



4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

RIN 1820-AB74

Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities Program; Early Intervention Program for Infants and Toddlers with Disabilities.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (Secretary) amends the regulations implementing Parts B and C of the Individuals with Disabilities Education Act (IDEA). These conforming changes are needed to implement statutory amendments made to the IDEA by the Every Student Succeeds Act (ESSA), enacted on December 10, 2015. These regulations remove and revise IDEA definitions based on changes made to the definitions in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the ESSA, and also update several State eligibility requirements to reflect amendments to the IDEA made by the ESSA. They also update relevant cross-references in the IDEA regulations to sections of the ESEA to reflect changes made by the ESSA. These regulations also include several technical corrections to previously

published IDEA Part B regulations.

DATES: These final regulations are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mary Louise Dirrigl, U.S. Department of Education, 550 12th Street, SW., Potomac Center Plaza, room 5156, Washington, DC 20202-2641. Telephone: (202) 245-7324 or by email: Mary.Louise.Dirrigl@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: Enacted December 10, 2015, the ESSA¹ reauthorized the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. The ESSA also made certain changes to sections 602 and 611 through 614 of the IDEA. Consequently, we are amending the IDEA regulations in parts 300 and 303 to reflect these changes.

Summary of the Major Provisions of This Regulatory Action: For the IDEA regulations in parts 300 and 303, these regulations:

- Revise the definition of the term "charter school" in §

¹ Unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

300.7 to update the statutory reference to the ESEA's amended definition of that term.

- Remove the definition of the term "core academic subjects" in § 300.10, the definition of "highly qualified special education teachers" in § 300.18, and the definition of "scientifically based research" in §§300.35 and 303.32 because these terms have been removed from the ESEA.
- Revise the term "Limited English proficient" in § 300.27 to reflect the revisions to the term "English learner" in section 8101 of the ESEA.
- Revise § 300.102(a)(3)(iv) to incorporate the definition of "regular high school diploma" in section 8101(43) of the ESEA.
- Move the qualification requirements for special education teachers from § 300.18(b)(1) and (2) to § 300.156(c).
- Revise § 300.160(c) to reflect amendments made to the IDEA by the ESSA that clarify that guidelines and alternate assessments to measure academic progress under title I of the ESEA apply only to children with disabilities who are students with the most significant cognitive disabilities, whose achievement is measured against alternate academic achievement standards if a State has adopted such standards as permitted under section 1111(b)(1)(E) of the ESEA.

- Revise paragraph (b) (4) (xi) of § 300.704 (State-level activities), regarding the provision of technical assistance to schools and local educational agencies (LEAs) implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, to include direct student services described in section 1003A(c) (3) of the ESEA to children with disabilities.

Part 300 Regulatory Changes:

Subpart A—General

DEFINITIONS USED IN THIS PART

We are revising the definition of “charter school” in § 300.7 by removing the phrase “section 5210(1)” and replacing it with “section 4310(2).” We are revising the authority citation for § 300.7 by removing “20 U.S.C. 7221i(1)” and replacing it with “20 U.S.C. 7221i(2).”

We are removing the definition of “core academic subjects” in § 300.10 and reserving § 300.10. This change is consistent with section 9215(ss) (1) (A) of the ESSA, which eliminated section 602(4) of the IDEA.

Consistent with section 9215(ss) (1) (B) of the ESSA, we are revising the definition of “excess cost” in § 300.16.

Specifically, we are revising the cross-reference to the ESEA in § 300.16(a)(3) to read “under part A of title III of the ESEA.”

We are removing the definition of “highly qualified special education teachers” in § 300.18, consistent with section 9214(d)(1) of the ESSA, which eliminated section 602(10) of the IDEA, and we are reserving § 300.18. Consequently, we are removing the references to § 300.18 in §§ 300.138(a)(1) and 300.146(b) and adding a reference to § 300.156(c) in § 300.138(a)(1), as explained below. Based on the amendments made to the IDEA by section 9214(d)(2)(A) of the ESSA, as discussed in Subpart B, we are moving § 300.18(b)(1) and (2), regarding qualifications for special education teachers, to § 300.156(c). Consistent with changes made by section 9214(d)(2)(B) and (C) to section 612(a)(14)(D) and (E) of the IDEA, we are also removing references to the term “highly qualified” in § 300.156(d) and (e) and replacing them with references to personnel “who meet the applicable requirements described in paragraph (c) of this section.”

