

**Summary of Major Changes in the Final IDEA Regulations  
from the Regulations Proposed in the NPRM**

**Highly Qualified Teacher Requirements**

- **States may develop a separate HOUSSE for special education teachers.**  
A new regulation permits States to develop a separate HOUSSE for special education teachers, provided that it does not establish a lower standard for the content knowledge requirements and meets all the requirements for a HOUSSE for regular education teachers. States also may develop a separate HOUSSE for special education teachers that include a single HOUSSE evaluation that covers multiple subjects.
- **Regular education teachers who become special education teachers are considered “new special education teachers” when first hired as a special education teacher.**  
A new regulation clarifies that a fully certified regular education teacher who becomes fully certified or licensed as a special education teacher is considered a “new” special education teacher when first hired as a special education teacher. This will give such teachers an additional two years to be highly qualified in all the core subject areas that the teacher teaches.
- **The highly qualified special education teacher requirements do not apply to private school teachers who provide services to private school students (parentally-placed or publicly-placed private school children with disabilities).**  
A new regulation clarifies that the highly qualified special education teacher requirements do not apply to private school teachers hired or contracted by LEAs to provide equitable services to children with disabilities placed by their parents in private schools. Private school teachers who provide services to publicly-placed children with disabilities also do not need to meet the highly qualified special education teacher requirements – this provision was in the proposed regulations and retained in the final regulations.

**Cochlear Implants**

- **Cochlear implants and “mapping” are not covered under the IDEA.**  
Language was added to the final regulations to make clear that surgically-implanted devices, the optimization of such devices (e.g., mapping), the maintenance of such devices, or the replacement of such devices are not covered under the IDEA.
- **Children with cochlear implants are still eligible for related services (e.g., speech therapy).**  
Many commenters stated that children with cochlear implants need instruction in listening and language skills to process spoken language, just as children with hearing loss who use hearing aids. A new regulation clarifies that a child with a

cochlear implant is entitled to related services that are determined by the child's IEP Team to be necessary for the child to benefit from special education.

- **Schools must routinely check the external components of a cochlear implant to make sure it is turned on and working, in the same manner that they routinely check hearing aids.**

In many ways, there is no substantive difference between serving a child with a cochlear implant in a school setting and serving a child with a hearing aid. The externally worn speech processor of a cochlear implant is similar to a hearing aid in that it must be turned on and properly functioning in order for the child to benefit from his or her education. A new regulation requires schools to routinely check the external device of a cochlear implant to make sure that it is turned on and working, in the same manner that schools are responsible for routinely checking hearing aids worn by children with disabilities.

### **Children With Disabilities Enrolled by Their Parents in Private Schools**

- **LEAs are responsible for child find and equitable services for children with disabilities who reside in one State and are enrolled by their parents in a private school located in another State.**

The statute places the responsibility for child find and equitable services for parentally-placed private school children with disabilities with the LEA where the private school is located. (This significantly departs from prior law, which based LEA responsibility on where parentally-placed private school children reside, and not where the private schools are located.) The statute does not provide an exception for a child who resides in one State and attends a private school in another States. A new regulation clarifies that each LEA's child find process and process for determining equitable services must include these out-of-state children.

- **Unexpended equitable services funds in a given year must be used in the following year to provide services to parentally-placed private school children with disabilities.**

A new regulation was added to require that, if an LEA does not spend the required equitable services funds for parentally-placed private school children with disabilities by the end of a fiscal year, the remaining funds must be used for special education and related services to parentally-placed private school children with disabilities the following year.

- **States can decide how complaints by private school officials regarding the consultation process will be filed with the State.** The proposed regulations required that the State complaint procedures be used when a private school official believes that an LEA has not engaged in meaningful and timely consultation or has not given due consideration to the views of private school officials regarding services for parentally-placed private school children with disabilities. The statute does not stipulate how a private school official must submit such complaints to the SEA. Therefore, the final regulations removed the

requirement that State complaint procedures be used and, instead, permit States to decide how complaints regarding the consultation process will be filed.

