

IDEA(2004)Regulations
Related to Secondary Transition

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

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Subpart A—General

Purposes and Applicability

§300.1 Purposes.

The purposes of this part are—

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- (b) To ensure that the rights of children with disabilities and their parents are protected;
- (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
- (d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

(Authority: 20 U.S.C. 1400(d))

Definitions Used in This Part

§300.22 Individualized Education Program

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

§300.26 Institution of higher education.*Institution of higher education—*

- (a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA); and
- (b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.*

(Authority: 20 U.S.C. 1401(17))

§300.34 Related services.

- (a) *General. 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, and includes speechlanguage pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.
- (b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*
 - (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
 - (2) Nothing in paragraph (b)(1) of this section—
 - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
 - (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety

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of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

- (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

- (i) Identification of children with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
- (iv) Creation and administration of programs for prevention of hearing loss;
- (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Interpreting services* includes—

- (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
- (ii) Special interpreting services for children who are deaf-blind.

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- (5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- (6) *Occupational therapy*—
- (i) Means services provided by a qualified occupational therapist; and
 - (ii) Includes—
 - (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) *Orientation and mobility services*—
- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (ii) Includes teaching children the following, as appropriate:
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques, and tools.
- (8) (i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;
- (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

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- (9) *Physical therapy* means services provided by a qualified physical therapist.
- (10) *Psychological services* includes—
- (i) Administering psychological and educational tests, and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - (vi) Assisting in developing positive behavioral intervention strategies.
- (11) *Recreation* includes—
- (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*
- (13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.
- (14) *Social work services in schools* includes—
- (i) Preparing a social or developmental history on a child with a disability;
 - (ii) Group and individual counseling with the child and family;

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- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - (v) Assisting in developing positive behavioral intervention strategies.
- (15) *Speech-language pathology services* includes—
- (i) Identification of children with speech or language impairments;
 - (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (16) *Transportation* includes—
- (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

§300.39 Special education.

(a) *General.*

- (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
- (2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

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- (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.
- (b) *Individual special education terms defined.* The terms in this definition are defined as follows:
- (1) *At no cost* means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
 - (2) *Physical education* means—
 - (i) The development of—
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor Development.
 - (3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
 - (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.
 - (4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—
 - (i) Develop an awareness of the environment in which they live; and
 - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
 - (5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for

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additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29))

§300.43 Transition services.

- (a) *Transition services* means a coordinated set of activities for a child with a disability that—
- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

Subpart B—State Eligibility

Other FAPE Requirements

§300.107 Nonacademic services.

The State must ensure the following:

- (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner

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necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1))

Methods of Ensuring Services

§300.154 Methods of ensuring services.

- (a) *Establishing responsibility for services.* The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:
- (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).
 - (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.
 - (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure

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reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

- (4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.
- (b) *Obligation of noneducational public agencies.*
- (1) (i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.
 - (ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
- (2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.
- (c) *Special rule.* The requirements of paragraph (a) of this section may be met through—

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- (1) State statute or regulation;
 - (2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - (3) Other appropriate written methods as determined by the Chief Executive Officer of the State or designee of that officer and approved by the Secretary.
- (d) *Children with disabilities who are covered by public benefits or insurance.*
- (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.
 - (2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—
 - (i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;
 - (iii) May not use a child's benefits under a public benefits or insurance program if that use would—
 - (A) Decrease available lifetime coverage or any other insured benefit;
 - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
 - (iv)
 - (A) Must obtain parental consent, consistent with § 300.9, each time that access to public benefits or insurance is sought; and
 - (B) Notify parents that the parents' refusal to allow access to their public benefits or

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insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

- (e) *Children with disabilities who are covered by private insurance.*
- (1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with § 300.9.
 - (2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—
 - (i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and
 - (ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
- (f) *Use of Part B funds.*
- (1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.
 - (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).
- (g) *Proceeds from public benefits or insurance or private insurance.*
- (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
 - (2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered ``State or local'' funds for purposes of the maintenance of effort provisions in §§ 300.163 and 300.203.
- (h) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title

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XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(12) and (e))

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

Evaluations and Reevaluations

§300.305 Additional requirements for evaluations and reevaluations.

- (a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
- (1) Review existing evaluation data on the child, including—
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
 - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
 - (i) (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (iii) (A) Whether the child needs special education and related services; or
(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) Whether any additions or modifications to the special education and related services are needed

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to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

- (b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.
- (c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.
- (d) *Requirements if additional data are not needed.*
 - (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of—
 - (i) That determination and the reasons for the determination; and
 - (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
 - (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
- (e) *Evaluations before change in eligibility.*
 - (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.
 - (2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.
 - (3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(Authority: 20 U.S.C. 1414(c))

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Individualized Education Programs**§300.320 Definition of individualized education program.**

- (a) *General.* As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include—
- (1) A statement of the child's present levels of academic achievement and functional performance, including—
 - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
 - (2)
 - (i) A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;
 - (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
 - (3) A description of—
 - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
 - (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

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- (i) To advance appropriately toward attaining the annual goals;
 - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
 - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments consistent with section 612(a)(16) of the Act; and
- (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) *Transition services.* 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.
- (c) *Transfer of rights at age of majority.* Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of

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the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

- (d) *Construction.* Nothing in this section shall be construed to require—
- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
 - (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

§300.321 IEP Team.

- (a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes—
- (1) The parents of the child;
 - (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - (4) A representative of the public agency who—
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the public agency.
 - (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
 - (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - (7) Whenever appropriate, the child with a disability.
- (b) *Transition services participants.*
- (1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary

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- goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).
- (2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.
 - (3) 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 paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- (c) *Determination of knowledge and special expertise.* The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.
- (d) *Designating a public agency representative.* A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.
- (e) *IEP Team attendance.*
- (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a 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.
 - (2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, 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.
- (f) *Initial IEP Team meeting for child under Part C.* In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

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(Authority: 20 U.S.C. 1414(d)(1)(B)-(d)(1)(D))

§300.322 Parent participation.

- (a) *Public agency responsibility— general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—
- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed on time and place.
- (b) *Information provided to parents.*
- (1) The notice required under paragraph (a)(1) of this section must—
 - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
 - (ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
 - (2) For a child with a disability 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, the notice also must—
 - (i) Indicate—
 - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and
 - (B) That the agency will invite the student; and
 - (ii) Identify any other agency that will be invited to send a representative.
- (c) *Other methods to ensure parent participation.* If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).

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- (d) *Conducting an IEP Team meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—
- (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) *Use of interpreters or other action, as appropriate.* The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (f) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

Development of IEP

§300.324 Development, review, and revision of IEP.

- (a) *Development of IEP—*
- (1) *General.* In developing each child's IEP, the IEP Team must consider—
 - (i) The strengths of the child;
 - (ii) The concerns of the parents for enhancing the education of their child;
 - (iii) The results of the initial or most recent evaluation of the child; and
 - (iv) The academic, developmental, and functional needs of the child.
 - (2) *Consideration of special factors.* The IEP Team must—
 - (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 - (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

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- (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - (v) Consider whether the child needs assistive technology devices and services.
- (3) *Requirement with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—
- (i) Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).
- (4) *Agreement.*
- (i) 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.
 - (ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.
- (5) *Consolidation of IEP Team meetings.* To the extent possible, the public agency must encourage the

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consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

- (6) *Amendments.* Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
- (b) *Review and revision of IEPs—*
- (1) *General.* Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—
- (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
- (ii) Revises the IEP, as appropriate, to address—
- (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
- (B) The results of any reevaluation conducted under § 300.303;
- (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
- (D) The child's anticipated needs; or
- (E) Other matters.
- (2) *Consideration of special factors.* In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.
- (3) *Requirement with respect to regular education teacher.* A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.
- (c) *Failure to meet transition objectives—*
- (1) *Participating agency failure.* If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
- (2) *Construction.* Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide

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or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) *Children with disabilities in adult prisons—*

(1) *Requirements that do not apply.* The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) *Modifications of IEP or placement.*

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

§300.520 Transfer of parental rights at age of majority.

