

# Handouts

## Theme B: IDEA and General Education

*These handouts are designed to accompany Modules 3-8.*

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*"Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by...*

*... having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible..."*

*P*ublic Law 108-446, Title 1, Sec. 601(c)(5)

*This training curriculum is a product of NICHCY  
the National Dissemination Center for Children with Disabilities.*

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# Snapshot of Training Curriculum

## Title of the Curriculum

*Building the Legacy: Individuals with Disabilities Education Act Amendments of 2004.*

## Purpose of the Curriculum

To provide authoritative information about, and training materials on, IDEA and its final Part B regulations.

## Source

The *Building the Legacy* training curriculum is a product of the National Dissemination Center for Children with Disabilities (NICHCY), produced at the request of the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

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A snapshot table of contents for the training curriculum is shown at the right. As of September 2007, *Building the Legacy* has the 19 training modules listed there. A title in gray text will be available in Fall 2007. The titles in **bold**—and marked with an asterisk (\*)—are already available online.

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*as of September 2007*

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*Please feel completely free to copy and share these handouts.*

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## U.S. Department of Education's Topic Brief (on the Statute)

IDEA—Reauthorized Statute

**Alignment with the *No Child Left Behind Act***

(See also Highly Qualified Teachers, Local Funding, and State Funding)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.<sup>1</sup> This document addresses only the changes to the provisions of IDEA regarding the alignment between IDEA and *No Child Left Behind*, referred to in this document as the *Elementary and Secondary Education Act* (ESEA) of 1965, that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Adds new definitions.

“Core academic subjects.” The term “core academic subjects” means English, reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography. [9101(11) of ESEA] [602(4) of IDEA]

“Limited English proficient.” The term “limited English proficient,” when used with respect to an individual, means an individual:

- Who is aged 3 through 21;
- Who is enrolled or preparing to enroll in an elementary school or secondary school;
- Either
  - o who was not born in the United States or whose native language is a language other than English;
  - o who is a Native American, Alaska Native, or a native resident of the outlying areas; and who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or

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<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: [www.ed.gov/about/offices/list/osers/index.html](http://www.ed.gov/about/offices/list/osers/index.html).

## Alignment with NCLB

- o who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
  - o The ability to meet the state's proficient level of achievement on state assessments described in Section 1111(b)(3) of ESEA;
  - o The ability to successfully achieve in classrooms where the language of instruction is English; or
  - o The opportunity to participate fully in society.

[9101(25) of ESEA] [602(18) of IDEA]

"Highly qualified." For a complete definition of the term "highly qualified," refer to the "Highly Qualified Teachers" topic brief. [9101(23) of ESEA] [602(10) of IDEA]

### 2. Allows funds reserved to carry out state-level activities to be used:

... to support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 6111 of ESEA. [611(e)(2)(C)(x) of IDEA]

### 3. Allows the use of funds in schoolwide programs.

... [A] local education agency (LEA) may use funds received under Part B for any fiscal year to carry out a schoolwide program under Section 1114 of ESEA, except that the amount so used in any such program shall not exceed:

- The number of children with disabilities participating in the schoolwide program, multiplied by
  - o The amount received by the LEA under this part for that fiscal year, divided by
  - o The number of children with disabilities in the jurisdiction of that agency.

[613(a)(2)(D)(i) and (ii)(I)-(II) of IDEA]

### 4. Allows the use of funds to carry out activities under ESEA.

If an LEA exercises the authority under Section 613(a)(2)(C)(i) of IDEA, the agency shall use an amount of local funds equal to the reduction in expenditures under Section 613(a)(2)(C)(i) of IDEA to carry out activities authorized under ESEA. [613(a)(2)(C)(ii) of IDEA]

### 5. Requires performance goals and indicators.

The state has established goals for the performance of children with disabilities in the state that:

- Promote the purposes of IDEA as stated in Section 601(d);
- Are the same as the state's definition of adequate yearly progress (AYP), including the state's objectives for progress by children with disabilities, under Section 1111(b)(2)(C) of ESEA;
- Address graduation rates and dropout rates, as well as such other factors as the state may determine; and

## Alignment with NCLB

- Are consistent, to the extent appropriate, with any other goals and standards for children established by the state.

In addition, the state has established performance indicators it will use to assess progress toward achieving the goals described in Section 612(a)(15)(A) of IDEA, including measurable annual objectives for progress by children with disabilities under Section 1111(b)(2)(C)(v)(II)(cc) of ESEA. [612(a)(15)(A) and (B) of IDEA]

### 6. Requires reporting.

[The state] will annually report to the secretary and the public on the progress of the state, and of children with disabilities in the state, toward meeting the goals established under Section 612(a)(15)(A) of IDEA, that may include elements of the reports required under Section 1111(h) of ESEA. [612(a)(15)(C) of IDEA]

### 7. Provides for the measurement of the achievement of children with disabilities on alternate assessments against alternate achievement standards.

