

QUESTIONS AND ANSWERS ON INDIVIDUALIZED EDUCATION PROGRAMS (IEPs), EVALUATIONS, AND REEVALUATIONS

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(REVISED F-1 AND F-3)

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. In addition, supplemental Part B regulations were published on December 1, 2008, and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise, or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide States, State educational agencies (SEAs), local educational agencies (LEAs), parents, and other stakeholders with information regarding the IDEA requirements relating to individualized education programs (IEPs), evaluations, and reevaluations. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. This Q&A document supersedes the Department's guidance, entitled: Questions and Answers on Individualized Education Programs (IEPs), Evaluations and Reevaluations, Revised June, 2010.

Generally, the questions and corresponding answers presented in this Q&A document required interpretation of the IDEA and its implementing regulations; the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <https://sites.ed.gov/idea/>.

If you are interested in commenting on this guidance, please e-mail your comments to OSERSguidancecomments@ed.gov and include IEPs, Evaluations and Reevaluations in the subject of your e-mail, or write to us at the following address: Ruth Ryder, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

Table of Contents

A. Transfer of Students with IEPs from One Public Agency to a New Public Agency	5
A-1: What if a student whose IEP has not been subject to a timely annual review, but who continues to receive special education and related services under that IEP, transfers to a new public agency in the same State? Is the new public agency required to provide a free appropriate public education (FAPE) from the time the student arrives?	5
A-2: What options are available when an out-of-state transfer student cannot provide a copy of his/her IEP, and the parent identifies the “comparable” services that the student should receive?	5
A-3: Is it permissible for a public agency to require that a student with a disability who transfers from another State with a current IEP that is provided to the new public agency remain at home without receiving special education and related services until a new IEP is developed by the new public agency?	6
A-4: What is the timeline for a new public agency to adopt an IEP from a previous public agency or to develop and implement a new IEP?	7
A-5: What happens if a child with a disability who has an IEP in effect transfers to a new public agency or LEA in a different State and the parent refuses to give consent for a new evaluation?	7
B. Initial Evaluation Timelines and Determination of Eligibility	9
B-1: Under the IDEA, what must occur during the 60-day time period after the public agency receives parental consent for an initial evaluation? Must a public agency determine eligibility and begin providing special education and related services within this IDEA 60-day initial evaluation timeline?	9
B-2: Must the assessments and other evaluation measures used to determine eligibility for special education and related services include a doctor’s medical diagnosis, particularly for children suspected of having autism or attention deficit disorder/attention deficit hyperactivity disorder?	9
C. IEP Team Membership and IEP Meetings.....	11
C-1: May the representative of the public agency be excused from attending an IEP Team meeting?	11
C-2: May more than one member of an IEP Team be excused from attending the same IEP Team meeting?.....	12

C-3: Must the public agency receive consent from a parent to excuse multiple regular education teachers if at least one regular education teacher will attend an IEP Team meeting?12

C-4: If the designated regular education teacher is excused from attending the IEP Team meeting, would an alternate regular education teacher be required to attend?13

C-5: Is there a specific timeline in the IDEA for public agencies to notify parents of a request to excuse an IEP Team member from attending an IEP Team meeting? May a State establish a timeline for this purpose?13

C-6: May State law or regulations regarding IEP Team membership and IEP Team meeting attendance requirements exceed those of the IDEA?14

C-7: Must an IEP Team document in writing that it considered all of the requirements of 34 CFR §300.324, regarding the development, review, and revision of IEPs?14

C-8: How must a public agency document that IEP Team members have been informed of changes to the IEP?15

C-9: Who must participate in making changes to the IEP when an IEP is amended without convening an IEP Team meeting pursuant to 34 CFR §300.324(a)(4)(i)?15

C-10: Must a public agency provide a parent with prior written notice if an IEP is amended without convening a meeting of the IEP Team?15

D. Consent Provisions.....17

D-1: Must a public agency obtain parental consent, or the consent of a child with a disability who has reached the age of majority, to invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services to an IEP Team meeting conducted in accordance with 34 CFR §300.321(b)(3)? Do the words “to the extent appropriate” impose a limitation on this requirement?.....17

D-2: Must a public agency pursue the initial evaluation of a child using the procedural safeguards outlined in subpart E of 34 CFR Part 300 in every case where a parent refuses to provide consent for an initial evaluation?18

D-3: What may a public agency do if a parent does not respond to the public agency’s request for the parent to provide consent to a reevaluation?18

D-4: The regulations provide, in 34 CFR §300.303(b)(2), that a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. What options are available to a public agency if a parent believes that the public agency should continue to provide special education and related services to their child but refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2)?.....19