- **Due process complaints regarding the child find requirements must be filed with the LEA in which the private school is located.**

Due process complaints for parentally-placed private school children apply only for failure to meet the child find requirements. A new regulation clarifies that these due process complaints must be filed with the LEA in which the private school is located.

- **Parental consent is required for disclosures of personally-identifiable information between the officials of the LEA where the private school is located and the LEA of the parent's residence.**

Given the statutory change that places responsibility for child find and equitable services on the LEA where the private school is located, we anticipate there will be more requests for the exchange of student information between officials of the LEA where the private school is located and the LEA of the parent's residence (for example, when a child is evaluated by the LEA where the private school is located, and subsequently enrolls in the LEA of residence). This new regulation makes clear that parental consent is required for such disclosures of personally identifiable information.

### **State Complaint Procedures**

- **The 60-day timeline to resolve a State complaint may be extended if the parties agree to engage in mediation.**

A new regulation was added to make this clear.

- **States must set-aside any part of a State complaint that is being addressed in a due process hearing until the conclusion of the due process hearing.**

The proposed regulations did not include this requirement. Many commenters requested that this requirement from the 1999 regulations be retained. The regulation states that if a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of a due process hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

- **SEAs must resolve complaints alleging a school's failure to implement the findings from a due process hearing.**

The proposed regulations did not include this requirement and many commenters requested that this requirement from the 1999 regulations be retained to avoid costly litigation. A new regulation was, therefore, added.

### **Use of Public Benefits or Insurance**

- **Parental consent must be obtained each time a school wants to use a parent’s public benefits or insurance to pay for special education or related services.**  
The final regulations clarify that a school must obtain parental consent each time that access to a parent’s public benefits or insurance is sought. The regulations also require schools to notify parents that refusal to allow access to their public benefits or insurance does not relieve the school of its responsibility to ensure that all required services are provided at no cost to the parents.

### **Participation in Assessments**

- **The final regulations regarding the participation of students with disabilities in assessments will be published with the 2% regulation.**  
Participation in assessments was the subject of an NPRM issued on December 15, 2005 to amend the regulations under Title I of the ESEA for States to measure the achievement of children with disabilities based on modified achievement standards. These final Part B regulations, therefore, do not include the final regulations related to assessments for students with disabilities (§300.160).

### **Access to Instructional Materials**

- **Schools must take all reasonable steps to provide instructional materials in accessible formats (e.g., Braille) to children with disabilities at the same time as other children receive instructional materials.**  
Many commenters requested that the regulations specify when accessible instructional materials must be provided to students who are blind or who have print disabilities. A new regulation clarifies the responsibilities of schools regarding accessible materials and also makes clear that this requirement applies regardless if a State or LEA chooses to coordinate with the National Instructional Materials Access Center (NIMAC) to provide accessible instructional materials.

### **Parental Consent**

- **Schools must make “reasonable efforts” to obtain informed consent from a parent for an initial evaluation, reevaluation, and initial provision of special education services.**  
New regulations make this clear and also clarify that to meet the “reasonable measures” requirement, schools must keep a record of its attempts to obtain parental consent such as detailed records of telephone calls, copies of correspondence, and records of visits made to the parent’s home or place of employment.
- **A school does not violate the IDEA if it declines to take a parent to due process or mediation to attempt to obtain parent consent for an initial evaluation, when a parent has declined to provide that consent.**  
A new regulation was added to make this clear.

- **School officials may not override a parent’s refusal to consent to an initial evaluation (to determine if the child has a disability) for a child who is home-schooled or placed in a private school by the parent at the parent’s expense.** School officials can use the due process procedures to override a parent’s refusal to consent to an evaluation of a public school student to determine if the child has a disability. The final regulations make clear that this is not the case for a child who is home-schooled or placed in a private school by the parents.
- **Parental consent is required before personally-identifiable information can be disclosed to other agencies that provide or pay for secondary transition services for children age 16 and older.**  
Agencies that provide or pay for transition and employment services for students with disabilities (e.g., vocational rehabilitation agencies) are generally invited to attend IEP Team meetings. The final regulations make clear that representatives of these agencies should not have access to the student’s records unless the parent (or the student who has reached the age of majority, gives consent for the disclosure.