If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of ESEA, the guidelines developed and implemented under Section 612(a)(16)(c)(i) of IDEA shall provide for alternate assessments that ... measure the achievement of children with disabilities against those standards. [612(a)(16)(C)(ii)(II) of IDEA]

### 8. Requires linking records of migratory children among states.

The LEA shall cooperate in the secretary's efforts under Section 1308 of ESEA to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the states, health and educational information regarding such children. [613(a)(9) of IDEA]

### 9. Establishes a limitation on eligibility determination.

In making a determination of eligibility under Section 614(b)(4)(A) of IDEA, a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in Section 1208(3) of ESEA); lack of instruction in math; or limited English proficiency. [614(b)(5) of IDEA]

### 10. Alignment of personnel development plans.

The application [for a state personnel development grant] shall include a plan that identifies and addresses state and local needs for preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that ... is integrated and aligned, to the maximum extent possible, with state plans and activities under ESEA, the *Rehabilitation Act of 1973*, and the *Higher Education Act of 1965*. [653(a)(2)(C) of IDEA]

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Available online at:

[www.nichcy.org/reauth/tb-nclb-align.pdf](http://www.nichcy.org/reauth/tb-nclb-align.pdf) (PDF)  
[www.nichcy.org/reauth/tb-nclb-align.doc](http://www.nichcy.org/reauth/tb-nclb-align.doc) (Word)



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IDEA—Reauthorized Statute

## Statewide and Districtwide Assessments

(See also Individualized Education Program (IEP) Content)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004 by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.<sup>1</sup> This document addresses only the changes to the IDEA provisions regarding statewide and districtwide assessments that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

### IDEA 2004:

#### 1. Removes the IDEA’s reference to “modifications in administration” regarding the assessment of children’s academic achievement and functional performance.

An individualized education program (IEP) must include a statement of any “appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child,” rather than a statement of individual modifications in the administration of state or districtwide student assessments. [612(d)(1)(A)(VI)(aa) of IDEA]

#### 2. Adds a reference to *No Child Left Behind* (NCLB).

All children with disabilities are included in all general state and districtwide assessment programs, including assessments described under Section 1111 of the *Elementary and Secondary Education Act* (ESEA) of 1965,<sup>2</sup> with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs (IEPs). [612(a)(16)(A) of IDEA]

#### 3. Adds specific requirements for state guidelines regarding alternate assessments.

State (or, in the case of a districtwide assessment, the local education agency (LEA)) guidelines developed and implemented under Section 612(a)(16)(c)(i) of IDEA must provide for alternate assessments that:

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<sup>1</sup> Topics in this series include: Alignment with the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: [www.ed.gov/about/offices/list/osers/index.html](http://www.ed.gov/about/offices/list/osers/index.html).

<sup>2</sup> For purposes of this document, the *No Child Left Behind Act* (NCLB) is referred to as the *Elementary and Secondary Education Act* (ESEA) of 1965, as amended.

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U.S. Department of Education's Topic Brief (on the Statute)

## Statewide and Districtwide Assessments

- Are aligned with the state's challenging academic content standards and challenging student academic achievement standards; and
- If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out Section 1111(b)(1) of the ESEA, measure the achievement of children with disabilities against those standards.

The state conducts the alternate assessments described above. [612(a)(16)(C)(ii), (iii) of IDEA]

#### 4. Expands requirements for reporting.

The state education agency (SEA) (or, in the case of a districtwide assessment, the LEA) makes available to the public and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

- The numbers of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments;
- The number of children with disabilities participating in alternate assessments that are aligned with the state's challenging academic content standards and challenging student academic achievement standards; and the number of children with disabilities participating in alternate assessments aligned with alternate achievement standards; and
- The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

[612(a)(16)(D) of IDEA]

#### 5. Includes changes to the individualized education program (IEP).

The IEP must include the following:

- For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives (within the required statement of a child's present levels of academic achievement and functional performance);
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16)(A) of IDEA; and
- If the IEP team determines that the child shall take an alternate assessment on a particular state or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment, and the particular alternate assessment selected is appropriate for the child.

[614(d)(1)(A)(i)(I)(cc), (VI)(aa)-(bb) of IDEA]

Available online at:

[www.nichcy.org/reauth/tb-assessments.pdf](http://www.nichcy.org/reauth/tb-assessments.pdf) (PDF)

[www.nichcy.org/reauth/tb-assessments.doc](http://www.nichcy.org/reauth/tb-assessments.doc) (Word)

## Sketching Out the Scene

Answer the following questions about the school or school system in which you work or are involved. If you have several you can choose from, just pick the one that comes to mind first. It's OK to guess if you have to.