D-5:	Does the requirement that a public agency obtain parental consent for the initial provision of special education and related services mean that parents must consent to each service included in the initial IEP developed for their child?.....	20
D-6:	What recourse is available to parents who consent to the initial provision of special education and related services but who disagree with a particular service or services in their child’s IEP?.....	21
D-7:	May a foster parent provide consent for an initial evaluation even if the biological parent refuses to provide such consent?.....	21
E.	Related Services	22
E-1:	Can artistic and cultural services, such as music therapy, be considered related services under the IDEA? If so, are there qualifications in the IDEA for personnel to provide such services as related services?.....	22
E-2:	Is a public agency responsible for paying for mental health services if the IEP Team determines that a child with a disability requires these services to receive FAPE and includes these services in the child’s IEP?	23
F.	Secondary Transition	25
F-1:	Must an IEP include measurable postsecondary goals relating to training, education, and employment based on age-appropriate transition assessments for every student with a disability who is at least 16 years old, regardless of the student’s skill levels? When is a separate goal also required for independent living skills?	25
F-2:	May community access skills be included in the IEP as independent living skills?	26
F-3:	If an IEP Team chooses to address transition before age 16 (for example, at age 14), do the same requirements apply?.....	26
F-4:	The regulations in 34 CFR §300.320(b)(1) require that appropriate postsecondary transition goals be measurable. Must public agencies measure achievement of the goals once a student has graduated or has aged out?.....	27

A. Transfer of Students with IEPs from One Public Agency to a New Public Agency

Authority: The requirements for IEPs for students who transfer from one public agency to a new public agency within the same school year are found in 34 CFR §300.323(e), (f), and (g). The requirements governing parental consent for initial evaluations are found in 34 CFR §300.300(a).

Question A-1: What if a student whose IEP has not been subject to a timely annual review, but who continues to receive special education and related services under that IEP, transfers to a new public agency in the same State? Is the new public agency required to provide a free appropriate public education (FAPE) from the time the student arrives?

Answer: If a child with a disability who received special education and related services pursuant to an IEP in a previous public agency (even if that public agency failed to meet the annual review requirements in 34 CFR §300.324(b)(1)(i)) transfers to a new public agency in the same State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must, pursuant to 34 CFR §300.323(e), provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency either (1) adopts the child’s IEP from the previous public agency; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

Question A-2: What options are available when an out-of-state transfer student cannot provide a copy of his/her IEP, and the parent identifies the “comparable” services that the student should receive?

Answer: The regulations in 34 CFR §300.323(g) require that, to facilitate the transition for a child described in 34 CFR §300.323(e) and (f)—

1. the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR §99.31(a)(2); and

2. the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

After taking reasonable steps to obtain the child's records from the public agency in which the child was previously enrolled, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, if the new public agency is not able to obtain the IEP from the previous public agency or from the parent, the new public agency is not required to provide special education and related services to the child pursuant to 34 CFR §300.323(f).

Even if the parent is unable to provide the child's IEP from the previous public agency, if the new public agency decides that an evaluation is necessary because it has reason to suspect that the child has a disability, nothing in the IDEA or its implementing regulations would prevent the new public agency from providing special education services to the child while the evaluation is pending, subject to an agreement between the parent and the new public agency. However, if the child receives special education services while the evaluation is pending, the new public agency still must ensure that the child's evaluation, which would be considered an initial evaluation, is conducted within 60 days of receiving parental consent for the evaluation or within the State-established timeframe within which the evaluation must be conducted, in accordance with 34 CFR §300.301(c)(1). Further, under 34 CFR §300.306(c)(1)-(2), if the new public agency conducts an eligibility determination and concludes that the child has a disability under 34 CFR §300.8 and needs special education and related services, the new public agency still must develop and implement an IEP for the child in accordance with applicable requirements in 34 CFR §§300.320 through 300.324 even though the child is already receiving special education services from the new public agency.

If there is a dispute between the parent and the new public agency regarding whether an evaluation is necessary or the special education and related services that are needed to provide FAPE to the child, the dispute could be resolved through the mediation procedures in 34 CFR §300.506 or, as appropriate, the due process procedures in 34 CFR §§300.507 through 300.516. If a due process complaint requesting a due process hearing is filed, the public agency would treat the child as a general education student while the due process complaint is pending.
71 FR 46540, 46682 (Aug. 14, 2006).

Question A-3: Is it permissible for a public agency to require that a student with a disability who transfers from another State with a current IEP that is

provided to the new public agency remain at home without receiving special education and related services until a new IEP is developed by the new public agency?

Answer: No. Under 34 CFR §300.323(f), if a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

Thus, the new public agency must provide FAPE to the child with a disability when the child enrolls in the new school in the public agency in the new State, and may not deny special education and related services to the child pending the development of a new IEP.

Question A-4: What is the timeline for a new public agency to adopt an IEP from a previous public agency or to develop and implement a new IEP?

Answer: Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the new public agency to adopt the child's IEP from the previous public agency or to develop and implement a new IEP. However, consistent with 34 CFR §300.323(e) and (f), the new public agency must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services.

