



**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**

Qualified Personnel

June 12, 2005

Qualified Personnel

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

NPRM Language	Current Regulation	Comments
<p>§300.10 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.</p>		<p>NPRM incorporates the language from Section 9101 of the ESEA of 1965.</p>
<p>§300.18 Highly qualified special education teacher. (a) General. For any public elementary or secondary school special education teacher, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also-- (1) Include the requirements described in paragraph (b) of this section; and (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section. (b) Requirements for highly qualified special education teachers. (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified means that-- (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing</p>	<p>§300.136 Personnel Standards (a) Definitions. As used in this part— (1) Appropriate professional requirements in the State means entry level requirements that— (i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and (ii) Establish suitable qualifications for personnel providing special education and related services under Part B of the Act to children with disabilities who are served by State, local, and private agencies (see §300.2); (2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline; (3) Profession or discipline means a specific occupational category that—</p>	

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<p>examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the requirements set forth in the State's public charter school law;</p> <p>(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) The teacher holds at least a bachelor's degree.</p> <p>(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--</p> <p>(i) The teacher--</p> <p>(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;</p> <p>(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;</p> <p>(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and</p> <p>(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and</p> <p>(ii) The State ensures, through its</p>	<p>(i) Provides special education and related services to children with disabilities under Part B of the Act;</p> <p>(ii) Has been established or designated by the State;</p> <p>(iii) Has a required scope of responsibility and degree of supervision; and</p> <p>(iv) Is not limited to traditional occupational categories; and</p> <p>(4) State-approved or -recognized certification, licensing, registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.</p>	<p>OSERS Discussion of Proposed Regulatory Changes “Proposed §300.18(b)(2) would specify that a teacher participating in an alternate route to certification program would be considered to be fully certified under certain circumstances. The standard to be applied to an alternate route to certification program would be the same as for those programs under the regulations implementing title I of the ESEA in 34 CFR §200.56(a)(2)(ii). This would provide for consistency in the interpretation and application of the alternate route to certification provisions across these programs.”</p>

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<p>certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.</p> <p>(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or (b)(2) of this section.</p> <p>(c) Requirements for highly qualified special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--</p> <p>(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or</p> <p>(2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those</p>		<p>OSERS Discussion of Proposed Regulatory Changes “In proposed §300.18(b)(3), a provision would be added to clarify that a public elementary or secondary school teacher who is not teaching a core academic subject would be considered <u>highly qualified</u> if the teacher meets the requirements of proposed §300.18(b)(1) and (2). This provision would reflect note 21 in U.S. House of Representatives Conference Report No. 108-779, (Conf. Rpt.) that special education teachers who are only providing consultative services to other teachers who are highly qualified to teach particular academic subjects, could be highly qualified by meeting the special education qualifications alone.”</p> <p>OSERS Discussion of Proposed Regulatory Changes “Proposed §300.18(c)(2) would clarify that all special education teachers who are exclusively teaching students who are assessed based on alternate academic achievement standards, as permitted under the regulations implementing title I of the ESEA, at a minimum, have subject matter knowledge at the elementary level or above, as determined by the State, needed to effectively teach to those standards. Note 21 in the Conf. Rpt. calls for</p>

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<p>standards.</p> <p>(d) Requirements for highly qualified special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--</p> <p>(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);</p> <p>(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or</p> <p>(3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation covering multiple subjects.</p> <p>(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing</p>		<p>teachers exclusively teaching students who are assessed based on alternate academic achievement standards above the elementary level to have a high level of competency in each of the core academic subjects taught.”</p> <p>OSERS Discussion of Proposed Regulatory Changes “The proposed regulation would not specifically address the use of a separate ”high objective uniform State standard of evaluation” (HOUSSE) for special education teachers. However, note 21 in the Conf. Rpt. recognized that some States have developed HOUSSE standards for special education teachers, and indicated that those separate HOUSSE standards should be permitted, including single HOUSSE evaluations that cover multiple subjects, as long as those adaptations of a State’s HOUSSE for use with special education teachers would not establish a lesser standard for the content knowledge requirements for special education teachers. We request comment on whether additional regulatory action is needed on this point. “</p>

