

## ALIGNMENT WITH THE *NO CHILD LEFT BEHIND (NCLB) ACT*

(See also **Highly Qualified Teachers, Local Funding, and State Funding**)

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup> This document addresses the final regulatory requirements regarding the alignment of *IDEA* and the *NCLB*<sup>2</sup>.

### IDEA Regulations

#### 1. Add new definitions.

“Core academic subjects.” The term “core academic subjects” means "English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography."

[34 CFR 300.10] [sec. 9101(11) of *ESEA*] [20 U.S.C. 1401(4) of *IDEA*]

“Limited English proficient.” Limited English proficient has the meaning given the term in section 9101(25) of the *ESEA*.

[34 CFR 300.27] [9101(25) of *ESEA*]

“Highly qualified.” For a complete definition of the term “highly qualified,” refer to the “Highly Qualified Teachers” topic brief. The definition of "highly qualified special education teacher" in the final Part B regulations contains requirements for special education teachers teaching core academic subjects, special education teachers teaching to alternate achievement standards, and special education teachers teaching multiple subjects, which cross-reference the requirements in section 9101(23) of the *ESEA* and 34 CFR §200.56 of the *ESEA* regulations.

[34 CFR 300.18] [20 U.S.C. 1401(10)] [sec. 9101(23) of the *ESEA*]

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA* 2004; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

<sup>2</sup> For purposes of this document, the No Child Left Behind Act (*NCLB*), signed into law by President George W. Bush on January 8, 2001 which amended Title I of the Elementary and Secondary Education Act of 1965 (*ESEA*), also is referred to as the *ESEA*.

"Scientifically based research." Scientifically based research has the meaning given the term in section 9101(37) of the *ESEA*.

[34 CFR 300.35] [20 U.S.C. 1411(e)(2)(C)(xi)] [sec. 9101(37) of the *ESEA*]

“Scientifically based research” (as defined in the *ESEA*): (a) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and (b) Includes research that (1) Employs systematic, empirical methods that draw on observation or experiment; (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

[34 CFR 300.35] [20 U.S.C. 1411(e)(2)(C)(xi)] [sec. 9101(37) of the *ESEA*]

An LEA may not use more than 15 percent of the amount the LEA receives under Part B for any fiscal year, less any amount reduced by the LEA under §300.205 for adjustment of local fiscal effort in certain fiscal years, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.) In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include: (1) Professional development (which may be provided by entities other than LEA's) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction; and (2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. Funds made available for early intervening services may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the *ESEA* if those funds are used to supplement, and not supplant, funds made available under the *ESEA* for the activities and services assisted under this section.

[34 CFR 300.226(a)-(b)] [20 U.S.C. 1413(f)]

## 2. Allow for use of funds reserved to carry out state-level activities

States may use part of their allocations reserved under §300.704(b)(1) to carry out a range of activities, including the following:

- To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the *ESEA*; and
- To provide technical assistance to schools and local educational agencies (LEAs), and direct services, including supplemental educational services as defined in section 1116(e) of the *ESEA* to children with disabilities, in schools or LEAs identified for improvement under section 1116 of the *ESEA* on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the *ESEA*.

[34 CFR 300.704(b)(4)(x) and (xi)] [20 U.S.C. 1411(e)(2)(C)(i) and (ii)-(II)]

## 3. Allow the use of funds in schoolwide programs.

...Notwithstanding the provisions in §§300.202 regarding use of amounts and 300.203 regarding maintenance of effort or any other provision of Part B of the Act, an LEA may use funds received under Part B for any fiscal year to carry out a schoolwide program under Section 1114 of the *ESEA*, except that the amount so used in any such program may not exceed:

- The amount received by the LEA under Part B of the Act for that fiscal year; divided by
- The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
- The number of children with disabilities participating in the schoolwide program.

