

Notice of Proposed Rulemaking (NPRM)
DEPARTMENT OF EDUCATION
34 CFR Parts 300, 301 and 304

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NOTE: The official version of this document is the document published in the Federal Register. This document has been delivered to the Office of the Federal Register but a publication date has not yet been scheduled. Publication is expected in the near future.

Excerpts from Draft Federal Regulations regarding SLD:

In the following discussion of proposed regulatory changes, we identify the changes that would be made to existing regulations after consideration of these factors.

Proposed Regulatory Changes

Definitions Used In This Part [page 13-14]

Finally, in paragraph (c)(10)(i) of proposed §300.8, which contains a definition of the term specific learning disability, the word "the" would be substituted for "an" before the phrase "imperfect ability to listen, think, . . ." reflecting the addition of "the" in section 602(30)(A) of the Act.

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Evaluations and Reevaluations [pages 117-125]

Additional Procedures for Evaluating Children With Specific Learning Disabilities

Proposed §§300.307 through 300.311 would revise §§300.540 through 300.543 of the current regulations regarding additional procedures for evaluating children suspected of having specific learning disabilities and would implement the new requirements of section 614(b)(6) of the Act. Proposed §300.307(a) would generally require a State to adopt criteria for determining whether a

child has a specific learning disability (SLD) as defined in proposed §300.8. Specifically, proposed §300.307(a)(1) would allow States to prohibit the use of a severe discrepancy between achievement and intellectual ability criterion for determining whether a child has an SLD. Proposed §300.307(a)(2) would make it clear that the State may not require LEAs to use a discrepancy model for determining whether a child has an SLD. In addition, proposed §300.307(a)(3) would require States to permit a process that examines whether the child responds to scientific, research-based intervention as part of the evaluation procedures. Proposed §300.307(a)(4) would allow States to permit the use of other alternative procedures for determining whether a child has an SLD as defined in §300.8. Proposed §300.307(b) would clarify that a public agency must use State criteria in determining whether a child has an SLD.

Recent consensus reports and empirical syntheses concur in suggesting major changes in the approach to the identification of an SLD. These reports recommend abandoning the IQ-discrepancy model and recommend the use of response to intervention (RTI) models (Donovan & Cross, 2002; Lyon et al., 2001; President's Commission on Excellence in Special Education, 2002; Stuebing et al., 2002). These reports find that SLD is a group of heterogeneous disorders, but recommend changes in the seven domains identified in current §300.541(a)(2) because of areas of difficulty for students with SLD that have not been identified under current regulations (e.g., reading fluency).

There are many reasons why use of the IQ-discrepancy criterion should be abandoned. The IQ-discrepancy criterion is potentially harmful to students as it results in delaying intervention until the student's achievement is sufficiently low so that the discrepancy is achieved. For most students, identification as having an SLD occurs at an age when the academic problems are difficult to remediate with the most intense remedial efforts (Torgesen et al., 2001). Not surprisingly, the "wait to fail" model that exemplifies most current identification practices for students with SLD does not result in significant closing of the achievement gap for most students placed in special education. Many students placed in special education as SLD show minimal gains in achievement and few actually leave special education (Donovon & Cross, 2002).

The use of the IQ-discrepancy drives assessment practices for most special education services (President's Commission on Excellence in Special Education,

2002). Nationwide, virtually every student considered for special education eligibility receives IQ tests. This practice consumes significant resources, with the average cost of an eligibility evaluation running several thousand dollars (MacMillan & Siperstein, 2002; President's Commission on Excellence in Special Education, 2002). Yet these assessments have little instructional relevance and often result in long delays in determining eligibility and therefore services.

