These excerpts include most, but not all of the references to post-secondary transition (but not Part C to Part B) in the 2006 Regulations for IDEA 2004. Page numbers may not all be correct.

 John Willis 3/17/14

**§ 300.43 Transition services.**

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially

designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(34))

**§ 300.320 Definition of individualized education program.**

(b) *Transition services.* Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments

related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

(c) *Transfer of rights at age of majority.* Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.

(d) *Construction.* Nothing in this section shall be construed to require—

(1) That additional information be included in a child’s IEP beyond what is explicitly required in section 614 of the Act; or (2) The IEP Team to include information under one component of a child’s IEP that is already contained under another component of the child’s IEP. (Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6))

**§ 300.321 IEP Team.**

(b) *Transition services participants.*

(1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).

(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child’s preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

**§ 300.322 Parent participation.**

(b) *Information provided to parents.*

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition

services for the child, in accordance with § 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

**§ 300.324 Development, review, and revision of IEP.**

(c) *Failure to meet transition objectives*—

(1) *Participating agency failure.* If a participating agency, other than the public agency, fails to provide

the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the

child set out in the IEP.

(2) *Construction.* Nothing in this part relieves any participating agency, including a State vocational

rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) *Children with disabilities in adult prisons*—

(1) *Requirements that do not apply.* The following requirements do not apply to children with disabilities

who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) *Modifications of IEP or placement.*

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child’s IEP

or placement if the State has demonstrated a bona fide security or compelling penological interest that

cannot otherwise be accommodated. (ii) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

**§ 300.622 Consent.**

 (2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3).

**Excerpts from Commentary**

**Federal Register** /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations **46578 *ff.***

Transition Services (New § 300.43) (Proposed § 300.42)

*Comment:* One commenter recommended replacing the word ‘‘child’’ with ‘‘student’’ in the definition

of *transition services*.

*Discussion:* The definition of *transition services* follows the language in section 602(34) of the Act. The words ‘‘child’’ and ‘‘student’’ are used throughout the Act and we have used the statutory language in these regulations whenever possible.

*Changes:* None.

*Comment:* One commenter recommended that the regulations include vocational and career training

through work-study as a type of transition service. A few commenters stated that the definition of *transition services* must specify that a student’s need for transition services cannot be based on the category or severity of a student’s disability, but rather on the student’s individual needs.

*Discussion:* We do not believe it is necessary to change the definition of *transition services* because the

definition is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. The definition clearly states that decisions regarding transition services must be made on the basis of the child’s individual needs, taking into account the child’s strengths, preferences, and interests. As with all special education and related services, the student’s IEP Team determines the transition services that are needed to provide FAPE to a child with a disability based on the needs of the child, not on the disability category or severity of the disability. We do not believe further clarification is necessary.

*Changes:* None.

*Comment:* A few commenters stated that the regulations do not define ‘‘functional’’ or explain how a student’s functional performance relates to the student’s unique needs or affects the student’s education. The commenters noted that the word ‘‘functional’’ is used throughout the regulations in various forms, including ‘‘functional assessment,’’ ‘‘functional goals,’’ ‘‘functional abilities,’’ ‘‘functional needs,’’ ‘‘functional achievement,’’ and ‘‘functional performance,’’ and should be defined to avoid confusion. One commenter recommended either defining the term or explicitly authorizing States to define the term.

One commenter recommended clarifying that ‘‘functional performance’’ must be a consideration for any child with a disability who may need services related to functional life skills and not just for students with significant cognitive disabilities. A few commenters stated that the definition of *transition services* must specify that ‘‘functional achievement’’ includes achievement in all major life functions, including behavior, social-emotional development, and daily living skills.

*Discussion:* We do not believe it is necessary to include a definition of ‘‘functional’’ in these regulations

because the word is generally used to refer to activities and skills that are not considered academic or related to a child’s academic achievement as measured on Statewide achievement tests. There is nothing in the Act that would prohibit a State from defining ‘‘functional,’’ as long as the definition and its use are consistent with the Act. We also do not believe it is necessary for the definition of *transition services* to refer to all the major life functions or to clarify that functional performance must be a consideration for any child with a disability, and not just for students with significant cognitive disabilities. As with all special education and related services, the student’s IEP Team determines the services that are needed to provide FAPE to a child with a disability based on the needs of the child.

*Changes:* None.

*Comment:* One commenter requested a definition of ‘‘results-oriented process.’’

*Discussion:* The term ‘‘results oriented process,’’ which appears in the statutory definition of *transition*

*services*, is generally used to refer to a process that focuses on results. Because we are using the plain meaning of the term (i.e., a process that focuses on results), we do not believe it is necessary to define the term in these regulations.

*Changes:* None.

*Comment:* A few commenters stated that ‘‘acquisition of daily living skills and functional vocational evaluation’’ is unclear as a child does not typically ‘‘acquire’’ an evaluation. The commenters stated that the phrase should be changed to ‘‘functional vocational skills.’’

*Discussion:* We agree that the phrase is unclear and will clarify the language in the regulation to refer to the ‘‘provision of a functional vocational evaluation.’’

*Changes:* We have added ‘‘provision of a’’ before ‘‘functional vocational evaluation’’ in new

§ 300.43(a)(2)(v) for clarity.

