Council for Exceptional Children
The voice and vision of special education

September 6, 2005

The Honorable Troy R. Justesen
U.S. Department of Education
400 Maryland Avenue, SW
Potomac Center Plaza, Room 5126
Washington, DC 20202

Dear Deputy Assistant Secretary Justesen:

This document is in response to the June 21, 2005 *Federal Register* announcement requesting public comment on regulations for the Individuals With Disabilities Education Act, as amended by the Individuals With Disabilities Improvement Act of 2004. These comments are on behalf of the Council for Exceptional Children (CEC), the largest professional organization committed to improving educational outcomes for individuals with exceptionalities.

CEC is committed to the achievement of successful outcomes for children and youth with disabilities, through the promotion of professional excellence in special education and the provision of high quality professional supports and quality conditions for teaching and learning.

We know that the Office of Special Education and Rehabilitation Services (OSERS) and CEC share the basic belief that a strong IDEA represents an important and necessary component of the education system in this country. It is fundamental to the success of children and youth with disabilities. We appreciate the opportunity to provide these comments, and we trust that these comments will be helpful as OSERS develops its final regulations for IDEA. These comments supercede all previous submitted comments from CEC.

CEC sought and received input on the IDEA regulations from its Units, including States and Divisions, and from its individual members. That input has been incorporated into this document.

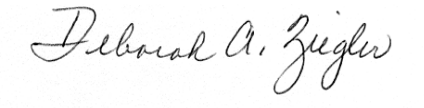
CEC encourages the Department to develop final regulations as soon as possible, disseminate them to the field, and provide training and technical assistance to special education professionals and families, as the law took effect on July 1, 2005. Overall, CEC would like to see a balance between the over-regulation of the law to the point where it does not provide any flexibility; and under-regulation, where, at worst, the law could be open to gross misinterpretation. Additionally, CEC would like the regulations written so that cross-references to other statutes be explicitly written into the regulations, not just referenced. We would also encourage the Department to only regulate the new law where

the law has actually been changed; do not write new regulations for the parts of the previous law that still are effect after July 1. Furthermore, we recommend that all new statutory language and certain provisions of conference report language be incorporated into regulations. Lastly, we recommend that the Department maintain "person first" language consistently throughout the final regulations. "Person first" language is widely accepted in professional, technical, and commercial writing today, and it should be the standard for all Department of Education regulations.

CEC encourages the Department to issue a Notice for Proposed Rulemaking for IDEA-Part C, the multi-year IEP and the paperwork reduction pilots as soon as possible and provide multiple venues for public comment similar to the regional meetings held by OSERs for the IDEA NPRM.

Thank you for considering CEC's recommendations. If you need additional information please contact Deborah Ziegler, Associate Executive Director for Policy and Communication Services at debz@cec.sped.org or 703-264-9406 or Dan Blair, Senior Director for Public Policy at danb@cec.sped.org or 703-264-9403.

Sincerely,



Deborah A. Ziegler, Ed.D
Associate Executive Director
Policy and Communication Services

Council for Exceptional Children
Comments On
Department of Education
34 CFR Parts 300, 301 and 304
Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities; and Service Obligations Under Special Education – Personnel Development To Improve Services and Results for Children With Disabilities

Part 300 – Assistance To States For the Education of Children With Disabilities

- Subpart A – General
- Subpart B – State Eligibility
- Subpart C – Local Education Agency Eligibility
- Subpart D – Evaluations, Eligibility Determinations, Individualized Education Programs and Educational Placements
- Subpart E – Procedural Safeguards
- Subpart F – Monitoring – Enforcement, Confidentiality and Program Information
- Subpart G – Authorization, Allotment, Use of Funds; Authorization of Appropriations
- Subpart H – Preschool Grants for Children With Disabilities

Part 304 – Service Obligations Under Special Education – Personnel Development To Improve Services and Results For Children With Disabilities

- Subpart A – General
- Subpart B – Conditions That Must Be Met by Grantee
- Subpart C – Conditions That Must Be Met by Scholar

General Comments

1. Recommendation: The regulations must include fully all the statutory language from all laws referenced. Parents and school personnel should not have to seek out a copy of the McKinney Vento Homeless Assistance Act, the Assistive Technology Act, the Elementary and Secondary Education Act, the Controlled Substances Act, and title 18 of the United States Code in order to fully understand their roles and responsibilities under the 2004 IDEA Amendments.

2. Recommendation: "Person First" language. In the regulations, the Department of Education has not maintained consistent use of "person first" language. CEC recommends that the Department maintain "person first" language consistently throughout the final regulations. "Person first" language is widely accepted in professional, technical, and commercial writing today, and it should be the standard for all Department of Education regulations.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART A

1. Recommendation: Modify **§300.8(c)(2)** as follows:
(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs that adversely affect a child's educational performance. The term includes children who are deaf-blind and have additional disabilities.

Rationale: The current definition of deaf-blindness is based on the educational program the child can or cannot attend, and has confused both educators and family members since its adoption. The other disability categories—with the exception of "multiple disabilities" which has also caused confusion because of its relationship with deaf-blindness—have definitions which are based on features of the disabilities.

While most of the children who are deaf-blind are served in programs for children with significant disabilities where they receive specialized support services related to their dual sensory loss, deaf-blind children are being educated in a continuum of education placements. The regular classroom, programs for children who are deaf and programs for children who are blind are all appropriate settings if the needed specialized support services are provided.

2. Recommendation: Support **§300.10** that lists the core academic subjects.

Rationale: CEC appreciates that the Department included a detailed list of the core academic subjects.

3. Recommendation: Modify **§300.18** to maintain statutory requirements that special education teachers be fully certified by the State to practice in the respective state. In addition, CEC recommends that the conclusion questioning the benefit of State certification be deleted from the final regulations.

In the Executive Order 12866, the Secretary concludes: "…that the benefit of State certification may not necessarily outweigh the cost." This conclusion is based on extrapolated numbers and sweeping assumptions. In leading up to this conclusion, the Secretary states that "Previously, special education's teachers were required by federal law to be certified as special education teachers in their states"

Rationale: Contrary to the Secretary's conclusions in Executive Order 12866, IDEA 2004 in §300.136 required States to establish qualifications for personnel providing special education, and that the State apply the "highest requirements in the State applicable to a

specific profession." In all States this has meant that practicing special education teachers must hold a State license in the respective State. Moreover, it is widely agreed, based on sound research evidence, that a fully licensed, well prepared teacher has a greater influence on student achievement than any other factor, including class size, class composition, or student background. Furthermore, evidence indicates that students who are assigned to the most effective teachers three years in a row score as many as 50 percentile points higher on achievement measures when compared to students who are assigned to the least effective teachers during a comparable period.

> **4. Recommendation:** Clarify **§300.18(b)(1)** to reflect that when a state determines that a teacher is "fully certified" in special education, this certification implies that the teacher is knowledgeable and skilled in the special education area in which certification is received.

Rationale: States have a range of requirements for determining special education certification. Whatever the state chooses for those requirements, if the teacher is labeled as having obtained "full state certification as a special education teacher," then it can be assumed that such a teacher is knowledgeable and skilled so that they can meet unique needs of the student with a disability. In eliminating the option for an "emergency, temporary or provisional" licensure, the law clearly sends the message that special education teachers should be fully skilled and knowledgeable in special education. If an individual cannot demonstrate special education skill and knowledge, the individual should not be eligible for "full state certification as a special education teacher".

> **5. Recommendation:** Delete **§300.18(b)(2)** as this language is not included in the statute.

Rationale: CEC recommends that the Department of Education delete this section as this language making an individual pursuing an alternative routes to a certification program highly qualified for three years, was not included in the statute concerning "high qualified" special education teachers. This language provides that unprepared personnel may be hired to teach children with disabilities, something the ESEA and the IDEA statutes explicitly attempt to eliminate.

According to a recent Annual Report to Congress on IDEA, allowing alternate routes to certification would likely negatively impact over a half-million children with disabilities and would allow as many as 35,000 unprepared individuals to be classified as "highly qualified". Evidence indicates that a fully certified, well prepared teacher has a greater influence on student achievement than any other factor, including class size, class composition, or student background. Furthermore, evidence indicates that students who are assigned to the most effective teachers three years in a row score as many as 50 percentile points higher on achievement measures when compared to students who are assigned to the least effective teachers during a comparable period. The recommendation

that individuals be determined to be "highly qualified" special education teachers for up to three years as they complete an alternative preparation program undermines and diminishes the "highly qualified" mandate, and will result in lower student achievement for hundreds of thousands of students with disabilities.

In addition, favoring alternative teacher education programs, creates an incentive for school districts to hire unprepared personnel over personnel prepared in other teacher preparation programs.

Clearly defining for states and traditional teacher preparation programs what constitutes approval as an alternative route to certification is needed. An individual who is working toward full certification through an alternative route is arguably on an emergency, temporary, or provisional basis, which means that the individual has not met the highly qualified requirement according to section (b)(1)(ii).