Alternative models are possible. The type of model most consistently recommended uses a process based on systematic assessment of the student's response to high quality, research-based general education instruction. The Department strongly recommends that States consider including this model in its criteria. Other models focus on the assessment of achievement skills identifying SLD by examining the strengths and weaknesses in achievement, or simply rely on an absolute level of low achievement. These models are directly linked to instruction. (Fletcher, et al., 2003). Other models use alternative approaches to determining aptitude-achievement discrepancies that do not involve IQ, including multiple assessments of cognitive skills. However, these models do not identify a unique group of low achievers and maintain a focus on assessment as opposed to intervention. In considering alternative models for identification, we believe that the focus should be on assessments that are related to instruction, and that identification should promote intervention. For these reasons, models that incorporate response to a research-based intervention should be given priority in any effort to identify students with SLD. Identification models that incorporate response to intervention represent a shift in special education toward the goals of better achievement and behavioral outcomes for students identified with SLD because the students who are identified under such models are most likely to require special education and related services.

Proposed §300.308, regarding eligibility group members, would revise §300.540 of the current regulations. Under this proposed regulation, the group making the determination of whether a child has an SLD would include a special education teacher. Further, this proposed regulation would require that the group be collectively qualified to conduct individual diagnostic assessments relevant to SLD, interpret and apply critical analysis to assessment data, develop appropriate educational and transitional recommendations, and deliver specifically designed instruction and services to meet the needs of students

with SLD. It is intended that the group described in proposed §300.308 would serve as the required group under proposed §300.306(a)(1).

The current requirements in §300.541 permit the group to determine that an SLD is present if the child does not achieve commensurate with his or her age and ability levels and if the group finds a severe discrepancy between achievement and intellectual ability. Proposed §300.309 would address the elements required for determining the existence of an SLD and would revise §300.541 of the current regulations in light of the statutory provision in section 614(b)(6)(A) of the Act, which protects LEAs from being required to use a severe discrepancy between intellectual ability and academic achievement. Under the proposed regulations, the first element of a determination that a child has an SLD is a finding that the child does not achieve commensurate with the child's age in one or more of the eight specified areas when provided with learning experiences appropriate to the child's age.

The second element for a determination that a child has an SLD is a finding that the child failed to make sufficient progress in meeting State-approved results when using a response to scientific, research-based intervention process, or the child exhibits a pattern of strengths and weaknesses that the team determines is relevant to the identification of an SLD. The pattern of strengths and weaknesses may be in performance, achievement, or both or may be in performance, achievement, or both relative to intellectual development. Proposed §300.309(a)(3) would incorporate the exclusions from section 602(30)(C) of the Act and would prohibit the eligibility group from finding an SLD if the SLD is primarily the result of other visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. These exclusions are in addition to the special rule for eligibility determination in section 614(b)(5) of the Act and proposed §300.306(b).

Proposed §300.309(b) would require the group to consider evidence that the child was provided appropriate instruction prior to, or as a part of, the referral process. These requirements would emphasize the importance of using high-quality, research-based instruction in regular education settings consistent with relevant sections of the ESEA, including that the instruction was delivered by qualified personnel. Also important is evidence that data-based documentation reflecting formal assessment of progress during instruction

through repeated assessments of achievement at reasonable intervals is provided to the parents and documentation that the timelines described in proposed §§300.301 and 300.303 are adhered to, unless extended by mutual written agreement of the child's parents and a group of qualified professionals as described in §300.308. These requirements would be included in §300.309(c) and (d), respectively, of the proposed regulations.

Proposed §300.310 would revise §300.542 of the current regulations regarding observation. Proposed §300.310(a) would require that at least one member of the group described in proposed §300.308, other than the child's teacher, who observes the child be trained in observation. This should ensure that the group member or members conducting the observation know what to look for when they observe the child. Proposed §300.310(a) also would provide additional parameters for conducting the observation, and would specify that the observation document academic performance and behavior in the areas of difficulty. Proposed §300.310(b) would be substantively unchanged from §300.542(b) of the current regulations.