**Federal Register** /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations **46581 *ff.***

Limitation—Exception to FAPE for Certain Ages (§ 300.102)

*Comment:* One commenter requested that the regulations clarify that children with disabilities who do not receive a regular high school diploma continue to be eligible for special education and related services. One commenter expressed concern that the provision in § 300.102(a)(3)(ii) regarding children with disabilities who have not been awarded a regular high school diploma could result in the delay of transition services in the context of the child’s secondary school experience and postsecondary goals.

*Discussion:* We believe that § 300.102(a)(3) is sufficiently clear that public agencies need not make FAPE available to children with disabilities who have graduated with a regular high school diploma and that no change is needed to the regulations. Children with disabilities who have not graduated with a regular high school diploma still have an entitlement to FAPE until the child reaches the age at which eligibility ceases under the age requirements within the State. However, we have reviewed the regulations and believe that it is important for these regulations to define ‘‘regular diploma’’ consistent with the ESEA regulations in 34 CFR § 200.19(a)(1)(i). Therefore, we will add language to clarify that a regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or general educational development (GED) credential. We do not believe § 300.102 could be interpreted to permit public agencies to delay implementation of transition

services, as stated by one commenter because transition services must be provided based on a child’s age, not the number of years the child has remaining in the child’s high school career. Section 300.320(b), consistent with section 614(d)(1)(A)(i)(VIII) of the Act, requires each child’s IEP to include, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by

the IEP Team, appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching those goals.

*Changes:* A new paragraph (iv) has been added in § 300.102(a)(3) stating that a regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or GED.

*Comment*: One commenter requested clarification as to how States should include children with disabilities who require special education services through age 21 in calculating, for adequate yearly progress (AYP) purposes, the percentage of children who graduate with a regular high school

diploma in the standard number of years. The commenter expressed concern that States, in order to comply with their high school graduation rate academic outcome requirements under the ESEA, will change the grade status from 12th grade to 11th grade for those children with disabilities who will

typically age out of the public education system under the Act. The commenter further stated that this will affect the exception to FAPE provisions in § 300.102 for children with disabilities who require special education services through age 21.

*Discussion:* The calculation of graduation rates under the ESEA for AYP purposes (34 CFR 200.19(a)(1)(i)) does not alter the exception to FAPE provisions in § 300.102(a)(3) for children with disabilities who graduate from high school with a regular high school diploma, but not in the standard

number of years. The public agency must make FAPE available until age 21 or the age limit established by State law, even though the child would not be included as graduating for AYP purposes under the ESEA. In practice, though, there is no conflict between the Act and the ESEA, as the Department

interprets the ESEA title I regulations to permit States to propose a method for accurately accounting for students who legitimately take longer than the standard number of years to graduate.

*Changes:* None.

**Residential Placement: (§ 300.104)**

*Comment:* A few commenters requested that the regulations clarify that parents cannot be held liable for

any costs if their child with a disability is placed in a residential setting by a public agency in order to provide FAPE to the child.

*Discussion:* Section 300.104, consistent with section 612(a)(1) and (a)(10)(B) of the Act, is a longstanding provision that applies to placements that are made by public agencies in public and private institutions for educational purposes and clarifies that parents are not required to bear the costs of a public or private residential placement if such placement is determined necessary to provide FAPE. If a public agency determines in an individual situation that a child with a disability cannot receive FAPE from the

programs that the public agency conducts and, therefore, placement in a public or private residential program is necessary to provide special education and related services to the child, the program, including non-medical care and room and board, must be at no cost to the parents of the child. In situations where a child’s educational needs are inseparable from the child’s emotional needs and an individual determination is made that the child requires the therapeutic and habilitation services of a residential

program in order to ‘‘benefit from special education,’’ these therapeutic and habilitation services may be

‘‘related services’’ under the Act. In such a case, the SEA is responsible for ensuring that the entire cost of that child’s placement, including the therapeutic care as well as room and board, is without cost to the parents. However, the SEA is not responsible for providing medical care. Thus, visits to a doctor for treatment of medical conditions are not covered services under Part B of the Act and parents may

be responsible for the cost of the medical care.

*Changes:* None.

**Federal Register** /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations **46644 *ff.***

*Comment:* Many commenters recommended that evaluations for other institutions (e.g., vocational

rehabilitation agencies, colleges and universities) should be required before a child graduates from secondary school with a regular diploma or exceeds the age limit for FAPE. However, a number of commenters disagreed and stated that public agencies should not be required to conduct evaluations that will be used to meet the entrance or eligibility requirements of another institution or agency. One commenter requested clarification regarding whether schools must provide updated evaluations for

college testing and admissions purposes and recommended including language in the regulations that explicitly states that public agencies are not required to conduct tests that are needed for admission to postsecondary programs.

Another commenter recommended that the regulations clarify that LEAs have responsibility for providing the postsecondary services that are included in the summary of the child’s academic achievement and functional performance. One commenter requested requiring a reevaluation before a child exits the school system. Another commenter recommended clarifying that a comprehensive evaluation is not required for children aging out of special education. A number of commenters provided recommendations on the information that should be included in the summary of a child’s academic and functional performance required in § 300.305(e)(3).

