



**The Division for Early Childhood (DEC)  
of the Council for Exceptional Children**

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These comments are provided on behalf of the Division for Early Childhood of the Council for Exceptional Children (DEC) in response to the Part B NPRM published in the Federal Register on June 21, 2005. DEC is a professional membership organization whose mission is to promote policies and advance evidence-based practices that support families and enhance the optimal development of young children who have or are at risk for developmental delays and disabilities. DEC appreciates the opportunity to provide the following comments and recommendations on the draft regulations.

1. DEC recommends the following language be included in the final regulations at 300.320(a)(1):
  - (1) A statement of the child's present levels of academic achievement and functional performance, **(for preschool children, present levels of development and functional performance)** including--
    - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children); or
    - (ii) For preschool children, as appropriate, how the disability affects the child's participation in developmentally **and age** appropriate **curriculum and** activities;
  
2. DEC recommends the following language be included in the final regulations at 300.320(a)(2)(i):
  - (2)(i) A statement of measurable annual goals, including academic and functional goals **(for preschool children, developmental and functional goals)** designed to--
    - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational **(or for preschool children developmental needs)** that result from the child's disability;

3. DEC recommends clarification on how the following language at 300.320(a)(2)(ii) applies to preschoolers:  
(2)(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
4. DEC recommends that under §300.320(a)(3)(ii) of the proposed regulations that the regulations clarify that periodic progress reports on annual goals must be provided **to parents as least as often as those for children without IEPs.**
5. DEC recommends the following language be included in the final regulations at 300.320(a)(5):  
(5) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the **regular class, (for preschool children, settings with typically developing peers)** and in the activities described in paragraph (a)(4) of this section;
6. DEC supports the NPRM language and recommends the following be added in the final regulations at 300.323(b):  
“...the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations...” **and “The IEP Team must explain the changes in services and settings in the initial IEP meeting”**
7. DEC recommends the following language be included in the final regulations at 300.321(f):  
In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent **(who must be informed in writing of this option)**, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.
8. DEC recommends that the language at 300.111(b) be revised to be consistent with IDEA 2004 and proposed regulatory language at §300.8(b) which does clarify that local school districts can select subsets of age ranges when determining their policy to use developmental delay to determine preschoolers eligible for Part B.

**Therefore, 34 CFR 300.111(b)(iii) should also read that LEAs may select specific subset(s) of state allowable age ranges.**

9. DEC appreciates the addition of “travel training instruction” to the related services language and further recommends that the definition of “travel training”, as included in the definition of special education, be referenced in the related services language.
10. DEC recommends that the regulations related to highly qualified teachers apply to private school teachers who teach in private schools where the public agency places children with disabilities. Children with disabilities whose education is guaranteed by IDEA have the right to a qualified teacher.
11. DEC recommends that language be clear in the final Part B regulations that IDEA personnel qualifications include preschool special education teachers. Revised personnel qualifications language in IDEA 2004 states- "The State educational agency has established and maintains qualifications to ensure that *personnel necessary to carry out this part* are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities." (Sec. 612(a)(14)).

IDEA 2004 further includes specific language related to special education teachers at the elementary, middle and secondary level; related services personnel; and paraprofessionals. Although preschool special education teachers are not specifically addressed in this language, DEC believes the statutory language is clear that preschool special education teachers are included in the above reference related to “personnel necessary to carry out this part.” *It is difficult to imagine that statutory intent is to require states to set standards for personnel who provide services to children birth to three and six through 21 years, but not for personnel who provide services to children aged 3-5 years.*

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

12. The new statutory language adds “school nurse services designed to enable a child with a disability to receive a FAPE as described in the IEP of the child” to the list of related services. (Sec. 602 (26)). *DEC is concerned that the new*

*language may limit the current regulation and requests that regulatory language ensure that other qualified personnel will continue to provide "school health services."*

13. DEC recommends that current regulatory language contained at 300.125(c) be retained. The current language reads as follows:

**(c) Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different.**

**(1) In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of this section, a description of the nature and extent of the Part C lead agency's participation must be included under paragraph (b)(2) of this section.**

**(2) With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers with disabilities.**

**(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section.**

14. DEC recommends that language at 300.106 related to extended school year (ESY) services be revised to ensure that ESY services are available as appropriate to preschoolers with disabilities. DEC recommends that (a)(3)(i) be revised to state that public agencies may not limit ESY to particular categories of disabilities **or age ranges** ... and that the definition at (b)(1) read "are provided to a child, **including a preschooler**, with a disability".