Proposed §300.311, regarding a written report, would revise §300.543 of the current regulations and incorporate much of the content of that section. The proposed regulation would remove the reference in §300.543(a)(6) of the current regulation as to whether a child has a severe discrepancy between achievement and ability that is not correctable without special education and related services and the reference in current §300.543(a)(7) regarding the effects of environmental, cultural, and economic disadvantage. This language is included in proposed §300.306. Proposed §300.311(a)(5) would require that the report address only whether the child does not achieve commensurate with the child's age rather than the discrepancy model referred to in current §300.531(a)(2). The proposed regulation also would require that the written report address two additional factors: whether there are strengths and weaknesses in performance or achievement, or both, or relative to intellectual development that require special education and related services; and the instructional strategies used and the response to student data collected if the response to the scientific, research-based process was implemented. These additional provisions should ensure that the report is a more useful document for educators in determining the existence of an SLD. It is intended that the written report in this section would serve as the required evaluation report

and documentation of the determination of eligibility as required by proposed §300.306(a)(2).

**ADDITIONAL PROCEDURES FOR EVALUATING
 CHILDREN WITH SPECIFIC LEARNING DISABILITIES**

IDEA 97 Regulations	FINAL Recommended Language for IDEA '04 (Reflects changes as of 11-11-05 conference call)	Draft Federal Regulation 6-10-05
N/A	N/A	<p><u>§300.307 Specific learning disabilities.</u></p> <p><u>(a) General. A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8. In addition, the criteria adopted by the State--</u></p> <p><u>(1) May prohibit the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8;</u></p> <p><u>(2) May not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability as defined in §300.8;</u></p> <p><u>(3) Must permit the use of a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in</u></p>

IDEA 97 Regulations	FINAL Recommended Language for IDEA '04 (Reflects changes as of 11-11-05 conference call)	Draft Federal Regulation 6-10-05
		<p><u>§300.304; and</u> <u>4) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability as defined in §300.8.</u> <u>(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.</u> <u>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</u></p>
<p><u>§300.540 Additional team members.</u></p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include-</p> <p>(a)</p> <p>(1) The child's regular teacher; or</p> <p>(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or</p> <p>3) For a child of less than school age, an individual qualified by the SEA to teach a</p>	<p><u>§300.540 Additional Team Members.</u></p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in §300.7, must be made by the child's parents and a team of qualified professionals which must include that:</p> <p>(a) is collectively qualified to:</p> <p>(1) conduct individual diagnostic assessments in the areas of cognition, speech and language, academic achievement and, social-emotional development;</p> <p>(2) interpret assessment and intervention data and apply clinical analysis to that data;</p>	<p>§300.308 Group members.</p> <p>The determination of whether a child suspected of having a specific learning disability is a child with a disability, as defined in §300.8, is made by the child's parents and the group described under §300.306(a)(1) *see end of doc</p> <p>that--</p> <p>(a) Is collectively qualified to--</p> <p>(1) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, and social-emotional development;</p> <p>(2) Interpret assessment and intervention data, and apply critical</p>

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<p>child of his or her age; and</p> <p>(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.</p> <p>(Authority: Sec. 5(b), Pub. L. 94-142)</p>	<p>(3) develop appropriate educational and, as appropriate, transitional recommendations based on the assessment data;</p> <p>(4) deliver and monitor specially designed instruction and services to meet the needs of a child with a specific learning disability.</p> <p>(b) minimally includes-</p> <p>(1) The child's regular teacher; or</p> <p>(1) A special education teacher with expertise in specific learning disabilities; and</p> <p>(2) The child's regular general education teacher; or</p> <p>(2) The child's regular general education teacher; or</p> <p>(3) If the child does not have a regular general education teacher, a regular classroom general education teacher qualified to teach a child of his or her age; or</p> <p>(3) If the child does not have a regular general education teacher, a regular classroom general education teacher qualified to teach a child of his or her age; or</p> <p>(4) If a child is less than school age, an individual qualified by the SEA to teach a child of his or her age; and</p> <p>(c) may include other professionals, such as a school psychologist, speech-language pathologist, reading teacher or educational therapist.</p>	<p>analysis to those data;</p> <p>(3) Develop appropriate educational and transitional recommendations based on the assessment data; and</p> <p>(4) Deliver, and monitor specifically designed instruction and services to meet the needs of a child with a specific learning disability; and</p> <p>(b) Includes--(1) A special education teacher;</p> <p>(2)(i) The child's general education teacher; or</p> <p>(ii) If the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; and</p> <p>(c) Other professionals, if appropriate, such as a school psychologist, reading teacher, or educational therapist.</p> <p>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</p>
<p><u>§300.541</u> Criteria for determining the</p>	<p><u>§300.541</u> Criteria for determining the existence of a specific learning disability.</p>	<p>§300.309 Determining the existence</p>