Commenters suggested that the summary report should include information about the child’s disability;

the effect of the disability on the child’s academic and functional performance (sufficient to establish eligibility under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, if

appropriate); any needed modifications or adaptations essential to the child’s success; the child’s most recent evaluations by professionals, including the child’s academic achievement and functional performance levels; assistive technology and other supports used by the child; and any modifications and

supports that would facilitate the child’s successful transition to postsecondary education or employment.

*Discussion:* We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act. While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child’s eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child’s academic achievement and functional performance. We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations. It would be inconsistent with the Act to require public agencies to conduct evaluations for children who are exiting the school system because they exceed the age for eligibility under State law.

Section 300.305(e)(2), consistent with section 614(c)(5)(B)(i) of the Act, is clear that an evaluation in accordance with §§ 300.304 through 300.311 is not required before the termination of a child’s eligibility under the Act due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under State law. Section 300.305(e)(3), consistent with section 614(c)(5)(B)(ii) of the Act, states that the summary required when a child graduates with a regular diploma or exceeds the age eligibility under State law must include information about the child’s academic achievement and functional performance, as well as recommendations on how to assist the child in meeting the child’s

postsecondary goals. The Act does not otherwise specify the information that must be included in the summary and we do not believe that the regulations should include a list of required information. Rather, we believe that State and local officials should have the flexibility to determine the appropriate content in a child’s summary, based on the child’s individual needs and postsecondary goals.

*Changes:* None.

*Comment:* One commenter stated that public agencies should not be required to conduct an evaluation of a child who graduates with a regular diploma because a regular diploma means that the child has met the same requirements and achieved the same or similar level of competency as the child’s nondisabled classmates. The commenter also requested that the regulations define a regular diploma to mean that the child has reached a comparable level of achievement as the child’s nondisabled classmates.

*Discussion:* Section 300.305(e)(2) specifically states that a public agency does not need to evaluate a child with a disability who graduates with a regular diploma. In addition, as noted in the *Analysis of Comments and Changes* section for subpart B, we have clarified in § 300.101(a)(3)(iv) that a regular

diploma does not include alternate degrees, such as a general educational development (GED) credential. We do not believe that any further clarification with respect to the definition of ‘‘regular diploma’’ is necessary.

*Changes:* None.

**46667 *ff.* Federal Register** / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations

Transition Services (§ 300.320(b))

*Comment:* Many commenters disagreed with changing the age at which transition services must be

provided to a child with a disability from 14 years to 16 years. One commenter recommended that

transition services begin at age 13. Another commenter recommended that transition services begin before high school, because if there is a choice of high schools, transition goals may be a determining factor in the selection process. A few commenters requested that the regulations clarify that States may continue to begin transition services with the first IEP after the child turns age 14. Some commenters recommended that transition begin two to four full school years before the child is expected to graduate because some

children may exit school at age 17.

Numerous commenters recommended that the regulations clarify that States have discretion to require transition services to begin before age 16 for all children in the State. However, a few commenters recommended removing the phrase ‘‘or younger if determined appropriate by the IEP Team’’ in

§ 300.320(b) because the language is not in the Act and promotes additional special education services.

A few commenters recommended that the regulations require transition planning to begin earlier than age 16 if necessary for the child to receive FAPE.

Other commenters recommended clarifying that, in order for transition services to begin by age 16, transition assessments and other pre-planning needs that would facilitate movement to post-school life must be completed prior to the child’s 16th birthday. One commenter recommended requiring

transition planning to begin no later than the child’s freshman year in high school and that this planning include selecting assessment instruments and completing assessments that will lead to the development of transition goals and objectives in the child’s IEP.

*Discussion:* Section 614(d)(1)(A)(i)(VIII) of the Act requires that transition services begin no later than the first IEP to be in effect when the child turns 16. Because IEP Team decisions must always be individualized, we have included the phrase ‘‘or younger if determined appropriate by the IEP Team’’ in

§ 300.320(b). The Act does not require transition planning or transition assessments, as recommended by some commenters. Therefore, consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require that IEPs include this information because it is beyond what is specifically required in the Act. The Department believes that a State could require transition services, if it

chose to do so, to begin before age 16 for all children in the State. However, consistent with

§ 300.199(a)(2) and section 608(a)(2) of the Act, a State that chooses to require transition services

before age 16 for all children would have to identify in writing to its LEAs and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the Act and Federal regulations.

*Changes:* None.

*Comment:* A few commenters recommended that § 300.320(b) clarify that the child is a participating IEP

Team member and that the IEP Team is required to consider the child’s preferences in developing transition goals and services.

*Discussion:* The clarification requested is not needed because § 300.321(b)(1) already requires the public agency to invite a child with a disability to attend the child’s IEP Team meeting, if a purpose of the meeting is to consider the child’s postsecondary goals and the transition services needed to assist the child to reach those goals. In addition, § 300.321(b)(2) requires the public agency to take steps to ensure that the child’s preferences and interests are considered, if the child does not attend the IEP Team meeting. We believe that this is sufficient clarification that, for the purposes mentioned by the commenter, the child

is a participating IEP Team member.