Consistent with section 9215(ss)(1)(C) of the ESSA, which amended section 602(18) of the IDEA, we are revising the definition of “Limited English proficient” in § 300.27 to adopt the meaning given to the term “English learner” in section 8101 of the ESEA.

Consistent with section 8002(1) of the ESEA, we are

removing the definition of "scientifically based research" in § 300.35 because this definition has been removed from the ESEA. Section 300.35 is reserved. However, we are retaining references to "scientifically based research" in §§ 300.604(a)(1)(ii) and 300.704(b)(4)(xi), because these references were retained in sections 616(e)(1)(A)(ii) and 611(e)(2)(C)(xi), respectively.

We are revising the following cross-references to definitions:

- The cross-reference to the definition of "special education" in § 300.105(a)(1) is changed from § 300.36 to § 300.39, and from § 300.38 to § 300.39 in § 300.115(b)(1).
- The cross-reference to the definition of "supplementary aids and services" in § 300.105(a)(3) is changed from § 300.38 to § 300.42, and from § 300.41 to § 300.42 in § 300.154(b)(1)(i).
- The cross-reference to the definition of "transition services" in § 300.154(b)(1)(i) is changed from § 300.42 to § 300.43.

Subpart B—State Eligibility

FREE APPROPRIATE PUBLIC EDUCATION (FAPE) REQUIREMENTS

We are revising § 300.102(a)(3)(iv) to incorporate the definition of "regular high school diploma" currently included

in section 8101(43) of the ESEA. The term means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. We are making this conforming change to ensure that "regular high school diploma" has the same meaning under the IDEA and the ESEA, and the definition is consistently applied under both programs. We are also updating the authority citation to reflect this change.

Additional Eligibility Requirements

Consistent with section 9214(d)(2)(A) of the ESSA, we are revising § 300.156(c) by removing the language indicating that each person employed as a public school special education teacher in the State must be highly qualified by the deadline established in section 1119(a)(2) of the ESEA. In its place at § 300.156(c), we are adding language from the current definition of "highly qualified" in § 300.18(b)(1). The revisions are needed to clarify that the IDEA, as amended by the ESSA, retains the same requirements as in current § 300.18(b)(1) governing the

qualifications of special education teachers. Additionally, consistent with section 9214(d)(2)(A) of the ESSA, we are retaining the requirements in current § 300.18(b)(2), regarding participation in an alternate route to certification as a special educator. The retention of these requirements is consistent with amendments to section 612(a)(14)(C)(i) of the IDEA, which require that an alternate route to certification as a special educator meets the minimum requirements described in 34 CFR 200.56(a)(2)(ii), as such section was in effect on November 28, 2008. Because 34 CFR 200.56(a)(2)(ii), as in effect on November 28, 2008, included the language in current § 300.18(b)(2), we are moving the language in current § 300.18(b)(2) to new § 300.156(c)(2). Additionally, consistent with amendments to section 612(a)(14)(D) and (E) of the IDEA made by section 9214(d)(2)(B) and (C) of the ESSA, we are removing references to “highly qualified” in paragraphs (d) and (e) of § 300.156 and replacing them with references to personnel “who meet the applicable requirements described in paragraph (c) of this section.”

Consistent with section 9215(ss)(3)(A) of the ESSA, which amended section 612(a)(15) of the IDEA (Performance goals and indicators), we are making the following changes to § 300.157. Consistent with section 9215(ss)(3)(A)(i) of the ESSA, which amended section 612(a)(15)(A)(ii) of the IDEA, we are replacing

§ 300.157(a) (2) in its entirety with the language "Are the same as the State's long-term goals and measurements of interim progress for children with disabilities under section 1111(c) (4) (A) (i) of the ESEA." Consistent with amendments to section 612(a) (15) (B) made by section 9215(ss) (3) (A) (ii) of the ESSA, we are also revising § 300.157(b) by replacing the language "including measurable annual objectives for progress by children with disabilities under section 1111(b) (2) (C) (v) (II)" with "including measurements of interim progress for children with disabilities under section 1111(c) (4) (A) (i)."