Funding conditions. The funds described in §300.205(a) are subject to the following conditions:

- The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) (only to pay the excess costs of providing special education and related services to children with disabilities) and (a)(3) (must be used to supplement, and not supplant, State, local, and other Federal funds).
- The funds may be used without regard to the requirements of §300.202(a)(1) (requiring LEAs to expend Part B funds in accordance with the applicable provisions of 34 CFR Part 300).
- (c) Meeting other Part B requirements. Except as provided immediately above, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools-
- (1) Receive services in accordance with a properly developed IEP; and

- (2) Are afforded all of the rights and services guaranteed to children with disabilities under Part B.

[34 CFR 300.206(a) and (b)] [20 U.S.C. 1413(a)(2)(D)]

#### **4. Allow LEAs some flexibility in the use of funds to carry out activities under *ESEA*.**

If an LEA receives an allocation under §300.705 (flow through funds) that exceeds the allocation the LEA received in the previous fiscal year and exercises the authority under §300.205(a) to reduce the level of expenditures otherwise required by not more than 50 percent of the amount of that excess, , the LEA must use an amount of local funds equal to the reduction in expenditures under §300.205(a) to carry out activities that could be supported with funds under the *ESEA* regardless of whether the LEA is using funds under the *ESEA* for those activities.

[34 CFR 300.205(b)] [20 U.S.C. 1413(a)(2)(C)(ii)]

#### **5. Add requirements for qualifications of special education teachers.**

The State educational agency must establish and maintain qualification to ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a)(2) of the *ESEA*.

[34 CFR 300.156(c)] [20 U.S.C. 1412(a)(14)(C)]

#### **6. Require performance goals and indicators.**

The State must have in effect established goals for the performance of children with disabilities in the State that:

- Promote the purposes of *IDEA* as stated in §300.1 of the final Part B regulations and Section 601(d) of the Act;
- Are the same as the State's objectives for progress by children in its definition of adequate yearly progress (AYP), including the State's objectives for progress by children with disabilities, under Section 1111(b)(2)(C) of the *ESEA*;
- Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
- Are consistent, to the extent appropriate, with any other goals and standards for children established by the State.

In addition, the State must have in effect established performance indicators it will use to assess progress toward achieving the goals described in Section 612(a)(15)(A) of *IDEA*, including measurable annual objectives for progress by children with disabilities under Section 1111(b)(2)(C)(v)(II)(cc) of the *ESEA*.

[34 CFR 300.157(a) and (b)] [20 U.S.C. 1412(a)(15)(A) and (B)]

## **7. Require reporting.**

[The State] must annually report to the secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under §300.157(a) for the performance of children with disabilities in the State, that may include elements of the reports required under Section 1111(h) of the *ESEA*.

[34 CFR 300.157(c)] [20 U.S.C. 1412(a)(15)(C)]

## **8. Require development of alternate assessments.**

*IDEA* provides<sup>3</sup> for the State, or an LEA in the case of a districtwide assessment, to develop alternate assessments that are the aligned with the State's challenging academic content standards and challenging student academic achievement standards.

[20 U.S.C. 1412(a)(16)(C)(ii)(I)]

If the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of the *ESEA*, the State's guidelines the State or its LEAs developed and implemented for alternate assessments must provide for alternate assessments that ... measure the achievement of children with disabilities against those standards.

[20 U.S.C. 1412(a)(16)(C)(ii)(II)]

## **9. Require linking records of migratory children among states.**

The LEA must cooperate in the secretary's efforts under Section 1308 of *ESEA* to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

[34 CFR 300.213] [20 U.S.C. 1413(a)(9)]

## **10. Provide a special rule for eligibility determination.**

A child must not be determined to be a child with a disability under 34 CFR Part 300 if the determinant factor for that determination is lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the *ESEA*); lack of appropriate instruction in math; or limited English proficiency.

[34 CFR 300.306(b)(1)] [20 U.S.C. 1414(b)(5)]

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<sup>3</sup> Final regulations regarding assessment are anticipated shortly.