Analysis of the 2006 IDEA Part B Final Regulations

This analysis of the 2006 IDEA Part B final regulations focuses on issues that impact speech-language pathology or audiology services in school settings. Published in the Federal Register on August 14, 2006, the Part B final regulations implement the recently enacted changes made to the Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446, or commonly known as IDEA 2004) that can be viewed in its entirety on ASHA's IDEA website at http://www.asha.org/advocacy/federal/idea/default/.

The Department of Education (ED) also released IDEA model forms in keeping with the 2004 reauthorization of the IDEA, wherein Congress included a requirement that the Secretary publish and disseminate model forms widely to states, local educational agencies, and parent and community training and information centers by the date of publication of the Part B final regulations. Model IEPs, notice of procedural safeguards, and prior written notices, can be accessed at ED’s website at http://idea.ed.gov/.

Additional information of specific aspects of the Part B regulations will follow over the coming months as developed by an IDEA Member Advisory Group (MAG) and a National Office staff team. Please continue to check ASHA’s IDEA website at http://www.asha.org/advocacy/federal/idea/default/ for further updates.

HIGHLIGHTS OF CRITICAL ISSUES

Personnel Qualifications (§300.156)

The final regulations removed the provision that requires state education personnel standards to meet the highest requirement for a profession or discipline in that state. This removal is consistent with a change in the IDEA 2004 statute. However, the final regulations do require:

¶ The State Education Agency (SEA) establish and maintain qualifications to ensure that personnel are appropriately and adequately prepared and trained and have the content knowledge and skills to serve children with disabilities;

¶ The qualifications for related services personnel and paraprofessionals are consistent with any State approved or State-recognized certification, licensing, registration, or other comparable requirements;

¶ State requirements not be waived on an emergency, temporary, or provisional basis; and
States must adopt a policy that includes a requirement that Local Education Agencies (LEAs) take measurable steps to recruit, hire, train, and retain highly qualified personnel.

The regulations also allow the use of paraprofessionals and assistants who are appropriately trained and supervised. ED points out in its discussion, that the Act should not be construed to permit or encourage the use of paraprofessionals as a replacement for special education teachers or related services providers.

The regulations specify that States may reserve a portion of their allocations to assist LEAs in meeting personnel shortages (see §300.704(b)(4)(vii)).

In its discussion, ED indicated that its intent is to provide greater flexibility for SEAs to establish appropriate personnel standards. It believes that states have sufficient incentives to ensure that related services providers deliver services of appropriate quality so that children with disabilities can achieve to high standards. Regarding the use of paraprofessionals and assistants, ED emphasized that these personnel are not directly responsible for the provision of special education and related services to children with disabilities; rather, they provide services only under the supervision of special education and related services personnel.

Finally, ED stated that, although many strategies for recruitment and retention of qualified personnel are effective, it did not include specific strategies in the regulations because these strategies vary depending on the unique needs of each State and Local Education Agency.

**Early Intervening Services (§300.26)**

The final regulations include a new provision that an LEA may use up to 15 percent of the Part B funds it receives to develop and implement coordinated, early intervening services for children who have not been identified as eligible under the Act, but who need additional academic and behavioral support to succeed in a general education environment. These services are for students in kindergarten through grade 12, with particular emphasis on students in kindergarten through grade three.

These activities include professional development for teachers and related service providers as well as educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. Although related services providers, including speech-language pathologists and audiologists, are not specifically listed, ED notes that there is nothing in the Act or regulations preventing States and LEAs from including related services personnel in these services.

ED commented that nothing is to be construed to delay an appropriate evaluation of a child suspected of having a disability. ED did not consider it appropriate or necessary to specify a timeframe. If a child receiving early intervening services is suspected of having a disability, the LEA must conduct a full and individual evaluation.
Individualized Education Plan (IEP) (§§300.320-.328)

The final regulations include a number of changes regarding the IEP:

Definition of individualized education program (300.320(a)(4)): benchmarks or short-term objectives are now required only for children with disabilities who take alternate assessments aligned to alternate achievement standards.

Transition services (§300.320): the law changed the age at which transition services must be provided to a child with a disability from 14 years to 16 years. The regulations are consistent with this change, but include the phrase “or younger if determined appropriate by the IEP Team.”

Construction of state requirements (300.320(d)): If a state requires IEPs to include information beyond that which is explicitly required in section 614 IDEA’04, the state must identify in writing to its LEAs and the Secretary that it is a state-imposed requirement and not one based on the law or regulations.

IEP Team attendance (§300.321): A member of the IEP Team does not have to attend the IEP meeting if that member’s area is not being modified or discussed, and the parent and LEA agree to this in writing. Also, a member of the IEP Team may be excused from attending the IEP meeting that includes a modification or discussion of the member’s area if the parent and LEA agree in writing and the member submits written input prior to the meeting. In its comments, ED was firm in leaving the decision of member attendance and excusal up to the LEA and parent rather than further regulating terms of the decision.

Considerations when developing the IEP (300.324): Added to the list of considerations is “the academic, developmental, and functional needs of the child” and deleted “as appropriate, the results of the child’s performance on any general state or district-wide assessment programs” to reflect wording changes in the Act.

