

IDEA REGULATIONS

MONITORING, TECHNICAL ASSISTANCE AND ENFORCEMENT

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

IDEA Regulations

1. Establish requirements for state monitoring, enforcement, and annual reporting.

The State must monitor the implementation of Part B, enforce Part B in accordance with the provisions at 34 CFR 300.604(a)(1), and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2), and annually report on performance under Part B.

The primary focus of the State’s monitoring activities must be on:

- Improving educational results and functional outcomes for all children with disabilities; and
- Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

As a part of its responsibilities under 34 CFR 300.600(a), the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in 34 CFR 300.600(d), and the indicators established by the Secretary for the State performance plans.

The State must monitor the local educational agencies (LEAs) located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

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

- Provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE).
- State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in 34 CFR 300.43 and in 20 U.S.C. 1437(a)(9).
- Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

[34 CFR 300.600] [20 U.S.C. 1416(a)]

2. Require that states develop performance plans.

Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation:

- Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.
- Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.
- As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR 300.600(d).

[34 CFR 300.601(a)] [20 U.S.C. 1416(b)]

3. Require state data collection.

Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans:

- If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.
- Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

[34 CFR 300.601(b)] [20 U.S.C. 1416(b)]

4. Require state use of targets to analyze performance and report annually.

Each State must use the targets established in the State's performance plan under 34 CFR 300.601 and the priority areas described in 34 CFR 300.600(d) to analyze the performance of each LEA.

[34 CFR 300.602(a)] [20 U.S.C. 1416(b)(2)(C)(i)]

The State must:

- Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and
- Make the State's performance plan available through public means, including by posting on the web site of the State educational agency (SEA), distribution to the media, and distribution through public agencies.

[34 CFR 300.602(b)(1)(i)] [20 U.S.C. 1416(b)(2)(C)(ii)]

If the State, in meeting the requirements of 34 CFR 300.602(b)(1)(i), collects performance data through State monitoring or sampling, the State must include in its report under 34 CFR 300.602 (b)(1)(i)(A) the most recently available performance data on each LEA, and the date the data were obtained.

[34 CFR 300.602(b)(1)(ii)]

The State must report annually to the Secretary on the performance of the State under the State's performance plan. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

[34 CFR 300.602(b)(2) and (3)] [20 U.S.C. 1416(b)(2)(C)(ii)(II) and (iii)]

5. Require annual review by the Secretary of state performance reports and determinations by the Secretary regarding state performance.

The Secretary annually reviews the State's performance report submitted pursuant to 34 CFR 300.602(b)(2) and, based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State:

- Meets the requirements and purposes of Part B of the Act;
- Needs assistance in implementing the requirements of Part B of the Act;
- Needs intervention in implementing the requirements of Part B of the Act; or
- Needs substantial intervention in implementing the requirements of Part B of the Act.

[34 CFR 300.603(b)(1)] [20 U.S.C. 1416(d)(1) and (2)(A)]

For determinations made under 34 CFR 300.603(b)(1)(iii) and (b)(1)(iv), the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.

- This hearing consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in 34 CFR 300.603(b)(1).

[34 CFR 300.603(b)(2)] [20 U.S.C. 1416(d)(2)(B)]

6. Require technical assistance and enforcement actions.

Needs assistance.

If the Secretary determines, for two consecutive years, that a State needs assistance under 34 CFR 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

- Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include:
 - o The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
 - o Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
 - o Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
 - o Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.
- Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.
- Identifies the State as a high-risk grantee and impose special conditions on the State's grant under Part B of the Act.

[34 CFR 300.604(a)] [20 U.S.C. 1416(e)(1)]

Needs intervention.

If the Secretary determines, for three or more consecutive years, that a State needs intervention under 34 CFR 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

- The Secretary may take any of the actions described in 34 CFR 300.604(a)(a) (Needs Assistance).
- The Secretary takes one or more of the following actions:
 - o Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.
 - o Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (*General Education Provisions Act (GEPA)*), if the Secretary has reason to believe that the State cannot correct the problem within one year.
 - o For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.
 - o Seeks to recover funds under section 452 of *GEPA*.
 - o Withholds, in whole or in part, any further payments to the State under Part B of the Act.
 - o Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[34 CFR 300.604(b)] [20 U.S.C. 1416(e)(2)]

Needs substantial intervention.

Notwithstanding 34 CFR 300.604 (a) (Needs Assistance) or 34 CFR 300.604(b) (Needs intervention), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

- Recovers funds under section 452 of *GEPA*.
- Withholds, in whole or in part, any further payments to the State under Part B of the Act.
- Refers the case to the Office of the Inspector General at the Department of Education.
- Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

[34 CFR 300.604(c)] [20 U.S.C. 1416(e)(3)]

Report to Congress.

The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Senate Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to 34 CFR 300.604(a) (Needs Assistance), (b) (Needs Intervention), or (c) (Needs Substantial Intervention), on the specific action taken and the reasons why enforcement action was taken.

[34 CFR 300.604(d)] [20 U.S.C. 1416 (e)(5)]

7. Describe the circumstances under which the Secretary may withhold a state's funds.

Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in 34 CFR 300.180 through 300.183. Pending the outcome of any hearing to withhold payments 34 CFR 300.605(a), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

If the Secretary determines that it is appropriate to withhold further payments under 34 CFR 300.604(b)(2) or (c)(2), the Secretary may determine:

- That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under 34 CFR 300.603(b)(1); or
- That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under 34 CFR 300.603(b)(1).

Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified:

- Payments to the State under Part B of the Act must be withheld in whole or in part; and
- Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under 34 CFR 300.603(b)(1), as the case may be.

[34 CFR 300.605] [20 U.S.C. 1416(e)(4), (e)(6)]

8. Require states to notify the public of the pendency of an enforcement action.

Any State that has received notice under 34 CFR 300.603(b)(1)(ii)-(iv) must, by means of a public notice, take such measures as may be necessary to notify the public within the State of the pendency of an action taken pursuant to 34 CFR 300.604.

[34 CFR 300.606] [20 U.S.C. 1416(e)(7)]

9. Describe withholding procedures when responsibility for children with disabilities in adult correctional facilities has been assigned to other than the SEA.

If responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to 34 CFR 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that:

- Any reduction or withholding of payments to the State under 34 CFR 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and
- Any withholding of funds under 34 CFR 300.604 must be limited to the specific agency responsible for the failure to comply with Part B of the Act.

[34 CFR 300.607] [20 U.S.C. 1416(h)]

10. Describe state enforcement actions when an LEA is not meeting the requirements of Part B.

If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under 34 CFR 300.203 for any fiscal year.

Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

[34 CFR 300.608] [20 U.S.C. 1416(f); 20 U.S.C. 1412(a)(11)]

11. Establish that the Secretary may use other enforcement authority to monitor and enforce Part B requirements.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under the *GEPA*, including the provisions in 34 CFR parts 76, 77, 80, and 81 to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12.

[34 CFR 300.609] [20 U.S.C. 1416(g)]