(a) *General.* A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)—

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- (1) (i) The public agency must provide any notice required by this part to both the child and the parents; and
 - (ii) All rights accorded to parents under Part B of the Act transfer to the child;
 - (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
 - (3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.
- (b) *Special rule.* A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

(Authority: 20 U.S.C. 1415(m))

Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information Monitoring, Technical Assistance, and Enforcement

Confidentiality of Information

§300.622 Consent.

- (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.
- (b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
- (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating

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agencies providing or paying for transition services in accordance with § 300.321(b)(3).

- (3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

END OF

IDEA(2004)Regulations
related to Secondary Transition

**Comments, Discussion, and Changes related to Secondary
Transition in UNOFFICIAL IDEA (2004) Regulations**

§300.8 Child with a disability

Comment: Some commenters suggested that the definition of child with a disability be changed to "student with a disability" and that the word "student," rather than "child," be used throughout the regulations because students over the age of 18 are not children.

Discussion: Section 602(3) of the Act defines child with a disability, not student with a disability. Therefore, we do not believe it is appropriate to change the definition as requested by the commenters. The words "child" and "student" are used throughout the Act and we generally have used the word "child" or "children," except when referring to services and activities for older students (e.g., transition services, postsecondary goals).

Changes: None.

§300.20 Include

Comment: Some commenters recommended that the regulations retain the requirement in current §300.347(b)(1) that requires IEPs to include a statement of the transition service needs of the child under applicable components of the child's IEP that focus on the child's courses of study (such as participation in advanced-placement courses or a vocational education program).

Discussion: The requirement referred to by the commenter is already in the regulations. Section 300.320(b)(2) includes a reference to "courses of study" as part of transition services, consistent with section 614(d)(1)(A)(i)(VIII)(bb) of the Act. The examples in current §300.347(b)(2) (i.e., advanced placement course or a vocational education program) are not included in §300.320(b)(2) because we do not believe they are necessary to understand and implement the requirement.

Changes: None.

§300.22 Individualized education program

Comment: One commenter recommended revising §300.320(a) to state that "an IEP includes" rather than "an IEP must include" in order to reflect the specific language in section 614(d) of the Act. The commenter stated that use of the word "must" limits the contents of an IEP to the items listed in §300.320(a).

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Discussion: The word "must" is used in §300.320(a) to clarify that an IEP is required to include the items listed in §300.320(a). We believe it is important to retain this language in §300.320(a). Under section 614(d)(1)(A)(ii)(I) of the Act, section 614 of the Act cannot be interpreted to require content in the IEP beyond that which is specified in the Act.

Changes: None.

Comment: One commenter requested clarifying the meaning of "appropriate" as used, for example, in §300.320(a)(1)(ii) to refer to a child's participation in "appropriate" activities.

Discussion: The word "appropriate" in these regulations does not have a different meaning from its common usage. Generally, the word "appropriate" is used to mean "suitable" or "fitting" for a particular person, condition, occasion, or place.

Changes: None.

Comment: Some commenters recommended requiring the IEP to include a statement of the relevant social and cultural background of a child and how those factors affect the appropriate participation, performance, and placement of the child in special education.

Discussion: Section 614(d)(1)(A)(ii)(I) of the Act precludes the Department from interpreting section 614 of the Act to require public agencies to include information in a child's IEP other than what is explicitly required in the Act. Therefore, we cannot require the IEP to include the statement requested by the commenters. However, a child's social or cultural background is one of many factors that a public agency must consider in interpreting evaluation data to determine if a child is a child with a disability under §300.8 and the educational needs of the child, consistent with §300.306(c)(1)(i).

Changes: None.

Comment: One commenter stated that adapted physical education should be part of a child's IEP. Another commenter recommended that travel training be required in the IEP.

Discussion: The definition of special education in new §300.39 (proposed §300.38) includes adapted physical education and travel training. We do not believe adapted physical education and travel training should be mandated as part of an IEP because, as with all special education and related services, each child's IEP Team determines the special education and related services that are needed to meet each child's unique needs in order for the child to receive FAPE. In addition, section 614(d)(1)(A)(ii)(I) of the Act prohibits the Department from interpreting section 614 of the Act to require public

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agencies to include information in a child's IEP that is not explicitly required under the Act.

Changes: None.

Comment: One commenter recommended that IEPs include the array of new tools used with nondisabled children, so that children with disabilities have access to the materials they need to progress in the general education curriculum.

Discussion: There is nothing in the Act that requires new tools or the same tools and materials used by nondisabled children to be used with children with disabilities or be specified in children's IEPs. Therefore, we cannot make the requested change because section 614(d)(1)(A)(ii)(I) of the Act prohibits the Department from interpreting section 614 of the Act to require public agencies to include information in a child's IEP that is not explicitly required under the Act. Each child's IEP Team determines the special education and related services, as well as supplementary aids, services, and supports that are needed to meet the child's needs in order to provide FAPE consistent with §300.320(a)(4) and section 614(d)(1)(A)(i)(IV) of the Act.

Changes: None.

§300.320 Present levels of academic achievement and functional performance

Comment: A few commenters stated that §300.320(a)(1) requires an IEP to include a statement of the child's present levels of academic achievement, and recommended that the regulations define "academic achievement."

Discussion: "Academic achievement" generally refers to a child's performance in academic areas (e.g., reading or language arts, math, science, and history). We believe the definition could vary depending on a child's circumstance or situation, and therefore, we do not believe a definition of "academic achievement" should be included in these regulations.

Changes: None.

Comment: Some commenters recommended that the regulations clarify that not every child requires a functional performance statement or functional annual goals. Some commenters stated that requiring functional assessments for all children places an unnecessary burden on an LEA, does not add value for every child, and creates a potential for increased litigation. One commenter recommended that §300.320(a)(1), regarding the child's present levels of performance, and §300.320(a)(2), regarding measurable annual goals, clarify that functional performance and

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functional goals should be included in a child's IEP only if determined appropriate by the child's IEP Team.

Discussion: We cannot make the changes requested by the commenters. Section 614(d)(1)(A)(i)(I) of the Act requires an IEP to include a statement of the child's present levels of academic achievement and functional performance.

Changes: None

§300.320 Measurable annual goals

Comment: One commenter requested clarification as to whether IEP goals must be specific to a particular discipline (e.g., physical therapy goals, occupational therapy goals). One commenter recommended that goals be explicitly defined and objectively measured. Another commenter recommended requiring IEP goals to have specific outcomes and measures on an identified assessment tool.

One commenter recommended clarifying that an IEP Team is permitted, under certain circumstances, to write goals that are intended to be achieved in less than one year.

Discussion: Section 300.320(a)(2)(i), consistent with section 614(d)(1)(A)(i)(II) of the Act, requires the IEP to include measurable annual goals. Further, §300.320(a)(3)(i), consistent with section 614(d)(1)(A)(i)(III) of the Act, requires the IEP to include a statement of how the child's progress toward meeting the annual goals will be measured. The Act does not require goals to be written for each specific discipline or to have outcomes and measures on a specific assessment tool. Furthermore, to the extent that the commenters are requesting that we mandate that IEPs include specific content not in section 614(d)(1)(A)(i) of the Act, under section 614(d)(1)(A)(ii)(I), we cannot interpret section 614 to require that additional content. IEPs may include more than the minimum content, if the IEP Team determines the additional content is appropriate.

Changes: None.

§300.23 Individualized education program team

Comment: A few commenters recommended requiring the public agency to include all the notice requirements in §300.322(b) with the invitation to a child to attend his or her IEP Team meeting. The commenters stated that children need to be fully informed about the details and purpose of the meeting in order for them to adequately prepare and, therefore, should have the same information that is provided to other members of the IEP Team.

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Discussion: We decline to make the suggested change. We believe it would be overly burdensome to require a public agency to include all the notice requirements in §300.322(b) with an invitation to a child to attend his or her IEP Team meeting, particularly because the information is provided to the child's parents who can easily share this information with the child. However, when a child with a disability reaches the age of majority under State law, the public agency must provide any notice required by the Act to both the child and the parents, consistent with §300.520 and section 615(m)(1)(A) of the Act.

Changes: None.

§300.38 Vocational education

Comment: A few commenters recommended revising the definition of vocational education to include specially designed educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree.

