

**DEPARTMENT OF EDUCATION****34 CFR Part 304**

RIN 1820-AB58

**Service Obligations Under Special Education—Personnel Development to Improve Services and Results for Children With Disabilities**

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary issues final regulations governing specific provisions of the Personnel Development to Improve Services and Results for Children with Disabilities program authorized under part D of the Individuals with Disabilities Education Act, as amended (IDEA or Act). The regulations are needed to implement changes made to IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004.

**DATES:** These regulations are effective July 5, 2006.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** These regulations implement specific provisions of part D of the IDEA. On June 21, 2005, we published a notice of proposed rulemaking (NPRM) in the *Federal Register* (70 FR 35782) (NPRM) to amend the regulations governing the Assistance to States for the Education of Children with Disabilities Program; Preschool Grants for Children with Disabilities Program; and Service Obligations under Special Education—Personnel Development to Improve Services and Results for Children with Disabilities. The proposed regulations for Service Obligations under Special Education—Personnel Development to Improve Services and Results for Children with Disabilities in 34 CFR part 304 are described on pages 35817 through 35818 of the preamble to the NPRM. The text of the proposed

regulations can be found on pages 35890 through 35892 of the NPRM.

In the preamble to the NPRM, the Secretary discussed the major changes proposed in that document to implement the provisions of the Service Obligations under Special Education—Personnel Development to Improve Services and Results for Children with Disabilities program, as specified in section 662(h) of the Act. These included the following:

- Clarifying in §§ 304.21 and 304.22 that stipends are not included in the cost of attendance and are not limited by the cap in § 304.22(b).
- Clarifying in § 304.30 that the Secretary is responsible for ensuring that scholars comply with the service obligation requirements.
- Describing in one section—§ 304.30—all of the requirements a scholar must meet.

As more fully explained in the *Analysis of Comments and Changes* section of this notice, these final regulations for part 304 contain several changes from the regulations proposed in the NPRM.

**Major Changes in the Regulations**

The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM:

1. Eligible employment options for scholars have been expanded (§ 304.30(e)(3)).
2. The number of additional years allowed to fulfill a scholar's service obligation has been increased from three to five years (§ 304.30(f)(1)).

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, five parties submitted comments on the proposed regulations for the Service Obligations Under Special Education—Personnel Development to Improve Services and Results for Children with Disabilities (Personnel Development Program). An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. We discuss substantive issues under the section to which they pertain. References to sections in this analysis are to those contained in the final regulations. The analysis generally does not address minor changes, including technical changes made to the language published in the NPRM, suggested changes the Secretary is not legally authorized to make under applicable statutory authority, or comments that express concerns of a general nature about the Department or other matters

that are not directly relevant to these regulations.

*Assurances that Must be Provided by Grantee (§ 304.23)*

*Comment:* None.

*Discussion:* Upon further review, the Department has determined that, at the time of exit from the program, the grantee should provide the scholar with a list containing all of the scholar's obligations under § 304.30, and the scholar should certify that this list of obligations is correct. We believe that this requirement should be added because it clarifies that the grantees, which have the best access to this information, are responsible for sharing this information with the scholars.

*Change:* We have deleted the requirement contained in § 304.23(c) that the grantee must "establish policies and procedures for receiving and maintaining records of written certification from scholars." We have modified § 304.23(c) by adding new §§ 304.23(c)(1) and (2), which require the grantee to provide information to the scholar and specify that, upon receipt of this information, the scholar must provide written certification to the grantee that this information is correct.

*Requirements for Scholar (§ 304.30(e))*

*Comment:* A few commenters stated that the "majority of children" and the "majority of time" requirements in § 304.30(e)(1) and (2) cause hardship for some scholars. The commenters stated that scholars who provide direct services in early intervention and adaptive physical education are most impacted by these requirements because early intervention and adaptive physical education positions involve working primarily, or exclusively, in settings in which scholars provide educational services, but not necessarily special education services, to students with the full range of abilities and disabilities in a general education setting. The commenters recommended eliminating the current "majority of children" and the "majority of time" requirements in § 304.30(e)(1) and (2) and instead requiring only that scholars "provide special education and related services to children with disabilities \* \* \*" consistent with section 662(h)(1) of the Act.