Question A-5: What happens if a child with a disability who has an IEP in effect transfers to a new public agency or LEA in a different State and the parent refuses to give consent for a new evaluation?

Answer: Under 34 CFR §300.323(f), if a child with a disability (who has an IEP in effect) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if

appropriate, that meets the applicable requirements in §§300.320 through 300.324. Nothing in 34 CFR §300.323(f) would preclude the new public agency in the new State from adopting the IEP developed for the child by the previous public agency in another State. If the new public agency determines that it is necessary to conduct a new evaluation, that evaluation would be considered an initial evaluation because the purpose of that evaluation is to determine whether the child qualifies as a child with a disability and to determine the educational needs of the child. 71 FR 46540, 46682 (Aug 14, 2006). The public agency must obtain parental consent for such an evaluation in accordance with 34 CFR §300.300(a). However, 34 CFR §300.300(a)(3)(i) provides that if a parent does not provide consent for an initial evaluation, or fails to respond to a request to provide consent, the new public agency may, but is not required to, pursue the initial evaluation by utilizing the Act's consent override procedures, if permissible under State law. The Act's consent override procedures are the procedural safeguards in subpart E of 34 CFR Part 300 and include the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.

Because the child's evaluation in this situation is considered an initial evaluation, and not a reevaluation, the stay-put provision in 34 CFR §300.518(a) does not apply. The new public agency would treat the student as a general education student and would not be required to provide the child with comparable services if a due process complaint is initiated to resolve the dispute over whether the evaluation should be conducted. 71 FR 46682. Also, 34 CFR §300.300(a)(3)(ii) is clear that the public agency does not violate its obligation under 34 CFR §§300.111 and 300.301 through 300.311 (to identify, locate, and evaluate a child suspected of having a disability and needing special education and related services) if it declines to pursue the evaluation. Similarly, if the parent does not provide consent for the new evaluation and the new public agency does not seek to override the parental refusal to consent to the new evaluation, the new public agency would treat the student as a general education student.

B. Initial Evaluation Timelines and Determination of Eligibility

Authority: The requirements for initial evaluation timelines are found in 34 CFR §300.301(c) and (d). The requirements for determining eligibility are found in 34 CFR §300.306.

Question B-1: Under the IDEA, what must occur during the 60-day time period after the public agency receives parental consent for an initial evaluation? Must a public agency determine eligibility and begin providing special education and related services within this IDEA 60-day initial evaluation timeline?

Answer: Under 34 CFR §300.301(c)(1), an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. The IDEA 60-day timeline applies only to the initial evaluation. Public agencies are not required to make the eligibility determination, obtain parental consent for the initial provision of special education and related services, conduct the initial meeting of the IEP Team to develop the child's IEP, or initially provide special education and related services to a child with a disability during the IDEA 60-day initial evaluation timeline.

Question B-2: Must the assessments and other evaluation measures used to determine eligibility for special education and related services include a doctor's medical diagnosis, particularly for children suspected of having autism or attention deficit disorder/attention deficit hyperactivity disorder?

Answer: There is no explicit requirement in the IDEA or the Part B regulations to include a medical diagnosis as part of the eligibility determination for any of the disability categories. The purpose of the evaluation conducted in accordance with 34 CFR §§300.304 through 300.311 is to determine whether the child qualifies as a child with a disability and the nature and extent of the educational needs of the child. Under 34 CFR §300.304(b)(1), in conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the educational needs of the child. That information could include information from a physician, if determined appropriate, to assess the effect of the child's medical condition on the child's eligibility and educational needs. However, under 34 CFR §300.304(b)(2), no single measure or assessment may be used as the sole criterion for determining

whether the child is a child with a disability and for determining an appropriate educational program for the child.

Under 34 CFR §300.306(c)(1)(i), in interpreting evaluation data for the purpose of determining whether the child is a child with a disability under Part B of the IDEA and the educational needs of the child, the group of qualified professionals and the parent must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. Under 34 CFR §300.306(c)(1)(ii), the public agency must ensure that information obtained from all of these sources is documented and carefully considered. There is nothing in the IDEA or the Part B regulations that would prevent a public agency from obtaining a medical diagnosis prior to determining whether the child has a particular disability and the educational needs of the child. Also, there is nothing in the IDEA or the Part B regulations that would prohibit a State from requiring that a medical diagnosis be obtained for purposes of determining whether a child has a particular disability, such as attention deficit disorder/attention deficit hyperactivity disorder or autism, provided the medical diagnosis is obtained at public expense and at no cost to the parents and is not used as the sole criterion for determining an appropriate educational program for the child. Further, if a State requires a medical diagnosis consistent with the above criteria, such a requirement exceeds the requirements of Part B of the IDEA. Under 34 CFR §300.199(a)(2), the State would be required to identify in writing to the LEAs located in the State, and to the Secretary, that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations.

C. IEP Team Membership and IEP Meetings

Authority: The requirements for participants at IEP Team meetings are found in 34 CFR §300.321.