1. This school/school system is in \_\_\_\_\_.
  - a rural area
  - a suburban community
  - an inner-city community
2. I'd describe this school/school system as:
  - Small, not many students
  - Medium-sized
  - Large
  - Very large
3. About what percentage of students have disabilities?
  - 0-5%
  - 6-10%
  - More than 10%
4. Which of the following would you see in this school/school system? (Check all that apply.)
  - White students
  - African-American students
  - Hispanic students
  - Students who are Asian/Pacific Islanders
5. Are there differences in educational performance among these racial/ethnic groups?
  - Yes
  - No
  - Don't know
6. If yes, describe your impressions or knowledge of those differences in educational performance.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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IDEA 2004's Final Regulations:

## Disproportionality

### §300.173 Overidentification and disproportionality.

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(24))

### §300.646 Disproportionality.

(a) *General.* Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(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—

(1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.

(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 intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1418(d))

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## Additional Provisions Related to Disproportionality

Subpart F—Monitoring, Enforcement, Confidentiality, and Program Information  
Monitoring, Technical Assistance, and Enforcement

§300.600 State monitoring and enforcement.

(a) The State must monitor the implementation of this part, enforce this part in accordance with §300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2), and annually report on performance under this part.

(b) The primary focus of the State's monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in §300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(Approved by the Office of Management and Budget under control number 1820-0624)

(Authority: 20 U.S.C. 1416(a))

§300.601 State performance plans and data collection.

(a) *General.* Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(over) 

## Additional Provisions Related to Disproportionality

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600(d).

(b) *Data collection.* (1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820-0624)  
(Authority: 20 U.S.C. 1416(b))

### §300.602 State use of targets and reporting.

(a) *General.* Each State must use the targets established in the State's performance plan under §300.601 and the priority areas described in §300.600(d) to analyze the performance of each LEA.

(b) *Public reporting and privacy—*

(1) *Public report.* (i) Subject to paragraph (b)(1)(ii) of this section, the State must—

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan; and

(B) Make the State's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) *State performance report.* The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) *Privacy.* The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

(Approved by the Office of Management and Budget under control number 1820-0624)  
(Authority: 20 U.S.C. 1416(b)(2)(C))



## IDEA Regulations

**Early Intervening Services**

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the Act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a "highly qualified teacher" that took effect upon the signing of the Act. The final regulations were published on August 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup> This document addresses the final regulatory requirements regarding early intervening services.

IDEA Regulations**1. Adds "early intervening services" to the regulations under local educational agency (LEA) eligibility.**

An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services,

<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the IDEA website at: <http://IDEA.ed.gov>.

<sup>2</sup> Scientifically based research has the meaning given the term in section 9101(37) of the *Elementary and Secondary Education Act* (ESEA) of 1965. Section 9101(37) of ESEA, as amended by the *No Child Left Behind Act* (NCLB) of 2001, defines scientifically based research as "research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education

activities and programs." The statute then explains that this kind of research: (1) Employs systematic, empirical methods that draw on observation or experiment; (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (Note: practitioner journals or education magazines are *not* the same as peer-reviewed academic journals.)

<sup>3</sup> For purposes of this document, the NCLB is referred to as the ESEA of 1965, as amended.

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U.S. Department of Education's Topic Brief (on the Regulations)

## Early Intervening Services

but who need additional academic and behavioral support to succeed in a general education environment.

[34 CFR 300.226(a)] [20 U.S.C. 1413(f)(1)]

### 2. Allows activities in implementing coordinated, early intervening services by LEAs.

In implementing coordinated, early intervening services under 34 CFR 300.226, an LEA may carry out activities that include:

- Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based<sup>2</sup> academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

[34 CFR 300.226(b)] [20 U.S.C. 1413(f)(2)]

### 3. Clarifies the relationship between free appropriate public education (FAPE) and early intervening services.

Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

[34 CFR 300.226(c)] [20 U.S.C. 1413(f)(3)]

### 4. Establishes reporting requirements.

Each LEA that develops and maintains coordinated, early intervening services under 34 CFR 300.226 must annually report to the State educational agency (SEA) on:

- The number of children served under 34 CFR 300.226 who received early intervening services; and
- The number of children served under 34 CFR 300.226 who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

[34 CFR 300.226(d)] [20 U.S.C. 1413(f)(4)]

### 5. Establishes coordination with the ESEA<sup>3</sup>.

Funds made available to carry out 34 CFR 300.226 may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under 34 CFR 300.226.

