

## A Summary of Significant Changes in the Final IDEA Regulations

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1. Confidentiality of information
  - a. 300.622(b)(2)--New language is added to clarify that consent must be obtained before personally identifiable information is released to officials of participating agencies that provide or pay for transition services. (Federal Register, p. 46736)
  - b. 300.622(b)(3)--New language is added to require parent consent before personally identifiable information is released between officials in the LEA where a private school is located and the LEA of the parent's residence. (Federal Register, p. 46736)
2. Definition of "highly qualified special education teacher"
  - a. 300.18(g)(2)--New language is added to clarify that when a fully certified regular education teacher subsequently becomes a fully certified special education teacher, he/she is a new special education teacher when first hired as a special education teacher. (Federal Register, p. 46561)
  - b. 300.18(h)--New language is added to clarify that highly qualified special education teacher requirements also do not apply to private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities. (Federal Register, p. 46562)
3. Definition of "local educational agency"
  - a. 300.28(b)--New language is added to clarify that a public elementary or secondary charter school that is established as its own LEA must be a nonprofit entity. (Federal Register, p. 46565)
4. Definition of "related services"
  - a. 300.34(b)--New language is added to clarify that "mapping" of a cochlear implant is considered optimization of the device, which does not fall under the definition of "related services." (Federal Register, p. 46569)
  - b. 300.34(b)(2)--New language is added to clarify the rights of a child with a surgically implanted device. (Federal Register, p. 46570)
  - c. 300.34(c)(13)--The terms "school health services" and "school nurse services" are combined and new language is added to clarify that "school nurse services" are services provided by a qualified school nurse while "school health services" are services that may be provided by either a qualified school nurse or other qualified person. (Federal Register, p. 46574)
  - d. 300.42--New language is added to clarify that the definition of "supplementary aids and services" is to include the provision of such aids and services in extracurricular and nonacademic settings. (Federal Register, p. 46578)

5. Discipline procedures
- a. 300.530(d)(4)--The requirement for school personnel to determine the location in which services will be provided for a child who will be removed for not more than 10 consecutive school days after the child has already been removed for 10 school days in the same year is removed. (Federal Register, p. 46717)
  - b. 300.530(d)(5)--The requirement for the IEP Team to determine the location in which services will be provided for removals that constitute a change of placement is removed. (Federal Register, p. 46719)
  - c. 300.530(e)(3)--New language is added that requires an LEA to take immediate steps to remedy deficiencies if the IEP Team determines that the conduct in question was the direct result of the LEA's failure to implement the IEP. (Federal Register, p. 46721)
  - d. 300.530(h)--New language is added to clarify that the LEA must notify the parents of the decision to make a removal that constitutes a change of placement and provide the procedural safeguards notice on the date on which the decision is made. New language is added to define the term "disciplinary action" as "a removal that constitutes a change of placement because of a violation of a code of student conduct." (Federal Register, p. 46722)
  - e. 300.532(a)--New language is added to clarify that a challenge of sufficiency of a due process complaint notice does not apply to expedited due process hearings for disciplinary cases. (Federal Register, p. 46725)
  - f. 300.532(b)(3)--The word "dangerous" is removed and substituted with the phrase "is substantially likely to result in injury to the child or to others" when referring to the LEA's request for a due process hearing. (Federal Register, p. 46724)
  - g. 300.532(c)(3)(ii)-- The proposed language that a resolution meeting must occur within seven days "of the date the hearing is requested" is changed to "of receiving notice of the due process complaint." (Federal Register, p. 46725)
  - h. 300.532(c)(4)--The two-day timeframe in the proposed regulations for disclosing information to the opposing party prior to an expedited due process hearing is removed. (Federal Register, p. 46726)
  - i. 300.534(b)(3)--The phrase, "in accordance with the agency's established child find or special education referral system," is removed in reference to a teacher, or other personnel of the LEA, expressing specific concerns about a child's pattern of behavior. (Federal Register, p. 46727)
  - j. 300.536(a)(2)(ii)—In determining whether a series of removals constitutes a change of placement, the requirement that a child's behavior must have been determined to be a manifestation of his or her disability is removed. (Federal Register, p. 46729)
6. FAPE requirements
- a. 300.101(c)--New language is added to clarify that FAPE must be made available, even though a child has not failed or been retained in a course or grade, and is advancing from grade to grade. (Federal Register, p. 46580)