Question C-1: May the representative of the public agency be excused from attending an IEP Team meeting?

Answer: Yes. The members who can be excused from attending an IEP Team meeting in whole or in part, subject to the conditions described in 34 CFR §300.321(e)(1) and (e)(2), include a public agency representative described in 34 CFR §300.321(a)(4). Under 34 CFR §300.321(e)(1), a public agency representative is not required to attend an IEP Team meeting in whole or in part, if the parent of the child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. When the meeting does involve a modification to, or discussion of, the member's area of the curriculum or related services, 34 CFR §300.321(e)(2) provides that a representative of the public agency may be excused from attending an IEP Team meeting, in whole or in part, if (i) the parent, in writing, and the public agency consent to the excusal; and (ii) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Allowing the IEP Team members described in 34 CFR §300.321(a)(2) through (a)(5) to be excused from attending an IEP Team meeting is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict. 71 FR 46673. However, because the public agency remains responsible for conducting IEP Team meetings that are consistent with the IEP requirements of the IDEA and its implementing regulations, it may not be reasonable for the public agency to agree or consent to the excusal of the public agency representative. For example, the public agency cannot consent to the excusal of the public agency representative from an IEP Team meeting if that individual is needed to ensure that decisions can be made at the meeting about commitment of agency resources that are necessary to implement the IEP being developed, reviewed, or revised. If a public agency representative is excused from attending an IEP Team meeting, consistent with 34 CFR 300.321(e), the public agency remains responsible for implementing the child's IEP and may not use the excusal as a reason for delaying the implementation of the child's IEP.

Question C-2: May more than one member of an IEP Team be excused from attending the same IEP Team meeting?

Answer: Yes. There is nothing in the IDEA or its implementing regulations that would limit the number of IEP Team members who may be excused from attending an IEP Team meeting, so long as the public agency meets the requirements of 34 CFR §300.321(e) that govern when IEP Team members can be excused from attending IEP Team meetings in whole or in part. 71 FR 46675. The excusal provisions in 34 CFR §300.321(e) apply to the following IEP Team members described in 34 CFR §300.321(a)(2) through (5):

- The regular education teacher(s) of the child (if the child is, or may be, participating in the regular education environment).
- The special education teacher(s) of the child, or where appropriate, the special education provider(s) of the child.
- A representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency.
- An individual who can interpret the instructional implications of evaluation results, who may be another member of the IEP Team.

Question C-3: Must the public agency receive consent from a parent to excuse multiple regular education teachers if at least one regular education teacher will attend an IEP Team meeting?

Answer: No. As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP Team includes “[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) . . .” Neither the IDEA nor its implementing regulations require that an IEP Team include more than one regular education teacher. Therefore, if an IEP Team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP Team meeting.

Question C-4: If the designated regular education teacher is excused from attending the IEP Team meeting, would an alternate regular education teacher be required to attend?

Answer: No. If the public agency designates a particular regular education teacher as the person who will participate in the IEP Team meeting pursuant to 34 CFR §300.321(a)(2), and that individual is excused from attending the meeting, consistent with the requirements in 34 CFR §300.321(e)(1) and (e)(2), the public agency would not be required to include a different regular education teacher in the IEP Team meeting.

Question C-5: Is there a specific timeline in the IDEA for public agencies to notify parents of a request to excuse an IEP Team member from attending an IEP Team meeting? May a State establish a timeline for this purpose?

Answer: Neither the IDEA nor its implementing regulations specify a time period in which a public agency must notify parents of a request for an excusal. In public comments on the proposed Part B regulations, the Department was asked to specify a timeline, through regulations, in which a public agency must notify parents of requests for excusing IEP Team members from attending IEP Team meetings. In declining the commenter's request to regulate, the Department noted that Part B of the IDEA does not specify how far in advance of an IEP Team meeting a public agency must notify a parent of the public agency's request to excuse an IEP Team member from attending the IEP Team meeting. Further, Part B of the IDEA does not specify, when the parent and public agency must sign a written agreement that the IEP Team member's attendance is not necessary, consistent with 34 CFR §300.321(e)(1), or when the parent and agency must provide written consent regarding the IEP Team member's excusal consistent with 34 CFR §300.321(e)(2). 71 FR 46676. The Department also explained that requiring the request for excusal or the written agreement or written consent to occur at a particular time prior to an IEP Team meeting would not account for situations where it would be impossible to meet the timeline (e.g., when an IEP Team member has an emergency). Thus, requiring specific timelines could impede Congressional intent to provide additional flexibility to parents in scheduling IEP Team meetings, as reflected in section 614(d)(1)(C) of the IDEA.

Moreover, we believe that it would be inconsistent with 34 CFR §300.321(e) to permit States to impose timelines for parents and public agencies to agree or consent to the excusal of an IEP Team member. A State may not restrict, or otherwise determine, when an IEP Team member can be excused from attending an IEP Team meeting, or prohibit

the excusal of an IEP Team member, provided the conditions in 34 CFR §300.321(e)(1) and (e)(2) are satisfied.