The stipulation that an individual who is participating in an alternative route to certification program may be considered a highly qualified special education teacher the moment he or she enrolls in the alternative route and have three years to gain full certification creates a lower standard for special education teachers. Furthermore, it is a divisive issue for teachers, especially for special education teachers who are also enrolled in traditional teacher preparation programs. Being considered a highly qualified special education teacher for up to three years just because they have enrolled in an alternative certification program creates a major loophole in the highly qualified mandate, and may also encourage the proliferation of alternative route special education teacher preparation programs that are of low caliber and do not actually improve the competence of the teaching corps. Therefore, CEC recommends deleting §300.18 (b)(2) or clearly defining for states and traditional teacher preparation programs what constitutes approval as an alternative route to certification. If the proposed regulations for alternative routes become final, teachers enrolled in traditional teacher preparation programs should be considered to be highly qualified if the traditional teacher preparation program includes the same conditions set forth in section (b)(2) for alternative routes to certification programs.

6. Recommendation: Support **§300.18(b)(3)**

Rationale: CEC supports the addition of language clarifying that a public elementary or secondary school teacher who is not teaching a core academic subject would be considered highly qualified if the teacher meets the requirements of proposed §300.18(b)(1) and (2)

7. Recommendation: Clarify **§300.18(c),** the procedures for determining if special educators teaching to alternate achievement standards are "highly qualified", also include special educators teaching students with disabilities whose achievement level and functioning levels are significantly below their age/grade levels.

Rationale: The CRS Report for Congress (CRS-3, Order Code RL-32415) specifically states that Congress' intentions were that "P.L. 108-446 modifies the ESEA requirements with respect to…special education teachers: those who teach only the most severely disabled children…". The recent guidance from the US Department of Education makes clear there are children with disabilities who are functioning significantly below age and grade level but are not being assessed against alternate achievement standards.

Special educators teach learners with complex disabilities, not at their age or grade level, but at the functioning level of the learners as determined through a thorough assessment process and delineated in the individualized education program (IEP). Thus, the teacher's core academic content knowledge needed to teach these students is specific to functioning level, not grade level.

8. Recommendation: Support **§300.18(c)(2)**

Rationale: CEC supports the addition of language clarifying 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 1 of the ESEA, at a minimum, have a subject matter knowledge at the elementary level or above, as determined by the State, needed to effectively teach those standards.

9. Recommendation: Clarify **§300.18(d)** to reflect the use of a separate HOUSSE for special education teachers.

Rationale: In response to the Department's request whether additional regulatory action is needed on "high objective uniform State standard of evaluation" (HOUSSE) for special education teachers, CEC recommends that the regulatory language specifically clarify the use of a separate HOUSSE for special education teachers. Clarification is needed on the criteria for a single HOUSSE evaluation that covers multiple subjects that would not establish a lesser standard for the content knowledge requirements for special education teachers.

CEC offers the following list of alternatives for special education teachers to acquire points or credits to consider for inclusion in a State's HOUSSE procedure for special educators teaching multiple subjects:

- **Special Education Certification**
  Special educators should receive points for full special education licensure, including:
  - State licensure from a State standards-based approved program in which the State standards include "General Curricular Standards for Teachers and/or for Special Education Teachers"; and
  - State licensure from a CEC approved program either independently or through the National Council for the Accreditation of Teacher Education (NCATE). The CEC Content Standards are aligned with the Standards from the Interstate New Teachers Assessment and Support Consortium (INTASC), and include standards for core academic content area knowledge and skills.

- **Teaching Experience**
  Special educators should receive points for all successful teaching experience related to a "core academic subject", including:
  - Collaboratively teaching core academic subjects with a "highly qualified" general educator, including: co-teaching, cooperative teaching, consultative teaching, team teaching, and other collaborative models. In each of these formats, two or more educators share responsibility and accountability for planning, teaching, and monitoring the success of learners with disabilities;
  - Teaching "core academic subjects" aligned to the State learning standards to individuals with disabilities. If multiple subjects were taught, a special educator should receive credits for each in each semester taught;
  - Teaching "core academic subjects" aligned to the State learning standards to individuals with disabilities during supervised student teaching semesters; and
  - Teaching "core academic subject" University courses or workshops.

- **Core Academic Subject Area Coursework**
  Special educators should receive points for all successfully completed coursework related to a "core academic subject", including:
  - Undergraduate coursework,
  - Graduate coursework,
  - Coursework not part of a degree program,
  - High school AP coursework
  - College proficiency coursework.

- **Continuing Professional Development Activities**

Special educators should receive points for all successfully completed continuing professional development activities related to "core academic subjects", including:

- Participation in writing State core content standards;
- Participation in developing and/or implementing State assessments aligned with State core content standards;
- Participation in designing and/or implementing alternative assessment systems aligned with State standards;
- Participation in aligning local and State content standards;
- Serving as a cooperating teacher of a student teacher or a mentor of a beginning teacher in teaching activities aligned to core academic content; and
- Serving on a school improvement committee related to core academic content at the school, district, state, national, or international level.

➢ **Publications and Presentations**

Special educators should receive points for participation in publications and presentations related to a "core academic subject", including:

- Professional presentations at the local, state, or national level, and
- Publication of materials, an article, book chapter, or other professional materials.

➢ **Awards**

Special educators should receive points for any awards or recognitions received that are related to a "core academic subject", including:

- Recognition as local teacher of the year,
- State teacher of the year, and
- National level award recognizing teaching excellence.

➢ **Additional HOUSSE considerations**

HOUSSE provisions need to be written to ensure that special educators can continue to provide specially designed instruction in the core academic subjects as identified in the Individualized Education Program, regardless of the placement of a child with disabilities. Provisions of the HOUSSE should promote both the meeting of the challenging expectations that have been established for all learners while also providing that Special Educators can continue to help children and youth with disabilities to learn functional skills to lead productive and independent lives.

10. Recommendation: Clarify **§300.18(d)(2)** to reflect that states may establish a separate single HOUSSE for special educators who teach multiple subjects. The provision of HOUSSE standards should only be used to address the content requirements of the highly qualified provision, not certification requirements.

Rationale: Allowing States the flexibility relative to this issue is consistent with the statutory language in IDEA 2004. The IDEA statute provides the opportunity for States to develop a separate HOUSSE procedure for special education teachers teaching multiple subjects. In addition, the CRS Report for Congress (CRS-3, Order Code RL-32415) specifically states that Congress' intentions were that "P.L. 108-446 modifies the ESEA requirements with respect to…special education teachers…who teach more than one subject." Moreover, this recommendation is included in Conference Report language (note 21), and it is important to make it clear in the regulations to ensure that States have this flexibility specific to Speciation Education Teachers Teaching Multiple Subjects.

11. Recommendation: Clarify **§300.18(e)**. CEC recommends that the U.S. Department of Education, in the regulations, further clarify that when the SEA or LEA employs an individual who is not "highly qualified", states meet their responsibilities for general supervision under IDEA through the application of notice and other sanction procedures identified under the Elementary and Secondary Education Act (ESEA).

Rationale: 1) The ESEA contains specific sanctions for failure to comply with the highly qualified provisions. If state agencies also exercise sanctioning authority under IDEA, schools could be twice punished, under two separate provisions of federal law, for the same infraction. To avoid double jeopardy, regulations need to be written that clarify that NCLB enforcement procedures for a district's failure to hire "highly qualified" teachers follow the provisions of NCLB and not IDEA.

2) Enforcement procedures under IDEA are the same whether the finding of noncompliance is a result of a complaint by a parent or as a result of a compliance-monitoring visit by the state. When Congress established the limitation on the right of action for failure of an LEA or SEA to employ a "highly qualified" teacher, Congress addressed the concern that individual teachers not become the target for a finding of noncompliance. Unless the regulations are expanded to include state agency enforcement procedures under compliance monitoring, individual teachers may become the target for a finding of noncompliance.

12. Recommendation: Delete **§300.18(g)** that the requirements ensuring special educators are "highly qualified" do not apply to teachers practicing in non-public schools.

Rationale: According to recent data in the U.S. Department of Education's IDEA Annual Report to Congress, approximately 75,000 students with disabilities (ages 6-21) in the

U.S. and the outlying areas are placed by local education agencies with public funds in private separate schools and private residential facilities.

CEC recognizes only one standard for special educators for entry-level practice in the profession. Allowing another standard for special educators practicing in non-public schools creates a dual standard. All children with disabilities, regardless of placement, should receive their individualized education services from fully certified well-prepared special educators. This remains just as true when local school districts place students with disabilities in private schools, and when public funds are used to provide special education services to individuals with disabilities in non-public school settings. All other federal requirements to provide a free appropriate public education follow students in non-public schools and the requirement that special educators in these settings must be "highly qualified" must also. It is not in the best interest of students with disabilities placed in non-public school settings to exclude special educators in these settings from theses requirements.

> **13. Recommendation:** Clarify **§300.18** to reflect the definitions of the terms "highly qualified" and "fully certified"

Rationale: As §300.18 is currently written, the terms "highly qualified" and "fully certified" are used in a manner that implies they are synonymous. CEC recommends that the Department maintain the distinctions between the two terms that Congress has crafted in ESEA and IDEA.