- b. 300.102(a)(3)(iv)--New language is added regarding exceptions to FAPE, that clarifies that a high school diploma does not include an alternative degrees that is not fully aligned with the State's academic standards, such as a certificate or GED. (Federal Register, p. 46580)
7. Individualized Education Programs
- a. 300.320(a)(5)--New language is added to clarify the requirement for an explanation of the extent, if any, to which the child will not participate with nondisabled children in the "regular class," instead of the "regular education environment." (Federal Register, p. 46665)
- b. 300.321(e)--New language is added to clarify that the excusal of IEP Team members refers to the required IEP Team members, excluding the parent (i.e., regular education teacher, special education teacher, representative of the public agency, individual who can interpret the evaluation results and who may be one of the designated team members) (Federal Register, p. 46675)
- c. 300.322(b)--New language is added in the requirement of the notice to parents of the IEP Team meeting regarding the participation of the Part C service coordinator or other representative of the Part C system at the initial IEP Team meeting for a child previously served under Part C. (Federal Register, p. 46677)
- d. 300.324(a)(4)--New language is added to clarify that if changes are made to a child's IEP without convening an IEP Team meeting, the public agency must ensure that the child's IEP Team is informed of the changes. (Federal Register, p. 46685)
8. Initial evaluations
- 300.301(d)--New language is added to clarify that an exception to the timeframe for completing an initial evaluation applies only when a child transfers to a school located in another public agency, not within the same agency. (Federal Register, p. 46638)
9. Parental consent for initial evaluations
- a. 300.300(a)--New language is added to clarify that a public agency proposing to conduct an initial evaluation to determine eligibility must provide prior written notice and obtain informed parental consent before conducting the evaluation. (Federal Register, p. 46630)
- b. 300.300(a)(1)(iii)--New language is added to require public agencies to make reasonable efforts to obtain the informed parental consent for an initial evaluation. (Federal Register, p. 46631)
- c. 300.300 (a)(3)(i)-(ii)--New language is added to clarify that the public agency does not violate its obligation regarding child find and evaluation procedures if it declines to pursue the evaluation when a parent does not provide consent for an initial evaluation. (Federal Register, p. 46632)
10. Parental consent for provision of initial services
- 300.300(b)(ii)--New language is added to require public agencies to make reasonable efforts to obtain the informed parental consent for provision of initial services. (Federal Register, p. 46633)

11. Parental consent for reevaluations  
300.300(c)(1)--New language is added to clarify that if a parent refuses to consent to a reevaluation, the public agency may, but is not required to, pursue the reevaluation through a due process hearing, and the public agency does not violate its obligation regarding child find and evaluation procedures if it declines to pursue the reevaluation. (Federal Register, p. 46634)
12. Parental consent (other consent requirements)
  - a. 300.300(d)(4)--New language is added to state that if a parent of a child who is home schooled or placed in a private school at parent expense does not provide consent for the initial evaluation or reevaluation, or the parent fails to respond to the request to provide consent, the public agency may not use the consent override procedures. The public agency is not required to consider the child as eligible for private school special education services. (Federal Register, p. 46635)
  - b. 300.300(d)(5)--New language is added to clarify the public agency's requirement to document its attempts to obtain parental consent for an initial evaluation, initial services, or a reevaluation. (Federal Register, p. 46635)
13. Physical education  
300.108(a)--New language is added to clarify when physical education does not need to be provided to every child with a disability unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. (Federal Register, p. 46583)
14. Private school students (Parentally placed when FAPE is not at issue)
  - a. 300.130--The definition of parentally-placed private school children with disabilities is clarified by referencing the definition of an "elementary school" and a "secondary school." (Federal Register, p. 46591)
  - b. 300.131(f)--New language is added to clarify requirements for out-of-State parentally-placed private school children with disabilities by stating that each LEA in which private schools are located must include parentally-placed children who reside in another State as part of carrying out its child find responsibilities. (Federal Register, p. 46591)
  - c. 300.133(a)(2)(ii)--New language is added to clarify that children aged three through five are considered to be parentally-placed private school children with disabilities if they are enrolled in a private school that meets the definition of "elementary school" in Section 300.13. (Federal Register, p. 46591)
  - d. 300.133(a)(3)--New language is added to clarify that an LEA that has not expended all of its proportionate share of funds for private school children with disabilities in a given year must obligate the remaining funds for special education and related services to parentally-placed private school children with disabilities during a carry-over period of one additional year. (Federal Register, p. 46594)
  - e. 300.133(c)(1)(i)--The requirement to consult with private school representatives regarding how to conduct the annual count of parentally-placed private school children with disabilities is revised to require the LEA to determine the number of parentally-

placed private school children with disabilities attending private schools located in the LEA after timely and meaningful consultation.