*Changes:* None.

*Comment:* A few commenters requested that the regulations clarify whether ‘‘transition assessments’’ are

formal evaluations or competency assessments. One commenter stated that transition assessments should be different for a college-bound child with a disability than for a child with severe disabilities whose future is a group home.

*Discussion:* We do not believe the requested clarification is necessary because the specific transition

assessments used to determine appropriate measurable postsecondary goals will depend on the individual

needs of the child, and are, therefore, best left to States and districts to determine on an individual basis.

*Changes:* None.

*Comment:* One commenter requested clarification of the term ‘‘postsecondary goals.’’ Another commenter recommended defining ‘‘postsecondary goals’’ in the definition section of these regulations.

*Discussion:* We do not believe it is necessary to include a definition of ‘‘postsecondary goals’’ in the

regulations. The term is generally understood to refer to those goals that a child hopes to achieve after leaving secondary school (i.e., high school).

*Changes:* None.

*Comment:* One commenter requested clarification regarding whether § 300.320(b)(1) requires measurable

postsecondary goals in each of the areas of training, education, employment, and, independent living skills.

*Discussion:* Beginning not later than the first IEP to be in effect when the child turns 16 years of age, section 614(d)(1)(A)(i)(VIII)(aa) of the Act requires a child’s IEP to include measurable postsecondary goals in the areas of training, education, and employment, and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate. It is up to the child’s IEP Team to determine whether IEP goals related to the development of independent living

skills are appropriate and necessary for the child to receive FAPE.

*Changes:* None.

*Comment:* Some commenters recommended that the regulations retain the requirement in current

§ 300.347(b)(1) that requires IEPs to include a statement of the transition service needs of the child under

applicable components of the child’s IEP that focus on the child’s courses of study (such as participation in advanced-placement courses or a vocational education program).

*Discussion:* The requirement referred to by the commenter is already in the regulations. Section 300.320(b)(2) includes a reference to ‘‘courses of study’’ as part of transition services, consistent with section 614(d)(1)(A)(i)(VIII)(bb) of the Act. The examples in current § 300.347(b)(2) (i.e., advanced placement course or a vocational education program) are not included in § 300.320(b)(2) because we

do not believe they are necessary to understand and implement the requirement.

*Changes:* None.

*Comment:* Several commenters recommended that the regulations explicitly require transition services to

include vocational and career training through work-study and documentation of accommodations needed in the workplace.

*Discussion:* The Act does not require IEPs to include vocational and career training or documentation of workplace accommodations. Consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require IEPs to include information beyond what is specifically required in the Act. It is up to each child’s IEP Team to determine the transition services that are needed to meet the unique transition needs of the child.

*Changes:* None.

*Comment:* A few commenters recommended that the regulations clarify that schools can use funds

provided under Part B of the Act to support children in transitional programs on college campuses and in

community-based settings.

*Discussion:* We do not believe that the clarification requested by the commenters is necessary to add to the regulations because, as with all special education and related services, it is up to each child’s IEP Team to determine the special education and related services that are needed to meet each child’s unique needs in order for the child to receive FAPE. Therefore, if a child’s IEP Team determines that a child’s needs can best be met through participation in transitional programs on college campuses or in community based settings, and includes such services on the child’s IEP, funds provided under Part B of the Act may be used for this purpose.

*Changes:* None.

*Comment:* One commenter recommended more accountability for transition services.

*Discussion:* The Act contains significant changes to the monitoring and enforcement requirements under

Part B of the Act. Section 300.600, consistent with section 616(a) of the Act, requires the primary focus of monitoring to be on improving educational results and functional outcomes for children with disabilities. The provisions in section 616(a) and (b)(2)(C)(ii) of the Act set forth the responsibility of States to monitor the implementation of the Act, enforce the Act, and annually report on performance of the State and each LEA. Section 300.600(c), consistent with section 616(a)(3) of the Act, requires States to measure performance in monitoring priority areas using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance. Section 300.601 reflects statutory language in section 616(b) of the Act and requires States to have a performance plan that evaluates their efforts to implement the requirement and purposes of the Act. Transition services are specifically being addressed

in State performance plans. We believe that these changes to the monitoring and enforcement requirements will ensure that States and LEAs are held accountable for the transition services they provide.

*Changes:* None.

*Comment:* One commenter requested that the regulations be revised to include an affirmative statement that transition services can be used to drive the IEP for the child.

*Discussion:* It would be inappropriate to include such a requirement in these regulations because, while section 614(d)(1)(A)(i)(VIII) of the Act includes transition services in a child’s IEP, there is no suggestion that it be the only component or the component that governs a child’s IEP.

*Changes:* None.

**Transfer of Rights at Age of Majority (§ 300.320(c))**

*Comment:* One commenter recommended that the regulations specify how the child is to be informed

of the transfer of rights. The commenter also recommended that the regulations require public agencies to explain to the child the rights that will transfer to the child on reaching the age of majority.

*Discussion:* The specific manner in which a child is informed about his or her rights is best left to States, districts, and IEP Teams to decide, based on their knowledge of the child and any unique local or State requirements. Section 300.320(c), consistent with section 614(d)(1)(A)(i)(VIII)(cc) of the Act, already requires the IEP to include a statement that the child has been informed of the child’s rights under Part

B of the Act, if any, that will transfer to the child on reaching the age of majority. We do not believe further clarification is necessary.