Question C-6: May State law or regulations regarding IEP Team membership and IEP Team meeting attendance requirements exceed those of the IDEA?

Answer: Yes, but with certain caveats. A State may establish laws or regulations for IEP Team membership and IEP Team meeting attendance, but must ensure that in doing so it does not establish provisions that reduce parent rights or are otherwise in conflict with the requirements of Part B of the IDEA and the Federal regulations. Examples of State regulations that could exceed Federal requirements regarding IEP Team membership but would not conflict with the IDEA in this regard would be for a State to require that a regular education teacher attend an IEP Team meeting regardless of whether the child is or may be participating in the regular education environment, that the IEP Team include additional members beyond those required by 34 CFR §300.321(a), or that a parent has the right to bring their child to any or all IEP Team meetings at any age.

If a State were to adopt laws or regulations that exceed the requirements of Part B of the IDEA, note that 34 CFR §300.199(a) requires each State that receives funds under Part B of the IDEA to do the following: (1) ensure that any State rules, regulations, and policies conform to the purposes of 34 CFR Part 300; (2) identify in writing to LEAs located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations; and (3) minimize the number of rules, regulations, and policies to which the LEAs and schools located in the State are subject under Part B of the IDEA.

Question C-7: Must an IEP Team document in writing that it considered all of the requirements of 34 CFR §300.324, regarding the development, review, and revision of IEPs?

Answer: States and public agencies are required to maintain records to show compliance with program requirements, pursuant to 34 CFR §76.731 of the Education Department General Administrative Regulations (EDGAR). Neither the IDEA nor its implementing regulations specify what documentation must be maintained to demonstrate this compliance with the requirements of 34 CFR §300.324.

The program requirements are found in the IDEA and its implementing regulations. Therefore, IEP Teams must document consideration of the requirements of 34 CFR §300.324 with sufficient detail to show

compliance with this regulation in the development, review, and revision of IEPs.

Question C-8: How must a public agency document that IEP Team members have been informed of changes to the IEP?

Answer: The regulations in 34 CFR §300.324(a)(4)(i) provide that, in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. The regulations require, in 34 CFR §300.324(a)(4)(ii), that if changes are made to the child's IEP in accordance with 34 CFR §300.324(a)(4)(i), the public agency must ensure that the child's IEP Team is informed of those changes. While neither the IDEA nor its implementing regulations specify the manner in which public agencies must document that they have ensured that the child's IEP Team is informed of changes, they must maintain records to show compliance with this program requirement, in accordance with 34 CFR §76.731 of EDGAR.

Question C-9: Who must participate in making changes to the IEP when an IEP is amended without convening an IEP Team meeting pursuant to 34 CFR §300.324(a)(4)(i)?

Answer: The regulations provide, in 34 CFR §300.324(a)(4)(i), that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. The IDEA and its regulations are silent as to which individuals must participate in making changes to the IEP where there is agreement between the parent and the public agency not to convene an IEP Team meeting for the purpose of making the changes.

Question C-10: Must a public agency provide a parent with prior written notice if an IEP is amended without convening a meeting of the IEP Team?

Answer: Yes. The regulations in 34 CFR §300.503(a) require that written notice that meets the requirements of 34 CFR §300.503(b) must be given to the parents of a child with a disability a reasonable time before the public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This provision applies, even if the IEP is revised without convening an IEP Team meeting, pursuant to 34 CFR §300.324(a)(4).

D. Consent Provisions

Authority: The requirement for consent to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to the child's IEP Team meeting is found in 34 CFR §300.321(b)(3). See also 34 CFR §300.622(b)(2).

The requirements for parental consent for initial evaluations are found in 34 CFR §300.300(a). The requirements for parental consent for the initial provision of special education and related services are found in 34 CFR §300.300(b)(1)-(2). The requirements for parental consent for reevaluations are found in 34 CFR §300.300(c).

Question D-1: Must a public agency obtain parental consent, or the consent of a child with a disability who has reached the age of majority, to invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services to an IEP Team meeting conducted in accordance with 34 CFR §300.321(b)(3)? Do the words "to the extent appropriate" impose a limitation on this requirement?

Answer: The regulations specifically provide that, to the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of §300.321(b)(1), the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services (34 CFR §300.321(b)(3)). See also 34 CFR §300.622(b)(2) (requiring consent of the parent or child who has reached the age of majority for disclosure of personally identifiable information to officials of an agency responsible for providing or paying for transition services). Paragraph (b)(1) of 34 CFR §300.321 requires that a child with a disability be invited to an IEP Team meeting if a purpose of a meeting will be the consideration of postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under 34 CFR §300.320(b).