f. 300.140(b)--New language is added to clarify that child find due process complaints are to be filed with the LEA in which the private school is located and forwarded to the SEA. (Federal Register, p. 46597)

g. 300.140(c)--New language is added to clarify that any complaint regarding noncompliance with the requirements governing parentally-placed private school children with disabilities must be filed in accordance with the State complaint process, and a complaint filed by a private school official regarding the lack of meaningful and timely consultation must be filed in accordance with a separate process to the SEA. (Federal Register, p. 46597)

15. Procedural Safeguards—Child’s status during proceedings  
300.518(c)--New language is added to clarify the status of a child transitioning from Part C of the Act to Part B when there is a dispute between the parent and the public agency. If the complaint involves an application of initial services under Part B for a child transitioning from Part C because the child has turned three, the public agency is not required to provide Part C services that the child had been receiving. If the child is found eligible under Part B and the parent consents to the initial provision of services, the public agency must provide those services that are not in dispute. (Federal Register, p. 46709)
16. Procedural Safeguards—Due process complaint  
300.508(c)--Language regarding a resolution session is removed to clarify that a resolution meeting should not be postponed when the LEA believes that a parent’s complaint is insufficient. (Federal Register, p. 46698)
17. Procedural Safeguards—Independent educational evaluations  
300.502(b)(5)--New language is added to clarify that a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. (Federal Register, p. 46690)
18. Procedural Safeguards—Mediation  
300.506(b)(7)--Language that states that parties to a mediation may be required to sign a confidentiality pledge is removed because it is no longer required in the Act. (Federal Register, p. 46696)
19. Procedural Safeguards—Model forms
  - a. 300.509(a)--New language is added that requires each SEA to develop model forms to assist both parents and public agencies in filing a due process complaint. New language is added to clarify that the SEA or LEA may not require the use of the model forms. (Federal Register, p. 46698)
  - b. 300.509(b)--New language is added to clarify that parents, public agencies, and other parties may use another form or document, so long as it meets the content requirement for filing a due process complaint or for filing a State complaint. (Federal Register, p. 46700)

20. Procedural Safeguards—Procedural safeguards notice
- a. 300.504(a)(2)--New language is added to clarify that a copy of the procedural safeguards notice must be given upon receipt of the first due process complaint as well as upon receipt of the first State complaint in a school year. (Federal Register, p. 46692)
  - b. 300.504(a)(3)--New language is added to require public agencies to give a copy of the procedural safeguards notice on the date on which a decision to make a disciplinary removal that constitutes a change of placement of a child is made. (Federal Register, p. 46692)
  - c. 300.504(c)--New language is added to clarify that the procedural safeguards notice must include a full explanation of the opportunity for the parent to present and resolve complaints utilizing both the due process complaint and State complaint procedures. New language is added to clarify that the procedural safeguards notice must inform parents about the child's placement during the pendency of any due process complaint, not merely during the pendency of a hearing on a due process complaint. (Federal Register, p. 46693)
21. Procedural Safeguards—Resolution Process
- a. 300.510(b)(1)--Language is revised to state that a due process hearing “may occur” (in lieu of “must occur”) by the end of a resolution session, if the parties have not resolved the dispute. (Federal Register, p. 46701)
  - b. 300.510(b)(2)--New language is added to clarify that the timeline for issuing the final decision begins at the expiration of the 30-day period, except for adjustments to the 30-day period specified in a new section 300.510(c). (Federal Register, p. 46702)
  - c. 300.510(b)(4)--New language is added that allows an LEA to request a hearing officer to dismiss the parent's due process complaint if the LEA is unable to obtain the participation of the parent. New language is added to require an LEA to use the same procedures for a resolution meeting as it uses to document its efforts to obtain the participation of a parent (300.322(d)) in other meetings. (Federal Register, p. 46702)
  - d. 300.510(b)(5)--New language is added that allows the parent to seek the intervention of a hearing officer to begin the due process hearing timeline if the LEA fails to hold the resolution meeting within 15 days of receiving notice. (Federal Register, p. 46702)
  - e. 300.510(c)—New language is added that allows for adjustments to the 30-day resolution period. It specifies that the 45-day timeline for the due process hearing begins the day after both parties agree to waive the resolution meeting, or after the mediation or resolution meeting begins but before the end of the 30-day period, the parties agree that no agreement is possible, or if both parties agree to continue the mediation at the end of the 30-day resolution period, but later, either party withdraws from the mediation process. (Federal Register, p. 46702)
22. Routine checking of hearing aids and surgically implanted devices
- 300.113--The requirement for routine checking of hearing aids is removed from Section 300.105(b) and moved to 300.113. New language is added regarding the need to ensure that the external components of surgically implanted medical devices are functioning properly. The language clarifies that the public agency is not responsible to the post-surgical maintenance, programming, or replacement of a medical device that has been