> **14. Recommendation:** Modify **§300.18** to include a definition of the term "special education teacher"

Rationale: The term "highly qualified" in the law makes a general reference to the term "special education teacher" without defining its meaning. Thus, the concept of "highly qualified special education teachers" is presented without any sense of what the special education elements of the term means, except for references to the teaching of academic content. The core special education services required in the law extend well beyond subject matter content. To be highly qualified, a special education teacher must be competent to deliver the most critical elements of special education services - those services that are considered essential by this law - that extend well beyond academic content. Thus, a comprehensive definition of a "highly qualified special education teacher" is essential and must be addressed in any regulation designed to facilitate the implementation of the law. (Essential Elements in the Definition of a Highly Qualified Special Education Teacher)[1]

[1] Derived from the Council for Exceptional Children standards for the preparation and licensure of special educators. http://www.cec.sped.org/ps/perf_based_stds/standards.htm

15. Recommendation: Modify **§300.19** to include the full definition of homeless children from the McKinney-Vento Homeless Assistance Act.

Rationale: All definitions from other statutes should be presented fully in the IDEA regulations to make them more user friendly to all stakeholders.

16. Recommendation: Modify **§300.27** to include the full definition of Limited English Proficient from the Elementary and Secondary Education Act.

Rationale: All definitions from other statutes should be presented fully in the IDEA regulations to make them more user friendly to all stakeholders.

17. Recommendation: Modify **§300.30** to include the definition of a foster parent as detailed in §300.20(b)(2) in the 1997 regulations.

Rationale: CEC Recognizes that a foster parent was added to the definition of "parent" in the statute. However, we think that the definition of foster parent in the 1997 regulations is more explicit in defining the role of a foster parent.

18. Recommendation: Retain the addition of "travel training instruction" to the definition of "orientation and mobility services" at **§300.34(c)(7)**

Rationale: CEC appreciates the addition of "travel training instruction" to the definition of "orientation and mobility services".

19. Recommendation: Modify **§300.43** to include the full definition from the Assistive Technology Act of 1998 and to clarify that Universal Design means designing curriculum, instructional materials and assessments so that they are accessible to students with as wide a range of abilities as possible.

Rationale: This provision refers to the definition of universal design from the Assistive Technology Act of 1998. It is a general definition and may not be interpreted to apply to curriculum and instructional materials which are essential to educational improvement. Universal design of assessments is mentioned elsewhere in IDEA, but it makes sense to also reference it here.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART B

1. **Recommendation:** Modify **§300.106** to include language as stated below:
(a)(3) In implementing the requirements of this section, a public agency may not –
(i) limit extended school year services to particular categories of disabilities or age ranges**.**

(b)*Definition. As used in this section, the term extended school year services means special education and related services that –*
(1) Are provided to a child, including a preschooler, with a disability"

Rationale: CEC recommends this language as it relates to extended school year (ESY) services to ensure that ESY services are available as appropriate to preschoolers with disabilities.

2. Recommendation: Modify **§300.111(b)(iii)** to include language in §300.8(b).

Rationale: In accordance with IDEA 2004, proposed regulatory language at §300.8(b) does clarify that local school districts can select subsets of age ranges when determining their policy to use developmental delay to determine preschoolers eligible for Part B. However, the language at §300.111(b) does not. §300.111(b)(iii) should read that LEAs may select specific subset(s) of state allowable age ranges. This LEA option is consistent with the revised language in IDEA 2004.

3. Recommendation: Modify **§300.111** to retain language from §300.125(c) of the 1997 regulations as it reads below:

(c) Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different.
(1) In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, a description of the nature and extent of the Part C lead agency's participation must be included under paragraph (b)(2) of this section.
(2) With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers with disabilities.
(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section.

Rationale: CEC recommends retaining regulatory language contained in §300.125(c) of the 1997 regulations as related to child find procedures that must be addressed when the SEA and the lead agency for the Part C program are different. There continues to be considerable confusion in the field as it relates to the above child find procedures.

4. Recommendation: Modify **§300.115(a)** to read:

§300.115(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, including preschool children, for special education and related services.

Rationale: This language is necessary to ensure that a full continuum is required for consideration of placements for preschool children, as there is still confusion in the field regarding this requirement for preschoolers with disabilities.

5. Recommendation: Modify §300.116(b)(3) and **§300.116(c)**, to remove the term "unless the parent agrees otherwise"

Rationale: The addition of this language is not consistent with the statue, longstanding OSEP policy or case law regarding each child's right to receive their services in the least restrictive environment (LRE).

6. Recommendation: Clarify **§300.130-144** the responsibilities of LEAs in which private schools are located. Specifically, CEC is recommending that the Department provide clarification on who is responsible for paying for the evaluation of parentally placed "non-resident" students, and the determination of proportional share of Part B federal funding for parentally placed "non-resident" students.

Rationale: CEC believes that clarification of this issue would greatly assist local education agencies' understanding of their responsibilities under IDEA 2004 when dealing with private schools. Based on the conversations and experiences that CEC has had with numerous individuals and entities regarding IDEA 2004, there is much confusion surrounding this particular topic. Is the local education agency where the private school is located responsible for these activities, or is the local education agency where the student resides responsible for paying for them?

7. Recommendation: Clarify **§300.136(a)(1)** and **§300.136(a)(2)** the criteria that the Secretary will use to determine that the LEA did not engage in consultation that was meaningful and did not give due consideration to the views of the private school official.

Rationale: LEAs need guidance on the new regulations with regard to the criteria the Secretary will use to judge if the LEA is in compliance with the provision.

8. Recommendation: Clarify **§300.151-§300.153** and **§300.504** regarding matters related to jurisdiction.

Rationale: In the proposed regulation language at **§300.504(c)(5)(iii),** states are required to include in the procedural safeguards notice "(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures". These distinctions need to be made by OSERS and not individual states.

9. Recommendation: Clarify **§300.152(a)(3)(B)** an outward timeline for dispute resolution.

Rationale: LEAs need guidance on the outward timeline for dispute resolution to ensure this process is initiated and completed in a timely manner.

10. Recommendations: Modify **§300.156** to be clear that IDEA personnel qualifications include preschool special education teachers.

Revised personnel qualifications language under the Part B statute states: " The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities" (Sec. 612(a)(14)). The language goes on to include specific language related to special education teachers at the elementary, middle and secondary level; related services personnel and paraprofessionals.

Rationale: Although preschool special education teachers are not specifically addressed in this language, CEC believes that statutory language is clear that preschool special education teachers are included due to the reference above "personnel necessary to carry out this part…" It is difficult to imagine that statutory intent is to require states to set standards for personnel who provide services to children birth to three and six through 21 years, but not for personnel who provide services to children aged 3-5 years.

CEC believes that the revised statutory language intends that all personnel providing services under IDEA, including preschool teachers, meet personnel qualification requirements established by states. Therefore, CEC recommends that language in the regulations clarify that states must establish and maintain qualifications to ensure preschool special education teachers are appropriately and adequately prepared and trained.

11. Recommendation: Modify **§300.156(a)** by inserting new paragraph (a)(2) and re-number current (a) as (a)(1):

"(a)(1) *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.

(2) The SEA shall consult with LEAs, other State agencies, including professional licensing boards, advocates for children with disabilities, and professional organizations to determine the appropriate rigorous 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 IEPs.

Rationale: Regulations should clarify, according to the congressional intent expressed in the Conference Report, that State education agencies (SEA) must establish "rigorous qualifications" for related services personnel. CEC supports school districts hiring related services personnel who meet the highest entry-level requirements in each State for those disciplines.

Professional organizations, as well as State agencies and discipline-specific licensing agencies, have established qualifications necessary for related services personnel to provide the appropriate quality and type of services to students with disabilities. These standards should be given full weight as SEAs determine appropriate qualifications for related services personnel. The qualifications should ensure that professionals are able to provide students with disabilities the services and supports necessary to be involved and progress in the general education curriculum and to be included in the accountability system under the No Child Left Behind Act.

12. Recommendation: §300.167 should retain the provisions in **§**300.653 of the 1997 regulations regarding advisory panel procedures.

Rationale: Many of these procedures including early meeting/agenda notification, reimbursement of reasonable and necessary expenses and interpreter and other necessary services are essential to ensure diverse parent participation. Without these required procedures, parents with busy work schedules, parents who are economically disadvantaged and parents who need foreign language or sign language interpreters may not be able to serve on State advisory panels. Proposed § 300.167 "procedurally or substantively weakens the protection provided to children with disabilities under this title as embodied in the regulations in effect on July 20, 1983" without a "clear and unequivocal intent of Congress" and is therefore in violation of § 607(b)(1) of the IDEA, 20 U.S.C. § 1406(b)(1).

13. Recommendation: Modify **§300.169** by reinstating requirement of the state advisory panel from **§**300.652(b) of the 1997 regulations regarding students with disabilities in adult prisons.

Rationale: The Department removes from mandatory duties of the State Advisory Panel a representative advising on eligible children with disabilities in adult correction agencies on grounds that it requires too much micromanaging. See §300.652(b) of the 1997 regulations. Specifically, the Department has provided that a representative for this population may sit on the advisory panel, but the person does not have advisory power. The population of children with disabilities in adult correction agencies is one of the most vulnerable populations. The Department should not only permit, but encourage advice and information from someone with knowledge in this area. Therefore, the Department should retain the language in §300.652(b) of the 1997 regulations.