We are making a number of amendments to §§ 300.160(c) through (f) to address amendments made by section 9215(ss) (3) (B) of the ESSA to section 612(a) (16) (C) (ii) of the IDEA, as well as changes made by the ESSA to section 1111(b) (2) (D) of the ESEA, which affect current (d), (e), and (f) of § 300.160. We are changing the title of § 300.160(c) from "Alternate Assessments" to "Alternate Assessments Aligned with Alternate Academic Achievement Standards for Students with the Most Significant Cognitive Disabilities." We are adding the phrase "children with disabilities who are students with the most significant cognitive disabilities" in § 300.160(c) (1) with respect to State guidelines for participation in alternate assessments, because section 9215(ss) (3) (B) of the ESSA clarifies that the State guidelines referred to in section 612(a) (16) (C) (i) of the IDEA

apply only to participation of children with disabilities who are students with the most significant cognitive disabilities in alternate assessments aligned with alternate academic achievement standards as permitted under section 1111(b)(1)(E) of the ESEA, if those children cannot take regular assessments, even with accommodations as indicated in their respective individualized education programs (IEPs).

Consistent with section 9215(ss)(3)(B) of the ESSA, which amended section 612(a)(16)(C)(ii) of the IDEA, we are also reorganizing § 300.160(c)(2) for greater clarity and to ensure consistency with 34 CFR 200.6(c) of the regulations for title I, part A of the ESEA. These changes will clarify that if a State has adopted alternate academic achievement standards as permitted under section 1111(b)(1)(E) of the ESEA and 34 CFR 200.1(d) of the regulations for title I, part A of the ESEA, the State must conduct alternate assessments that measure the achievement of children with disabilities who are students with the most significant cognitive disabilities against those standards. Consistent with amendments made to section 612(a)(16)(C)(ii) of the IDEA by section 9215(ss)(3)(B) of the ESSA, we are replacing the phrase "the State's challenging academic content standards and challenging student academic achievement standards" with "challenging State academic content standards under section 1111(b)(1) of the ESEA and alternate

academic achievement standards under section 1111(b)(1)(E) of the ESEA.” Accordingly, § 300.160(c)(2)(iii) is removed, because the statutory amendments that form the basis for the above regulatory changes clarify that in assessing the academic progress of children with disabilities under title I, part A of the ESEA, the only alternate assessments permitted under the IDEA and title I of the ESEA are alternate assessments aligned with alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities under section 1111(b)(2)(D) of the ESEA. We are amending § 300.160(c)(3) by adding a reference to section 1111(b)(1)(E)(ii) of the ESEA and changing the title I, part A regulatory reference to § 200.6(c)(6) to reinforce that States are prohibited from adopting modified academic achievement standards or any other alternate academic achievement standards that do not meet the requirements in section 1111(b)(1)(E) of the ESEA for any students with disabilities under section 602(3) of the IDEA.

Consistent with section 1111(b)(2)(D)(i)(II) of the ESEA, and 34 CFR 200.6(d)(2), we are amending § 300.160(d) (Explanation to IEP Teams). We are adding new § 300.160(d)(1) to read, “A State (or in the case of a district-wide assessment, an LEA) must provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic

achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma." Consistent with section 1111(b)(2)(D)(i)(VII) of the ESEA, and 34 CFR 200.6(d)(4), we have added new § 300.160(d)(2), which reads, "A State (or in the case of a district-wide assessment, an LEA) must not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma." Even though this language is now reflected in 34 CFR 200.6(d)(2) and (4), we believe this is important information for IEP teams to have in ensuring that students with the most significant cognitive disabilities taking alternate assessments aligned with alternate academic achievement standards receive the special education and related services that they need to enable them to be involved and make progress in the general education curriculum that is aligned with the State's challenging academic content standards for the grade in which the student is enrolled. Similarly, we believe it is important for parents to

be fully informed of the possible implications of their child's participation in alternate assessments aligned with alternate academic achievement standards. Therefore, consistent with section 1111(b)(2)(D)(i)(II) of the ESEA, and 34 CFR 200.6(d)(3), we have revised § 300.160(e) (Inform parents) to read, "A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines referred to in paragraph (c)(1) are informed, consistent with § 200.2(e), that their child's achievement will be measured based on alternate academic achievement standards, and how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma." This revised language is also consistent with 34 CFR 200.6(d)(3), implementing title I, part A of the ESEA.