Discussion: We believe that the more general reference to "organized education programs" in the definition of vocational education is accurate and should not be changed to refer to "specially designed educational programs," as recommended by the commenter, because some children with disabilities will benefit from educational programs that are available for all children and will not need specially designed programs.

Changes: None.

Comment: Some commenters stated that Congress did not intend that the definition of vocational education would include vocational and technical education. The commenters stated that the addition of vocational and technical education to the definition of vocational education creates a right under the Act to educational services that would be extremely costly for States and LEAs to implement.

Other commenters stated that including the definition of vocational and technical education from the Carl D. Perkins Act expands FAPE beyond secondary education, which is an unwarranted responsibility for school districts. One commenter stated that the definition could be interpreted to require public agencies to provide two years of postsecondary education for students with disabilities. A few commenters strongly recommended removing the definition of vocational and technical education. Some commenters recommended removing the reference to the postsecondary level for a 1-year certificate, an associate degree, and industry-recognized credential in the definition of

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vocational and technical education. One commenter suggested that proposed §300.38(b)(6)(i)(A) conclude with the word "or" to clarify that the sequence of courses is discretionary.

Discussion: The definition of vocational education was revised to include the definition of vocational and technical education in the Carl D. Perkins Vocational and Applied Technology Act of 1988, as amended, 20 U.S.C. 2301, 2302(29). However, based on the comments we received, it is apparent that including the definition of vocational and technical education has raised concerns and confusion regarding the responsibilities of SEAs and LEAs to provide vocational education. Therefore, we will remove the definition of vocational and technical education in proposed §300.38(b)(6) and the reference to vocational and technical education in proposed §300.38(b)(5)(ii).

Changes: The definition of vocational and technical education in proposed §300.38(b)(6) has been removed. Accordingly, the reference to vocational and technical education in proposed §300.38(b)(5)(ii) has also been removed.

Comment: A few commenters recommended revising §300.110 to require States to ensure that each public agency have in effect policies, procedures, and programs to provide children with disabilities the variety of educational programs and services available to nondisabled children. The commenters stated that §300.110 does not provide any guidance to educators. A few commenters stated that "vocational education is an outdated term" and proposed replacing it with "career-technical and adult education" or "career and technical education."

Discussion: We do not believe it is necessary to change §300.110. Under this provision, States must ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency, whatever those options are, and we are not aware of any implementation problems with this requirement. We believe that it is important that educators understand that children with disabilities must have access to the same range of programs and services that a public agency provides to nondisabled children and that the regulation conveys this point. We also do not believe it is necessary to replace the term "vocational education" with the language recommended by the commenter. The term is broad in its meaning and generally accepted and understood in the field and, therefore, would encompass such areas as "career-technical" and "technical education."

Changes: None.

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§300.39 Special Education

Comment: A few commenters recommended strengthening the definition of travel training in new §300.39(b)(4) (proposed §300.38(b)(4)) and adding travel training to new §300.43 (proposed §300.42) (transition services) to acknowledge that transportation is vitally important for children with disabilities to have full participation in the community. The commenters recommended that the definition of travel training include providing instruction to children with disabilities, other than blindness, to enable them to learn the skills and behaviors necessary to move effectively and safely in various environments, including use of public transportation.

Discussion: We believe the definition of travel training already acknowledges the importance of transportation in supporting children with disabilities to fully participate in their communities. New §300.43(a)(4) (proposed §300.42(a)(4)) defines travel training to include providing instruction that enables children to learn the skills necessary to move effectively and safely from place to place in school, home, at work and in the community. Therefore, we do not believe that further clarification is necessary. We also do not believe that it is necessary to add travel training to the definition of transition services, as recommended by the commenters. We believe that IEP Teams already consider the importance of transportation and travel training services in the course of planning for a student's postsecondary transition needs. It is unnecessary to state that travel training includes instructing children with disabilities other than blindness, as requested by the commenters, because the definition of travel training already states that travel training is appropriate for any child with a disability who requires this instruction. (pp. 224-225)

Changes: None

§300.39 (b)Travel training

Travel training (new §300.39(b)(4)) (proposed §300.38(b)(4))

Comment: A few commenters recommended strengthening the definition of travel training in new §300.39(b)(4) (proposed §300.38(b)(4)) and adding travel training to new §300.43 (proposed §300.42) (transition services) to acknowledge that transportation is vitally important for children with disabilities to have full participation in the community. The commenters recommended that the definition of travel training

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include providing instruction to children with disabilities, other than blindness, to enable them to learn the skills and behaviors necessary to move effectively and safely in various environments, including use of public transportation.

Discussion: We believe the definition of travel training already acknowledges the importance of transportation in supporting children with disabilities to fully participate in their communities. New §300.43(a)(4) (proposed §300.42(a)(4)) defines travel training to include providing instruction that enables children to learn the skills necessary to move effectively and safely from place to place in school, home, at work and in the community. Therefore, we do not believe that further clarification is necessary. We also do not believe that it is necessary to add travel training to the definition of transition services, as recommended by the commenters. We believe that IEP Teams already consider the importance of transportation and travel training services in the course of planning for a student's postsecondary transition needs. It is unnecessary to state that travel training includes instructing children with disabilities other than blindness, as requested by the commenters, because the definition of travel training already states that travel training is appropriate for any child with a disability who requires this instruction.

Changes: None.

Comment: A few commenters strongly recommended clarifying that the definition of travel training does not include training for children with visual impairments, regardless of whether they have additional disabilities.

Discussion: Any child with a disability, including a child with a visual impairment, who needs travel training instruction to receive FAPE, as determined by the child's IEP Team, can receive travel training instruction. New §300.39(b)(4) (proposed §300.38(b)(4)) specifically states that travel training means providing instruction to children with significant cognitive disabilities and any other children with disabilities who require this instruction. We, therefore, decline to change the definition, as recommended by the commenters.

Changes: None.

§300.43 Transition Services

Comment: One commenter requested a definition of "results-oriented process."

Discussion: The term "results-oriented process," which appears in the statutory definition of transition services, is generally used to refer to a process that focuses on results. Because we

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are using the plain meaning of the term (i.e., a process that focuses on results), we do not believe it is necessary to define the term in these regulations.

Changes: None.

Comment: A few commenters stated that "acquisition of daily living skills and functional vocational evaluation" is unclear as a child does not typically "acquire" an evaluation. The commenters stated that the phrase should be changed to "functional vocational skills."

Discussion: We agree that the phrase is unclear and will clarify the language in the regulation to refer to the "provision of a functional vocational evaluation."

Changes: We have added "provision of a" before "functional vocational evaluation" in new §300.43(a)(2)(v) for clarity.

Comment: One commenter recommended that the regulations include vocational and career training through work-study as a type of transition service. A few commenters stated that the definition of transition services must specify that a student's need for transition services cannot be based on the category or severity of a student's disability, but rather on the student's individual needs.

Discussion: We do not believe it is necessary to change the definition of transition services because the definition is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. The definition clearly states that decisions regarding transition services must be made on the basis of the child's individual needs, taking into account the child's strengths, preferences, and interests. As with all special education and related services, the student's IEP Team determines the transition services that are needed to provide FAPE to a child with a disability based on the needs of the child, not on the disability category or severity of the disability. We do not believe further clarification is necessary.

Changes: None.(p. 231)

Comment: Some commenters recommended that the regulations retain the requirement in current §300.347(b)(1) that requires IEPs to include a statement of the transition service needs of the child under applicable components of the child's IEP that focus on the child's courses of study (such as participation in advanced-placement courses or a vocational education program).

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Discussion: The requirement referred to by the commenter is already in the regulations. Section 300.320(b)(2) includes a reference to "courses of study" as part of transition services, consistent with section 614(d)(1)(A)(i)(VIII)(bb) of the Act. The examples in current §300.347(b)(2) (i.e., advanced placement course or a vocational education program) are not included in §300.320(b)(2) because we do not believe they are necessary to understand and implement the requirement.

Changes: None.

Comment: A few commenters recommended that the regulations clarify that schools can use funds provided under Part B of the Act to support children in transitional programs on college campuses and in community-based settings.