14. Recommendation: Modify **§300.172** and **§300.210** to incorporate the following—

- Adoption of Accessibility Standards: SEAs and LEAs are required to "adopt" the National Instructional Materials Accessibility Standard (NIMAS) in a "timely manner." However, the proposed regulations neither clarify what adoption might mean (especially in the case of LEAs which may not have sufficiently-defined mechanisms in place to establish such standards within their respective jurisdictions) nor set boundaries for the timeliness of SEAs' and LEAs' adoption of the standards. With respect to the issue of timing, the regulations should provide that NIMAS should be adopted by all SEAs and LEAs no later than December 3, 2006.

- Scope of NIMAS: The Department has published a separate notice pertaining to the establishment of the National Instructional Materials Accessibility Standards (NIMAS). Although that notice is not the subject of these comments per se, CEC urges the Department to formally build into the establishment of the NIMAS a federally-recognized process allowing such standards to be regularly updated and modernized. We strongly believe that the 2004 amendments were intended to benefit all students who may need specialized access to instructional materials, and as technology evolves, the NIMAS will be extensible to enable even greater access beyond the production of Braille, large print and digital audio texts currently available, meaning that an even wider population of students with disabilities would be served.

Rationale: CEC commends the Department for both recognizing the clear need to affirmatively address the persistent overall national lack of access to required instructional materials and for unequivocally articulating, for the first time in regulations

implementing America's special education law, the unambiguous obligation of SEAs (Sec. 300.172) and LEAs (Sec. 300.210) to ensure such access for all students with disabilities. The provisions of the 2004 amendments regarding access to instructional materials were intended to be construed broadly and with a view toward meeting the needs of all students who may require specialized access to required textbooks and other core academic materials. However, without additional direction from the Department, SEAs and LEAs will neither be assured of their compliance with current law nor be able to assure the Department, with integrity, that the students they serve are indeed receiving meaningful access to classroom materials.

> **15. Recommendation:** Modify **§300.174** in the following two ways.
> §300.174 (b) should be renamed "Statutory rule of construction".
>
> Add the following language:
> 300.174(c) Additional clarification. In implementing this section, school staff should neither promote nor discourage any specific treatment options that parents and treating professionals may consider and implement. In addition, when medication has been included in a treatment program to address a specific condition, nothing in this section shall be deemed as a bar to school staff reporting to parents or their representatives, classroom observations on the impact and/or efficacy of specific treatments. Best practices in medication management include the consideration of classroom behavior, academic performance and functional performance in the treating professional's determining the most appropriate, or required changes in medication and/or dosages."

Rationale: The provision of the regulation is a restatement of the wording in the Act with no additional clarification or commentary. The Act and the regulation prohibit both state and local education personnel from requiring a child to have a prescription for a controlled substance as a condition of attending school. CEC supports the underlying premise of this provision that no parent or child should be forced to adopt a treatment for a disorder in order to attend a public school.

Teachers and related services personnel are frequently the first to recognize learning, functioning and behavioral problems in the school setting and therefore should be able to advise parents of such observations. CEC believes that professionals should act within their professional scope of practice; thus, school personnel should not recommend the use of medication. They should also not interfere with the administration of a medically supervised treatment. Medication assessment and prescription is the role of a physician. However, school personnel should be able to recommend a comprehensive and complete medical assessment by persons licensed to perform such evaluations. Because students

spend a significant portion of their day in the classroom, the vital role school personnel play in providing observations to the diagnosing professionals cannot be underestimated. Effective communication between school personnel and parents is essential and strongly encouraged.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART C

1. **Recommendation:** Modify **§300.226(a)** to specify that this provision can be applied to the entire age range under Part B of 3-21years.

Rationale: The new statute includes language that allows for the provision of early intervening services through interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) 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 (Sec. 613(f)). CEC notes that the statute is silent on providing early intervening services for children aged 3 to 5 and does not restrict this provision for use in preschool.

2. Recommendation: Modify **§300.226** by adding language in paragraph (b)(1); add new paragraph (c) and re-letter current paragraphs (c)-(e):

"(b) *Activities.* In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(1) Professional development (which may be provided by entities other than LEAs) for teachers, <u>related services personnel</u>**,** and other school staff…

Rationale: Related services personnel have specialized training and expertise in providing early intervening services. These staff members are included in the No Child Left Behind Act as "pupil services personnel" and in many instances are already working with at-risk general education students, the population targeted in this provision. Related services personnel are trained to identify students early and to design and implement academic and behavioral interventions. They also provide consultation to teachers on how to implement interventions in the classroom and how to evaluate the success of these activities. Specifying related services personnel as providers of early intervening services ensures that students' needs are addressed by personnel with specialized skills who already present in the school and can provide a bridge between special and general education staff.

3. Recommendation: Modify **§300.226(b)(2)** as follows:
"(b)(2)Providing educational and behavioral evaluations, services, and support, including scientifically-based literacy instruction <u>and supplemental instructional materials."</u>

Rationale: The explicit acknowledgement that supplemental instructional materials may be used in early intervening programs is intended to clear up confusion in school districts regarding whether or not they may be used. Some school districts believe that they cannot use supplemental instructional materials because they were not developed using randomized clinical trials. CEC believes that the supplemental instructional materials used must be evidenced based.

4. Recommendation: Modify **§300.226(b)** by adding (b)(3):
"(b)(3) providing information about early intervening services to parents of children who receive early intervening services"

Rationale: The LEA should provide parents with information about early intervening services and the goals for such services.

5. Recommendation: Retain **§300.226(c)**

Rationale: The content of section (c) addresses the concern that early intervening services must not be used as a means of avoiding special education requirements and/or procedural safeguards, and re-enforces early intervening services as a short-term approach to making necessary instructional modifications and/or building requisite skills for children who are not identified as having a disability. Early intervening services can be discontinued for those students who close the gap in performance level with their non-struggling peers while students who continue to display low rates of progress can be moved to higher levels of intervention.

6. Recommendation: Modify **§300.226(d)** as follows:
"(d) *Reporting*. Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA and make available to the general public in language that is accessible and understandable to all stakeholders on –
(1) The number of children served under this section; ~~and~~
(2) The number of children served under this section who subsequently receive special education and related services under Part B of the Act during the preceding two year period, and
(3) the length of time a child receives early intervention services
(4) the impact of the early intervening services
(5) the amount of Part B funds used for early intervening services"

Rationale: Schools should be able to account for the amount of time a student receives early intervening service and their impact. In addition, schools should report the amount of Part B funds used to support early intervening services and the actual services provided.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART D

1. **Recommendation:** Modify **§300.300(a)** to include a new (a)(4) section regarding the lack of authority of a public agency to override a parent's refusal to give consent for initial evaluation for children who are home schooled or placed in a private school by the parents at their own expense.

Rationale: In order to avoid any confusion over a public agency's obligation to initially evaluate this group of children utilizing the override provision, the regulations should clearly spell out this disclaimer in the preamble. On its face, the language in the preamble appears to lessen the child find requirement in §300.111, furthermore, to require a public agency to actively identify these children, but take away the authority to evaluate them seems to be contradictory.

2. Recommendation: Support **§300.305(e)(3)** that requires public agencies to provide a summary of performance for students exiting the school system.

Rationale: CEC suggests that an effective summary of the student's academic and functional performance can be developed based on the results of age-appropriate transition assessments that must be completed as part of the IEP transition planning process. A summary of performance that includes a review of a student's previous disability documentation and current data on the functional impact of the student's disability will significantly assist the student in gaining access to, and participating in, further education and employment.

3. Recommendation: Remove **§300.307(a)(1)** because the regulation contradicts the statute and goes beyond the intent of Congress as evidenced in the Conference Report. The statute does not prohibit a state from using discrepancy to identify SLD, although the LEA is not required to do so.

Rationale: CEC reiterates its support for the use of evidence-based procedures. Therefore, CEC recommends caution in making rules that endorse procedures such as response-to-intervention models, because the research on those models has yet to show that they improve processes for identifying students with SLD and is not extensive enough to guide large-scale implementation. Failure to respond, or responsiveness to intervention, has great potential as a pre-referral mechanism that will identify a pool of students who need additional support, and who may or may not have SLD; however, to use a process to identify SLD when that process cannot distinguish between students with SLD and students who may be underachieving for other reasons is indefensible.

Issues such as disproportionality, misidentification and expensive litigation related to identification and service delivery may escalate if failure to respond to intervention is used as the criterion to identify Learning Disabilities in the absence of the research base needed to guide and support its use. Thus, CEC supports the use of comprehensive evaluation to distinguish students with SLD from students without SLD and recommends intensive research to make response-to-intervention models an evidence-based process.

4. Recommendation: Support **§300.307(a)(2)**

Rationale: CEC supports §300.307(a)(2) because the regulations clarifies that a state is not required to use a severe discrepancy between ability and achievement to identify SLD.

5. Recommendation: Modify **§300.308(b)(1)** to add "<u>with expertise in specific learning disabilities</u>" to "Group Members".

Rationale: Given the move toward use of a comprehensive evaluation approach, it is critical that the team includes a special education teacher who has explicit preparation and experience in specific learning disabilities, not merely in the much broader area of special education.

6. Recommendation: Modify **§300.308(c)** to add "<u>speech-language pathologist</u>" to "Other professionals".

Rationale: In §300.540(b) of the 1997 regulations a speech language pathologist is listed; this should be retained in the final regulations. Knowledge of speech-language disorders is frequently a critical element of determining the presence of a specific learning disability.