Consistent with section 612(a)(16)(C) of the IDEA and section 1111(b)(1)(E)(ii) of the ESEA, we are revising § 300.160(f) to make clear that school year 2016-2017 is the last school year for which States may report on the participation and performance of children with disabilities taking alternate assessments based on grade-level achievement standards. We are also correcting an inadvertent error in § 300.160(f)(3), regarding participation in assessments, that was included in the

August 21, 2015 regulations governing title I, part A of the ESEA. See Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children With Disabilities. 80 FR 50773. We are replacing school years prior to "2015-2016" with school years prior to "2016-2017." This correction clarifies that school year 2015-2016, not school year 2014-2015, was the last school year in which States were permitted to administer alternate assessments based on modified academic achievement standards. We have also removed the words "if any" from § 300.160(f)(4), because the only alternate assessments that States may conduct to assess academic progress under title I of the ESEA are alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities. We are also changing the words "based on" to "aligned with" in paragraphs (f)(3) and (4) of § 300.160 to be consistent with the language used elsewhere in § 300.160(c) referring to alternate assessments conducted under this section.

Subpart C—Local Educational Agency Eligibility

Consistent with section 9215(ss)(4) of the ESSA, which amended section 613(a)(3) of the IDEA, we are revising § 300.207, regarding personnel development, by removing the reference to "section 2122 of the ESEA" and replacing it with "section 2102(b) of the ESEA."

Subpart D—Evaluations, Eligibility Determinations,
Individualized Education Programs, and Educational Placements

Evaluations and Reevaluations

Consistent with section 9215(ss)(5) of the ESSA, which amended section 614(b)(5)(A) of the IDEA, we are revising § 300.306(b)(1)(i), regarding determination of eligibility, by inserting the phrase “as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015)” after “ESEA.”

Development of IEP

We are correcting an inadvertent error in § 300.324(d)(2)(ii) (Children with disabilities in adult prisons) by changing the least restrictive environment reference from § 300.112 to § 300.114.

Subpart G—Authorization, Allotment, Use of Funds, and
Authorization of Appropriations

ALLOTMENTS, GRANTS, AND USE OF FUNDS

Consistent with section 9215(ss)(2)(A) and (B) of the ESSA, which amended section 611(e)(2)(C) and (e)(3)(C)(ii)(I)(bb) of the IDEA, we are making the following revisions. We are revising § 300.704(b)(4) (Other State-level activities) as follows:

- Removing “section 6111 of the ESEA” from paragraph (x) and replacing it with “section 1201 of the ESEA.”

- Revising paragraph (xi) regarding the provision of technical assistance to schools and LEAs by removing “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” and replacing it with “including direct student services described in section 1003A(c)(3) of the ESEA to children with disabilities, to schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities.”
- Replacing the phrase “to meet or exceed the objectives established by the State under section 1111(b)(2)(G) of the ESEA” with “based on the challenging academic standards described in section 1111(b)(1) of the ESEA.”
- Finally, we are revising § 300.704(c)(3)(i)(A)(2), regarding the LEA high cost fund, by changing the ESEA reference from section 9101 to section 8101.

