



**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**

**Evaluations and Eligibility
Determinations**

June 12, 2005

Evaluations and Eligibility Determinations

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

| NPRM Language | Current Regulation | Comments |
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| §300.27 Limited English proficient. Limited English proficient has the meaning given the term in section 9101 (25) of the ESEA. | | In general, statutory language was incorporated into regulations. |
| §300.29 Native language. Native language, when used with respect to an individual who is limited English proficient, means the following: (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section. (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). | §300.19 Native language. As used in this part, the term native language, if used with reference to an individual of limited English proficiency, means the following: (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section. (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. (b) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). | Note: Although NPRM language in bold is not in the statute, it is included in current regulations. |
| §300.300 Parental consent. (a) Consent for initial evaluation. (1)(i) Except as provided in paragraph (a) (2) of this section (regarding consent for wards of the State), the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must | §300.505 (a) Parental consent. (a) General. (1) Subject to paragraphs (a)(3),(b) and (c) of this section, informed parent consent must be obtained before – (i) Conducting an initial evaluation or reevaluation; and (ii) Initial provision of special education and | In general, statutory language was incorporated into regulations. OSERS discussion of proposed regulatory changes “Proposed §300.300(a) (1) (ii) would retain the provision in §300.505(a) (2) of the current regulations that consent for the initial evaluation may not be construed as consent for |

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| <p>obtain informed consent from the parent of the child before conducting the evaluation.</p> <p>(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.</p> <p>(2)(i) If the child is a ward of the State and is not residing with the child’s parent, the public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.</p> <p>(ii) the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—</p> <p>(A) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;</p> <p>(B) The rights of the parents of the child have been terminated in accordance with State law; or</p> <p>(C) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.</p> <p>(3) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial</p> | <p>related services to a child with a disability.</p> <p>(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.</p> <p>§300.505 (b) Parental consent.</p> <p>(b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under §§300.507-300.509 or the mediation procedures under §300.506</p> | <p>the initial provision of special education and related services. The proposed regulations would use the term “initial provision” rather than the statutory term “receipt” of special education and related services. This would make clear that consent does not need to be sought every time a particular service is provided to the child. The proposed regulation would continue to refer to consent for the initial provision of services, in lieu of using the statutory language, which refers to “consent for placement for receipt of special education and related services.” This would be consistent with the revised language in section 614 (a) (1) (D) (i) (I) of the Act and the Department’s position that placement refers to the provision of special education services rather than as a specific place, such as a specific classroom or specific school.”</p> <p>“Proposed paragraph (a) (3) of §300.300 would replace §300.505 (b) ... States and LEAs do not violate their obligation to locate, identify, and evaluate children suspected of being children with disabilities under the Act if they decline to pursue an evaluation to which a parent has failed to consent.”</p> |

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| <p>evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.</p> <p>(b) Parental consent for services. (1) A public agency that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.</p> <p>(2) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in Subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.</p> <p>(3) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services the public agency—</p> <p>(i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and</p> <p>(ii) Is not required to convene an IEP meeting</p> | <p>if appropriate, except to the extent inconsistent with State law relating to parental consent.</p> | <p>“In addition, paragraph (a) (3) of this section would permit consent override only for children who are enrolled in public school or seeking to be enrolled in public school. For children who are home schooled or placed in a private school by the parents at their own expense, consent override is not authorized. The district can always use the override procedures to evaluate the child at some future time should the parents choose to return their child to public school. Of course, public agencies do have an obligation to actively seek parental consent to evaluate private (including home school, if considered a private school under State law) children who are suspected of being children with disabilities under the Act. However, if the parents of a private school child withhold consent for an initial evaluation, the public agency would have no authority to conduct an evaluation under proposed §300.131 and no obligation to consider that child as eligible for services under proposed §§300.132 through 300.144”</p> |