7. Recommendation: Modify **§300.309(a)(2)(ii)** by defining "intellectual development."

Rationale: The regulation introduces a new term "intellectual development" that must be defined.

8. Recommendation: Modify **§300.309(a)(3)** by adding
<u>(vi) Limited English Proficiency</u>

Rationale: The preamble to the proposed regulations states that exclusions listed in 300.309 are in addition to the special rule for eligibility determination in section 614(b) of the Act and proposed §300.309 in addition to the provisions in the special rule.

9. Recommendation: Modify **§300.309(b)** by adding "child's parents and" before "group".

Rationale: This addition provides consistency with §300.308, which states that the child's parents and the group described in §300.306(a)(1) must make the determination. Without this addition, parents may be excluded from critical decision-making regarding their child.

10. Recommendation: Clarification **§300.309(c)** regarding the phrase "if the child has not made adequate progress after an appropriate period of time," as this is subject to varied interpretation.

Rationale: CEC is concerned that the varied interpretations to the phrase as written above may delay "a referral for an evaluation to determine if the child needs special education and related services." CEC recommends extending "appropriate period of time" to include "as agreed to by the child study team and parents" and also recommends that research on appropriate timelines for response to intervention be an initiative that receives high priority for support by the Department.

11. Recommendation: Support **§300.309(d)**

Rationale: This proposed regulation will ensure that the evaluation process moves forward in a timely fashion, but also allows the parties to agree to an extension should it be necessary. CEC supports the informed participation of all parties in this process, so that a determination of eligibility for services may be made as expeditiously as possible.

12. Recommendation: Modify **§300.311 (a)** by adding the following language: (8) The determination of the team concerning the effects of cultural factors, limited English Proficiency, environmental or economic disadvantage.

Rationale: CEC believes this language is necessary to ensure that the written report covers all elements of §300.309.

13. Recommendation: Modify **§300.320(a)(1)** to include the following language:

(1) A statement of the child's present levels of academic achievement and functional performance, (for preschool children, present levels of development 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 non-disabled children); or
   (ii) For preschool children, as appropriate, how the disability affects the child's participation in developmentally and age appropriate curriculum and activities;

Rationale: CEC believes this added language will help clarify IEP requirements relating to preschool children.

14. Recommendation: Modify **§300.320(a)(2)(i)** to include the following language:
(2)(i) A statement of measurable annual goals, including academic and functional goals (for preschool children, developmental 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 (or for preschool children developmental needs) that result from the child's disability;

Rationale: CEC believes this added language will help clarify IEP requirements relating to preschool children.

15. Recommendation: Clarify **§300.320(a)(2)(ii)** to explain how this applies to preschoolers:
(2)(ii)For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives

Rationale: CEC recommends clarification regarding this section to explain its applicability for preschool children.

16. Recommendation: Modify **§300.320(a)(3)(ii)** by clarifying that parents must be sent progress reports concurrent with the issuance of report cards.

Rationale: The proposed regulation language which says "such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards" may be misinterpreted as an option, not part of the requirement. The report cards are meaningless if the parents have to read them without concurrent IEP progress reports. In addition parents whose children have disabilities should be informed of their child's progress at least as often as parents are informed of their non-disabled children's progress.

17. Recommendation: Add new **§300.320(a)(4)(iv)** to read as follows:
"A lack of available peer-reviewed research on special education and related services or supplemental aids and services shall not be construed as a basis for denying special education and related services or supplemental aids and services."

Rationale: This language clarifies that IEP teams cannot use §300.320(a)(4) to inappropriately limit access to necessary services. Professionals should be able to use

their professional judgment, in conjunction with the best available evidence, to determine the most appropriate methodology or intervention strategy for a given child. In cases where the proposed regulations state that an action may be taken to the "extent practicable", we believe that entities responsible for implementing any action may fail to do so because through little or no effort, any action can be ignored because it is not "practicable".

> **18. Recommendation:** Modify **§300.320 (a)(5)** by using the phrase "regular class" instead of using "regular education environment" and including preschool children, as reads below:
> (5) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class, (for preschool children settings with typically developing peers) and in the activities described in paragraph (a)(4) of this section;

Rationale: IDEA 2004 requires that IEPs contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. The proposed regulations change the statutory words "regular class" to "regular education environment." This new term weakens the intent for children to access the general education curriculum and the LRE provisions since "regular environment" can be interpreted to mean almost any involvement with nondisabled children in a general education school. The term "regular class" needs no clarification; it is in the current regulations, in IDEA 2004 and in the preamble to this proposed regulation. The Department is not upholding the intent of Congress with this change. In addition, further clarification regarding preschool children was included for additional clarity.

> **19. Recommendation:** Support **§300.320(b),** to provide IEP teams with the authority to initiate transition planning before age 16.

Rationale: CEC believes that earlier transition planning gives IEP teams the opportunity to connect students to the high school courses of study they will need to reach their postsecondary goals related to further education, independent living, and employment. In addition, IEP teams will have the opportunity to initiate services that support students to remain in school, rather than dropout, during the sometimes difficult transition from middle to high school.

> **20. Recommendation:** Modify **§300.321** to retain §300.344(b)(3)(ii) in the 1997 regulations.

Rationale: In the preamble of the proposed regulations, CEC notes that the Department has stated that the "public agency's obligations to take steps to obtain the participation of the other agency in the planning for transition services if the other agency does not send a representative, would be removed as it is an unnecessary burden." CEC believes that

while the cited language above may be somewhat of a burden, it is extremely important. The involvement of all relevant agencies in transition planning is necessary in providing quality and meaningful transition plans for students with disabilities.

21. Recommendation: Modify **§300.321(a)(3)** as follows:
(a)(3) Not less than one special education teacher of the child, or where appropriate, ~~not less that one special education provider of the child~~, or in circumstances where there is no special education teacher, one special education provider.

Rationale: The proposed regulation is the same as the current regulation in this respect, but it causes confusion about whether a special education provider can be substituted for the special education teacher. Special education providers are valuable members of the IEP team but they should not replace a child's special education teacher.

22. Recommendation: Support **§300.321(b)(2)**

Rationale: CEC strongly supports the participation of the child with a disability in the transition IEP. Students with disabilities have the right and the need to help make decisions that affect their lives after school.

23. Recommendation: Modify **§300.321(b)(3)** to delete the phrase *"with the consent of the parents or a child who has reached the age of majority"*

Rationale: The proposed language is inconsistent with the language of the new statute and the 1997 regulations. The proposed language would introduce an unnecessary new paperwork requirement for public agencies to seek prior written consent for inviting a representative of a participating agency. In formed consent issues relating to the IEP process and information sharing among agencies are already addressed by other federal and state regulations. This additional requirement also seems to conflict with the requirements in the section on Parent Participation, §300.322(b)(2)(ii). That section requires the public agency to inform parents of any other agency that will be invited to send a representative when the student's postsecondary goals will be discussed.

24. Recommendation: Modify **§300.321(e)** to include new language in paragraph (e)(2):

"(2) A member of the IEP Team may be excused from attending an IEP 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 service, if –

(i) The parent, in writing, ~~and~~ the public agency, and the member proposed to be excused consent to the excusal, with reasonable and appropriate notice sufficient to provide input; ~~and~~

(ii) The member submits, in writing to the parent and IEP Team, input into the development of the IEP prior to the meeting ; and
(iii) Excused members are provided a copy of the new IEP after the meeting or after amendment of the IEP.

Rationale: In order to ensure the integrity of the IEP process, the team must engage in a discussion of a scope and depth to determine what services are necessary to meet the child's unique needs. The team is obliged to discuss not only current services, but other services that might be necessary to help the child be successful in school. The richness of this discussion may be diminished if members are allowed to be excused too frequently and, instead, the team must rely on written input. In addition, written input may require further clarification and/or additional discussion requiring the excused member's immediate response in order for the team to complete its task.

Written input may also dictate the need for an additional meeting if the discussion cannot be completed without the excused member and that member is not currently available. In that instance, the staff member will have spent instructional time to create the written input but will still have to attend a meeting. In fact, if members are routinely excused, this could lead to an increase in the number of IEP meetings, which would be inconsistent with congressional intent to streamline and focus the IEP process.

If there is discussion regarding excusal of a particular member, that individual should be involved in determining if excusal is appropriate. It is in the best interests of the child for the team member to participate in this decision, as the member is best-qualified to determine if her or her professional expertise is required at the meeting. Staff members' time should be used to maximum efficiency, and those members may best know whether attendance at the meeting is the wisest use of their time.

25. Recommendation: Modify **§300.321(f)** to include the following language: "(f) *Initial IEP meeting for child under Part C.* In the case of a child who was previously served under pact C, an invitation to the initial IEP meeting shall, at the request of the parent (who must be informed in writing of this option), be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services."

Rationale: Parents may not know of their right to request an invitation to the Part C service coordinator for the first IEP team meeting. Without this knowledge, the service coordinator or others could inadvertently be excluded from meaningful participation at that meeting. The parents may want the service coordinator there, but they may not know that they have the right to ask for the service coordinator's presence at the meeting.

26. Recommendation: Modify **§300.322** to retain language used in §300.345(e) of the 1997 regulations regarding the use of interpreters.