Part 303 Regulatory Changes:

Subpart A-General

Definitions Used in This Part

Consistent with section 8002(1) of the ESEA, we are removing the definition of "scientifically based research" from § 303.32, because this definition has been removed from the ESEA. Section 303.32 is reserved. The definition of "scientifically based research" was adopted in the 2011 regulations under Part C of the IDEA to cross-reference the same definition under the ESEA. However, the term "scientifically based research" is still retained and applies to § 303.112 of the Part C regulations regarding the State's responsibility to make early intervention services available under section 635(a)(2) of the IDEA. See 76 FR 60140, 60163-60164 (Sept. 28, 2011).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more or adversely affect a sector of the economy, productivity,

competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, it must identify two deregulatory actions. For Fiscal Year 2017, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or

marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only upon a reasoned determination that their benefits will justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these regulations will not impose additional costs to States and LEAs or to the Federal government. These regulations

do not impose additional costs or administrative burdens because States will be in the process of developing and revising their regulations implementing title I of the ESEA to conform with the changes made by the ESSA. We believe any additional costs imposed on States by these final regulations will be negligible, primarily because they reflect technical changes which do not impose additional burden. Moreover, we believe any costs will be significantly outweighed by the potential benefits of ensuring consistency among the implementation of the IDEA and ESSA requirements for children with disabilities.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b) (B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is "unnecessary" in those situations in which "the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." Utility Solid Waste Activities

Group v. EPA, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act 31 (1947) and South Carolina v. Block, 558 F. Supp. 1004, 1016 (D.S.C. 1983). These regulations implement the technical amendments made to the IDEA by the ESSA and include revisions made for consistency with the statute.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because these final regulations include only conforming changes and technical corrections, there is good cause to make them effective on the day they are published.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early

notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to

documents published by the Department.

List of Subjects in 34 CFR Parts 300 and 303

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: June 27, 2017.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 300 and 303 of title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH
DISABILITIES

1. The authority citation for part 300 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3, 1406, 1411-1419, and 3474,
unless otherwise noted.

§ 300.7 [Amended]

2. Section 300.7 is amended by removing the phrase “section 5210(1)” and adding in its place “section 4310(2)” and by

removing the authority citation "20 U.S.C. 7221i(1)" and adding in its place "20 U.S.C. 7221i(2)".

§ 300.10 [Removed and Reserved]

3. Remove and reserve § 300.10.

§ 300.16 [Amended]

4. Section 300.16 is amended in paragraph (a)(3) by removing the words "Parts A and B" and adding in its place "Part A".

§ 300.18 [Removed and Reserved]

5. Remove and reserve § 300.18.

§ 300.27 [Amended]

6. Section 300.27 is amended by removing the phrase "in section 9101(25) of the ESEA" and adding in its place "'English learner' in section 8101 of the ESEA".

§ 300.35 [Removed and Reserved]

7. Remove and reserve § 300.35.

8. Section 300.102 is amended by revising paragraph (a)(3)(iv) and by revising the authority citation to read as follows:

§ 300.102 Limitation—exception to FAPE for certain ages.

(a) * * *

(3) * * *

(iv) As used in paragraphs (a)(3)(i) through (iii) of this section, the term regular high school diploma means the standard

high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

* * * * *

Authority: 20 U.S.C. 1412(a)(1)(B)-(C) and 7801(43).

§ 300.105 [Amended]

9. Section 300.105 is amended:

A. In paragraph (a)(1) by removing “§ 300.36” and adding in its place “§ 300.39”.

B. In paragraph (a)(3) by removing “§ 300.38” and adding in its place “§ 300.42”.

§ 300.115 [Amended]

10. Section 300.115 is amended in paragraph (b)(1) by removing “§ 300.38” and adding in its place “§ 300.39”.

§ 300.138 [Amended]

11. Section 300.138 is amended in paragraph (a)(1) by removing the phrase “highly qualified special education teacher requirements of § 300.18” and adding in its place

"special education teacher qualification requirements in § 300.156(c)".

§ 300.146 [Amended]

12. Section 300.146 is amended in paragraph (b) by removing "§ 300.18 and".

§ 300.154 [Amended]

13. Section 300.154 is amended in paragraph (b)(1)(i) by removing "§ 300.41" and "§ 300.42" and adding in their place "§ 300.42" and "§ 300.43", respectively.

14. Section 300.156 is amended:

A. By revising paragraph (c).

B. In paragraph (d) by removing the term "highly qualified" and adding in its place "who meet the applicable requirements described in paragraph (c) of this section" after the word "personnel".