This consent requirement was included in the Part B regulations to protect the confidentiality of discussions that occur at IEP Team meetings, which other agency representatives would be able to hear as a result of their attendance at such meetings, only because they may be providing or paying for transition services. 71 FR 46672. Because the discussions at each IEP Team meeting are not the same, and confidential information about the child is always shared, we believe that consent of the parent, or of a child with a disability who has reached the age of majority, must be obtained prior to each IEP Team meeting if a public agency proposes to invite a representative of any participating agency that is likely to be

responsible for providing or paying for transition services. The words “to the extent appropriate” were included in §300.321(b)(3) to allow the public agency to determine that such a representative is not needed at a particular meeting. This phrase does not represent a limitation on the responsibility of the public agency to obtain the consent of the parents or the child with a disability who has reached the age of majority to invite such a representative.

Question D-2: Must a public agency pursue the initial evaluation of a child using the procedural safeguards outlined in subpart E of 34 CFR Part 300 in every case where a parent refuses to provide consent for an initial evaluation?

Answer: No. As we explained in our response to question A-5 above, 34 CFR §300.300(a)(3)(i) provides that if a parent of a child enrolled in or seeking to be enrolled in public school does not consent to the initial evaluation or fails to respond to the request for consent, the decision whether to use applicable consent override procedures is optional on the part of the public agency. These consent override procedures refer to the procedural safeguards in subpart E of the Part B regulations (including the mediation procedures under 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent. Under 34 CFR §300.300(a)(3)(ii), the public agency does not violate its obligation under §§300.111 and 300.301 through 300.311 (to identify, locate, and evaluate a child suspected of having a disability and needing special education and related services) if it declines to pursue the evaluation.

Question D-3: What may a public agency do if a parent does not respond to the public agency’s request for the parent to provide consent to a reevaluation?

Answer: Under 34 CFR §300.300(c)(2), the public agency need not obtain informed parental consent for the reevaluation if the public agency can demonstrate that it made reasonable efforts to obtain consent for the reevaluation, and the child’s parent has failed to respond to the request for consent. This means that a public agency may conduct a reevaluation of a child with a disability without using the consent override procedures if the public agency can demonstrate that it made reasonable efforts to obtain parental consent for the reevaluation, and the child’s parent has failed to respond to the request for consent. Section 300.300(d)(5) of the regulations provides that in order to meet the reasonable efforts requirement, the public agency must document its attempts to obtain parental consent using the procedures in 34 CFR §300.322(d). These

procedures include detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

Question D-4: The regulations provide, in 34 CFR §300.303(b)(2), that a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. What options are available to a public agency if a parent believes that the public agency should continue to provide special education and related services to their child but refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2)?

Answer: If a parent refuses to consent to a three-year reevaluation under 34 CFR §300.303(b)(2), but requests that the public agency continue the provision of special education and related services to their child, the public agency has the following options:

1. The public agency and the parent may, as provided in 34 CFR §300.303(b)(2), agree that the reevaluation is unnecessary. If such an agreement is reached, the three-year reevaluation need not be conducted. However, the public agency must continue to provide FAPE to the child.
2. If the public agency believes that the reevaluation is necessary, and the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the Act's consent override procedures described in 34 CFR §300.300(a)(3), so long as overriding a parental refusal to consent to a reevaluation is permissible under State law. These consent override procedures are the procedural safeguards in subpart E of 34 CFR Part 300, including the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.
3. If the public agency chooses not to pursue the reevaluation by using the consent override procedures described in 34 CFR §300.300(a)(3), and the public agency believes, based on a review of existing evaluation data on the child, that the child does not continue to have a disability or does not continue to need special education and related services, the public agency may determine that it will not continue the provision of special education and related services to the child. If the public agency determines that it will not continue the provision of special education and related services to the child, the public agency must provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child consistent with

34 CFR §300.503(a)(2), including the right of the parent to use the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516 if the parent disagrees with the public agency's decision to discontinue the provision of FAPE to the child.

Question D-5: Does the requirement that a public agency obtain parental consent for the initial provision of special education and related services mean that parents must consent to each service included in the initial IEP developed for their child?

Answer: No. Under 34 CFR §300.300(b)(1), a public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services. However, this consent requirement only applies to the initial provision of special education and related services generally, and not to the particular special education and related services to be included in the child's initial IEP. In order to give informed consent to the initial provision of special education and related services under 34 CFR §300.300(b)(1), parents must be fully informed of what special education and related services are and the types of services their child might need, but not the exact program of services that would be included in an IEP to be developed for their child. Once the public agency has obtained parental consent and before the initial provision of special education and related services, the IEP Team would convene a meeting to develop an IEP for the child in accordance with 34 CFR §§300.320 through 300.324. Decisions about the program of special education and related services to be provided to the child are left to the child's IEP Team, which must include the child's parents, a public agency representative, and other individuals, consistent with 34 CFR §300.321. While the IDEA does not require public agencies to obtain parental consent for particular services in a child's IEP, under the regulations in 34 CFR §300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services. In cases where a State creates additional parental consent rights, the State must ensure that each public agency in the State has effective procedures to ensure that the parent's exercise of these rights does not result in a failure to provide FAPE to the child.