Consolidation of IEP Team meetings (§300.324): To the extent possible, LEAs must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

Amendments to the IEP (300.324(a)(4)): IEPs may be amended without an IEP Team meeting if the parent and LEA agree to this. This is intended to benefit parents by providing flexibility. LEAs are required to inform the IEP Team of the changes that were made without an IEP Team meeting.

Alternative means of meeting participation (§300.328): The LEA and parent may agree to use alternative means of meeting participation, such as video conferences and conference calls.
**Additional Findings** - the following two provisions were in the 1999 final regulations, but subsequently removed from the 2005 proposed regulations, have been reinstated in the 2006 final regulations:

*Parent participation* (§300.322): ED retained the requirement from the 1999 IDEA final regulations that the LEA must ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

*Consideration of special factors* (§300.324): ED retained the requirement that when the IEP is reviewed and revised, the IEP Team must consider the same special factors considered when the IEP was developed.

**Related Services Exception (§300.34(b))**

The final regulations added a new section 300.34(b) entitled “Exception; services that apply to children with surgically implanted devices, including cochlear implants,” and clarifies that related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

A new §300.34(b)(2) has been added to make clear that nothing in the previous paragraph: (A) limits the right of a child with a surgically implanted device (e.g., a cochlear implant) to receive related services that are determined by the IEP Team to be necessary for the child to benefit from special education; (B) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or (C) prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly.

In their discussion, ED indicated that the language in §300.34(b) was added to clarify that mapping a cochlear implant is an example of device optimization and is not a related service under the Act, as reflected in the Senate Report to the statute. ED also indicated that the exclusion of mapping as a related service is not intended to deny a child with a disability assistive technology (e.g., FM system), proper classroom acoustical modifications, educational support services (e.g., educational interpreters), or routine checking to determine if the external component of a surgically implanted device is turned on and working. Neither does the exclusion of mapping as a related service preclude a child with a cochlear implant from receiving the related services (e.g., speech and language services) that are necessary for the child to benefit from special education services. Each child’s IEP Team, which includes the child’s parent along with school officials, determines the related services, and the amount of services, that are required for the child to benefit from special education.
Routine Checking Of Hearing Aids and External Components or Surgically Implanted Medical Services (§300.113)

The final regulations added a provision (§300.113(b)(1)) that requires each public agency to ensure that the external components of surgically implanted medical devices are functioning properly. Also added was §300.113(b)(2) to make it clear that, for a child with a surgically implanted medical device who is receiving special education and related services, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

In its discussion, ED further stated that the public agency is responsible for the routine checking of the external components of a surgically implanted device in much the same manner as a public agency is responsible for the proper functioning of a hearing aid, for example, to see that the device is turned on and functioning properly.

Evaluation Procedures (§300.304)

The final regulations retained the requirement in the 1999 final IDEA regulations that assessment and other evaluation materials be provided and administered in the child’s native language or other mode of communication. The 2006 regulations include an additional provision that states the assessment and evaluation materials must also be “in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally”.

Disproportionality (§300.646)

The final regulations added a provision requiring states to review ethnicity data in addition to race data to determine the presence of disproportionality. The 2006 regulations also require states to include a review of disproportionality with respect to disciplinary actions. In the event that significant disproportionality is determined, the state will not only be required to review and revise policies, procedures, and practices, but they will also require the LEA to reserve the maximum amount of funds under 613(f) to provide early intervening services to children in the LEA, “particularly, but not exclusively” to those in groups that were significantly overidentified. Additionally, the LEA will be required to publicly report on the revision of policies, practices, and procedures. This is stricter than the previous 1999 regulations on disproportionality and is supported with funding to address the problem. ED referenced their guidance to states on methods for assessing disproportionality, which can be found at http://www.ideadata.org/docs/Disproportionality%20Technical%20Assistance%20Guide.pdf.
Additional Procedures for Identifying Children with Specific Learning Disabilities
(§300.307-311)

The final regulations related to identifying children with specific learning disabilities (SLD) have some significant changes, although similar to the 1999 regulations. The 2006 regulations for IDEA 2004 indicate that states:

- Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability;
- Must permit the use of a process based on the child’s response to scientific, research-based intervention; and
- May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

Although the regulations do not indicate that states may prohibit use of a discrepancy model, ED indicated in their discussions that IDEA 2004 indicates that states are free to prohibit the use of a discrepancy model.

The regulations indicate that states “must permit the use of a process based on the child’s response to scientific, research-based intervention.” This means states can use what is usually referred to as a Responsiveness-to-Intervention (RTI) model to determine if a child is suspected of having SLD. ED also indicated that an RTI process does not replace the need for a comprehensive evaluation. Determining why a child has not responded to research-based interventions requires a comprehensive evaluation. A public agency must use a variety of data gathering tools and strategies and cannot rely on any single procedure (e.g., RTI) as the sole criterion for determining eligibility for special education and related services.

This requirement applies to all children suspected of having a disability, including those suspected of having SLD. If the state uses alternative research-based procedures for determining whether a child has SLD, ED has made it clear that it does not support the use of identification procedures that are not based on scientific research. Models or procedures that claim to assist in identifying a child with SLD, but are not based on sound scientific research, are not appropriate and should not be adopted by LEAs or states.

The regulations indicate that the determination of whether a child suspected of having SLD is a child with a disability must be made by the child’s parents and a team of qualified professionals, which must include… “at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.”