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<p><u>existence of a specific learning disability.</u></p> <p>(a) A team may determine that a child has a specific learning disability if-</p> <p>(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, if provided with learning experiences appropriate for the child's age and ability levels; and</p> <p>(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:</p> <p>(i) Oral expression.</p> <p>(ii) Listening comprehension.</p> <p>(iii) Written expression.</p> <p>(iv) Basic reading skill.</p> <p>(v) Reading comprehension.</p> <p>(vi) Mathematics calculation.</p> <p>(vii) Mathematics reasoning.</p>	<p>(a) A team may determine that a child has a specific learning disability if—</p> <p>(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section following areas, when provided with learning experiences that are appropriate for the child's age and ability levels,</p> <p>(i) Oral expression.</p> <p>(ii) Listening comprehension.</p> <p>(iii) Written expression.</p> <p>(iv) Basic reading skill.</p> <p>(v) Reading comprehension.</p> <p>(vi) Mathematics calculation.</p> <p>(vii) Mathematics reasoning; and</p> <p>(2) If a Response to Scientific, Research-based Intervention Process has been implemented, the child fails to achieve a rate of learning to make sufficient progress to meet SEA approved outcomes in one or more of the areas identified in (1); and</p> <p>(3) the child exhibits a pattern of strengths and weaknesses in performance and/or cognitive abilities that is determined by the team to be relevant to the identification of a specific learning disability, using</p>	<p>of a specific learning disability.</p> <p>(a) The group described in §300.308 may determine that a child has a specific learning disability if--</p> <p>(1) The child does not achieve commensurate with the child's age in one or more of the following areas, when provided with learning experiences appropriate for the child's age:</p> <p>(i) Oral expression.</p> <p>(ii) Listening comprehension.</p> <p>(iii) Written expression.</p> <p>(iv) Basic reading skill.</p> <p>(v) Reading fluency skills.</p> <p>(vi) Reading comprehension.</p> <p>(vii) Mathematics calculation.</p> <p>(viii) Mathematics problem solving.</p> <p>(2)(i) The child fails to achieve a rate of learning to make sufficient progress to meet State-approved results in one or more of the areas identified in paragraph (a)(1) of this section when assessed with a response to scientific, research-based intervention process; or</p> <p>(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, or a pattern of strengths and weaknesses in performance,</p>

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<p>(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of-</p> <ul style="list-style-type: none"> (1) A visual, hearing, or motor impairment; (2) Mental retardation; (3) Emotional disturbance; or (4) Environmental, cultural or economic disadvantage. <p>(Authority: Sec. 5(b), Pub. L. 94-142)</p>	<p>appropriate assessments consistent with §300.530-300.536.</p> <p>(b) The team documents that its findings under 300.541 are not primarily the result of-</p> <ul style="list-style-type: none"> (1) A visual, hearing, or motor impairment; (2) Mental retardation; (3) Emotional disturbance; (4) Cultural factors; (5) Limited English proficiency; (6) Environmental or economic disadvantage. <p>(c) For a child suspected of having a specific learning disability, the team may consider, as part of the evaluation described in 300.532-533, the data from a scientific, research-based intervention process that must include-</p> <ul style="list-style-type: none"> (1) High-quality, research-based instruction and behavioral supports in general education settings; (2) Scientific, research-based interventions focused specifically on individual student difficulties and delivered with appropriate intensity; (3) Use of a collaborative approach by school staff for development, implementation and monitoring of the 	<p>achievement, or both, relative to intellectual development, that is determined by the team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with §§300.304 and 300.305; and</p> <ul style="list-style-type: none"> (3) The group determines that its findings under paragraph (a)(1) and (2) of this section are not primarily the result of-- <ul style="list-style-type: none"> (i) A visual, hearing, or motor disability; (ii) Mental retardation; (iii) Emotional disturbance; (iv) Cultural factors; or (v) Environmental or economic disadvantage. (b) For a child suspected of having a specific learning disability, the group must consider, as part of the evaluation described in §§300.304 through 300.306, data that demonstrates that-- <ul style="list-style-type: none"> (1) Prior to, or as a part of the referral process, the child was provided appropriate high-quality, research-based instruction in regular education settings, consistent with section 1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel; and

