

## ***IDEA* REGULATIONS**

### **STATE FUNDING**

**(See also Early Intervening Services, Disproportionality and Overidentification and Alignment with the *No Child Left Behind Act*)**

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 requirements.<sup>1</sup> This document addresses only the changes to the *IDEA* provisions regarding State funding that took effect on July 1, 2005. Most of these provisions are reflected in the regulations issued August 14, 2006.

## ***IDEA* Statute and Regulations**

### **1. Change the formula grants to States in FY 2005 and 2006.**

For fiscal years 2005 and 2006 the number of children with disabilities in the State who are receiving special education and related services aged three through five, if the State is eligible for a grant under section 619 of IDEA and aged 6 through 21; multiplied by forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States, (as defined in 34 CFR 300.717).

[34 CFR 300.700(b)(1)(i)] [20 U.S.C. 1411(a)(2)(A)]

For fiscal year 2007 and subsequent fiscal years, the number of children with disabilities in the 2004-2005 school year in the State who received special education and related services—

- Aged three through five if the State is eligible for a grant under section 619 of IDEA, and
- Aged 6 through 21;
- Multiplied by forty (40) percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States;(as defined in 34 CFR 300.717);

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind 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; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; 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 and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: [www.ed.gov/about/offices/list/osers/index.html](http://www.ed.gov/about/offices/list/osers/index.html).

- Adjusted by the rate of annual change in the sum of-eighty-five (85) percent of the State's population of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE (free appropriate public education) under Part B of IDEA; and
- Fifteen (15) percent of the State's population of children described under 34 CFR 300.700 (b)(2)(iii)(A) who are living in poverty.

[34 CFR 300.700(b)(2)] [20 U.S.C. 1411(a)(2)(B)]

## **2. Set forth authorized appropriations establishing a seven-year path to “full funding.”**

For the purpose of carrying out Part B, other than Section 619, there are authorized to be appropriated (but are subject to decisions made through the appropriations process):

- \$12,358,376,571 for FY 2005;
- \$14,648,647,143 for FY 2006;
- \$16,938,917,714 for FY 2007;
- \$19,229,188,286 for FY 2008;
- \$21,519,458,857 for FY 2009;
- \$23,809,729,429 for FY 2010;
- \$26,100,000,000 for FY 2011; and
- Such sums as may be necessary for FY 2012, and each succeeding fiscal year.

[20 U.S.C. 1411(i)]

## **3. Alter the calculation of, and raise the maximum amount of, the State administration set aside.**

For the purpose of administering Part 300, including 34 CFR 300.704(c), section 619 of the IDEA 2004, and the coordination of activities under Part B of IDEA and providing technical assistance to other programs that provide services to children with disabilities:

- Each State may reserve, for each fiscal year, not more than the maximum amount the State was eligible to reserve for State administration under section 611 of IDEA for fiscal year 2004, or \$800,000 (adjusted in accordance with 34 CFR 300.704(a)(2), whichever is greater; and
- Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under 34 CFR 300.701(a) for the fiscal year or \$35,000, whichever is greater.

[34 CFR 300.704] [20 U.S.C. 1411(e)(1)(A)]

#### **4. Change the amount States may reserve for other State-level activities.**

States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows if the amount that the State sets aside for State administration under paragraph 34 CFR 300.704(a) is greater than \$850,000 and the State opts to finance a high cost fund under 34 CFR 300.704(c):

- For fiscal years 2005 and 2006, 10 percent of the State's allocation under 34 CFR 300.703.
- For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under 34 CFR 300.703 adjusted cumulatively for inflation.

[34 CFR 300.704(b)(1)(i)] [20 U.S.C. 1411(e)(2)(A)(i)]

#### **5. Allow a “small State adjustment” to the amount described in Section 611(e)(2)(A)(i) (State-level activities).**

If the amount that the State sets aside for State administration under 34 CFR 300.704 (a) of this section is less than or equal to \$850,000 and the State opts to finance a high cost fund under 34 CR 300.704(c):

- For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under 34 CFR 300.703.
- For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under 34 CFR 300.703 adjusted cumulatively for inflation.