C. In paragraph (e) by removing the phrase "be highly qualified" and adding in its place "meet the applicable requirements described in paragraph (c) of this section".

The revision reads as follows:

§ 300.156 Personnel qualifications.

* * * * *

(c) Qualifications for special education teachers. (1) The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special

education teacher in the State who teaches in an elementary school, middle school, or secondary school—

(i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a

positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (c) (2) (i) of this section are met.

* * * * *

15. Section 300.157 is amended:

A. By revising paragraph (a) (2).

B. In paragraph (b) by removing "including measurable annual objectives for progress by children with disabilities under section 1111(b) (2) (C) (v) (II)" and adding in its place "including measurements of interim progress for children with disabilities under section 1111(c) (4) (A) (i)".

The revision reads as follows:

§ 300.157 Performance goals and indicators.

* * * * *

(a) * * *

(2) Are the same as the State's long-term goals and measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i) of the ESEA.

* * * * *

16. Section 300.160 is amended by revising paragraphs (c) through (f) to read as follows:

§ 300.160 Participation in assessments.

* * * * *

(c) Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities. (1) If a State has adopted alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities as permitted in section 1111(b)(1)(E) of the ESEA, the State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of children with disabilities who are students with the most significant

cognitive disabilities under title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must--

(i) Be aligned with the challenging State academic content standards under section 1111(b)(1) of the ESEA and alternate academic achievement standards under section 1111(b)(1)(E) of the ESEA; and

(ii) Measure the achievement of children with disabilities who are students with the most significant cognitive disabilities against those standards.

(3) Consistent with section 1111(b)(1)(E)(ii) of the ESEA and 34 CFR 200.6(c)(6), a State may not adopt modified academic achievement standards or any other alternate academic achievement standards that do not meet the requirements in section 1111(b)(1)(E) of the ESEA for any children with disabilities under section 602(3) of the IDEA.

(d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, an LEA) must--

(1) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement

standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and

(2) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in paragraph (c)(1) of this section are informed, consistent with 34 CFR 200.2(e), that their child's achievement will be measured based on alternate academic achievement standards, and of how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were

provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards in school years prior to 2017-2018.

(3) The number of children with disabilities, if any, participating in alternate assessments aligned with modified academic achievement standards in school years prior to 2016-2017.

(4) The number of children with disabilities who are students with the most significant cognitive disabilities participating in alternate assessments aligned with alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards (prior to 2017-2018), alternate assessments based on modified academic achievement standards (prior to 2016-2017), and alternate assessments aligned with alternate academic achievement standards if-

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

* * * * *

§ 300.207 [Amended]

17. Section 300.207 is amended by removing "section 2122 of the ESEA" and adding in its place "section 2102(b) of the ESEA".

§ 300.306 [Amended]

18. Section 300.306 is amended in paragraph (b)(1)(i) by adding the phrase "as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015)" after "ESEA".

§ 300.324 [Amended]

19. Section 300.324 is amended in paragraph (d)(2)(ii) by removing "300.112" and adding in its place "300.114".

20. Section 300.704 is amended:

A. In paragraph (b)(4)(x) by removing "6111 of the ESEA" and adding in its place "1201 of the ESEA".

B. Revising paragraph (b)(4)(xi).

C. In paragraph (c)(3)(i)(A)(2) by removing "section 9101" and adding in its place "section 8101".

The revision reads as follows:

§ 300.704 State-level activities.

* * * * *

(b) * * *

(4) * * *

(xi) To provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c) (3) of the ESEA, to children with disabilities, in schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance 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 based on the challenging academic standards described in section 1111(b) (1) of the ESEA.

* * * * *

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS
WITH DISABILITIES

21. The authority citation for part 303 continues to read as follows:

AUTHORITY: 20 U.S.C. 1431 through 1444, unless otherwise noted.

§ 303.32 [Removed and Reserved]

22. Remove and reserve § 303.32.

[FR Doc. 2017-13801 Filed: 6/29/2017 8:45 am; Publication Date: 6/30/2017]