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	<p>intervention process;</p> <p>(4) Data-based documentation reflecting continuous monitoring of student performance and progress during interventions;</p> <p>(5) Documentation of parent involvement throughout the process;</p> <p>(6) Documentation that the timelines described in §300.532-300.533 are adhered to unless extended by mutual written agreement of the child's parents and a team of qualified professionals as described in 300.540;</p> <p>(7) Systematic assessment and documentation that the interventions used were implemented with fidelity.</p>	<p>(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the child's parents.</p> <p>(c) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (b)(1) and (2) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services must be made.</p> <p>(d) Once the child is referred for an evaluation to determine if the child needs special education and related services, the timelines described in §§300.301 and 300.303 must be adhered to, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in §300.308.</p> <p>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</p>
<p>§300.542 Observation.</p> <p>(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.</p> <p>(b) In the case of a child of less than school age or</p>	<p>§300.542 Observation.</p> <p>(a) At least one team member, other than the child's regular current teacher, who is trained in observation shall observe the child's academic performance learning environment, including in the regular classroom setting, to document academic</p>	<p>§300.310 Observation.</p> <p>(a) At least one member of the group described in §300.308, other than the child's current teacher, who is trained in observation, shall observe the child, and the learning environment, including the</p>

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<p>out of school, a team member shall observe the child in an environment appropriate for a child of that age.</p> <p>(Authority: Sec. 5(b), Pub. L. 94-142)</p>	<p>performance and behavior in the areas of difficulty.</p> <p>(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.</p>	<p>regular classroom setting, to document academic performance and behavior in the areas of difficulty.</p> <p>(b) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.</p> <p>(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</p>
<p>§300.543 Written report.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of-</p> <ol style="list-style-type: none"> (1) Whether the child has a specific learning disability; (2) The basis for making the determination; (3) The relevant behavior noted during the observation of the child; (4) The relationship of that behavior to the child's academic functioning; (5) The educationally relevant medical findings, if any; (6) Whether there is a severe discrepancy between achievement and ability that is not 	<p>§300.543 Written report.</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility, as required by §300.534(a)(2), must include a statement of-</p> <ol style="list-style-type: none"> (1) Whether the child has a specific learning disability; (2) The basis for making the determination, including assurance that the determination has been made in accordance with §300.535 (a); (3) The relevant behavior noted during the observation of the child; (4) The relationship of that behavior to the child's academic functioning; (5) The educationally relevant medical 	<p>§300.311 Written report.</p> <p>(a) For a child suspected of having a specific learning disability, the evaluation report and the documentation of the determination of eligibility, as required by §300.306(a)(2), must include a statement of--</p> <ol style="list-style-type: none"> (1) Whether the child has a specific learning disability; (2) The basis for making the determination, including an assurance that the determination has been made in accordance with §300.306(c)(1); (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning; (4) The educationally relevant medical findings, if any;