[34 CFR 300.704(1)(b)(iii)] [20 U.S.C. 1411(e)(2)(A)(ii)]

#### **6. Provide an “exception” to the amount described in Section 611(e)(2)(A) (State-level activities).**

If the amount that the State sets aside for State administration under 34 CFR 300.704(a) is greater than \$850,000 and the State opts not to finance a high cost fund under 34 CFR 300.704(c):

- For fiscal years 2005 and 2006, nine percent of the State's allocation under 34 CRF 300.703.
- For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

[34 CFR 300.704(b)(1)(ii)] [20 U.S.C. 1411(e)(2)(A)(iii)]

If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

- For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under 34 CFR 300.703.
- For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under 34 CFR 300.703 adjusted cumulatively for inflation.

[34 CFR 300.704(b)(1)(iv)] [20 U.S.C. 1411(e)(2)(A)(ii)]

## **7. Describe the required uses of funds reserved for State-level activities.**

Some portion of the funds reserved under 34 CFR 300.704(b)(1) must be used to carry out the following activities:

- For monitoring, enforcement and complaint investigation; and
- To establish and implement the mediation process required by section 615(e) of IDEA, including providing for the cost of mediators and support personnel.

[34 CFR 300.704(b)(3)] [20 U.S.C. 1411(e)(2)(B)]

## **8. Expands the list of allowable State-level activities.**

Funds reserved under 34 CFR 300.703(b)(1) also may be used to carry out the following activities:

- For support and direct services, including technical assistance, personnel preparation, and professional development and training;
- To support paperwork reduction activities, including expanding the use of technology in the IEP process;
- To assist local educational agencies (LEAs) in providing positive behavioral interventions and supports and mental health services for children with disabilities;
- To improve the use of technology in the classroom by children with disabilities to enhance learning;
- To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;
- Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;
- To assist LEAs in meeting personnel shortages;
- To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

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

[34 CFR 300.704(b)(4)] [20 U.S.C. 1411(e)(2)(C)(x), (xi)]

## 9. Add authority for an LEA risk pool.

For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under 34 CFR 300.704(b)(1);

- To finance and make disbursements from the high cost fund to LEAs in accordance with 34 CFR 300.704 (c) during the first and succeeding fiscal years of the high cost fund; and
- To support innovative and effective ways of cost sharing by the State, by an LEA or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to 34 CFR 300.704(c)(2)(ii).

[34 CFR 300.704(c)] [20 U.S.C. 1411(e)(3)(A)]

## 10. Authorize flexibility in using funds for Part C.

Any State eligible to receive a grant under section 619 of IDEA may use funds made available under 34 CFR 300.704(a)(1), 34 CFR 300.705(c), or 34 CFR 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of IDEA and the State education agency (SEA) to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of IDEA to children with disabilities who are eligible for services under section 619 of IDEA and who previously

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<sup>2</sup> Refers to requirements of the State's accountability plan under section 1111(b)(2) ESEA, where each state must establish statewide annual measurable objectives applicable to all students, pursuant to section 1111(b)(2)(C)(v).

received services under Part C of IDEA until the children enter, or are eligible under State law to enter, kindergarten, or elementary school, as appropriate.

[34 CFR 300.704(f)] [20 U.S.C. 1411(e)(7)]

**11. Establish a limitation on use of federal funds to meet State-law-mandated funding obligations.**

In complying with 34 CFR 300.162 and 34 CFR 300.163, a State may not use funds paid to it under 34 CFR Part 300 to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation

[34 CFR 300.166] [20 U.S.C. 1412(a)(20)]

**12. Add an exception to State maintenance of effort (MOE) requirements.**

For any fiscal year for which the allotment received by a State under section 611 of IDEA 2004 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent year pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the SEA, notwithstanding 34 CFR 300.162 through 34 CFR 300.163 (related to State-level nonsupplanting and maintenance of effort), and 34 CFR 300.175 (related to direct services by the SEA) may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

[34 CFR 300.230(a)] [20 U.S.C. 1413(j)(1)]