### **Evaluating Children With Specific Learning Disabilities (SLD)**

- **The group that decides whether a child has a learning disability must include the child’s parents, the child’s regular teacher, and at least one person qualified to conduct diagnostic examinations of children.**  
The proposed regulations had a more specific set of requirements for the group of people responsible for determining whether a child has SLD. Many commenters recommended adding different members to the group. However, there was no consensus on who should be a member of the eligibility group. Therefore, the requirements for the eligibility group that were in the 1999 regulations are retained in the final regulations.
- **A number of changes were made to ensure that underachievement in a child suspected of having an SLD is not due to lack of appropriate instruction in reading or math.**
- **Many commenters expressed concern that children participating in a response to intervention (RTI) process would not be referred for special education and thus, would not receive the services they need. The following requirements were added to the final regulations to address these concerns:**
  - Public agencies must promptly request parental consent to evaluate a child suspected of having an SLD who has not made adequate progress when provided with appropriate instruction.
  - Public agencies must promptly request parental consent to evaluate a child suspected of having an SLD whenever a child is referred for an evaluation.
  - Parents must be informed if a child participates in a process that assesses the child’s response to scientific, research-based intervention and receive information about (a) the State’s policies regarding the amount and nature

of student performance data that will be collected and the general education services that will be provided, (b) strategies for increasing the child's rate of learning, and (c) the parents' right to request an evaluation.

- **The group deciding whether a child has SLD must consider information obtained from observing the child in the child's learning environment.** Observation has always been part of the process for determining whether a child has an SLD. A new regulation clarifies that the information from an observation may be from (a) an observation that occurred during routine classroom instruction and completed before the child was referred for an evaluation or (b) obtained by a member of the eligibility group after the child has been referred for an evaluation and parental consent obtained.

### **Individualized Education Programs (IEPs)**

- **IEPs can be changed without an IEP Team meeting, but schools must inform IEP Team members of any changes made to the IEP.** The statute permits a parent and a school to agree to amend a child's IEP after the annual IEP Team meeting without convening an IEP Team meeting. A new regulation was added to require the child's IEP Team to be informed of any changes made to a child's IEP without an IEP Team meeting.

### **Independent Educational Evaluations (IEEs)**

- **A parent is entitled to only one IEE at public expense each time the school conducts an evaluation with which the parent disagrees.** A new regulation was added to make this clear.
- **If a parent obtains an IEE at public expense or shares with the school an evaluation obtained at private expense, the school must consider the evaluation, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.** The language in the proposed regulations was changed to make this clear.

### **Procedural Safeguards Notice**

- **Additional times when parents must be given a copy of the procedural safeguards: (a) upon receipt of the first due process complaint and upon the receipt of the first State complaint; and (b) when a change of placement is made because of a violation of a code of student conduct.** The proposed regulations required schools to give parents a copy of the procedural safeguards notice only once a year and (a) upon initial referral or parental request for an evaluation; (b) upon parent request; and (c) upon receipt of the first State complaint or due process complaint. The final regulations make clear that the procedural safeguards must be given to a parent when schools receive the first due process complaint notice, when schools receive the first State complaint notice, and when a student violates a code of student conduct that results in a change of placement.

### **Resolution Session Prior to a Due Process Hearing**

- **Several regulations were added to clarify the requirements for the 30-day resolution session that must be held before a due process hearing can be held. The new regulations provide the following:**
  - If an LEA is unable to obtain the participation of the parent in the resolution meeting, the LEA may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent’s due process complaint.
  - If an LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing.
  - Exceptions to the 30-day resolution period include when: (a) both parties agree in writing to waive the resolution meeting; (b) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or (c) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process).

### **Settlement Agreements**

- **Settlement agreements may be enforced by the SEA, if the State has other mechanisms or procedures to seek such enforcement.**

The proposed regulations required a parent to go to court to seek enforcement of a settlement agreement. The final regulations allow for other mechanisms or procedures that a State might have to enforce settlement agreements, which should help reduce litigation.