Rationale: The preamble to the proposed regulations states that the '97 regulations, regarding the use of interpreters, would be removed because Section 504 of the Rehabilitation Act of 1973 and title II of the Americans With Disabilities Act cover these areas. CEC would like the '97 regulatory language retained because we believe that schools and parents will not know that this requirement falls under other laws and not IDEA. Retention of '97 regulation language will help clarify this.

27. Recommendation: Support **§300.322(b)(2)**

Rationale: The parents and the student must be involved in the transition planning for that student and need to know what other agencies may provide services after leaving school.

28. Recommendation: Modify **§300.322(d)** to incorporate examples provided in §300.345(d) of the 1997 regulations that demonstrate how a public agency must keep records of its attempts to convince a parent that he/she should attend the IEP meeting.

Rationale: The burden here is not lessened, so CEC recommends that the final regulations give specific examples of records that can be kept.

29. Recommendation: Modify **§300.323** to retain language in §300.342(b)(3) of the 1997 regulations regarding the roles of all members of the IEP team. The proposed regulations delete this provision, which requires that each person responsible for the IEP implementation be informed of his/her responsibilities.

Rationale: CEC believes that it is important for every member of the IEP team to be informed of his or her responsibilities as an IEP team member.

30. Recommendation: Modify **§300.323(b)(1)** to include the following language: (b)(1)"…the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations…" and "The IEP Team must explain the changes in services and settings in the initial IEP meeting".

Rationale: CEC believes that this added language will help clarify how an IFSP relates to an IEP, particularly the IFSP content and the natural environments language.

31. Recommendation: Clarify **§300.323(e)**, specifically what is meant by "comparable services" and the differences in eligibility criteria for students who transfer from state to state. In the case of a child who transfers from one school to another within the same state, or from state to state, the proposed regulations state

"the public agency must provide FAPE to the child, including services comparable to those described in the previous IEP".

Rationale: The language in the proposed regulations should clarify what "comparable services" are when a student transfers from state to state because lack of clarification here could lead to a broad interpretation by LEAs of what constitutes "comparable services".

32. Recommendation: Modify **§300.324 (a)(2)(i)** as follows:
(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 based on functional behavioral assessments, to address that behavior."

Rationale: Numerous studies have demonstrated that functional behavioral assessments lead to the development of successful behavioral interventions for children in school settings.

33. Recommendation: Modify **§300.324 (a)(6)** as follows:
"(6) Amendments. Changes to the IEP may be made either by the entire IEP Team 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~~. Each member of the IEP Team, including the parent, must be provided with a revised copy of the IEP with the amendments incorporated.

Rationale: It is essential to the implementation of an IEP that everyone on the IEP team, including the parents, has the most updated version of the document.

34. Recommendation: Support **§300.324(c).**

Rationale: The school system has the final responsibility for ensuring a successful transition, so it must identify alternative strategies for meeting the student's objectives.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART E

1. Recommendation: Modify **§300.501(c)** to retain language in §300.501(c)(5) of the 1997 regulations, regarding making reasonable efforts to ensure that parents understand and are able to participate in any group discussion including provision of interpreter services for parents with deafness or whose native language is other than English.

Rationale: The OSERS discussion of proposed regulatory changes indicates that this provision is both "unnecessarily duplicative" and "is inherent in the obligation in proposed §300.501(b)(1) that parents be afforded an opportunity to participate in meetings about the identification, evaluation, educational placement and provision of FAPE to their child." Clearly the opportunity to participate is dependant upon a parent understanding the discussions occurring at the meeting. The regulations must be clear on what is required to ensure that "parents have an opportunity to participate in meetings."

2. Recommendation: Modify **§300.501(c)(4)** to retain language in 300.501(c)(4) of the 1997 regulations. CEC notes that this language from the 1997 regulations has not been included in the proposed regulations. According to OSERS discussion of proposed regulatory changes, "The phrase would be removed to provide school personnel greater flexibility in how they document attempts to involve parents. However, public agencies still must maintain documentation of their efforts in this regard."

Rationale: CEC believes that removing the language at §300.501(c)(4) of the 1997 regulations does not lessen the responsibility for the LEA, and the language in question in the proposed regulations appears to only offer suggestions for documenting attempts to ensure parental involvement. The language from the 1997 regulations is clearer and more explicit in defining the responsibilities of the public agency when documenting attempts to contact the parents when determining the placement of a child without the parents' involvement.

3. Recommendation: Modify **§300.503** to include language concerning prior notice that was included in §300.503(a)(2) of the 1997 regulations.

Rationale: The preamble regarding §300.503, indicates that this language "…is not necessary to explain in the regulation that prior written notice can be provided at the same time as parental consent is requested because parental consent cannot be obtained without this notice." However, CEC notes that this provision is necessary, as prior notice must be given a reasonable time before the action occurs.

4. Recommendation: Clarify **§300.504(b)** in the proposed regulations, which reflects new statutory language related to public agencies placing a current copy of procedural safeguards notice on its website. CEC requests clarification that this practice would not replace Part B requirements regarding providing a copy of this notice to individual parents in accordance with the Part B requirements.

Rationale: It should be made clear that the perceived convenience of the procedural safeguard notice's availability on-line does not preclude having it be made available to parents in hard-copy form.

5. Recommendation: Support **§300.504(c)**

Rationale: §300.504(c) requires an explanation of the State complaint procedure and the due process complaint procedure. Both are important procedures and parents need to have both explained, as the Department recognizes. This is also recognized by IDEA 2004, which recognizes the existence of a complaint under § 615(b)(6) and a due process complaint notice under §615(b)(7).

6. Recommendation: Clarify **§300.504(c)(5)(iii)**, specifically matters related to jurisdiction and what issues may be raised.

Rationale: In the proposed regulation language at §300.504(c)(5)(iii), states are required to include in the procedural safeguards notice "(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures". These distinctions need to be made by OSERS and not individual states.

7. Recommendation: Clarify **§300.519,** specifically what is meant by the "temporary" nature of the appointment of surrogates and how the provisions at (d)(2)(ii) and (iii) of the proposed regulations apply.

Rationale: The proposed language at §300.519(f) indicates that "In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section." CEC is aware of the difficulties in addressing the needs of unaccompanied homeless youth, but the language needs to clarify how requirements in (d) and (f) in this section work together.

8. Recommendation: Modify **§300.530(a)**, as follows:

(a) *Case-by-Case determination.* (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
(2) In making this determination, school personnel must document what supports were in place for the student prior to the incident in question to address the student's behavioral needs and to assist the student to observe the code of student conduct."

Rationale: By requiring school personnel to document, what, if any , services and supports the student received priori to the incident, school personnel will be in a better position to assess what actions should be taken.

CEC suggests further that regulations provide more clarification about what "unique circumstances" should be considered when determining whether as change in placement is appropriate. We are hopeful that this subparagraph reflects the language of the Gun-Free Schools Act, encouraging school personnel to consider the context of the infraction and tailor disciplinary reactions based on that context. We are concerned however that the clause could be used to justify ignoring basic concepts or short-circuiting protections for students with disabilities on the basis of a "case by case" determination. Thus we would appreciate further clarification of what is and is not acceptable practice for "case by case determination."

9. Recommendation: Modify **§300.530(d)(i)** to include statutory language from Section 612(a)(1)(A) regarding the provision of FAPE. In addition, CEC recommends that additional clarification be included regarding what "educational services" are to be provided to students who have been suspended or expelled.

Rationale: The proposed regulations do not explicitly state that FAPE applies to all children with disabilities, including those who have been suspended or expelled from school. CEC believes that this should be spelled out in the final regulations so that there is no question on this issue. CEC would like the "educational services" defined in this section of the final regulations so that there is no confusion on these provisions either.

10. Recommendation: Modify **§300.530(d)(4)** as follows:

"(d) *Services...*
(3) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under Sec. 300.536, school personnel, in consultation with ~~at least one of the child's teachers~~ the members of the child's IEP Team, determine the extent to which services are needed under paragraph (d)(1) of this section, if any, and the

location in which services, if any, will be provided."

Rationale: This section appears to be intended to allow some flexibility in providing additional services in cases where an incident does not constitute a "change in placement." CEC has concerns, however, about the provision allowing decisions about services to be made in consultation with "at least one of the child's teachers." Decisions about change in placement are typically made in consultation with the entire IEP team. Reducing this to a single teacher, who in theory could be any of the child's teachers, could significantly reduce the protections offered by team decision making.

It is also important to note that, as written, this section has the potential for introducing confusion into the decision-making process. It is the IEP team that determines whether a given removal or series of removals constitutes a change in placement. Thus, since the decision regarding change in placement needs to be made by the team, it makes little sense to rely on one individual to decide on services.

11. Recommendation: Modify **§300.530(e)** or **(f)** to retain language from §300.523(c)(2)(ii) from the 1997 regulations concerning the requirement that the LEA must demonstrate that the child's disability did not impair his/her ability to understand the impact or consequences of the behavior or to control the behavior before it can be determined that the conduct was not a manifestation of the child's disability.

Rationale: LEAs must not be given a lesser standard when determining actions to be taken against a child who faces disciplinary action for his/her behavior. This requirement provides reasonable protections for the child when he/she faces disciplinary action over punishable behavior. Every effort should be taken, and maintained, to determine whether the child's behavior was the result of a disability.