surgically implanted or of an external component of the device. (Federal Register, p. 46585)

23. Specific learning disabilities

a. 300.307(a)(1)--Language allowing a State to prohibit the use of a severe discrepancy model for determining if a child has a specific learning disability is removed. The language clarifies that the State must not require the use of a severe discrepancy model. (Federal Register, p. 46646)

b. 300.307(a)(2)--Language that states that the process based on response to scientific, research-based intervention is a part of the evaluation procedures is removed. (Federal Register, p. 46646)

c. 300.308--The qualifications and duties of the group designated to determine the existence of a specific learning disability are removed. Language in the previous regulations, but changed in the proposed regulations, regarding the membership of the group is reinstated. (Federal Register, p. 46650)

d. 300.309(a)--New language is added to clarify that the group may determine the existence of a specific learning disability if the child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of eight areas. (Federal Register, p. 46652)

e. 300.309(a)(3)--The term "limited English proficiency" is added to the other five exclusionary conditions (visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage) for determination of a specific learning disability. (Federal Register, p. 46655)

f. 300.309(b)--New language is added to clarify the eligibility criteria to ensure that underachievement is not due to a lack of appropriate instruction in reading or math. The term "high-quality, research-based instruction" is replaced with "appropriate instruction" in describing the type of instruction the child received prior to, or as part of the referral process. (Federal Register, p. 46656)

g. 300.309(c)--New language is added to require public agencies to promptly request parental consent for an evaluation if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided appropriate instruction, and whenever a child is referred for an evaluation. (Federal Register, p. 46658)

h. 300.310--New language is added to revise the requirements for observation of a child suspected of having a specific learning disability. The group designated to determine the existence of a specific learning disability must decide to use information from observation in routine classroom instruction that was done prior to the referral for an evaluation. At least one member of the group must conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parent consent obtained. (Federal Register, p. 46659)

i. 300.311--The term "written report" is renamed to "specific documentation for the eligibility determination" and the reference to the need for an evaluation report is removed. (Federal Register, p. 46660)

- j. 300.311(a)(5)--New language is added to clarify that the documentation must specify whether the child does not achieve adequately for the child's age or to meet State-approved grade-level standards, and the child does not make sufficient progress to meet those requirements.
- k. 300.311(a)(5)(ii)(B)--New language is added to clarify that the consideration of the child's pattern of strengths and weaknesses is relative to meet age or State-approved grade-level standards or intellectual development.
- l. 300.311(a)(6)--New language is added that requires the group to document the determination regarding the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level. (Federal Register, p. 46661)
- m. 300.311(a)(7)--Adds new language that requires that the documentation of the group must include documentation that the child's parents were notified about the State's policies regarding the amount and nature of student performance data that would be collected and the general education services to be provided, the strategies for increasing the child's rate of learning, and the parents' right to request an evaluation. (Federal Register, p. 46658)
24. State complaint procedures  
300.152(c)(1)--New language is added to clarify actions taken when a state complaint contains multiple issues of which one or more are part of a due process hearing. The State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. The language further clarifies that any issue in a complaint that is not part of a due process hearing must be resolved using the time limit and procedures in the state complaint procedures. (Federal Register, p. 46605)