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<p>correctable without special education and related services; and</p> <p>(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.</p> <p>(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.</p> <p>(Authority: Sec. 5(b), Pub. L. 94-142)</p>	<p>findings, if any;</p> <p>(6) Whether the child does not achieve commensurate with his or her age and ability levels; and</p> <p>(7) Whether there are strengths and weaknesses in performance or cognitive abilities in one or more of the areas mentioned in §300.541 (a)(2) that require special education and related services; and</p> <p>(8) The instructional strategies used and the student-centered data collected if a Response to Scientific, Research-based Intervention Process as described in §300.541 was implemented; and</p> <p>(9) The determination of the team concerning the effects of cultural factors, limited English proficiency, environmental or economic disadvantage.</p> <p>(b) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.</p>	<p>(5) Whether the child does not achieve commensurate with the child's age;</p> <p>(6) Whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement, or both, relative to intellectual development in one or more of the areas described in §300.309(a) that require special education and related services; and</p> <p>(7) The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process, as described in §300.309 was implemented.</p> <p>(b) Each group member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the group member must submit a separate statement presenting his or her conclusions. (Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))</p>
		<p>§300.306 Determination of eligibility.</p> <p>(a) <u>General</u>. Upon completion of the administration of assessments and other evaluation measures--</p>

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		(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

Costs and Benefits of Proposed Non-statutory Regulatory Provisions [pages 247-251]

There are many provisions in the proposed regulations that are expected to result in economic impacts, both positive and negative. The following analysis estimates the impact of the proposed regulations that were not required by the Act:

Procedures for Evaluating Children With Specific Learning Disabilities

Proposed §300.307(a) would require that States adopt criteria for determining whether a child has a specific learning disability. Under the proposed regulation, States may not require, but may prohibit, that LEAs use criteria based on a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. The proposed regulation would also require that criteria adopted by States permit the use of a process that determines if the child responds to scientific, research-based intervention. States would also be permitted to use other alternative procedures to determine if a child has a specific learning disability.

Before determining that a child has a specific learning disability, proposed §300.309(b) would require that the evaluation team consider data that demonstrate that prior to, or as part of the referral process, the child received appropriate high-quality, research-based instruction in regular education settings and that data-based documentation of repeated assessments of achievement during instruction was provided to the child's parents. If the child had not made adequate progress under these conditions after an appropriate period of time, the proposed regulation would further require that the public agency refer the child for an evaluation to determine if special education and related services are needed. Under the proposed regulation, the child's parents and the team of qualified professionals, described in proposed §300.308, would be permitted to extend the evaluation timelines described in proposed §§300.301 through 300.303 by mutual written agreement.

If the estimated number of initial evaluations each year is 1.7 million and the percentage of evaluations involving children with specific learning disabilities is equivalent to the percentage of all children served under Part

B of the Act with specific learning disabilities, then the proposed regulation would affect approximately 816,000 evaluations each year. Depending on the criteria adopted by their States pursuant to proposed §300.307(a), public agencies could realize savings under the proposed regulation by reducing the amount of a school psychologist's time involved in conducting cognitive assessments that would have been needed to document an IQ discrepancy. However, these savings could be offset by increased costs associated with documenting student achievement through regular formal assessments of their progress, as required under proposed §300.309(b).

Although the cost of evaluating children suspected of having specific learning disabilities might be affected by the proposed regulations, the Department expects that the most significant benefits of the proposed changes would be achieved through improved identification of children suspected of having specific learning disabilities. By requiring that States permit alternatives to an IQ-discrepancy criterion, the proposed regulation would facilitate more appropriate and timely identification of children with specific learning disabilities, so that they can benefit from research-based interventions that have been shown to produce better achievement and behavioral outcomes.

The proposed regulations may impose additional costs on small public agencies that lack capacity currently to conduct repeated assessments of achievement during instruction and provide parents with documentation of the formal assessments of their child's progress. These costs are likely to be offset by reduced need for psychologists to administer intellectual assessments. To the extent that small districts may not employ school psychologists, the proposed criteria may alleviate testing burdens felt disproportionately by small districts under an IQ discrepancy evaluation model.