*Changes:* None.

*Comment:* One commenter stated that § 300.320(c) is redundant with § 300.520.

*Discussion:* Sections 300.320 and 300.520 are related, but not redundant. Section 300.320(c) requires the IEP to include a statement that the child has been informed of the child’s rights under Part B of the Act that will transfer to the child on reaching the age of majority. Section 300.520 provides additional information about the transfer of rights as part of the procedural safeguards for parents and children under the Act.

*Changes:* None.

**46671-46673 Federal Register** / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations

Transition Services Participants (§ 300.321(b))

*Comment:* A few commenters recommended requiring the public agency to invite the child with a

disability to attend the child’s IEP Team meeting no later than age 16 or at least two years prior to the child’s expected graduation, whichever comes first.

*Discussion:* The commenters’ concerns are addressed in § 300.321(b), which requires the public agency to invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching the child’s postsecondary goals. Furthermore, a child’s IEP must include

transition services beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP Team, consistent with § 300.320(b).

*Changes:* None.

*Comment:* One commenter requested that the regulations clarify that parents and children are not required to use the transition services offered by agencies that the school invites to the IEP Team meeting.

*Discussion:* There is nothing in the Act or these regulations that requires a parent or child to participate in

transition services that are offered by agencies that the public agency has invited to participate in an IEP Team meeting. However, if the IEP Team determines that such services are necessary to meet the needs of the child, and the services are included on the child’s IEP, and the parent (or a child who has reached the age of majority) disagrees with the services, the parent (or the child who has reached the age of

majority) can request mediation, file a due process complaint, or file a State complaint to resolve the issue. We do not believe further clarification in the regulations is necessary.

*Changes:* None.

*Comment:* A few commenters recommended requiring the public agency to include all the notice requirements in § 300.322(b) with the invitation to a child to attend his or her IEP Team meeting. The commenters stated that children need to be fully informed about the details and purpose of the meeting in order for them to adequately prepare and, therefore, should have the same information that is provided to other members of the IEP Team.

*Discussion:* We decline to make the suggested change. We believe it would be overly burdensome to require a public agency to include all the notice requirements in § 300.322(b) with an invitation to a child to attend his or her IEP Team meeting, particularly because the information is provided to the child’s parents who can easily share this information with the child. However, when a child with a disability reaches the age of majority under State law, the public agency must provide any notice required by the Act to both the child and the parents, consistent with § 300.520 and section 615(m)(1)(A) of the Act.

*Changes:* None.

*Comment:* One commenter requested clarification regarding the public agency’s responsibility to invite a child who has not reached the age of majority to the child’s IEP Team meeting when a parent does not want the child to attend.

*Discussion:* Section 300.321(b)(1) requires the public agency to invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, regardless of whether the child has reached the age of majority. However, until the child reaches the age of majority under State law, unless the rights of the parent to act for the child are extinguished or otherwise limited,

only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP Team meeting.

*Changes:* None.

*Comment:* A few commenters expressed concern that § 300.321(b) does not require children to have

sufficient input as a member of the IEP Team and recommended requiring the IEP Team to more strongly consider the child’s preferences and needs.

*Discussion:* Section 300.321(a)(7) includes the child as a member of the IEP Team, when appropriate, and

§ 300.321(b)(1) requires the public agency to invite the child to the child’s IEP Team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. Further, if the child does not attend the IEP Team meeting, § 300.321(b)(2) requires the public agency to take other steps to ensure that the child’s

preferences and interests are considered. We believe this is sufficient to ensure that the child’s preferences

and needs are considered and do not believe that any changes to § 300.321(b) are necessary.

*Changes:* None.

*Comment:* One commenter stated that the requirements in § 300.321(b), regarding transition services

participants, are not in the Act, are too rigid, and should be modified to provide more flexibility for individual children.

*Discussion:* We believe that, although not specified in the Act, the requirements in § 300.321(b) are

necessary to assist children with disabilities to successfully transition from high school to employment,

training, and postsecondary education opportunities. We believe it is critical for children with disabilities to be involved in determining their transition goals, as well as the services that will be used to reach those goals. Section 300.321(b), therefore, requires the public agency to invite the child to attend IEP Team meetings in which transition goals and services will be discussed. If the child does not attend the IEP Team meeting, § 300.321(b)(2) requires the public agency to take other steps to ensure that the child’s

preferences and interests are considered. We also believe that, when it is likely that a child will be involved with other agencies that provide or pay for transition services or postsecondary services, it is appropriate (provided that the parent, or a child who has reached the age of majority, consents) for

representatives from such agencies to be invited to the child’s IEP Team meeting. The involvement and collaboration with other public agencies (e.g., vocational rehabilitation agencies, the Social Security Administration) can be helpful in planning for transition and in providing resources that will help

children when they leave high school. We believe that children with disabilities will benefit when transition services under the Act are coordinated with vocational rehabilitation services, as well as other supports and programs that serve all children moving from school to adult life. Therefore, we decline to change the requirements in § 300.321(b).