Discussion: We do not believe that the clarification requested by the commenters is necessary to add to the regulations because, as with all special education and related services, it is up to each child's IEP Team to determine the special education and related services that are needed to meet each child's unique needs in order for the child to receive FAPE. Therefore, if a child's IEP Team determines that a child's needs can best be met through participation in transitional programs on college campuses or in community-based settings, and includes such services on the child's IEP, funds provided under Part B of the Act may be used for this purpose.

Changes: None.

Comment: One commenter recommended more accountability for transition services.

Discussion: The Act contains significant changes to the monitoring and enforcement requirements under Part B of the Act. Section 300.600, consistent with section 616(a) of the Act, requires the primary focus of monitoring to be on improving educational results and functional outcomes for children with disabilities. The provisions in section 616(a) and (b)(2)(C)(ii) of the Act set forth the responsibility of States to monitor the implementation of the Act, enforce the Act, and annually report on performance of the State and each LEA. Section 300.600(c), consistent with section 616(a)(3) of the Act, requires States to measure performance in monitoring priority areas using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance. Section 300.601 reflects statutory language in section 616(b) of the Act and requires States to have a performance plan that evaluates their efforts to implement the requirement and purposes of the Act. Transition services are specifically being addressed in State performance plans. We

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believe that these changes to the monitoring and enforcement requirements will ensure that States and LEAs are held accountable for the transition services they provide.

Changes: None.

Comment: One commenter requested that the regulations be revised to include an affirmative statement that transition services can be used to drive the IEP for the child.

Discussion: It would be inappropriate to include such a requirement in these regulations because, while section 614(d)(1)(A)(i)(VIII) of the Act includes transition services in a child's IEP, there is no suggestion that it be the only component or the component that governs a child's IEP.

Changes: None.

Comment: Several commenters requested that the regulations explicitly state that a child with a disability who has not yet received a regular high school diploma or "aged out" of special education may participate in dual enrollment programs and receive services in a postsecondary or community-based setting if the IEP Team decides it is appropriate.

Discussion: Section 300.110, consistent with section 612(a)(2) of the Act, requires States to ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency. This would apply to dual enrollment programs in post-secondary or community-based settings. Therefore, a State would be responsible for ensuring that a public agency that offered dual enrollment programs in post-secondary or community-based settings to a nondisabled student would have that option available to a student with disabilities whose IEP Team determined that such a program would best meet the student's needs. However, we do not believe that the Act requires public agencies to provide dual enrollment programs in post-secondary or community-based settings for students with disabilities, if such programs are not available to nondisabled secondary school students. Therefore, we are not modifying the regulations.

Changes: None.

§300.102 Limitation—exception to FAPE for certain ages

Comment: One commenter requested that the regulations clarify that children with disabilities who do not receive a regular high school diploma continue to be eligible for special education and related services. One commenter expressed concern that the provision in §300.102(a)(3)(ii) regarding children with

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disabilities who have not been awarded a regular high school diploma could result in the delay of transition services in the context of the child's secondary school experience and postsecondary goals.

Discussion: We believe that §300.102(a)(3) is sufficiently clear that public agencies need not make FAPE available to children with disabilities who have graduated with a regular high school diploma and that no change is needed to the regulations. Children with disabilities who have not graduated with a regular high school diploma still have an entitlement to FAPE until the child reaches the age at which eligibility ceases under the age requirements within the State. However, we have reviewed the regulations and believe that it is important for these regulations to define "regular diploma" consistent with the ESEA regulations in 34 CFR §200.19(a)(1)(i). Therefore, we will add language to clarify that a regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or general educational development (GED) credential.

We do not believe §300.102 could be interpreted to permit public agencies to delay implementation of transition services, as stated by one commenter because transition services must be provided based on a child's age, not the number of years the child has remaining the child's high school career. Section 300.320(b), consistent with section 614(d)(1)(A)(i)(VIII) of the Act, requires each child's IEP to include, 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, appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching those goals.

Changes: A new paragraph (iv) has been added in §300.102(a)(3) stating that a regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or GED.

§300.119 Technical Assistance and Training Activities

Comment: One commenter requested that the regulations define "training."

Discussion: The Department intends the term "training," as used in §300.119, to have its generally accepted meaning. Training is generally agreed to be any activity used to enhance one's skill or knowledge to acquire, maintain, and advance knowledge, skills, and abilities. Given the general understanding of the term "training," we do not believe it is necessary to regulate on this matter.

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Changes: None.

§300.301 Initial evaluations.

§300.302 Screening for instructional purposes is not evaluation.

§300.303 Reevaluations.

§300.304 Evaluation procedures.

§300.305 Additional requirements for evaluations and reevaluations.

§300.306 Determination of eligibility

Comment: Many commenters recommended that evaluations for other institutions (e.g., vocational rehabilitation agencies, colleges and universities) should be required before a child graduates from secondary school with a regular diploma or exceeds the age limit for FAPE. However, a number of commenters disagreed and stated that public agencies should not be required to conduct evaluations that will be used to meet the entrance or eligibility requirements of another institution or agency. One commenter requested clarification regarding whether schools must provide updated evaluations for college testing and admissions purposes and recommended including language in the regulations that explicitly states that public agencies are not required to conduct tests that are needed for admission to postsecondary programs. Another commenter recommended that the regulations clarify that LEAs have responsibility for providing the postsecondary services that are included in the summary of the child's academic achievement and functional performance. One commenter requested requiring a reevaluation before a child exits the school system. Another commenter recommended clarifying that a comprehensive evaluation is not required for children aging out of special education.

A number of commenters provided recommendations on the information that should be included in the summary of a child's academic and functional performance required in §300.305(e)(3). Commenters suggested that the summary report should include information about the child's disability; the effect of the disability on the child's academic and functional performance (sufficient to establish eligibility under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, if appropriate); any needed modifications or adaptations essential

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to the child's success; the child's most recent evaluations by professionals, including the child's academic achievement and functional performance levels; assistive technology and other supports used by the child; and any modifications and supports that would facilitate the child's successful transition to postsecondary education or employment.

Discussion: We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act. While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child's academic achievement and functional performance. We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations.

It would be inconsistent with the Act to require public agencies to conduct evaluations for children who are exiting the school system because they exceed the age for eligibility under State law. Section 300.305(e)(2), consistent with section 614(c)(5)(B)(i) of the Act, is clear that an evaluation in accordance with §§300.304 through 300.311 is not required before the termination of a child's eligibility under the Act due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under State law. Section 300.305(e)(3), consistent with section 614(c)(5)(B)(ii) of the Act, states that the summary required when a child graduates with a regular diploma or exceeds the age eligibility under State law must include information about the child's academic achievement and functional performance, as well as recommendations on how to assist the child in meeting the child's postsecondary goals. The Act does not otherwise specify the information that must be included in the summary and we do not believe that the regulations should include a list of required information. Rather, we believe that State and local officials should have the flexibility to determine the appropriate content in a child's summary, based on the child's individual needs and postsecondary goals.

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Comment: One commenter stated that public agencies should not be required to conduct an evaluation of a child who graduates with a regular diploma because a regular diploma means that the child has met the same requirements and achieved the same or similar level of competency as the child's nondisabled classmates. The commenter also requested that the regulations define a regular diploma to mean that the child has reached a comparable level of achievement as the child's nondisabled classmates.

Discussion: Section 300.305(e)(2) specifically states that a public agency does not need to evaluate a child with a disability who graduates with a regular diploma. In addition, as noted in the Analysis of Comments and Changes section for subpart B, we have clarified in §300.101(a)(3)(iv) that a regular diploma does not include alternate degrees, such as a general educational development (GED) credential. We do not believe that any further clarification with respect to the definition of "regular diploma" is necessary.

Changes: None.

§300.320 Transition services

Comment: Many commenters disagreed with changing the age at which transition services must be provided to a child with a disability from 14 years to 16 years. One commenter recommended that transition services begin at age 13. Another commenter recommended that transition services begin before high school, because if there is a choice of high schools, transition goals may be a determining factor in the selection process. A few commenters requested that the regulations clarify that States may continue to begin transition services with the first IEP after the child turns age 14. Some commenters recommended that transition begin two to four full school years before the child is expected to graduate because some children may exit school at age 17.