12. Recommendation: Clarification of **§300.530(e-f)** specifically in areas such as "manifestation determination" where it appears that significant changes have been made in the law, the incorporation of the conference report language from the bill (p. 224) into the final regulations will not only assist in clarifying this provision, but it will also assist school personnel in interpreting the new statutory "case-by-case determination" language. In addition, while CEC recognizes that the statute requires IAES placement determinations be made on a case-by-case basis, we request that the final regulations provide *all* students, including students with disabilities, with fair and consistent opportunities when those determinations are made.

Rationale: Because the new statute contains several new criteria for manifestation determination, CEC thinks the clarity and breadth with which the conference report language in this area is written will greatly assist LEAs and parents when considering

options for discipline, and it should therefore be included in the final regulations. In addition, the report language for the new "case-by-case determination" provisions is equally helpful in explaining the intentions of Congress in this area, and it should be included as well in the final regulations so that there is no confusion on how this new "case-by-case" provision is implemented. CEC also believes that review of all placement determinations should be applied equally to all students, so that students with disabilities do not face unfair discrimination.

> **13. Recommendation:** Clarification of **§300.530(g)(3)** and **§300.532(b)(2)(ii)** regarding the distinction between "removal of a child to an IAES by school personnel for inflicting serious bodily injury" (§300.530(g)(3)) or "removal of the child by a hearing officer because maintaining the child's current placement is substantially likely to result in injury to the child or others" (§300.532(b)(2)(ii)). CEC would also like to see a definition of the term "substantially likely" in this section.

Rationale: CEC would like clarification as to whether these situations are just a matter of tense, as though removal of a child by a hearing officer is a preventative measure, whereas removal of the child by school personnel is an after-the-fact disciplinary measure. The term "substantially likely" is vague and needs to be defined so there is no confusion.

> **14. Recommendation:** Modify **§300.532(b)** to retain language from §300.521(a) of the 1997 regulations stating that the standard of proof for a hearing officer to remove a child to an interim alternative educational setting continues to be "substantial evidence," which is defined in the 1997 regulations as beyond a preponderance of the evidence (§300.521(e)). That authority is not given to hearing officers in the proposed regulations in §300.532(b). CEC would like to see the final regulations retain the definition of "substantial evidence" from the '97 regulations as well. There is no a definition of "substantial evidence" in the proposed regulations.

Rationale: There must be standard by which hearing officers conduct determinations of whether a change of placement is necessary. The '97 regulations contain such a standard, and include a definition of "substantial evidence" that can be readily followed.

> **15. Recommendation:** Support **§300.534** and **§300.535**

Rationale: CEC is pleased that the Department of Education has provided minimal changes to existing regulations in areas such as "protections for children not yet eligible for special education and related services" (§300.534) and "referral to and action by law enforcement and judicial authorities" (§300.535).

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART F

1. Recommendation: Modify **§300.646(b)(2)** to read:
"(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 these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must—...

(2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under paragraph (a) of this section while monitoring the effect of those services on data measuring the extent of disproportionate representation**;**…".

Rationale: As the professional organization representing students in the disability categories most affected by minority overrepresentation, we applaud the addition of new regulations regarding data collection and intervention to address the disproportionate representation of minority students in special education.

Although it makes sense to provide additional early intervention services to all children in the LEA, not merely those affected by disproportionality, there is no guarantee that these additional services *applied to all children* will address the original factors that caused and maintained disproportionate representation. Thus we would suggest adding the phrase, as stated above, in paragraph (b)(2).

2. Recommendation: CEC recommends that language in Subpart F related to monitoring be revised to ensure that it is consistent with Part C (including the use of terms, lead agency, early intervention, local providers, etc.).

Rationale: This will avoid confusion and reinforce understanding that monitoring and enforcement activities also apply to the Part C programs.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART G

No Comments

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS
SUBPART H

1. **Recommendation:** Support **§300.800-818**

Rationale: CEC supports the incorporation of the 619 preschool regulations in the Part B regulations.

COUNCIL FOR EXCEPTIONAL CHILDREN
RECOMMENDATIONS FOR IDEA REGULATIONS

Part 304 – Service Obligations Under Special Education – Personnel Development To Improve Services and Results For Children With Disabilities

1. Recommendation: Modify **§304.30(e)(1)** and **(2)** to address the problem that the 'majority of time/majority of children' requirements (§304.30(e)(1) and (2)) are causing for grantees, for some IDEA scholars and for early intervention programs and education agencies in need of trained personnel. The scholars most affected are those who provide direct services - special education, related services or early intervention services - to children with disabilities, but whose jobs do not enable them to satisfy either of the 'majority' criteria. These scholars are working in early intervention programs and inclusive educational arrangements serving children with disabilities side-by-side with children who do not have disabilities. These IDEA scholars are able to meet the statutory requirement of serving children with disabilities, but cannot satisfy the 'majority' requirements of the regulations as a result of class and caseload assignments, or state and local service delivery configurations. Additional discussion of this problem is below in our Rationale.

One or more alternatives need to be devised that will enable IDEA scholars who are serving children with disabilities, as the law requires, but are unable to meet the majority' criteria, to satisfy their obligation through service. Rather than supporting federal policies which favor inclusive educational practices and programs when appropriate for children with disabilities, the Department's position on 'majority' criteria sends a clear message to IDEA scholars: seek employment in less inclusive and segregated settings, or repay your scholarship, plus interest. The service obligation regulations should not be at odds with policies aimed at inclusive programming, and need to recognize that IDEA Parts B and C services are being provided appropriately by State and local programs across the broad continuum of placements.

After extensive consideration and debate in an effort to resolve the problem, we offer the only alternative to the 'majority' criteria we believe can be justified:

Permit IDEA Scholars to Satisfy their Service Obligation by Meeting the Statutory Requirement. Under this proposal, IDEA scholars would be permitted to satisfy their obligation by performing work in which they provide special education, related services, or early intervention services to children with disabilities, as defined by IDEA. This option is consistent with the language of the statute. We believe it is also consistent with the intent of the Congress which favors inclusive service delivery, when appropriate, and has authorized personnel

preparation funding to meet the Nation's needs for qualified personnel to serve children with disabilities.

In coming to the above recommendation, we considered such alternatives as permitting the affected IDEA scholars to satisfy their obligation by serving for one additional year over the length of their obligation, or allowing affected scholars to obtain a deferral of their obligation so that they could secure employment that would enable them to meet the 'majority' criteria. Neither is acceptable because they impose a burden on IDEA scholars for working in inclusive settings. The requirement that IDEA scholars work for two years for each year of financial assistance they receive from an IDEA training grant already imposes a longer service obligation than do other US Department of Education programs.

Rationale: Based on the experience of our IHE members who have been monitoring the employment of IDEA scholars for the last 5-6 years, HECSE emphasizes that the problem described here is experienced most notably by students we train at the pre-doctoral level to fill roles as direct service providers who will work in inclusive settings/programs serving children with disabilities alongside children who do not have identified disabilities (such as special education teachers and early childhood/early intervention personnel). For these IDEA scholars, factors outside their control impact on their ability to meet the 'majority' requirements. Such factors include an agency's approach to delivering services to children with disabilities (e.g., early intervention services, or inclusive and reverse mainstreaming arrangements), court-ordered service configurations which mandate blended classes for disabled and non-disabled children, and state policies in education and early intervention.

The Department has justified the 'majority' criteria in the past as a way of ensuring that IDEA scholarship funds impact as much as possible on the greatest number of children with disabilities, and serve to reduce shortages among special education and related personnel. This justification, while perhaps sound at a surface level, is impractical and is no longer defensible because the policy it supports (favoring less inclusive and segregated service provision) is unacceptable. We agree with the Department that priority in the use of IDEA personnel preparation funds needs to be placed on training personnel to provide special education, related services and early intervention services, but not at the cost of inclusive service delivery and of agencies who are serving children with disabilities.

As we have explored how the 'majority' criteria problem could be resolved, the recent experiences of two IHE grantees are illustrative of the negative impact these criteria are having:

- A collaborative of tribal organizations and the rural schools districts in their communities asked an IHE this year to help them develop an application for an IDEA training grant that would have prepared early childhood and primary level special education teachers to work in the rural and remote areas in which they are located. When informed that the IDEA scholars would have to be able to meet the regulations' 'majority' criteria in order to satisfy their service obligation, this approach to addressing these tribes' and communities' personnel needs was abandoned because of their extensive use of inclusive service delivery practices in both early intervention/early childhood and school settings.

- In the Special Education Department of at least several IHEs, faculty are engaged in debates over whether they can continue to seek IDEA support for the preparation of personnel to provide special education and early intervention services to children with disabilities because the school and EI programs they are supplying personnel for make extensive use of inclusive arrangements which make meeting the 'majority' criteria impossible.

We urge the Department to take steps in the final regulations that will remove what is an unacceptable problem for some of our students, for programs serving children with disabilities who need personnel, and for institutions of higher education which are working to meet the need for highly qualified personnel to serve children with disabilities.