Question D-6: What recourse is available to parents who consent to the initial provision of special education and related services but who disagree with a particular service or services in their child's IEP?

Answer: In situations where a parent agrees with the majority of services in his/her child's IEP, but disagrees with the provision of a particular service or services, such as physical therapy or occupational therapy, the public agency should work with the parent informally to achieve agreement. While the parent and public agency are attempting to resolve their differences, the agency should provide the service or services that are not in dispute.

In situations where a parent disagrees with the provision of a particular special education or related service, and the parent and public agency later agree that the child would be provided with FAPE if the child did not receive that service, the public agency could decide not to provide the service with which the parent disagrees. If, however, the parent and the public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service with which the parent disagrees, and the parent and public agency cannot resolve their differences informally, the parent may use the procedures in subpart E of the IDEA regulations to pursue the issue of whether the service with which the parent disagrees is not appropriate for their child. This includes the mediation procedures in 34 CFR §300.506 or the due process procedures in 34 CFR §§300.507 through 300.516.

Question D-7: May a foster parent provide consent for an initial evaluation even if the biological parent refuses to provide such consent?

Answer: If the biological parent of the child refuses consent for an initial evaluation of the child, and the parental rights of the biological parent have not been terminated in accordance with State law, or a court has not designated a foster parent to make educational decisions for the child in accordance with State law, a foster parent may not provide consent for an initial evaluation. See 34 CFR §300.30(b)(1).

E. Related Services

Authority: The requirements for related services are found in 34 CFR §300.34.

Question E-1: Can artistic and cultural services, such as music therapy, be considered related services under the IDEA? If so, are there qualifications in the IDEA for personnel to provide such services as related services?

Answer: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services can include artistic and cultural services that are therapeutic in nature, regardless of whether the IDEA or the Part B regulations identify the particular therapeutic service as a related service. The Department's long-standing interpretation is that the list of related services in the IDEA and the Part B regulations is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education in order for the child to receive FAPE. As is true regarding consideration of any related service for a child with a disability under Part B of the IDEA, the members of the child's IEP Team (which include the parents, school officials, and whenever appropriate, the child with a disability) must make individual determinations in light of each child's unique abilities and needs about whether an artistic or cultural service such as music therapy is required to assist the child to benefit from special education.

If a child's IEP Team determines that an artistic or cultural service such as music therapy is an appropriate related service for the child with a disability, that related service must be included in the child's IEP under the statement of special education, related services, and supplementary aids and services to be provided to the child or on behalf of the child.

34 CFR §300.320(a)(4). These services are to enable the child to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(i)-(iii). If the child's IEP specifies that an artistic or cultural service such as music therapy is a related service for the child, that related service must be provided at public expense and at no cost to the parents. 34 CFR §§300.101 and 300.17.

Regarding the question about personnel qualifications for providers when an artistic or cultural service such as music therapy is considered a related

service, Part B of IDEA does not prescribe particular qualifications or credentials for personnel providing special education and related services. Under 34 CFR §300.156(a), each SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the IDEA are appropriately and adequately prepared and trained. This responsibility includes ensuring that the qualifications for related services personnel and paraprofessionals are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. 34 CFR §300.156(b)(1). In addition, the SEA must ensure that related services personnel who deliver services in their discipline or profession meet applicable State qualification standards and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis. 34 CFR §300.156(b)(2)(ii). Therefore, if a child's IEP includes an artistic or cultural service such as music therapy as a related service, the SEA would be responsible for ensuring that the child received that service from appropriately and adequately trained personnel, consistent with 34 CFR §300.156(b).

Question E-2: Is a public agency responsible for paying for mental health services if the IEP Team determines that a child with a disability requires these services to receive FAPE and includes these services in the child's IEP?

Answer: The IEP Team for each child with a disability is responsible for identifying the related services that the child needs in order to benefit from special education and receive FAPE. These services must be included in the child's IEP in the statement of special education, related services, and supplementary aids and services, to be provided to, or on behalf of, the child to enable the child to: advance appropriately toward attaining the annual goals, be involved and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(4)(i)-(iii). Mental health services provided as a related service must be provided at no cost to the parents. 34 CFR §§300.101 and 300.17.

An IEP Team may consider whether mental health services are provided as counseling services (34 CFR §300.34(c)(2)) or social work services in schools (34 CFR §300.34(c)(14)). Under 34 CFR §300.34(c)(2), counseling services are defined as including services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. Under 34 CFR §300.34(c)(14)(ii), social work services in schools includes group or individual counseling for the child and family.

However, under 34 CFR §300.34(c)(5), the public agency would not be responsible for paying for mental health services that constitute medical treatment for a child by a licensed physician except to the extent that the services are for diagnostic and evaluation purposes only.