Numerous commenters recommended that the regulations clarify that States have discretion to require transition services to begin before age 16 for all children in the State. However, a few commenters recommended removing the phrase "or younger if determined appropriate by the IEP Team" in §300.320(b) because the language is not in the Act and promotes additional special education services.

A few commenters recommended that the regulations require transition planning to begin earlier than age 16 if necessary for the child to receive FAPE. Other commenters recommended clarifying that, in order for transition services to begin by

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age 16, transition assessments and other pre-planning needs that would facilitate movement to post-school life must be completed prior to the child's 16th birthday. One commenter recommended requiring transition planning to begin no later than the child's freshman year in high school and that this planning include selecting assessment instruments and completing assessments that will lead to the development of transition goals and objectives in the child's IEP.

Discussion: Section 614(d)(1)(A)(i)(VIII) of the Act requires that transition services begin no later than the first IEP to be in effect when the child turns 16. Because IEP Team decisions must always be individualized, we have included the phrase "or younger if determined appropriate by the IEP Team" in §300.320(b).

The Act does not require transition planning or transition assessments, as recommended by some commenters. Therefore, consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require that IEPs include this information because it is beyond what is specifically required in the Act.

The Department believes that a State could require transition services, if it chose to do so, to begin before age 16 for all children in the State. However, consistent with §300.199(a)(2) and section 608(a)(2) of the Act, a State that chooses to require transition services before age 16 for all children would have to identify in writing to its LEAs and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the Act and Federal regulations.

Changes: None.

Comment: A few commenters recommended that §300.320(b) clarify that the child is a participating IEP Team member and that the IEP Team is required to consider the child's preferences in developing transition goals and services.

Discussion: The clarification requested is not needed because §300.321(b)(1) already requires the public agency to invite a child with a disability to attend the child's IEP Team meeting, if a purpose of the meeting is to consider the child's postsecondary goals and the transition services needed to assist the child to reach those goals. In addition, §300.321(b)(2) requires the public agency to take steps to ensure that the child's preferences and interests are considered, if the child does not attend the IEP Team meeting. We believe that this is sufficient clarification that, for the purposes mentioned by the

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commenter, the child is a participating IEP Team member.

Changes: None

Comment: A few commenters requested that the regulations clarify whether "transition assessments" are formal evaluations or competency assessments. One commenter stated that transition assessments should be different for a college-bound child with a disability than for a child with severe disabilities whose future is a group home.

Discussion: We do not believe the requested clarification is necessary because the specific transition assessments used to determine appropriate measurable postsecondary goals will depend on the individual needs of the child, and are, therefore, best left to States and districts to determine on an individual basis.

Changes: None.

Comment: One commenter requested clarification of the term "postsecondary goals." Another commenter recommended defining "postsecondary goals" in the definition section of these regulations.

Discussion: We do not believe it is necessary to include a definition of "postsecondary goals" in the regulations. The term is generally understood to refer to those goals that a child hopes to achieve after leaving secondary school (i.e., high school).

Changes: None.

Comment: One commenter requested clarification regarding whether §300.320(b)(1) requires measurable postsecondary goals in each of the areas of training, education, employment, and, independent living skills.

Discussion: Beginning not later than the first IEP to be in effect when the child turns 16 years of age, section 614(d)(1)(A)(i)(VIII)(aa) of 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. Goals in the area of independent living are required only if appropriate. 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.

Changes: None.

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§300.321 Transition services participants

Comment: A few commenters recommended requiring the public agency to invite the child with a disability to attend the child's IEP Team meeting no later than age 16 or at least two years prior to the child's expected graduation, whichever comes first.

Discussion: The commenters' concerns are addressed in §300.321(b), which requires the public agency to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching the child's postsecondary goals. Furthermore, a child's IEP must include transition services 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, consistent with §300.320(b).

Changes: None.

§300.320 Transfer of rights at age of majority

Comment: One commenter recommended that the regulations specify how the child is to be informed of the transfer of rights. The commenter also recommended that the regulations require public agencies to explain to the child the rights that will transfer to the child on reaching the age of majority.

Discussion: The specific manner in which a child is informed about his or her rights is best left to States, districts, and IEP Teams to decide, based on their knowledge of the child and any unique local or State requirements. Section 300.320(c), consistent with section 614(d)(1)(A)(i)(VIII)(cc) of the Act, already requires the IEP to include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority. We do not believe further clarification is necessary.

Changes: None.

Comment: One commenter stated that §300.320(c) is redundant with §300.520.

Discussion: Sections 300.320 and 300.520 are related, but not redundant. Section 300.320(c) requires the IEP to include a statement that the child has been informed of the child's rights under Part B of the Act that will transfer to the child on reaching the age of majority. Section 300.520 provides additional information about the transfer of rights as part of the procedural safeguards for parents and children under the Act.

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Changes: None.

Comment: One commenter stated that interagency agreements are important because agencies other than SEAs (e.g., mental health agencies that place children in residential facilities) are responsible for providing special educational services. The commenter requested that the regulations specify that residential facilities be allowed reimbursement for providing educational services and that children in these facilities are entitled to FAPE.

Discussion: We do not believe it is necessary to further clarify in the regulations that children with disabilities who are placed in residential facilities by public agencies are entitled to FAPE because §300.146, consistent with section 612(a)(10)(B) of the Act, provides that SEAs must ensure that children with disabilities receive FAPE when they are placed in or referred to private schools or facilities by public agencies. Whether residential facilities can receive reimbursement for educational services will depend on how States have apportioned financial responsibility among State agencies and we do not believe that regulating on this issue is appropriate or necessary.

Changes: None.

§300.324 Failure to meet transition objectives

Comment: One commenter recommended that §300.324(c) emphasize collaboration between public agencies providing education and transportation in order to resolve problems concerning a child's transportation IEP objectives related to transition.

Discussion: Section 300.321(b)(3) requires the IEP Team to invite a representative of any agency that is likely to be responsible for providing or paying for transition services, when appropriate, and with the consent of the parent (or a child who has reached the age of majority). In addition, §300.154(a), consistent with section 612(a)(12) of the Act, requires each State to ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency and the SEA, in order to ensure that services needed to ensure FAPE are provided. Section 300.154(b) and section 612(a)(12)(B)(i) of the Act specifically refer to interagency agreements or other mechanisms for interagency coordination with agencies assigned responsibility under State policy to provide special education or related services relating to transition. This would include a public agency that is

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responsible for transportation under State policy. We believe this is sufficient to address the commenter's concern.

Changes: None.

Comment: A few commenters requested that §300.324(c)(1) clarify that public agencies are under a legal obligation to provide services related to the transition objectives in a child's IEP.

Discussion: It is not necessary to include additional language in §300.324(c)(1). Section 300.101, consistent with section 612(a)(1)(A) of the Act, requires each SEA to ensure that the special education and related services that are necessary for the child to receive FAPE are provided in conformity with the child's IEP. If an agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to develop alternative strategies to meet the transition objectives for the child set out in the child's IEP, consistent with section 614(d)(6) of the Act and §300.324(c)(1).

Changes: None.

Comment: A few commenters stated that families are often unaware of the transfer of rights at the age of majority and recommended requiring schools to inform parents and students in writing of the transfer of rights one year prior to the day the student reaches the age of majority.

Discussion: The commenters' concerns are addressed elsewhere in the regulations. Section 300.320(c), consistent with section 614(d)(1)(A)(VIII)(cc) of the Act, requires that, beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority. Section 300.322(f) (proposed §300.322(e)) requires the public agency to give a copy of the child's IEP to the parent, and, therefore, parents are informed as well.

Changes: None.

§300.321 IEP Team

Transition requirements

Section 300.321(b) modifies previous regulations regarding transition services planning for children with disabilities who are 16 through 21 years old. Public agencies are still required to invite other agencies that are likely to be responsible for providing or paying for transition services to the child's IEP

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Team meeting. If the invited agency does not send a representative, public agencies are no longer required to take additional steps to obtain the participation of those agencies in the planning of transition, as required under former §300.344(b)(3)(ii).