*Changes:* None.

*Comment:* One commenter stated that § 300.321(b)(1), which requires the public agency to invite the child to an IEP Team meeting when transition is to be considered, duplicates § 300.321(a)(7), which requires a child with a disability to be invited to his or her IEP Team meeting, whenever possible.

*Discussion:* These two provisions are not redundant. Section 300.321(a)(7) requires the public agency to include the child with a disability, when appropriate (not ‘‘whenever possible,’’ as stated by the commenter), in the child’s IEP Team meeting, and, thus, provides discretion for the parent and the public agency to determine when it is appropriate to include the child in the IEP Team meeting. Section 300.321(b), on the other hand, requires a public agency to invite a child to attend an IEP Team meeting when the purpose of the meeting will be to consider the postsecondary goals for the child and the transition services needed to assist the child to reach those goals. The Department believes it is important for a child with a disability to participate in determining the child’s postsecondary goals and for the IEP Team to consider the child’s preferences and interests in determining those goals.

*Changes:* None.

*Comment:* Many commenters recommended removing the requirement in § 300.321(b)(3) for

parental consent (or consent of a child who has reached the age of majority) before inviting personnel from participating agencies to attend an IEP Team meeting because it is burdensome, may reduce the number of agencies participating in the IEP Team meeting, and may limit the options for transition

services for the child. The commenters stated that this consent is unnecessary under FERPA, and inconsistent with § 300.321(a)(6), which allows the parent or the agency to include other individuals in the IEP Team who have knowledge or special expertise regarding the child.

*Discussion:* Section 300.321(b)(3) was included in the regulations specifically to address issues related to the confidentiality of information. Under section 617(c) of the Act the Department must ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, irrespective of the requirements under FERPA. We continue to believe that a public agency should be required to obtain parental consent (or the consent of a child who has reached the age of majority) before inviting representatives from other participating agencies to attend an IEP Team meeting, consistent with § 300.321(b)(3). We do not believe that the requirements in § 300.321(b)(3) are inconsistent with § 300.321(a)(6). Section 300.321(a)(6) permits other individuals who have knowledge or special expertise regarding the child to attend the child’s IEP Team meeting at the discretion of the parent or the public

agency. It is clear that in § 300.321(b)(3), the individuals invited to the IEP Team meeting are representatives from other agencies who do not necessarily have special knowledge or expertise

regarding the child. In these situations, we believe that consent should be required because representatives of these agencies are invited to participate in a child’s IEP Team meeting only because they may be providing or paying for transition services. We do not believe that representatives of these agencies should have access to all the child’s records unless the parent (or the child who has reached the age of

majority) gives consent for such a disclosure. Therefore, we believe it is important to include the requirement for consent in § 300.321(b)(3).

*Changes:* None.

*Comment:* Some commenters recommended removing the phrase, ‘‘to the extent appropriate’’ in

§ 300.321(b)(3) and requiring public agencies to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to the IEP Team meeting.

*Discussion:* We disagree with the recommended change because the decision as to whether to invite a

particular agency to participate in a child’s IEP Team meeting is a decision that should be left to the public agency and the parent (or the child with a disability who has reached the age of majority).

*Changes:* None.

*Comment:* Numerous commenters recommended retaining current § 300.344(b)(3)(ii), which requires the

public agency to take steps to ensure the participation of invited agencies in the planning of any transition services when the agencies do not send a representative to the IEP Team meeting. These commenters stated that the participation of other agencies is vital to ensuring that the child receives the necessary services. One commenter requested that the regulations clarify that, aside from inviting other agencies

to attend a child’s IEP Team meeting, public agencies have no obligation to obtain the participation of agencies likely to provide transition services.

*Discussion:* The Act has never given public agencies the authority to compel other agencies to participate in the planning of transition services for a child with a disability, including when the requirements in

§ 300.344(b)(3)(ii) were in effect. Without the authority to compel other agencies to participate in the planning of transition services, public agencies have not been able to meet the requirement in current

§ 300.344(b)(3)(ii) to ‘‘ensure’’ the participation of other agencies in transition planning. Therefore, while we believe that public agencies should take steps to obtain the participation of other agencies in the planning of transition services for a child, we believe it is unhelpful to retain current § 300.344(b)(3)(ii).

*Changes:* None.

*Comment:* A few commenters recommended that the regulations require the public agency to put parents

in touch with agencies providing transition services.

*Discussion:* We do not believe it is necessary to regulate to require public agencies to put parents in touch with agencies providing transition services. As a matter of practice, public agencies regularly provide information to children and parents about transition services during the course of planning and developing transition goals and determining the services that are necessary to meet the child’s transition goals.

*Changes:* None.

*Comment:* One commenter asked whether a parent could exclude an individual from the IEP Team.

*Discussion:* A parent can refuse to provide consent only for the public agency to invite other agencies that are likely to be responsible for providing or paying for transition services. A parent may not exclude any of the required members of the IEP Team.

*Changes:* None.

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**Failure To Meet Transition Objectives (§ 300.324(c))**

*Comment:* One commenter recommended that § 300.324(c) emphasize collaboration between public

agencies providing education and transportation in order to resolve problems concerning a child’s

transportation IEP objectives related to transition.