[34 CFR 300.226(e)] [20 U.S.C. 1413(f)(5)]

(continued on next page) 

U.S. Department of Education's Topic Brief (on the Regulations)

## Early Intervening Services

### 6. Permits the use of funds for early intervening services.

The amount of funds expended by an LEA for early intervening services under 34 CFR 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under 34 CFR 300.205(a) of this section.

[34 CFR 300.205(d)] [20 U.S.C. 1413(a)(2)(C)(i)]

### 7. Requires early intervening services in the case of significant disproportionality.

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 34 CFR 300.646(a), the State or the Secretary of the Interior must...require any LEA identified under 34 CFR 300.646(a) to reserve the maximum amount of funds under section 613(f) of the Act [34 CFR 300.226] to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under 34 CFR 300.646(a) of this section.

[34 CFR 300.646(b)(2)] [20 U.S.C. 1418(d)(2)(B)]

### 8. Maintenance of Effort and Early Intervening Services

LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR 300.205(d) and use some of their Part B funds for early intervening services under 34 CFR 300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds that it uses for one purpose affect the amount that it may use for the other. Below are examples that illustrate how 34 CFR 300.205(d) and 300.226(a) affect one another.

Example 1: In this example, the amount that is 15 percent of the LEA's total grant (see 34 CFR 300.226(a)), which is the maximum amount that the LEA may use for early intervening services (EIS), is greater than the amount that may be used for local maintenance of effort (MOE) reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see 34 CFR 300.205(a)).

Prior Year's Allocation:	\$900,000
Current Year's Allocation:	\$1,000,000
Increase:	\$100,000
Maximum Available for MOE Reduction:	\$50,000
Maximum Available for EIS:	\$150,000

- If the LEA chooses to set aside \$150,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$150,000 for EIS means \$0 can be used for MOE).

(over) 

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 U.S. Department of Education's Topic Brief (on the Regulations)

## Early Intervening Services

- If the LEA chooses to set aside \$100,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$100,000 for EIS means \$0 can be used for MOE).
- If the LEA chooses to set aside \$50,000 for EIS, it may not reduce its MOE (MOE maximum \$50,000 less \$50,000 for EIS means \$0 can be used for MOE).
- If the LEA chooses to set aside \$30,000 for EIS, it may reduce its MOE by \$20,000 (MOE maximum \$50,000 less \$30,000 for EIS means \$20,000 can be used for MOE).
- If the LEA chooses to set aside \$0 for EIS, it may reduce its MOE by \$50,000 (MOE maximum \$50,000 less \$0 for EIS means \$50,000 can be used for MOE).

Example 2: In this example, the amount that is 15 percent of the LEA's total grant (see 34 CFR 300.226(a)), which is the maximum amount that the LEA may use for EIS, is less than the amount that may be used for MOE reduction (50 percent of the increase in the LEA's grant from the prior year's grant) (see 34 CFR 300.205(a)).

Prior Year's Allocation:	\$1,000,000
Current Year's Allocation:	\$2,000,000
Increase:	\$1,000,000
Maximum Available for MOE Reduction:	\$500,000
Maximum Available for EIS:	\$300,000

- If the LEA chooses to use no funds for MOE, it may set aside \$300,000 for EIS (EIS maximum \$300,000 less \$0 means \$300,000 for EIS).
- If the LEA chooses to use \$100,000 for MOE, it may set aside \$200,000 for EIS (EIS maximum \$300,000 less \$100,000 means \$200,000 for EIS).
- If the LEA chooses to use \$150,000 for MOE, it may set aside \$150,000 for EIS (EIS maximum \$300,000 less \$150,000 means \$150,000 for EIS).
- If the LEA chooses to use \$300,000 for MOE, it may not set aside anything for EIS (EIS maximum \$300,000 less \$300,000 means \$0 for EIS).
- If the LEA chooses to use \$500,000 for MOE, it may not set aside anything for EIS (EIS maximum \$300,000 less \$500,000 means \$0 for EIS).

[Appendix D to 34 CFR 300]

Available online at:

[www.nichcy.org/reauth/EarlyInterveningServices.pdf](http://www.nichcy.org/reauth/EarlyInterveningServices.pdf) (PDF)

[www.nichcy.org/reauth/EarlyInterveningServices.doc](http://www.nichcy.org/reauth/EarlyInterveningServices.doc) (Word)

# Inquiring Minds

Instructions: Work in groups of 4. Each of you has an assigned number—1, 2, 3, or 4. Answer the two questions below.

Time:  
You have 5 minutes.



Roles:

Number 1. "The Focuser" keeps the group focused on the task (and can also contribute to its answers).