Public agencies will realize savings from the change to the extent that they will not have to continue to contact agencies that declined to participate in IEP Team meetings on transition planning. In school year 2006-2007, we project that public agencies will conduct 1.193 million meetings for children with disabilities who are 16 through 21 years old. We used data from the National Longitudinal Transition Study 2 (NLTS2) on school contacts of outside agency personnel to project the number of instances in which outside agencies would be invited to IEP Team meetings during the 2006-2007 school year. Based on these data, we project that schools will invite 1.492 million personnel from other agencies to IEP Team meetings for these students during the 2006-2007 school year. The NLTS2 also collected data on the percentage of children with a transition plan for whom outside agency staff were actively involved in transition planning. Based on these data, we project that 432,800 (29 percent) of the contacts will result in the active participation of outside agency personnel in transition planning for children with disabilities who are age 16 through 21.

We base our estimate of the savings from the change on the projected 1,059,200 (71 percent) instances in which outside agencies will not participate in transition planning despite school contacts that, under the previous regulations, would have included both an invitation to participate in the child's IEP Team meeting and additional follow-up attempts. If public agencies made only one additional attempt to contact the outside agency and each attempt required 15 minutes of administrative personnel time, then the change will save \$6.6 million (based on an average hourly compensation for office and administrative support staff of \$25).

Studies of best practices conducted by the National Center on Secondary Education and Transition indicate that effective transition planning requires structured interagency collaboration. Successful approaches cited in the studies included memoranda of understanding between relevant agencies and interagency teams or coordinators to ensure that educators, State agency personnel and other community service providers share information with parents and children with disabilities. The previous regulations focused on administrative contact instead of active strategic partnerships between agencies that facilitate seamless transitions for children with disabilities between school and adult settings. For this reason, the

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Department believes that the elimination of the non-statutory requirement that public agencies make additional attempts to contact other agencies will reduce administrative burden and allow public agencies to focus their efforts on interagency collaborative transition planning for children with disabilities.

Comment: Several commenters recommended that the regulations explicitly require transition services to include vocational and career training through work-study and documentation of accommodations needed in the workplace.

Discussion: The Act does not require IEPs to include vocational and career training or documentation of workplace accommodations. Consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require IEPs to include information beyond what is specifically required in the Act. It is up to each child's IEP Team to determine the transition services that are needed to meet the unique transition needs of the child.

Changes: None.

§300.321 Transition services participants

Comment: A few commenters recommended requiring the public agency to invite the child with a disability to attend the child's IEP Team meeting no later than age 16 or at least two years prior to the child's expected graduation, whichever comes first.

Discussion: The commenters' concerns are addressed in §300.321(b), which requires the public agency to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching the child's postsecondary goals. Furthermore, a child's IEP must include transition services 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, consistent with §300.320(b).

Changes: None.

Comment: One commenter requested clarification regarding the public agency's responsibility to invite a child who has not reached the age of majority to the child's IEP Team meeting when a parent does not want the child to attend.

Discussion: Section 300.321(b)(1) requires the public agency to invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of

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the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, regardless of whether the child has reached the age of majority. However, until the child reaches the age of majority under State law, unless the rights of the parent to act for the child are extinguished or otherwise limited, only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP Team meeting.

Changes: None.

Comment: A few commenters expressed concern that §300.321(b) does not require children to have sufficient input as a member of the IEP Team and recommended requiring the IEP Team to more strongly consider the child's preferences and needs.

Discussion: Section 300.321(a)(7) includes the child as a member of the IEP Team, when appropriate, and §300.321(b)(1) requires the public agency to invite the child to the child's IEP Team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. Further, if the child does not attend the IEP Team meeting, §300.321(b)(2) requires the public agency to take other steps to ensure that the child's preferences and interests are considered. We believe this is sufficient to ensure that the child's preferences and needs are considered and do not believe that any changes to §300.321(b) are necessary.

Changes: None.

Comment: One commenter stated that the requirements in §300.321(b), regarding transition services participants, are not in the Act, are too rigid, and should be modified to provide more flexibility for individual children.

Discussion: We believe that, although not specified in the Act, the requirements in §300.321(b) are necessary to assist children with disabilities to successfully transition from high school to employment, training, and postsecondary education opportunities. We believe it is critical for children with disabilities to be involved in determining their transition goals, as well as the services that will be used to reach those goals. Section 300.321(b), therefore, requires the public agency to invite the child to attend IEP Team meetings in which transition goals and services will be discussed. If the child does not attend the IEP Team meeting, §300.321(b)(2) requires the public agency to take other steps to ensure that the child's preferences and interests are considered.

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We also believe that, when it is likely that a child will be involved with other agencies that provide or pay for transition services or postsecondary services, it is appropriate (provided that the parent, or a child who has reached the age of majority, consents) for representatives from such agencies to be invited to the child's IEP Team meeting. The involvement and collaboration with other public agencies (e.g., vocational rehabilitation agencies, the Social Security Administration) can be helpful in planning for transition and in providing resources that will help children when they leave high school. We believe that children with disabilities will benefit when transition services under the Act are coordinated with vocational rehabilitation services, as well as other supports and programs that serve all children moving from school to adult life. Therefore, we decline to change the requirements in §300.321(b).
Changes: None.

Comment: One commenter stated that §300.321(b)(1), which requires the public agency to invite the child to an IEP Team meeting when transition is to be considered, duplicates §300.321(a)(7), which requires a child with a disability to be invited to his or her IEP Team meeting, whenever possible.

Discussion: These two provisions are not redundant. Section 300.321(a)(7) requires the public agency to include the child with a disability, when appropriate (not "whenever possible," as stated by the commenter), in the child's IEP Team meeting, and, thus, provides discretion for the parent and the public agency to determine when it is appropriate to include the child in the IEP Team meeting. Section 300.321(b), on the other hand, requires a public agency to invite a child to attend an IEP Team meeting when the purpose of the meeting will be to consider the postsecondary goals for the child and the transition services needed to assist the child to reach those goals. The Department believes it is important for a child with a disability to participate in determining the child's postsecondary goals and for the IEP Team to consider the child's preferences and interests in determining those goals.

Changes: None.

Comment: Many commenters recommended removing the requirement in §300.321(b)(3) for parental consent (or consent of a child who has reached the age of majority) before inviting personnel from participating agencies to attend an IEP Team meeting because it is burdensome, may reduce the number of agencies participating in the IEP Team meeting, and may limit the options for transition services for the child. The commenters stated that this consent is unnecessary under FERPA, and inconsistent

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with §300.321(a)(6), which allows the parent or the agency to include other individuals in the IEP Team who have knowledge or special expertise regarding the child.

Discussion: Section 300.321(b)(3) was included in the regulations specifically to address issues related to the confidentiality of information. Under section 617(c) of the Act the Department must ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, irrespective of the requirements under FERPA. We continue to believe that a public agency should be required to obtain parental consent (or the consent of a child who has reached the age of majority) before inviting representatives from other participating agencies to attend an IEP Team meeting, consistent with §300.321(b)(3).

We do not believe that the requirements in §300.321(b)(3) are inconsistent with §300.321(a)(6). Section 300.321(a)(6) permits other individuals who have knowledge or special expertise regarding the child to attend the child's IEP Team meeting at the discretion of the parent or the public agency. It is clear that in §300.321(b)(3), the individuals invited to the IEP Team meeting are representatives from other agencies who do not necessarily have special knowledge or expertise regarding the child. In these situations, we believe that consent should be required because representatives of these agencies are invited to participate in a child's IEP Team meeting only because they may be providing or paying for transition services. We do not believe that representatives of these agencies should have access to all the child's records unless the parent (or the child who has reached the age of majority) gives consent for such a disclosure. Therefore, we believe it is important to include the requirement for consent in §300.321(b)(3).

Changes: None.

Comment: Some commenters recommended removing the phrase, "to the extent appropriate" in §300.321(b)(3) and requiring public agencies to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to the IEP Team meeting.

Discussion: We disagree with the recommended change because the decision as to whether to invite a particular agency to participate in a child's IEP Team meeting is a decision that should be left to the public agency and the parent (or the child with a disability who has reached the age of majority).

Changes: None.