### **“Stay-put”**

- **If a complaint involves initial services for a child who is moving from an early intervention program (under Part C of the IDEA) and is no longer eligible for early intervention services, the public agency is not required to provide the early intervention services that the child had been receiving.**

The proposed regulations were clear that during the pendency of any administrative or judicial proceeding regarding a due process complaint, the child must remain in his or her current educational placement (“stay-put” requirement). The final regulations specify that “stay-put” does not apply when the complaint involves a child who is moving from an early intervention program (under Part C of the IDEA) (and is no longer eligible for early intervention services because the child has turned age 3) to a preschool program (under Part B of the IDEA).

### **Discipline Procedures**

- The final regulations do not make any major changes to the discipline requirements that were included in the NPRM. Changes in the final regulations

simply clarify the provisions that were included in the proposed regulation. Some of the major statutory changes regarding discipline that are included and clarified in the final regulations include the following:

New authority for school personnel

- School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

New standards for manifestation determinations

- A manifestation determination is only required when there is a change in placement of a child with a disability because of a violation of a code of student conduct.
- The statute establishes a new standard for determining if the conduct in question was a manifestation of the child's disability. The behavior must be considered a manifestation of the child's behavior if the behavior was (1) caused by, or had a direct and substantial relationship to, the child's disability; or (2) the direct result of the LEA's failure to implement the IEP.
- The final regulations make clear that if the LEA, the parent, and IEP Team determine that the child's behavior was the direct result of the LEA's failure to implement the child's IEP, the LEA must take immediate steps to remedy those deficiencies.
- The statute requires that, if the determination is made that the conduct was a manifestation of the child's disability, the IEP team must:
  - Conduct a functional behavioral assessment (unless one has already been conducted) and implement a behavioral intervention plan for the child.
  - If a behavioral intervention plan has been developed, review and modify it, as necessary, to address the behavior; and
  - Return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavior intervention plan.

Removals for up to 45 school days for "serious bodily injury"

- The statute permits school personnel to remove a student to an interim alternative educational setting for not more than 45 school days when a child inflicts serious bodily injury upon another person while at school, on school premises, or at a school. This is in addition to 45 day removals for weapons and drug offenses,

Timelines for an expedited due process hearing regarding appeals

- The statute requires that when an appeal of a disciplinary decision or manifestation determination has been requested, the SEA or LEA must arrange for an expedited hearing, which must occur within 20 school days of the date the hearing is requested, and must result in a determination within 10 school days after the hearing.

**State Monitoring and Enforcement**

- The final regulations include more of the statutory requirements related to Federal and State monitoring and enforcement. These requirements specify that the Department must monitor States and States must monitor LEAs using quantifiable indicators set by the Department in specific priority areas, including
  - The provision of FAPE in the least restrictive environment;
  - State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, and a system of transition services; and
  - Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.
- A new regulation was added to specify that States are not restricted from using any other authority available to them to monitor and enforce the requirements of Part B of the Act.

**Changes to the Definitions Section of the Regulations**

- **Other Health Impaired**  
Tourette syndrome was added to the list of health problems a child may have to be considered eligible for special education and related services under “Other Health Impaired.”
- **Interpreting services**  
The definition of interpreting services was changed to include transcription services (e.g., communication access real-time translation (CART), C-Print, and TypeWell) and special interpreting services for children who are deaf-blind.
- **Orientation and mobility services**  
Travel training” was included in the definition of “orientation and mobility services” in the proposed regulations, but was removed from the final regulations. “Travel training” is still included in the definition of “special education.”
- **Scientifically based research**  
A definition of scientifically-based research is included in the final regulations. The definition references the definition of that term from the ESEA.

- **School health services and school nurse services**  
The definition clarifies that “school nurse services” are provided by a qualified school nurse, and “school health services” may be provided by a qualified school nurse or other qualified person.
- **Special education services**  
The definition was revised to remove the definition of vocational and technical education, which was included in the proposed regulations. Commenters stated that including vocational and technical education in the definition of special education inappropriately extends services under the IDEA to post-secondary education.
- **Supplementary aids and services**  
The definition was modified to clarify that supplementary aids and services are also provided to enable children with disabilities to participate in extracurricular and nonacademic settings.