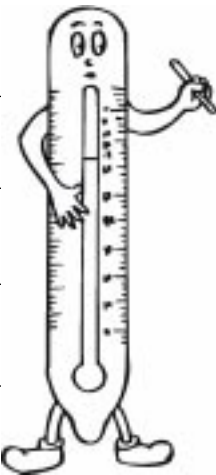
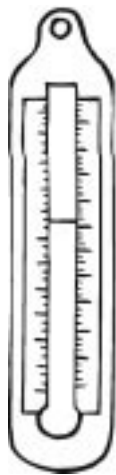
Number 2. "The Generator" answers the two questions below.

Number 3. "The Generator" also answers the two questions below.

Number 4. "The Notetaker" writes down what the group comes up with.

## 1—What Do You Already Know?

*Early Intervening Services (EIS)* and *Response to Intervention (RtI)* are two new elements in IDEA 2004. Rate how much your group already knows about these topics, using the "hot scales" below.

	<p>_____ <i>We know it all. We're hot!</i> _____</p> <p>_____ <i>"Most all."</i> _____</p> <p>_____ <i>"Not too much."</i> _____</p> <p>_____ <i>EIS? RtI? Huh?</i> _____</p>		<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<b>Early Intervening Services</b>		<b>Response to Intervention</b>	

## 2—What Would You Like to Know?

So—what would you like to know about these two topics? Using the back of this sheet, list 5 questions you'd like to have answered about Early Intervening Services and 5 questions you'd like answered about Response to Intervention.

(over) 

## 1—Our Questions about Early Intervening Services

1.

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2.

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3.

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4.

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5.

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## 2—Our Questions about Response to Intervention

1.

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2.

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3.

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4.

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5.

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IDEA 2004's Final Regulations for:

## Early Intervening Services

§300.226 Early intervening services.

**§300.226 Early intervening services.**

(a) *General.* An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D for examples of how §300.205(d), regarding local maintenance of effort, and §300.226(a) affect one another.)

(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 and other school staff to enable such personnel

to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) *Construction.* Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

(d) *Reporting.* Each LEA that develops and maintains coordinated, early intervening services under this section must annually report to the SEA on—

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.

### IDEA 2004's Definition of Scientifically Based Research

§300.35 Scientifically based research.

*Scientifically based research* has the meaning given the term in section 9101(37) of the ESEA.

*(See ESEA's definition on the other side of this handout.)*

(over) 

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## Early Intervening Services

(e) *Coordination with ESEA.* Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(f))

### ESEA's Definition of Scientifically Based Research

*Scientifically based research—*

(a) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(b) Includes research that—

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.



IDEA 2004's Final Regulations for:

## Maintenance of Effort

### §300.203 Maintenance of effort.

(a) *General.* Except as provided in §§300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

- (i) Local funds only.
- (ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.



*This page is included here to facilitate the two-sided photocopying of these handouts.*

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## Selected Provisions of IDEA 2004: Using Research-Based Interventions in Determining a Specific Learning Disability

### §300.307 Specific learning disabilities.

(a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

### §300.309 Determining the existence of a specific learning disability.

(a) The group described in §300.306 may determine that a child has a specific learning disability, as defined in §300.8(c)(10), if—

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following

areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving.

(2)(i) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

(i) A visual, hearing, or motor disability;

(over) 

## Using Research-Based Interventions in Determining a Specific Learning Disability

- (ii) Mental retardation;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

### §300.311 Specific documentation for the eligibility determination

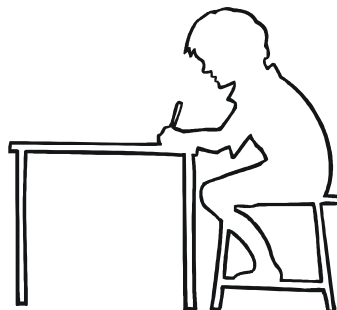
(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in §300.306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;



(continued on next page) 

## Using Research-Based Interventions in Determining a Specific Learning Disability

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with §300.309(a)(1); and

(ii)(A) The child does not make sufficient progress to meet age or State approved grade-level standards consistent with §300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with §300.309(a)(2)(ii);

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))





*This page is included here to facilitate the two-sided photocopying of these handouts.*

## IDEA Regulations

**Highly Qualified Teachers**

(See also Alignment with the No Child Left Behind Act)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the Act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the Act. The final regulations were published on August 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup> This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding highly qualified teachers.