Comment: Many commenters recommended that the regulations require the IEP Team to include a representative of the public

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agency who has the authority to commit resources. One commenter stated that the failure of this individual to attend an IEP Team meeting lengthens the decision-making process, delays services, and removes parents from equal participation in an IEP Team meeting.

Discussion: Section 300.321(a)(4) incorporates the language in section 614(d)(1)(B)(iv) of the Act and requires the IEP Team to include 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 LEA resources.

A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided. However, we do not need to regulate in the manner suggested, as the public agency will be bound by the IEP that is developed at an IEP Team meeting.

Changes: None.

§300.322 Parent Participation

Comment: A few commenters recommended requiring the public agency to include all the notice requirements in §300.322(b) with the invitation to a child to attend his or her IEP Team meeting. The commenters stated that children need to be fully informed about the details and purpose of the meeting in order for them to adequately prepare and, therefore, should have the same information that is provided to other members of the IEP Team.

Discussion: We decline to make the suggested change. We believe it would be overly burdensome to require a public agency to include all the notice requirements in §300.322(b) with an invitation to a child to attend his or her IEP Team meeting, particularly because the information is provided to the child's parents who can easily share this information with the child. However, when a child with a disability reaches the age of majority under State law, the public agency must provide any notice required by the Act to both the child and the parents, consistent with §300.520 and section 615(m)(1)(A) of the Act.

Changes: None.

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Comment: A few commenters recommended that the regulations require the public agency to put parents in touch with agencies providing transition services.

Discussion: We do not believe it is necessary to regulate to require public agencies to put parents in touch with agencies providing transition services. As a matter of practice, public agencies regularly provide information to children and parents about transition services during the course of planning and developing transition goals and determining the services that are necessary to meet the child's transition goals.

Changes: None.

§300.324 Development, review, and revision of IEP

Comment: A few commenters requested that §300.324(c)(1) clarify that public agencies are under a legal obligation to provide services related to the transition objectives in a child's IEP.

Discussion: It is not necessary to include additional language in §300.324(c)(1). Section 300.101, consistent with section 612(a)(1)(A) of the Act, requires each SEA to ensure that the special education and related services that are necessary for the child to receive FAPE are provided in conformity with the child's IEP. If an agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to develop alternative strategies to meet the transition objectives for the child set out in the child's IEP, consistent with section 614(d)(6) of the Act and §300.324(c)(1).

Changes: None.

Comment: One commenter recommended that §300.324(c) emphasize collaboration between public agencies providing education and transportation in order to resolve problems concerning a child's transportation IEP objectives related to transition.

Discussion: Section 300.321(b)(3) requires the IEP Team to invite a representative of any agency that is likely to be responsible for providing or paying for transition services, when appropriate, and with the consent of the parent (or a child who has reached the age of majority). In addition, §300.154(a), consistent with section 612(a)(12) of the Act, requires each State to ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency and the SEA, in order to ensure that services needed to ensure FAPE are provided. Section 300.154(b) and section 612(a)(12)(B)(i) of the Act specifically refer to

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interagency agreements or other mechanisms for interagency coordination with agencies assigned responsibility under State policy to provide special education or related services relating to transition. This would include a public agency that is responsible for transportation under State policy. We believe this is sufficient to address the commenter's concern.

Changes: None.

Comment: A few commenters stated that guidance is needed regarding what requirements apply when serving incarcerated children with disabilities. One commenter recommended requiring that children with disabilities incarcerated in local jails continue with their established school schedules and IEP services, which States may provide directly or through an LEA.

Discussion: No change to the regulations is needed. Section 300.324(d)(1), consistent with section 614(d)(7) of the Act, specifies the requirements of the Act that do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons. If a child with a disability is incarcerated, but is not convicted as an adult under State law and is not incarcerated in an adult prison, the requirements of the Act apply. Whether the special education and related services are provided directly by the State or through an LEA is a decision that is best left to States and LEAs to determine.

Changes: None.

Comment: One commenter stated that SEAs and LEAs should not be allowed to restrict the types of services provided to children with disabilities simply because they are incarcerated.

Discussion: We disagree with the commenter. The Act allows services to be restricted for a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison. Section 614(d)(7)(B) of the Act states that the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. Further, the LRE requirements in §300.114 and the requirements related to transition services in §300.320 do not apply.

Changes: None. (p. 855-857)

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§300.324 Failure to meet transition objectives

Comment: One commenter recommended that §300.324(c) emphasize collaboration between public agencies providing education and transportation in order to resolve problems concerning a child's transportation IEP objectives related to transition.

Discussion: Section 300.321(b)(3) requires the IEP Team to invite a representative of any agency that is likely to be responsible for providing or paying for transition services, when appropriate, and with the consent of the parent (or a child who has reached the age of majority). In addition, §300.154(a), consistent with section 612(a)(12) of the Act, requires each State to ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency and the SEA, in order to ensure that services needed to ensure FAPE are provided. Section 300.154(b) and section 612(a)(12)(B)(i) of the Act specifically refer to interagency agreements or other mechanisms for interagency coordination with agencies assigned responsibility under State policy to provide special education or related services relating to transition. This would include a public agency that is responsible for transportation under State policy. We believe this is sufficient to address the commenter's concern.

Changes: None.

Comment: A few commenters requested that §300.324(c)(1) clarify that public agencies are under a legal obligation to provide services related to the transition objectives in a child's IEP.

Discussion: It is not necessary to include additional language in §300.324(c)(1). Section 300.101, consistent with section 612(a)(1)(A) of the Act, requires each SEA to ensure that the special education and related services that are necessary for the child to receive FAPE are provided in conformity with the child's IEP. If an agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to develop alternative strategies to meet the transition objectives for the child set out in the child's IEP, consistent with section 614(d)(6) of the Act and §300.324(c)(1).

Changes: None.

§300.520 Transfer of parental rights at age of majority

Comment: A few commenters recommended clarifying §300.520(a)(2) to mean that all rights transfer to children who have reached the age of majority under State law.

Discussion: To change the regulation in the manner suggested by the commenters would be inconsistent with the Act. Section 615(m)(1)(D) of the Act allows, but does not require, a State to transfer all rights accorded to parents under Part B of the Act to children who are incarcerated in an adult or juvenile, State or local correctional institution when a child with a disability reaches the age of majority under State law.

Changes: None.

Comment: A few commenters stated that the notice to transfer parental rights to a child at the age of majority should be provided to the child and parents one year before the child reaches the age of majority.

Discussion: We do not believe this change is necessary because the regulations in §300.320(c) already address the notification requirement. Specifically, §300.320(c) requires that, beginning no later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520. Because the regulations already contain the notice requirement, we do not believe it is necessary to add further clarification of this requirement to §300.625.

Changes: None.

§300.600 State monitoring and enforcement

Comment: One commenter recommended more accountability for transition services.

Discussion: The Act contains significant changes to the monitoring and enforcement requirements under Part B of the Act. Section 300.600, consistent with section 616(a) of the Act, requires the primary focus of monitoring to be on improving educational results and functional outcomes for children with disabilities. The provisions in section 616(a) and (b)(2)(C)(ii) of the Act set forth the responsibility of States to monitor the implementation of the Act, enforce the Act, and annually report on performance of the State and each LEA. Section 300.600(c), consistent with section 616(a)(3) of the Act, requires States to measure performance in monitoring

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priority areas using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance. Section 300.601 reflects statutory language in section 616(b) of the Act and requires States to have a performance plan that evaluates their efforts to implement the requirement and purposes of the Act. Transition services are specifically being addressed in State performance plans. We believe that these changes to the monitoring and enforcement requirements will ensure that States and LEAs are held accountable for the transition services they provide.

Changes: None.

Comment: One commenter requested clarification as to how States should include children with disabilities who require special education services through age 21 in calculating, for adequate yearly progress (AYP) purposes, the percentage of children who graduate with a regular high school diploma in the standard number of years. The commenter expressed concern that States, in order to comply with their high school graduation rate academic outcome requirements under the ESEA, will change the grade status from 12th grade to 11th grade for those children with disabilities who will typically age out of the public education system under the Act. The commenter further stated that this will affect the exception to FAPE provisions in §300.102 for children with disabilities who require special education services through age 21.