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| <p>or develop an IEP under §§300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent.</p> <p>(c) Parental consent for reevaluations. (1) Subject to paragraph (c)(2) of this section, each public agency must obtain informed parental consent, in accordance with §300.300(a), prior to conducting any reevaluation of a child with a disability.</p> <p>(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that –</p> <p>(i) It had taken reasonable measures to obtain such consent; and</p> <p>(ii) The child’s parent has failed to respond.</p> <p>(d) Other consent requirements.</p> <p>(1) Parental consent is not required before—</p> <p>(i) Reviewing existing data as part of an evaluation or a reevaluation; or</p> <p>(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.</p> <p>(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with</p> | <p>§300.506 (c) Parental consent.</p> <p>(c) Failure to respond to request for reevaluation. (1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child’s parent has failed to respond.</p> <p>(2) To meet the reasonable measures requirement in paragraph (c) (1) of this section, the public agency must use procedures consistent with those in §300.345(d).</p> <p>§300.505 Parental consent</p> <p>(a)(3) Parental consent is not required before—</p> <p>(i) Reviewing existing data as part of an evaluation or a reevaluation; or</p> <p>(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.</p> <p>(d) Additional State consent requirements. In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective</p> | <p>Note: All NPRM language is not in the statute, although it is included generally in current regulations.</p> |

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| <p>FAPE. (3) A public agency may not use a parent’s refusal to consent to one service or activity under paragraphs (a) and (d) (2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.</p> | <p>procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with FAPE. (e) Limitation. A public agency may not use a parent’s refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.</p> | |
| <p>§300.301 Initial evaluations. (a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part. (b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child, or a public agency, may initiate a request for an initial evaluation to determine if the child is a child with a disability. (c) Procedures for initial evaluation. The initial evaluation— (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures – (i) To determine if the child is a child with a disability under §300.8; and (ii) To determine the educational needs of the child.</p> | <p>§300.531 Initial evaluation. Each public agency shall conduct a full and individual initial evaluation, in accordance with §§300.532 and 300.533, before the initial provision of special education and related services to a child with a disability under Part B of the Act.</p> <p>§300.343(b) IEP meetings. (b) Initial IEPs: provision of services. (1) Each public agency shall ensure that within a reasonable period of time following the agency’s receipt of parent consent to an initial evaluation of a child— (i) The child is evaluated; and (ii) If determined eligible under this part, special education and related services are made available to the child in accordance with an IEP.</p> <p>§300.320(a) Initial evaluations. (a) Each public agency shall ensure that a full</p> | <p>In general, statutory language was incorporated into regulations.</p> |

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| <p>(d) Exception. The timeframe described in paragraph (c) (1) of this section shall not apply to a public agency if –</p> <p>(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or</p> <p>(2)(i) A child enrolls in a school served by the public agency after the relevant timeframe in paragraph (c) (1) of this section has begun, and prior to a determination by the child’s previous public agency as to whether the child is a child with a disability under §300.8.</p> <p>(ii) The exception in paragraph (c) (2)(ii) (A) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.</p> | <p>and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—</p> <p>(1) to determine if the child is a “child with a disability” under §300.7; and</p> <p>(2) To determine the educational needs of the child.</p> | |
| <p>§300.302 Screening for instructional purposes is not evaluation.</p> <p>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.</p> | | <p>Statutory language was incorporated into regulations.</p> |
| <p>§300.303 Reevaluations.</p> <p>(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—</p> <p>(1) If the public agency determines that the</p> | <p>§300.536 Reevaluation.</p> <p>Each public agency shall ensure—</p> <p>(a) That the IEP of each child with a disability is reviewed in accordance with §§300.340-300.350; and</p> <p>(b) That a reevaluation of each child, in</p> | <p>In general, the statutory language was incorporated into the regulations.</p> |

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| <p>educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(2) If the child’s parent or teacher requests a reevaluation.</p> <p>(b) Limitation. A reevaluation conducted under paragraph (a) of this section—</p> <p>(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and</p> <p>(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.</p> | <p>accordance with §§300.532-300.535, is conducted if conditions warrant a reevaluation, or if the child’s parent or teacher requests a reevaluation, but at least once every three years.</p> | |
| <p>§300.304 Evaluation procedures.</p> <p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must—</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—</p> <p>(i) Whether the child is a child with a disability under §300.8; and</p> <p>(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child,</p> | <p>§300.532 Evaluation procedures.</p> <p>Each public agency shall ensure, at a minimum, that the following requirements are met:</p> <p>(a)(1) Tests and other evaluation materials used to assess a child under Part B of the Act—</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; and</p> <p>(ii) Are provided and administered in the child’s native language or other mode of communication, unless it is clearly not feasible to do so; and</p> | <p>In general, statutory language was incorporated into regulations.</p> |