IDEA Regulations**1. Establishes requirements for special education teachers teaching core academic subjects.**

For any public elementary or secondary school special education teacher teaching core academic subjects<sup>2</sup>, the term “highly qualified” has the meaning given the term in section 9101 of the ESEA<sup>3</sup> and 34 CFR 200.56, except that the requirements for highly qualified also include:

- The requirements for special education teachers in general described in 34 CFR 300.18(b) [see “Establishes requirements for special education teachers in general,” “Describes how a special education teacher can meet the general requirements when participating in an alternative route to certification program” and “Describes how a special education teacher who is not teaching a core academic subject can meet the requirements” in this document]; and
- The option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of 34 CFR 300.18(c) and (d) [see “Establishes requirements for special education teachers teaching to alternate achievement standards” and “Establishes requirements for special education teachers teaching multiple subjects” in this document].

[34 CFR 300.18(a)] [20 U.S.C. 1401(10)(A)]

<sup>1</sup> Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint

Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the IDEA website at: <http://IDEA.ed.gov>.

<sup>2</sup> “Core academic subjects” means English, reading or language arts, mathematics, foreign languages, civics and government, economics, arts, history and geography. 34 CFR 300.10.

<sup>3</sup> For purposes of this document, *No Child Left Behind* (NCLB) also is referred to as the *Elementary and Secondary Education Act* of 1965, as amended (ESEA).

<sup>4</sup> HOUSSE stands for “high objective uniform State standard of evaluation.”

U.S. Department of Education's Topic Brief (on the Regulations)

## Highly Qualified Teachers

### 2. Establishes requirements for special education teachers in general.

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that:

- The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
- The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- The teacher holds at least a bachelor's degree.

[34 CFR 300.18(b)(1)] [20 U.S.C. 1401(10)(B)]

### 3. Describes how a special education teacher can meet the general requirements when participating in an alternative route to certification program.

A teacher will be considered to meet the standard in 34 CFR 300.18(b)(1)(i) [see the requirement regarding full State certification in paragraph 2 of this document] if that teacher is participating in an alternative route to special education certification program under which the teacher:

- Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
- Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

- Assumes functions as a teacher only for a specified period of time not to exceed three years; and
- Demonstrates satisfactory progress toward full certification as prescribed by the State. The State ensures, through its certification and licensure process, that the provisions in 34 CFR 300.18(b)(2)(i) are met [see the requirements regarding alternative routes to certification in this paragraph].

[34 CFR 300.18(b)(2)] [20 U.S.C. 1401(10)(B)]

### 4. Describes how a special education teacher who is not teaching a core academic subject can meet the requirements.

Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of 34 CFR 300.18(b)(1) [see "Establishes requirements for special education teachers in general" in this document] or the requirements of 34 CFR 300.18(b)(1)(iii) [the requirement that the teacher holds at least a bachelor's degree] and (b)(2) [see "Describes how a special education teacher can meet the general requirements when participating in an alternative route to certification program" in this document].

[34 CFR 300.18(b)(3)] [20 U.S.C. 1401(10)(B)]

### 5. Establishes requirements for special education teachers teaching to alternate achievement standards.

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

- Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or



U.S. Department of Education's Topic Brief (on the Regulations)

## Highly Qualified Teachers

- not new to the profession; or
- Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

[34 CFR 300.18(c)] [20 U.S.C. 1401(10)(C)]

### 6. Establishes requirements for special education teachers teaching multiple subjects.

Subject to 34 CFR 300.18(e) [see "Provides for separate HOUSSE<sup>4</sup> standards for special education teachers" in this document], when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either:

- Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
- In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single HOUSSE covering multiple subjects; or
- In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school

teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

[34 CFR 300.18(d)] [20 U.S.C. 1401(10)(D)]

### 7. Provides for separate HOUSSE standards for special education teachers.

Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers:

- A State may develop a separate HOUSSE for special education teachers; and
- The standards described in 34 CFR 300.18(e)(1) [see the prior bullet] may include single HOUSSE evaluations that cover multiple subjects.

[34 CFR 300.18(e)] [20 U.S.C. 1401(10)]

### 8. Creates a rule of construction.

Notwithstanding any other individual right of action that a parent or student may maintain under Part 300, nothing in Part 300 shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency (SEA) or local educational agency (LEA) employee to be highly qualified, or to prevent a parent from filing a complaint under 34 CFR 300.151-300.153 about staff qualifications with the SEA as provided for under Part 300.

[34 CFR 300.18(f)] [20 U.S.C. 1401(10)(E)]

### 9. Describes the applicability of definition to ESEA and clarification of "new" special education teacher.

A teacher who is highly qualified under section 602(10) of IDEA [20 U.S.C. 1401(10)] shall be considered highly qualified for purposes of the ESEA.