15. IDEA 2004 includes language that allows for the provision of early intervening services for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. (Sec. 613(f)) *DEC notes that the statute is silent on providing early intervening services for children aged 3 to 5 and does not restrict this provision for use in preschool. Given the current emphasis on early academic and behavioral support, DEC recommends that the regulations specify this provision can be applied to the entire age range under Part B of 3-21 years.*

16. Regarding the new language for children transferring from in state or out of state in 300.323(e) DEC recommends clarification on these requirements

including what constitutes “comparable services” and how differences in individual states’ eligibility definitions are accounted for in such transfers.

17. DEC requests regulatory language be included for the term “scientifically-based” and the guidance should be aligned with NCLB language as long as the guidance ensures that single-subject, correlational, and qualitative research are included in the definition along with random assignment experiments.
18. DEC recommends regulatory language on “peer-reviewed research” be consistent with the work of the National Research Council (2005). Further, related to the matter of involving consumers in the peer review process, DEC asks that the Department find ways of involving consumers that do not compromise the quality of the review decisions. Examples of this, which should be considered, are found in NCR report (e.g. participating in retrospective reviews of agency portfolios, serving on priority-setting committees).
19. DEC recommends that the language in current regulations at 300.20(b)(2) related to the definition of a foster parent be retained in the final regulations.
20. DEC recommends that the language in current regulations at 300.342(b)(3) stating that **each teacher and provider described in paragraph (b)(2) of this section is informed of his or her specific responsibilities related to implementing the child’s IEP** be retained in final Part B regulations.
21. DEC recommends that the language at 300.346(b) be retained to ensure that “special factors” be considered at initial IEP meetings and during reviews as well.
22. DEC recommends that language from §300.346(c) be retained in the final regulations. The term “device” is not included in the NPRM and should be specifically addressed in §300.320(a)(4).
23. DEC recommends that the language at 300.345(e) in current regulations be retained as follows- “The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents who are deaf, or whose native language is other than English.” *Clearly the opportunity to participate is dependant upon a parent understanding the discussions occurring at the meeting.* The regulations must be clear on what is required to ensure that “parents have an opportunity to participate in meetings.”

24. DEC recommends that language at §300.501(c)(4) be retained in the final regulations at §300.501(c)(4). The language is clearer and more explicit in defining the responsibilities of the public agency when documenting attempts to contact the parents when determining the placement of a child without the parents' involvement.
25. DEC recommends that clarification be provided related to the new provision at §300.504(b) in the proposed regulations related to public agencies placing a current copy of procedural safeguards notice on its website. DEC requests clarification that this practice would not replace Part B requirements regarding providing a copy of this notice to individual parents in accordance with the Part B requirements.
26. The NPRM language at 300.504(c)(5)(iii) indicates that states are required to include in the procedural safeguards notice "(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;" DEC recommends that OSERS clarify the "matters related to jurisdiction" and "what issues may be raised in the final regulations" as these should be consistent nationwide and not vary state to state.
27. Proposed regulations language at 300.519(f) indicates that in the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to requirements that employees involved in the care of the child are prohibited from being a surrogate, until a surrogate can be appointed that meets all of the requirements. DEC recommends that OSERS clarify the "temporary" nature of the appointment (i.e., How long can this be done?) and how the provisions in the NPRM that address the criteria for selecting a surrogate parent (no conflict of interest and adequate knowledge and skills) apply in these instances.
28. DEC recommends that all definitions from other statutes should be included in the IDEA regulations to make them more user friendly to all stakeholders (e.g. homeless, LEP,)
29. DEC recommends that the language at 300.115 be revised to include - Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, **including preschool children**, for special education and related services. *This language is*

*necessary to ensure that a full continuum is required for consideration of placements for preschool children. There is still confusion in the field regarding this requirement for preschoolers with disabilities.*

30. DEC **strongly** recommends that the additional phrase added to 300.116(b)(3) and (c) “**unless the parent agrees otherwise**” be deleted in the final regulations. The addition of this language is not consistent with the statute, longstanding OSEP policy or case law regarding each children’s right to receive their services in the LRE.
31. DEC recommends that language in Subpart F related to monitoring be revised to ensure that it is consistent with Part C (including the use of terms such as lead agency, early intervention, local providers, etc.). This will avoid confusion and reinforce understanding that monitoring and enforcement activities also apply to the Part C program.
32. DEC supports the incorporation of the 619 preschool regulations in the Part B regulations at 300.800 – 818.

Thank you for this opportunity. DEC is ready to provide assistance at your request. For further information, please contact Sarah Mulligan, DEC Executive Director at 406-543-0872, ext. 224/sarah.mulligan@dec-spced.org; Lynette Chandler, DEC President, at 815-753-8424/lchandler@niu.edu; Diana LaRocco, Chair of DEC’s Governmental Relations Committee at 860-768-5807/dlarocco@hartford.edu; or Sharon Walsh, DEC Consultant at 703-250-4935 or walshtaylo@aol.com.