*Discussion:* Section 300.321(b)(3) requires the IEP Team to invite a representative of any agency that is

likely to be responsible for providing or paying for transition services, when appropriate, and with the consent of the parent (or a child who has reached the age of majority). In addition, § 300.154(a), consistent with section 612(a)(12) of the Act, requires each State to ensure that an interagency agreement

or other mechanism for interagency coordination is in effect between each non-educational public agency and the SEA, in order to ensure that services needed to ensure FAPE are provided. Section 300.154(b) and section 612(a)(12)(B)(i) of the Act specifically refer to interagency agreements or other mechanisms for interagency coordination with agencies assigned responsibility under State policy to provide special education or related services relating to transition. This would include a public agency that is

responsible for transportation under State policy. We believe this is sufficient to address the commenter’s

concern.

*Changes:* None.

*Comment:* A few commenters requested that § 300.324(c)(1) clarify that public agencies are under a legal

obligation to provide services related to the transition objectives in a child’s IEP.

*Discussion:* It is not necessary to include additional language in § 300.324(c)(1). Section 300.101,

consistent with section 612(a)(1)(A) of the Act, requires each SEA to ensure that the special education and related services that are necessary for the child to receive FAPE are provided in conformity with the child’s IEP. If an agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to develop alternative strategies to meet the transition objectives for the child set out in the child’s IEP, consistent with section 614(d)(6) of the Act and § 300.324(c)(1).

*Changes:* None.

*Comment:* One commenter stated that SEAs and LEAs should not be allowed to restrict the types of services provided to children with disabilities simply because they are incarcerated.

*Discussion:* We disagree with the commenter. The Act allows services to be restricted for a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison. Section 614(d)(7)(B) of the Act states that the IEP Team of a child with a disability who is convicted as an adult

under State law and incarcerated in an adult prison may modify the child’s IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. Further, the LRE requirements in § 300.114 and the requirements related to transition services in § 300.320 do not apply.

*Changes:* None.

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**Consent (§ 300.622)**

*Comment:* One commenter suggested requiring schools to obtain parental consent before disclosing personally identifiable information to any party, unless authorized by 34 CFR part 99. Another commenter requested clarification regarding the requirements in § 300.622.

*Discussion:* We agree that § 300.622 should be revised to more accurately reflect the Department’s policies regarding when parental consent is or is not required for disclosures of personally identifiable information to officials of participating agencies, and other individuals and entities. In some instances, current § 300.571 (proposed § 300.622) has been construed to prohibit disclosures without parental

consent under this part that would be permitted without parental consent under FERPA. Accordingly, when final regulations for this program were issued in 1999, we amended current § 300.571(a) (proposed § 300.622(a)) to clarify that the release of disciplinary records to law enforcement authorities could occur without parental consent, to the extent that such disclosure was permitted under FERPA. In order to

more clearly state the Department’s longstanding position that consent is required for disclosures of personally identifiable information to parties, other than officials of participating agencies collecting or using the information under this part, unless the information is contained in education records and

the disclosure is allowed without parental consent under 34 CFR part 99, we are reorganizing

§ 300.622(a). Under FERPA and § 300.622(a), schools, generally, must have written permission from the parent (or child who has reached the age of majority) in order to release information from a child’s education records. However, there are exceptions to this general rule under FERPA that also apply to the

records of children with disabilities and permit the release of information from education records without parental consent. Under 34 CFR 99.31(a), schools can disclose education records without consent under the circumstances specified in § 99.31 including if the disclosure meets one or more of the following conditions: School officials with legitimate educational interests, as determined by the educational agency or institution; Other schools where the student seeks or intends to enroll, subject to the requirements of § 99.34; Specified authorized representatives, subject to the requirements of § 99.35, in connection with an audit or evaluation of Federal or State-supported education programs, or compliance with or enforcement of Federal legal requirements which relate to those programs; Appropriate parties in connection with financial aid to a student for which the student has applied or which the student has received, if necessary for specified purposes; Organizations conducting certain studies for or on behalf of the school; Accrediting organizations; To comply with a judicial order or lawfully issued subpoena; Appropriate officials in cases of health and safety emergencies; and State and local authorities, within a juvenile justice system, pursuant to specific State law. We believe that the changes to § 300.622(a) state more clearly that under § 300.622, disclosures of personally identifiable information from education records of children with disabilities can be made without parental consent if the disclosure without parental consent would be permissible under FERPA. For example, in a situation involving a health emergency, information from a child with a disability’s education records could be released to a hospital without

parental consent in order to ensure that the child received appropriate emergency health services.