U.S. Department of Education's Topic Brief (on the Regulations)

## Highly Qualified Teachers

For purposes of 34 CFR 300.18(d)(3) [see "Establishes requirements for special education teachers teaching multiple subjects," regarding new teachers, in this document], a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

[34 CFR 300.18(g)] [20 U.S.C. 1401(10)(F)]

### 10. Establishes that private school teachers are not covered under the highly qualified teacher standards.

The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under 34 CFR 300.138.

[34 CFR 300.18(h)] [20 U.S.C. 1401(10)]

### 11. Describes the responsibility of SEA regarding children with disabilities placed in or referred to a private school or facility by the SEA and LEAs.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of Part 300, except for 34 CFR 300.18 and 300.156(c).

[34 CFR 300.146(b)] [20 U.S.C. 1412(a)(10)(B)]

### 12. Establishes the responsibility of the SEA for personnel qualifications.

The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part 300 are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

[34 CFR 300.156(a)] [20 U.S.C. 1412(a)(14)]

### 13. Describes personnel qualifications regarding related services personnel and paraprofessionals.

The qualifications under 34 CFR 300.156(a) [see "Establishes the responsibility of the SEA for personnel qualifications" in this document] must include qualifications for related services personnel and paraprofessionals that:

- Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
- Ensure that related services personnel who deliver services in their discipline or profession meet the requirements of 34 CFR 300.156(b)(1) [see prior bullet] and have not had certification or licensure requirements waived on an emergency, temporary or provisional basis; and

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## Highly Qualified Teachers

- Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation or written policy, in meeting the requirements of Part 300 to be used to assist in the provision of special education and related services under Part 300 to children with disabilities.

[34 CFR 300.156(b)] [20 U.S.C. 1412(a)(14)(B)]

### 14. Establishes a deadline for special education teachers to be highly qualified.

The qualifications described in 34 CFR 300.156(a) [see "Establishes the responsibility of the SEA for personnel qualifications" in this document] must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of ESEA.

[34 CFR 300.156(c)] [20 U.S.C. 1412(a)(14)(C)]

### 15. Requires each State to adopt a policy on recruitment, training and retention.

In implementing 34 CFR 300.156, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train and retain highly qualified personnel to provide special education and related services under Part B to children with disabilities.

[34 CFR 300.156(d)] [20 U.S.C. 1412(a)(14)(D)]

### 16. Creates a rule of construction.

Notwithstanding any other individual right of action that a parent or student may maintain under Part 300, nothing in Part 300 shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under Part 300.

[34 CFR 300.156(e)] [20 U.S.C. 1412(a)(14)(E)]

### 17. Establishes the responsibility of the LEA for personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of 34 CFR 300.156 and section 2122 of the ESEA.

[34 CFR 300.207] [20 U.S.C. 1413(a)(3)]

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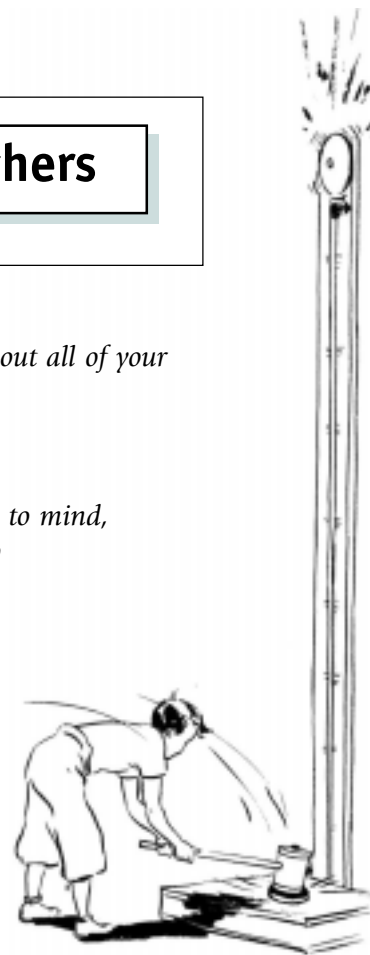


## Reflecting on Our Best Teachers

Answer the following questions from the context of the teachers YOU had throughout all of your schooling. Then share your answers in a small group.

1. The best teacher I ever had was named... *(If more than one teacher springs to mind, you've been fortunate indeed! Writing down more than 1 teacher is just fine, go ahead.)*

2. If I had to list a few reasons why she or he was my best teacher, I'd have to say... *(If you named more than 1 teacher above, then combine the reasons and list what, collectively, qualified them for your list of "Best.")*



3. Name the top 3 qualifications you think every *general education* teacher should have.

4. Name the top 3 qualifications you think every *special education* teacher should have.



*This page is included here to facilitate the two-sided photocopying of these handouts.*

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## ESEA's Definition of "Highly Qualified" Teachers

*Editor's note:* The IDEA Part B regulations state that "the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56" [§300.18(a)], except as provided in its own regulations (appearing on Handout B-12). While ESEA's definition of "highly qualified" is subject to change, as is IDEA's, we provide the current definition (as of December 20, 2006) for your reference.