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<p>in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified.</p> <p>(f) Definition for purposes of the ESEA. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.</p> <p>(g) The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools.</p>		<p>OSERS Discussion of Proposed Regulatory Changes “Proposed §300.18(g) would clarify that the requirements in proposed §300.18 regarding highly qualified special education teachers do not apply with respect to teachers hired by private elementary and secondary schools.”</p>
<p>§300.146 Responsibility of State educational agency.</p> <p>Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency-</p> <p>(a) Is provided special education and related services--</p> <p>(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and</p> <p>(2) At no cost to the parents;</p> <p>(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 and §300.156(c); and</p> <p>(c) Has all of the rights of a child with a disability who is served by a public agency.</p>	<p>300.401 Responsibility of State Education Agency.</p> <p>Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency-</p> <p>(a) Is provided special education and related services—</p> <p>(1) In conformance with an IEP that meets the requirements of §§300.340-300.350; and</p> <p>(2) At no cost to the parents;</p> <p>(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs (including the requirements of this part); and</p> <p>(c) Has all of the rights of a child with a disability who is served by a public agency.</p>	<p>OSERS Discussion of Proposed Regulatory Changes “This provision is intended to ensure that children with disabilities who are publicly-placed in or referred to a private school or facility as a means of providing these children with special education and related services would continue to retain the same right to FAPE that they would have if served directly by a public agency. However, because of statutory language in the ESEA that the requirements regarding highly qualified teachers apply only to public school teachers, as well as related language in section 602(10) of the Act and proposed §300.18, we do not read proposed §300.146(b) as requiring teachers of children with disabilities who are placed in or referred to private schools by a public agency to meet either the "highly qualified teacher" standard in the ESEA or the "highly qualified special</p>

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		<p>education teacher" standard in the Act.”</p> <p>Note: NPRM language indicates that highly qualified standards do not apply with respect to private schools or facilities in which children with disabilities are referred or placed by a public agency for the provision of FAPE.</p>
<p>§300.156 Personnel qualifications. (a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that-- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession-- (i) Meet the requirements of paragraph (b)(1) of this section; and (ii) Have not had certification or licensure requirements waived on an emergency,</p>	<p>§300.146(b) Policies and procedures. (1) (i) The State must have on file with the Secretary policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained. (ii) The policies and procedures required in paragraph (b)(1)(i) of this section must provide for the establishment and maintenance of standards that are consistent with any State- approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services. (2) Each State may—(i) Determine the specific occupational categories required to provide special education and related services within the State; and (ii) Revise or expand those categories as needed. (3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide</p>	<p>OSERS Discussion of Proposed Regulatory Changes “As provided in note 21 of the Conf. Rpt., the incorporated provisions require that special education teachers obtain full State certification as special education teachers, but it does not prevent regular education and other teachers who are highly qualified in particular subjects from providing instruction in core academic subjects to children with disabilities in those subjects. For example, a reading specialist who is highly qualified in reading instruction, but who is not certified as a special education teacher, would not be prohibited from providing reading instruction to children with disabilities. Proposed §300.156(a) contains the general requirement that a State’s qualifications ensure that personnel carrying out the purposes of part 300 are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.”</p> <p>OSERS Discussion of Proposed Regulatory Changes “Proposed §300.156(b) reflects the comment in note 97 of the Conf. Rpt. that the current regulations requiring related services providers to meet the highest State standard</p>

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<p>temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.</p> <p>(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.</p> <p>(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to--</p> <p>(1) Create a right of action on behalf of an individual student for the failure of a particular SEA or LEA staff person to be highly qualified; or</p> <p>(2) Prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as</p>	<p>special education and related services under Part B of the Act.</p> <p>(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard as necessary to ensure the provision of FAPE to all children with disabilities in the State without violating the requirements of this section.</p> <p>(c) Steps for retraining or hiring personnel. To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State must provide the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.</p> <p>(d) Status of personnel standards in the State.</p> <p>(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.</p>	<p>applicable to their profession across all State agencies have established an unreasonable standard for SEAs to meet, and as a result, have led to a shortage of the availability of related services for students with disabilities.</p> <p>Conferees intended for SEAs to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. SEAs are encouraged to consult with LEAs, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related services providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEPs.”</p>

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<p>provided for under this part.</p>	<p>(2) The information required in paragraph (d)(1) of this section must be on file in the SEA and available to the public.</p> <p>(e) Applicability of State statutes and agency rules. In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities must be considered.</p> <p>(f) Use of paraprofessionals and assistants. A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Act.</p> <p>(g) Policy to address shortage of personnel.</p> <p>(1) In implementing this section, a State may adopt a policy that includes a requirement that LEAs in the State make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law and the steps described in paragraph (c) of this section,</p>	

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	<p>within three years.</p> <p>(2) If a State has reached its established date under paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.</p> <p>(3) (i) Each State must have a mechanism for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the State for a specific profession or discipline.</p> <p>(ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under §300.135.</p>	