Under proposed § 300.622(b), parental consent is not required for disclosures of personally identifiable information to officials of participating agencies for purposes of carrying out a requirement of this part. This is not a new requirement; proposed § 300.622(b) is the same as current § 300.571(b). However, we believe the requirement should be stated more clearly, and therefore, are changing the language in

paragraph (b). We believe that this provision is particularly important to ensure that participating agencies have the information they need to carry out the requirements of this part in an effective manner. For example, if another State agency provides school health services under the Act, consent would not be required for a school nurse to have access to personally identifiable information in a child’s education

records in order to provide the school health services that are included on the child’s IEP. However, despite the recognition that officials of participating agencies need access to records of children with

disabilities to carry out the requirements of this part, there are important privacy concerns that we feel need to be protected in certain specified situations. We believe that parental consent should be required before personally identifiable information can be released to representatives of participating agencies who are likely to provide or pay for transition services in accordance with § 300.321(b)(3). Representatives of

these agencies, generally, are invited to participate in a child’s IEP meeting because they may be providing or paying for transition services. We do not believe that the representatives of these agencies should have access to all the child’s records unless the parent (or the child who has reached the age of

majority) gives consent for the disclosure. We are, therefore, adding a new paragraph (b)(2) in § 300.622 to make this clear. We also believe it is important to be clear about the confidentiality requirements for children who are placed in private schools by their parents, given the significant change in the child find requirements for these children. Under section 612(a)(10)(A)(i)(II) of the Act, child find for these children now is the responsibility of the LEA in which the private school is located and not the child’s LEA of residence. We can anticipate situations in which there may be requests for information to be exchanged between the two LEAs, such as when a child is evaluated and identified as a child with a disability by

the LEA in which the private school is located and the child subsequently returns to public school in the LEA of residence. We believe under such circumstances parental consent should be required before personally identifiable information is released between officials of the LEA where a private school is located and the LEA of the parent’s residence. We believe that consent is important in these situations

to protect the privacy of the child and the child’s family. Therefore, we are adding a new paragraph (b)(3) to § 300.622 to make this clear. We are removing the requirement in proposed § 300.622(c) (current

§ 300.571(c)), which requires the SEA to provide policies and procedures that are used in the event that a parent refuses to provide consent under this section. This is already included in § 300.504(c)(3), which requires the procedural safeguards notice to include, among other things, a full explanation of the parental consent requirements and the opportunity to present and resolve complaints through the due process or

State complaint procedures.

*Changes:* We have reorganized § 300.622 to more accurately reflect the Department’s policy regarding when parental consent is and is not required for disclosures of personally identifiable information to officials of participating agencies, and other individuals and entities. We made changes to § 300.622(a) and added a new paragraph (b)(1) to clarify the Department’s longstanding policy that consent is required for disclosures of personally identifiable information to parties, unless the interested parties are officials of participating agencies, collecting or using the information under this part, or the information is contained in education records and the disclosure is allowed without parental consent under FERPA. We added a new paragraph (b)(2) to clarify that parental consent is required for the disclosure of information to participating agencies that likely may provide or pay for transition services. We also added a new paragraph (b)(3) to require parental consent for the disclosure of records of parentally placed private school children between LEAs. Finally, we removed the requirement in proposed § 300.622(c) (current § 300.571(c)), because the information is included in § 300.504(c)(3).

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**Transition Requirements**

Section 300.321(b) modifies previous regulations regarding transition services planning for children with disabilities who are 16 through 21 years old. Public agencies are still required to invite other agencies that are likely to be responsible for providing or paying for transition services to the child’s IEP Team meeting. If the invited agency does not send a representative, public agencies are no longer required to take additional steps to obtain the participation of those agencies in the planning of transition, as required under former § 300.344(b)(3)(ii). Public agencies will realize savings from the change to the extent that they will not have to continue to contact agencies that declined to participate in IEP Team meetings on transition planning. In school year 2006–2007, we project that public agencies will conduct 1.193 million meetings for children with disabilities who are 16 through 21 years old. We used data from the *National Longitudinal Transition Study 2* (NLTS2) on school contacts of outside agency personnel to project the

number of instances in which outside agencies would be invited to IEP Team meetings during the 2006–2007 school year. Based on these data, we project that schools will invite 1.492 million personnel from other agencies to Individualized Education Program (IEP) Team meetings for these students during

the 2006–2007 school year. The NLTS2 also collected data on the percentage of children with a transition plan for whom outside agency staff were actively involved in transition planning. Based on these data, we project that 432,800 (29 percent) of the contacts will result in the active participation of outside agency personnel in transition planning for children with disabilities who are age 16 through 21. We base our estimate of the savings from the change on the projected 1,059,200 (71 percent) instances in which outside agencies will not participate in transition planning despite school contacts that, under the

previous regulations, would have included both an invitation to participate in the child’s IEP Team

meeting and additional follow-up attempts. If public agencies made only one additional attempt to contact the outside agency and each attempt required 15 minutes of administrative personnel time, then the change will save $6.6 million (based on an average hourly compensation for office and administrative support staff of $25). Studies of best practices conducted by the National Center on Secondary

Education and Transition indicate that effective transition planning requires structured interagency collaboration. Successful approaches cited in the studies included memoranda of understanding between relevant agencies and interagency teams or coordinators to ensure that educators, State agency personnel and other community service providers share information with parents and children with disabilities. The previous regulations focused on administrative contact instead of active strategic partnerships between agencies that facilitate seamless transitions for children with disabilities between school and adult settings. For this reason, the Department believes that the elimination of the non-statutory requirement that public agencies make additional attempts to contact other agencies will reduce administrative

burden and allow public agencies to focus their efforts on interagency collaborative transition planning for

children with disabilities.