The term "highly qualified"—

(A) When used with respect to any public elementary school or secondary school teacher teaching in a State, means that—

(i) The teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law; and

(ii) The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

(B) When used with respect to—

(i) An elementary school teacher who is new to the profession, means that the teacher—

(I) Holds at least a bachelor's degree; and

(II) Has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or



(ii) A middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

(I) Passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(II) Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

(C) When used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and—

(i) Has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

(ii) Demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that—

(over)

## ESEA's Definition of "Highly Qualified" Teachers

(I) Is set by the State for both grade appropriate academic subject matter knowledge and teaching skills;

(II) Is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

(III) Provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

(IV) Is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

(V) Takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

(VI) Is made available to the public upon request; and

(VII) May involve multiple, objective measures of teacher competency.



## Highly Qualified Teachers

§300.18 Highly qualified special education teachers.

(a) *Requirements for special education teachers teaching core academic subjects.* For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also—

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) *Requirements for special education teachers in general.* (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that—

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) *Requirements for special education teachers teaching to alternate achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(over) 

## Highly Qualified Teachers

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

(d) *Requirements for special education teachers teaching multiple subjects.* Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(e) *Separate HOUSSE standards for special education teachers.* Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

(g) *Applicability of definition to ESEA; and clarification of new special education teacher.* (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of §300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) *Private school teachers not covered.* The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under §300.138.

(Authority: 20 U.S.C. 1401(10))

IDEA 2004's Final Regulations:

## Access to Instructional Materials

§300.172 Access to instructional materials.

(a) *General.* The State must—

(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and

(2) Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.

(b) *Rights and responsibilities of SEA.* (1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.

(2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in §300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need

instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) *Preparation and delivery of files.* If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must—

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to—

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) *Assistive technology.* In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(over) 

## Access to Instructional Materials

(e) *Definitions.* (1) In this section and §300.210—

(i) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled “An Act to provide books for adult blind,” approved March 3, 1931, 2 U.S.C 135a;

(ii) *National Instructional Materials Access Center* or *NIMAC* means the center established pursuant to section 674(e) of the Act;

(iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in section 674(e)(3)(B) of the Act;

(iv) *Specialized formats* has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

§ 300.210 Purchase of instructional materials.

(a) *General.* Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under Sec. 300.172.

(b) *Rights of LEA.* (1) Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

(2) If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in Sec. 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.



### Referenced Definitions

“Blind Persons or Other Persons with Print Disabilities”

from the Library of Congress Regulations

The Library of Congress regulations related to the Act to Provide Books for the Adult Blind (approved March 3, 1931, 2 U.S.C. 135a) provide that “blind persons or other persons with print disabilities” include:

- Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees.
- Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.
- Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(continued on next page)

## Access to Instructional Materials

- Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner. [36 CFR 701.6(b)(1)]

### How IDEA's Statute Defines NIMAC— section 674(e)(1) and (2)

#### (e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

(1) IN GENERAL.—The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the “National Instructional Materials Access Center” not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

(2) DUTIES.—The duties of the National Instructional Materials Access Center are the following:

(A) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.

(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 612(a)(23) and 613(a)(6).

### “Competent Authority” from the Library of Congress Regulations— 36 CFR 701.6(b)(2)

*Competent authority* is defined as follows:

In cases of blindness, visual disability, or physical limitations “competent authority” is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any persons whose competence under specific circumstances is acceptable to the Library of Congress.

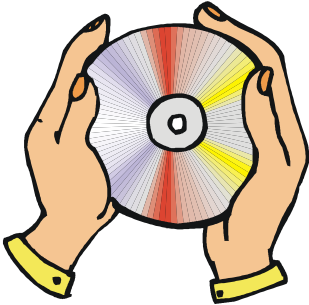
In the case of a reading disability from organic dysfunction, competent authority is defined to include doctors of medicine who may consult with colleagues in associated disciplines.

### How IDEA's Statute Defines “Print Instructional Materials” — 2 USC 1474(e)(3)(C)

(C) PRINT INSTRUCTIONAL MATERIALS.—The term “print instructional materials” means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

(over) 

## Access to Instructional Materials



“Specialized Formats”  
from the Copyright Act  
Section 121(d)(4) of title 17,  
United States Code

*Specialized formats* has the meaning given the term in section 121(d)(4) of title 17, United States Code:

(A) Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities.

(B) With respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (71 Fed. Reg. at 46621)