2. Recommendation: Modify **§304.30(e)** to include an additional item to the existing list:

> *(7) The individual spends the majority of his or her time in personnel training, technical assistance and program development for school-wide, district-wide, state-wide or in home-based programs (a) to support the effective integration of at-risk students, including students with disabilities, in the general education program, or (b) to prevent the inappropriate identification of students with disabilities.*

Rationale: Federal education policy articulated in recent reauthorizations of IDEA and in the 2002 NCLB has increased the expectations as well as the requirements to address the needs and performance of children with disabilities within the programs, policies, and procedures of the larger education system. These demands require personnel – especially those with special education leadership credentials at the doctoral level – to assure that education agencies have the capacity and infrastructure to develop, implement and evaluate universal interventions that support all learners, including children with disabilities. School- and district-wide behavioral and reading interventions, and state and local assessment and accountability systems are examples of areas in which agencies

require personnel with expertise in special education. Yet, as agencies staff their initiatives, they are looking for personnel who bring knowledge and skills related to children with disabilities to jobs that have a universal focus, rather than a 'special education' or 'regular education' focus.

CEC recommends that the Department permit IDEA scholars to satisfy their service obligation, under limited circumstances, through work that addresses the needs of children with disabilities within the broader context of prevention and intervention initiatives designed to accommodate the needs of a wide range of children.

CEC agrees with the Department that a priority in the use of IDEA personnel preparation funds needs to continue to be placed on the preparation of qualified individuals, at both the doctoral and pre-doctoral levels, who will provide special education, related services and early intervention services for children with disabilities. This focus is consistent with the need to continually improve the qualifications of and reduce shortages among personnel who provide special education, related services and early intervention services to children with disabilities as well as among personnel working in the field leadership positions, such as higher education faculty.

At the same time, IDEA policy as well as the results of IDEA's R and D investments emphasize that children with disabilities, who are among the most educationally vulnerable, require specialized services to meet their unique needs but also achieve better outcomes when they have access to effective whole school approaches designed to address the needs of a wide range of at-risk learners. OSEP investments in such areas as prevention and early identification of disabilities, school-wide behavior and literacy programs, and student assessment have demonstrated how universal approaches can effectively support children with disabilities within the larger education context. Critical to scaling up and implementing such approaches are personnel with advanced preparation in special education.

Our recommendation is intended to provide a limited opportunity to IDEA scholars to satisfy the obligation by working in positions such as the following:

- Work in State and local testing programs assessing the performance of all children, including students with disabilities;

- Working for a TA provider or intermediate school district to support schools' implementation of school wide positive behavioral supports and interventions;

- Conducting research on RTI models to improve instruction for at-risk learners and to prevent the development of later reading problems, including problems that could result in the identification of children for special education services;

- Reading consultant/coordinator supporting school-wide efforts to prevent reading failure among all students (e.g., Reading First), including children with disabilities.

- Providing training or technical assistance for general education teachers to foster effective inclusion of children with disabilities.

> **3. Recommendation:** Modify **§304.30(e)(1)** and **(2)** to address a problem faced by some IDEA scholars who are providing special education, related services or early intervention services to children with disabilities but whose jobs (e.g., as a result of caseload assignments, state and local service delivery configurations) do not enable them to satisfy either of the 'majority' options provided at §304.30(e)(1) and (2). The scholars of concern are a minority of all IDEA scholars who are able to meet the statutory requirement of serving children with disabilities, but cannot satisfy the 'majority' requirements of the regulations.

Rationale: We encourage the Department to permit IDEA scholars who are providing special education, related services or early intervention services to children with disabilities and whose job assignment does not permit them to meet the 'majority' requirements of §304.30(e) (1) or (2) to nevertheless satisfy their IDEA obligation by performing work.

Towards this end, we request the Department develop alternative ways for IDEA scholars to satisfy their obligation when they work in inclusive settings/programs in which they are providing special education, related services or early intervention services to children with disabilities. IDEA policy favors placement of children with disabilities in inclusive settings, when appropriate; the service obligation regulations need to be consistent with that policy in ways that recognize how IDEA Parts B and C services are being provided by State and local programs. We recommend two additional means by which IDEA scholars can satisfy the 'majority' requirements through work:

> a. Length of the service obligation. Permit IDEA scholars who are serving children with disabilities, as required by IDEA, to satisfy their obligation by working for an additional year. This approach would permit scholars whose job(s) does not permit them to meet either of the 'majority' requirements of regulations to satisfy their obligation by working for one year more than they would otherwise have to work. A scholar unable to meet either of the majority requirements who received financial assistance for one academic year and was obligated to work for two years would, instead, be required to work for three years in order to satisfy the obligation. The scholar would be required to provide services to children with disabilities in each year of work that is counted towards satisfying the obligation. Further, a student unable to satisfy either of the 'majority' requirements for any year of work would be subject to the extra year of work requirement. This avenue for meeting the obligation would be of direct benefit to IDEA scholars such as those providing early

intervention services and those providing services in circumstances in which inclusive service delivery is the practice.

b. Deferral of the Service Obligation Deadline. Permit IDEA scholars who are providing special education, related services or early intervention services to children with disabilities to request a deferral of up to 2 years of their service obligation when their work assignments do not permit them to meet either of the 'majority' requirements. Such requests, including information describing the individual's special circumstance, would be made to and ruled upon by the US Department of Education. This avenue for satisfying the obligation would be especially helpful to scholars whose caseloads or work assignments are changed by their employer. By extending the deadline by which a scholar must satisfy their obligation, the Department would enable scholars who do not or cannot take Option A above the time to secure other qualified employment (and re-locate if necessary or feasible) in which they are able to satisfy one of the 'majority' requirements. The scholar would be required to provide services to children with disabilities and to meet either of the 'majority' requirements in each year of work that is counted towards satisfying the obligation.

The options suggested above would provide an incentive to students to secure employment in which they can meet one of the 'majority' criteria and, therefore, satisfy their obligation in the shortest time possible. At the same time, they would permit scholars who cannot meet either of the 'majority' requirements to satisfy their obligation through work as long as they continue to provide special education, related services or early intervention services to children with disabilities.

Based on the experience of grantees under the IDEA personnel preparation program who have been monitoring the employment of IDEA scholars for the last 5-6 years, only a portion of students are unable to satisfy the 'majority' requirements. It is a problem most notably for students we train at the pre-doctoral level to fill roles as direct service providers who will work in inclusive settings/programs serving children with disabilities alongside children who do not have identified disabilities (such as special education teachers and early childhood/early intervention personnel). For these IDEA scholars, factors outside their control impact on their ability to meet the 'majority' requirements. Such factors include an agency's approach to delivering services to some children (e.g., early intervention services, or inclusion and reverse mainstreaming arrangements), court-ordered service configurations which mandate blended classes for disabled and non-disabled children, and employers who change the scholar's caseload or assignment from one in which he or she can satisfy the majority requirement one year but not the next.

While many early childhood special education programs serve primarily children with identified disabilities, some agencies within States' service delivery systems provide services to both at-risk children and children with disabilities from birth through age five,

with an emphasis on preventing later educational problems. For example, Head Start and Early Head Start programs are important and sometimes critical components – especially in rural communities – in the service delivery systems for young children with disabilities. Yet, Head Start teaching jobs cannot always be 'segregated' into 'special education' vs. 'non-special education' positions even when programs are serving high numbers of young children with disabilities. The NPRM places Head Start jobs off-limits to IDEA scholars unless those jobs permit the scholar to satisfy the 'majority' requirements. If IDEA scholars cannot satisfy their obligation by working in such settings, programs such as Head Start cannot compete for newly trained special educators.

We believe the suggestions we have provided above, or others the Department could develop, are needed in order to permit IDEA scholars to satisfy the obligation when the 'majority' requirements cannot be met, and to enable agencies serving children with disabilities to address legitimate and priority needs for qualified service providers.

> **4. Recommendation:** Modify **§304.30(f)(2)** to permit all IDEA scholars who were qualified service providers before accepting IDEA financial assistance to satisfy their obligation through "Eligible Employment."

Rationale: This provision of the NPRM would permit students to perform eligible employment (that satisfies their obligation) after they complete one academic year of the training for which their IDEA scholarship is provided. The Department has interpreted a similar provision in current regulations to mean that IDEA scholars who do not complete one academic year of training can only satisfy their obligation by repaying the Department for the amount of financial assistance they received. Performing qualified or 'eligible employment' is not an option for these scholars. This interpretation is places an unnecessary financial burden on IDEA scholars who were already qualified to provide special education, related service or early intervention services before receiving IDEA scholarship support and who could otherwise satisfy their obligation through service.

Some IDEA scholars are qualified service providers who return to school for additional training, for example to enable them to obtain an additional endorsement to work with different populations, or to develop the skills and knowledge to better serve the children with disabilities they work with. A very few of these IDEA scholars do not complete one academic year of study. However, on occasion a scholar is unable to complete one academic year of study due to personal or professional reasons and, therefore, must make a cash repayment to the US Department of Education for the financial assistance they received. IDEA scholars *who can provide special education, related services or early intervention services to children with disabilities* should be permitted to satisfy their obligation either through work or through a repayment arrangement with the US Department of Education. As IDEA training grantees, we would rather that service obligation regulations encourage and provide an incentive to these scholars to return to

'eligible employment' rather than giving them a monetary fine for attempting to improve their knowledge and skills.