*Discussion:* The Department supports the provision of special education and related services and early intervention services in settings with nondisabled children. However, the Department believes that the limited funds available for the Personnel Development Program should be targeted to support and train scholars who, following completion of

training, will be employed in positions (other than supervisory, postsecondary faculty, research, policy, technical assistance, program development, or administration) that meet the "majority of time" or the "majority of children" requirements in § 304.30(e)(1) and (2) to ensure that the need for qualified special education personnel can be met. The Department believes that these majority requirements are necessary to ensure that there are sufficient numbers of qualified personnel to provide the most effective special education, related services, and early intervention services to infants, toddlers, and children with disabilities.

*Changes:* None.

*Comment:* None.

*Discussion:* Upon internal review, the Department has determined that it would be helpful to define more precisely the term "majority," as it is used in § 304.30(e).

*Changes:* We have modified the language in § 304.30(e) to substitute the term "51 percent" for the term "majority" throughout this section.

*Comment:* A few commenters stated that the range of employment options to satisfy the service obligation requirements in § 304.30(e)(3) through (5) is too restrictive and should be expanded. The commenters stated that scholars should be allowed to satisfy their service obligation through work in other areas, such as policy, administration, professional development, technical assistance, and program development related to special education, related services, and early intervention services.

*Discussion:* The Department agrees that there may be situations in which an individual can fulfill his or her service obligation in a position that is not described in § 304.30(e), including positions involving policy, technical assistance, program development, or administration, when the individual spends at least 51 percent of his or her time performing work related to the training for which a scholarship was received.

*Changes:* We have deleted § 304.30(e)(4) and (5), and modified the language in § 304.30(e)(3) to clarify that, in addition to positions involving supervision, teaching at the postsecondary level, and research, a scholar may fulfill the scholar's service obligation in a position involving policy, technical assistance, program development, or administration when the scholar spends at least 51 percent of his or her time performing work related to the training for which a scholarship was received under section 662 of the Act.

*Comment:* A few commenters stated that recent Federal education policy, as articulated in the No Child Left Behind Act of 2001 and the 2004 reauthorization of IDEA, focuses on addressing the needs and performance of children with disabilities within programs, policies, and procedures of the general education system. The commenters recommended that the Department expand the eligible employment options to include, under limited circumstances, employment that addresses the needs of children with disabilities within the broader context of prevention and intervention initiatives in the general education system that are designed to accommodate the needs of a wide range of children.

*Discussion:* The purpose of providing scholarships under the Personnel Development Program is to ensure that there are sufficient numbers of qualified personnel to provide special education, related services, and early intervention services to infants, toddlers, and children with disabilities. While scholarships under this program may be used to provide support for training and professional development on topics leading to the identification of children with disabilities (e.g., progress monitoring and response to intervention), we do not believe scholars should be permitted to satisfy their service obligation in positions that focus primarily on nondisabled students or nondisabled students who may be at risk of having a disability.

*Changes:* None.

#### *Time Period (§ 304.30(f))*

*Comment:* A few commenters suggested changing the length of the service obligation in § 304.30(f)(1) so that scholars who are unable to satisfy the "majority of children" or the "majority of time" requirement in any single year would either automatically be subject to one extra year of service, or, upon request, receive a deferral of up to two years.

*Discussion:* Section 304.30(f)(1) requires scholars to complete at least two years of service obligation for every academic year for which assistance was received and to complete their service obligation in not more than the sum of the number of years required plus three additional years. The Department recognizes that some employment circumstances may make it difficult for scholars to fulfill their service obligation, as defined in § 304.30(e), within this time period. While implementing the commenters' recommendations would be too complex and burdensome to administer

and monitor, we believe it would be appropriate to expand the number of years that scholars will have to fulfill their service obligation.

