



**Council for  
Exceptional  
Children**

**Council for Exceptional Children's  
Initial Summary of Selected Provisions from  
Part B Proposed Regulations for the  
Individuals With Disabilities Education Act**

**Early Intervening Services**

**June 12, 2005**

## Early Intervening Services

**Note: Bold text in left column indicates language not specifically included in IDEA 2004**

NPRM Language	Current Regulation	Comments
<p>§300.226 Early intervening services.</p> <p>(a) General. An LEA may not use more than 15 percent of the amount such agency receives under <b>Part B of the Act</b> for any fiscal year, less any amount reduced by the agency pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.</p> <p>(b) Activities. In implementing coordinated, early intervening services under this <b>section</b>, an LEA may carry out activities that include--</p> <p>(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic [<i>instruction</i>] and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and</p> <p>(2) Providing educational and behavioral evaluations, services, and supports, including</p>		<p>In general, statutory language was incorporated into regulations.</p>

NPRM Language	Current Regulation	Comments
<p>scientifically based literacy instruction.</p> <p>(c) Construction. Nothing in this <b>section</b> shall be construed to <b>either</b> limit or create a right to FAPE under <b>Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.</b></p> <p>(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this <b>section must</b> annually report to the SEA on--</p> <p>(1) The number of <b>children</b> served under this section; and</p> <p>(2) The number of <b>children</b> served under this <b>section</b> who subsequently receive special education and related services under <b>Part B of the Act</b> during the preceding two year period.</p> <p>(e) Coordination with ESEA. Funds made available to carry out this <b>section</b> may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if <b>those</b> funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this <b>section.</b></p>		<p><b>OSERS Discussion of Proposed Regulatory Changes</b> “We have included the language regarding evaluation of children suspected of having a disability in proposed §300.226(c) because we believe it is critical to ensure that any child suspected of being a child with a disability is evaluated in a timely manner and without any undue or unnecessary delay.”</p>
<p>300.205 Adjustments to local efforts in certain fiscal years</p> <p>(d) Special rule. The amount of funds expended by an LEA <b>for early intervening services</b> under §300.226 shall count toward the maximum amount of expenditures <b>that the</b> LEA may reduce under paragraph (a) of this section.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>§300.646 Disproportionality.</p> <p>(a) General. Each State that receives</p>		<p>In general, statutory language was incorporated into regulations.</p>

NPRM Language	Current Regulation	Comments
<p>assistance under <b>Part B of the Act</b>, and the Secretary of the Interior, <b>must</b> provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to-</p> <p>(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) <b>of the Act</b>;</p> <p>(2) The placement in particular educational settings of <b>these</b> children; and</p> <p>(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.</p> <p>(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of <b>these</b> children, in accordance with paragraph (a) <b>of this section</b>, the State or the Secretary of the Interior <b>must--</b></p> <p>(1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in <b>the</b> identification or placement to ensure that <b>the</b> policies, procedures, and practices comply with the requirements of <b>the Act</b>.</p> <p>(2) Require any LEA identified under paragraph (a) <b>of this section</b> to reserve the maximum amount of funds under section 613(f) <b>of the Act</b> to provide comprehensive coordinated early intervening services to serve</p>		

NPRM Language	Current Regulation	Comments
<p>children in the LEA, particularly, <b>but not exclusively</b>, children in those groups that were significantly overidentified under paragraph (a) <b>of this section</b>; and</p> <p>(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) <b>of this section.</b></p>		