Discussion: The calculation of graduation rates under the ESEA for AYP purposes (34 CFR 200.19(a)(1)(i)) does not alter the exception to FAPE provisions in §300.102(a)(3) for children with disabilities who graduate from high school with a regular high school diploma, but not in the standard number of years. The public agency must make FAPE available until age 21 or the age limit established by State law, even though the child would not be included as graduating for AYP purposes under the ESEA. In practice, though, there is no conflict between the Act and the ESEA, as the Department interprets the ESEA title I regulations to permit States to propose a method for accurately accounting for students who legitimately take longer than the standard number of years to graduate.

§300.622 Consent

Comment: One commenter suggested requiring schools to obtain parental consent before disclosing personally identifiable information to any party, unless authorized by 34 CFR part 99. Another commenter requested clarification regarding the requirements in §300.622.

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Discussion: ... We believe that parental consent should be required before personally identifiable information can be released to representatives of participating agencies who are likely to provide or pay for transition services in accordance with §300.321(b)(3). Representatives of these agencies, generally, are invited to participate in a child's IEP meeting because they may be providing or paying for transition services. We do not believe that the representatives of these agencies should have access to all the child's records unless the parent (or the child who has reached the age of majority) gives consent for the disclosure. We are, therefore, adding a new paragraph (b)(2) in §300.622 to make this clear...

Changes: ... We added a new paragraph (b)(2) to clarify that parental consent is required for the disclosure of information to participating agencies that likely may provide or pay for transition services...

§300.625 Children's Rights.

Comment: One commenter requested clarifying the requirement in §300.625(a) that children receive privacy rights similar to those received by parents.

Discussion: Section 300.625 is the same as current §300.574 and has been in the regulations since 1977. It provides that States must have policies and procedures concerning the extent to which children are afforded rights of privacy similar to those of parents, taking into consideration the age of the child and type or severity of disability. It does not require States to grant particular privacy rights to a child in addition to those that apply when the child reaches the age of majority, as specified in paragraphs (b) and (c) of §300.625. We do not believe further clarification is necessary.

Changes: None.

Additional Secondary Transition Related Comments:

Transition requirements

Section 300.321(b) modifies previous regulations regarding transition services planning for children with disabilities who are 16 through 21 years old. Public agencies are still required to invite other agencies that are likely to be responsible for providing or paying for transition services to the child's IEP Team meeting. If the invited agency does not send a representative, public agencies are no longer required to take additional steps to obtain the participation of those agencies

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in the planning of transition, as required under former §300.344(b)(3)(ii).

Public agencies will realize savings from the change to the extent that they will not have to continue to contact agencies that declined to participate in IEP Team meetings on transition planning. In school year 2006-2007, we project that public agencies will conduct 1.193 million meetings for children with disabilities who are 16 through 21 years old. We used data from the National Longitudinal Transition Study 2 (NLTS2) on school contacts of outside agency personnel to project the number of instances in which outside agencies would be invited to IEP Team meetings during the 2006-2007 school year. Based on these data, we project that schools will invite 1.492 million personnel from other agencies to IEP Team meetings for these students during the 2006-2007 school year. The NLTS2 also collected data on the percentage of children with a transition plan for whom outside agency staff were actively involved in transition planning. Based on these data, we project that 432,800 (29 percent) of the contacts will result in the active participation of outside agency personnel in transition planning for children with disabilities who are age 16 through 21.

We base our estimate of the savings from the change on the projected 1,059,200 (71 percent) instances in which outside agencies will not participate in transition planning despite school contacts that, under the previous regulations, would have included both an invitation to participate in the child's IEP Team meeting and additional follow-up attempts. If public agencies made only one additional attempt to contact the outside agency and each attempt required 15 minutes of administrative personnel time, then the change will save \$6.6 million (based on an average hourly compensation for office and administrative support staff of \$25).

Studies of best practices conducted by the National Center on Secondary Education and Transition indicate that effective transition planning requires structured interagency collaboration. Successful approaches cited in the studies included memoranda of understanding between relevant agencies and interagency teams or coordinators to ensure that educators, State agency personnel and other community service providers share information with parents and children with disabilities. The previous regulations focused on administrative contact instead of active strategic partnerships between agencies that facilitate seamless transitions for children with disabilities between school and adult settings. For this reason, the Department believes that the elimination of the non-statutory requirement that public agencies make additional attempts to contact other agencies will reduce administrative burden and

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allow public agencies to focus their efforts on interagency collaborative transition planning for children with disabilities.

Comment: A few commenters stated that the regulations do not define "functional" or explain how a student's functional performance relates to the student's unique needs or affects the student's education. The commenters noted that the word "functional" is used throughout the regulations in various forms, including "functional assessment," "functional goals," "functional abilities," "functional needs," "functional achievement," and "functional performance," and should be defined to avoid confusion. One commenter recommended either defining the term or explicitly authorizing States to define the term.

One commenter recommended clarifying that "functional performance" must be a consideration for any child with a disability who may need services related to functional life skills and not just for students with significant cognitive disabilities. A few commenters stated that the definition of transition services must specify that "functional achievement" includes achievement in all major life functions, including behavior, social-emotional development, and daily living skills.

Discussion: We do not believe it is necessary to include a definition of "functional" in these regulations because the word is generally used to refer to activities and skills that are not considered academic or related to a child's academic achievement as measured on Statewide achievement tests. There is nothing in the Act that would prohibit a State from defining "functional," as long as the definition and its use are consistent with the Act.

We also do not believe it is necessary for the definition of transition services to refer to all the major life functions or to clarify that functional performance must be a consideration for any child with a disability, and not just for students with significant cognitive disabilities. As with all special education and related services, the student's IEP Team determines the services that are needed to provide FAPE to a child with a disability based on the needs of the child.

Changes: None.

Comment: One commenter requested that the regulations clarify that parents and children are not required to use the transition services offered by agencies that the school invites to the IEP Team meeting.

Discussion: There is nothing in the Act or these regulations that requires a parent or child to participate in transition

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services that are offered by agencies that the public agency has invited to participate in an IEP Team meeting. However, if the IEP Team determines that such services are necessary to meet the needs of the child, and the services are included on the child's IEP, and the parent (or a child who has reached the age of majority) disagrees with the services, the parent (or the child who has reached the age of majority) can request mediation, file a due process complaint, or file a State complaint to resolve the issue. We do not believe further clarification in the regulations is necessary.

Changes: None.

Comment: Numerous commenters recommended retaining current §300.344(b)(3)(ii), which requires the public agency to take steps to ensure the participation of invited agencies in the planning of any transition services when the agencies do not send a representative to the IEP Team meeting. These commenters stated that the participation of other agencies is vital to ensuring that the child receives the necessary services. One commenter requested that the regulations clarify that, aside from inviting other agencies to attend a child's IEP Team meeting, public agencies have no obligation to obtain the participation of agencies likely to provide transition services.

Discussion: The Act has never given public agencies the authority to compel other agencies to participate in the planning of transition services for a child with a disability, including when the requirements in §300.344(b)(3)(ii) were in effect. Without the authority to compel other agencies to participate in the planning of transition services, public agencies have not been able to meet the requirement in current §300.344(b)(3)(ii) to "ensure" the participation of other agencies in transition planning. Therefore, while we believe that public agencies should take steps to obtain the participation of other agencies in the planning of transition services for a child, we believe it is unhelpful to retain current §300.344(b)(3)(ii).

Changes: None.

Comment: A few commenters recommended that the regulations require the public agency to put parents in touch with agencies providing transition services.

Discussion: We do not believe it is necessary to regulate to require public agencies to put parents in touch with agencies providing transition services. As a matter of practice, public agencies regularly provide information to children and parents about transition services during the course of planning and

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developing transition goals and determining the services that are necessary to meet the child's transition goals.

Changes: None.

Comment: One commenter asked whether a parent could exclude an individual from the IEP Team.

Discussion: A parent can refuse to provide consent only for the public agency to invite other agencies that are likely to be responsible for providing or paying for transition services. A parent may not exclude any of the required members of the IEP Team.

Changes: None.