F. Secondary Transition

Authority: The requirements for the content of the IEP related to transition services are found in 34 CFR §300.320(b).

Question F-1: Must an IEP include measurable postsecondary goals relating to training, education, and employment based on age-appropriate transition assessments for every student with a disability who is at least 16 years old, regardless of the student's skill levels? When is a separate goal also required for independent living skills?

Answer: Under 34 CFR §300.320(b), the IEP for each child with a disability, must, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. The Department explained in the Analysis of Comments and Changes section of the preamble of the August 2006 final Part B regulations that "...the Act requires a child's IEP to include measurable postsecondary goals in the areas of training, education, **and** employment, and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills.... It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE." [Emphasis added] 71 Fed. Reg. 46668 (Aug. 14, 2006). The requirements for postsecondary IEP goals apply, whether or not the student's skill levels related to training, education, and employment are age appropriate. In all cases, the IEP Team must develop the specific postsecondary goals for the student, in light of the unique needs of the student as determined by age-appropriate transition assessments of the student's skills in these areas.

Regarding postsecondary goals related to training and education, the IDEA and its implementing regulations do not define the terms "training" and "education." However, the areas of training and education can reasonably be interpreted as overlapping in certain instances. In determining whether postsecondary goals in the areas of training and education overlap, the IEP Team must consider the unique needs of each individual student with a disability in light of his or her plans after leaving high school. If the IEP Team determines that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student

after leaving high school, the IEP Team can combine the training and education goals of the student into one or more postsecondary goals addressing those areas. For example, for a student whose postsecondary goal is teacher certification, any program providing teacher certification would include education as well as training. Similarly, a student with a disability who enrolls in a postsecondary program in engineering would be obtaining both education and occupational training in the program. The same is true for students with disabilities enrolled in programs for doctors, lawyers, accountants, technologists, physical therapists, medical technicians, mechanics, computer programmers, etc. Thus, in some instances, it would be permissible for the IEP to include a combined postsecondary goal or goals in the areas of training and education to address a student's postsecondary plans, if determined appropriate by the IEP Team. This guidance, however, is not intended to prohibit the IEP Team from developing separate postsecondary goals in the areas related to training and education in a student's IEP, if deemed appropriate by the IEP Team, in light of the student's postsecondary plans.

On the other hand, because employment is a distinct activity from the areas related to training and education, each student's IEP must include a separate postsecondary goal in the area of employment.

Question F-2: May community access skills be included in the IEP as independent living skills?

Answer: The IEP Team must determine whether it is necessary to include appropriate measurable postsecondary goals related to independent living skills in the IEP for a particular child, and, if so, what transition services are needed to assist the child in reaching those goals. Under 34 CFR §300.43, the term "transition services" is defined as "a coordinated set of activities for a child with a disability...to facilitate movement from school to post-school activities," and include among other activities, "independent living, or community participation." Based on the assessment of the student's independent living skills, the IEP Team would need to determine whether transition services provided as community access skills are necessary for the child to receive FAPE. If so, those skills must be reflected in the transition services in the child's IEP.

Question F-3: If an IEP Team chooses to address transition before age 16 (for example, at age 14), do the same requirements apply?

Answer: Yes. The regulations provide, in 34 CFR §300.320(b), that beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter,

the IEP must include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. If the IEP Team for a particular child with a disability determines that it is appropriate to address the requirements of 34 CFR §300.320(b) for a child who is younger than age 16, then the IEP for that child must meet the requirements of 34 CFR §300.320(b). This regulation requires including appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, and employment, and, where appropriate, independent living skills. As discussed in the answer to question F-1 above, a student's IEP may include a combined postsecondary goal or goals in the areas of training and education, if deemed appropriate by the IEP Team, in light of the student's postsecondary plans.

Question F-4: The regulations in 34 CFR §300.320(b)(1) require that appropriate postsecondary transition goals be measurable. Must public agencies measure achievement of the goals once a student has graduated or has aged out?

Answer: There is no requirement for public agencies to determine whether the postsecondary goals have been met once a child is no longer eligible for FAPE under Part B of the IDEA. Under 34 CFR §300.101(a), FAPE must be made available to all children residing in the State in mandatory age ranges. However, the obligation to make FAPE available does not apply to children who have graduated from high school with a regular high school diploma (34 CFR §300.102(a)(3)(i)) or to children who have exceeded the mandatory age range for provision of FAPE under State law (34 CFR §300.102(a)(1)). When a child's eligibility for FAPE pursuant to Part B of the IDEA terminates under these circumstances, in accordance with 34 CFR §300.305(e)(3), the LEA must provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. However, nothing in the IDEA requires the LEA to measure the child's progress on these postsecondary transition goals, or provide any special education services to the child after the child has graduated from a regular high school or exceeded the mandatory age range for FAPE.