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| <p>to participate in appropriate activities);</p> <p>(2) Not use any single procedure as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that—</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part—</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> | <p>(2) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child’s English language skills.</p> <p>(b) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining—</p> <p>(1) Whether the child is a child with a disability under §300.7; and</p> <p>(2) the content of the child’s IEP.</p> <p>(c)(1) Any standardized tests that are given to a child—</p> <p>(i) Have been validated for the specific purpose for which they are used; and</p> <p>(ii) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.</p> <p>(2) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g. the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.</p> <p>(d) Tests and other evaluation materials</p> | <p>OSERS discussion of proposed regulatory changes</p> <p>“In order to provide information and guidance regarding evaluation and assessment in one place, proposed §300.304(c) (1) (ii) would incorporate section 614(b) (3) (A) (ii) of the Act, and also would include language from the requirement in section 612(a) (6) (B) of the Act regarding the form of assessments and other evaluation materials used to assess limited English proficient children under the Act. Based on additional clarity provided in the statute, the proposed regulation would require public agencies to provide and administer assessments in the child’s native language, including ensuring that the form in which the test is provided or administered is most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer the assessment in this manner.”</p> <p>Note: All NPRM language, in bold, is not in the statute, although it is included generally in current regulations.</p> |

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| <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> | <p>include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(e) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.</p> <p>(g) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.</p> <p>(h) In evaluating each child with a disability under §§300.531-300.536, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(i) The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or</p> | |

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| | developmental factors. (j) The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. | |
| §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; | §§300.533 Determination of needed evaluation data. (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in §300.344, and other qualified professionals, as appropriate, shall - (1) Review existing evaluation data on the child, including— (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based assessments and 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) Whether the child has a particular category of disability, as described in §300.7, or, in case of a reevaluation of a child, whether the child continues to have such a disability; (ii) The present levels of performance and educational needs of the child; (iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child | In general, statutory language was incorporated into regulations. |

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| <p>(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 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.</p> <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(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.</p> <p>(d) Requirements if additional data are not needed.</p> <p>(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--</p> <p>(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.</p> <p>(2) The public agency is not required to</p> | <p>continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed 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 curriculum.</p> <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) Need for additional data. The public agency shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) Requirements if additional data are not needed. (1) If the determination under paragraph (a) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents—</p> <p>(i) Of that determination and the reasons for it; and (ii) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.</p> <p>(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.</p> | |

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| <p>conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) Evaluations before change in placement.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | <p>§300.534 (c) Determination of eligibility</p> <p>(c)(1) A public agency must evaluate a child with a disability in accordance with §§300.532 and 300.533 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (c)(1) of this section is not required before the termination of a student's eligibility under Part B of the Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law.</p> | |
| <p>§300.306 Determination of eligibility.</p> <p>(a) General. Upon completion of the administration of assessments and other evaluation measures--</p> <p>(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and</p> | <p>§300.534 Determination of eligibility.</p> <p>(a) Upon completing the administration of tests and other evaluation materials -</p> <p>(1) A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in §300.7; and</p> <p>(2) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.</p> | <p>In general, statutory language was incorporated into regulations.</p> |

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| <p>(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility to the parent.</p> <p>(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--</p> <p>(1) If the determinant factor for that determination is--</p> <p>(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);</p> <p>(ii) Lack of instruction in math; or</p> <p>(iii) Limited English proficiency; and</p> <p>(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).</p> <p>(c) Procedures for determining eligibility and placement. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must--</p> <p>(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p> | <p>(b) A child may not be determined to be eligible under this part if—</p> <p>(1) The determinant factor for that eligibility determination is—</p> <p>(i) Lack of instruction in reading or math; or</p> <p>(ii) Limited English proficiency ; and</p> <p>(2) The child does not otherwise meet the eligibility criteria under §300.7(a).</p> <p>§300.535 Procedures for determining eligibility and placement.</p> <p>(a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.7, and the educational needs of the child, each public agency shall—</p> <p>(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and</p> <p>(2) Ensure that information obtained from all of these sources is documented and carefully considered.</p> | <p>Note: All NPRM language in bold is not in the statute, although it is included generally in current regulations.</p> |

| NPRM Language | Current Regulation | Comments |
|---|--|----------|
| <p>(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.</p> | <p>(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.340-300.350.</p> | |