*Changes:* We have revised § 304.30(f)(1) to allow all scholars five, instead of three, additional years to fulfill their service obligation.

*Comment:* A few commenters expressed concern that, when scholars who are qualified service providers before they enter an academic program (e.g., teachers returning to school for a masters degree) do not complete one academic year of study because of personal or professional reasons, they must repay their scholarship. The commenters stated that these scholars, who are already qualified to provide special education, related services, or early intervention services to children with disabilities, should be permitted to satisfy their obligation through service, rather than repaying the cost of the scholarship, even though they have not accumulated one year of academic credit, as required in § 304.30(f)(2).

*Discussion:* The Department believes that scholars are unlikely to make substantial gains in their knowledge and skills in less than one year such that they would be able to provide improved special education, related services, or early intervention services to infants, toddlers, and children with disabilities.

*Changes:* None.

#### **Executive Order 12866**

These final regulations have been reviewed by the Office of Management and Budget (OMB) as a significant regulatory action in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of these final regulations, we have determined that the benefits of the regulations justify the costs.

#### **Summary of Potential Costs and Benefits**

##### **Service Obligation Tracking Burden**

The statutory change incorporated in these final regulations, which shifts the burden for ensuring that scholars comply with their service obligation from grantees to the Secretary, was not specifically addressed in the *Summary of potential costs and benefits section* contained in the NPRM because this

change does not impose any additional burden on grantees, and will not result in any significant additional costs or benefits.

We include additional discussion of potential costs and benefits in the section of this preamble titled *Analysis of Comment and Changes*.

#### Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The collection of information in these final regulations has been approved by OMB under OMB control number 1820-0622. We also display this OMB control number in these final regulations at the end of the affected sections of the regulations.

The clarification of the written certification requirement from the scholar in § 304.23(c)(2) was not discussed in the NPRM but has been added to the final regulations. This imposes a new information collection requirement, however, it does not fall under the Paperwork Reduction Act's definition of "information" as explained in 5 CFR 1320.3(h).

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal Financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

#### Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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**Note:** The official version of the document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.325 Personnel Development to Improve Services and Results for Children with Disabilities).

#### List of Subjects in 34 CFR Part 304

Service obligations under special education—personnel development to improve services and results for children with disabilities.

Dated: May 26, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

■ For the reasons set forth above, the Department revises 34 CFR part 304 to read as follows:

### PART 304—SERVICE OBLIGATIONS UNDER SPECIAL EDUCATION—PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

#### Subpart A—General

Sec.

304.1 Purpose.

304.3 Definitions.

#### Subpart B—Conditions That Must Be Met by Grantee

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304.23 Assurances that must be provided by grantee.

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304.30 Requirements for scholar.

304.31 Requirements for obtaining an exception or deferral to performance or repayment under an agreement.

**Authority:** 20 U.S.C. 1462(h), unless otherwise noted.

#### Subpart A—General

##### § 304.1 Purpose.

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Development to Improve Services and

Results for Children with Disabilities program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 662(h) of the Act and the regulations of this part.

(Authority: 20 U.S.C. 1462(h))

##### § 304.3 Definitions.

The following definitions apply to this program:

(a) *Academic year* means—

(1) A full-time course of study—

(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or

(2) For a part-time scholar, the accumulation of periods of part-time courses of study that is equivalent to an "academic year" under paragraph (a)(1) of this definition.

(b) *Act* means the Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1400 *et seq.*

(c) *Early intervention services* means early intervention services as defined in section 632(4) of the Act and includes early intervention services to infants and toddlers with disabilities, and as applicable, to infants and toddlers at risk for disabilities under sections 632(1) and 632(5)(b) of the Act.

(d) *Full-time*, for purposes of determining whether an individual is employed full-time in accordance with § 304.30 means a full-time position as defined by the individual's employer or by the agencies served by the individual.

(e) *Related services* means related services as defined in section 602(26) of the Act.

(f) *Repayment* means monetary reimbursement of scholarship assistance in lieu of completion of a service obligation.

(g) *Scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of the Act.

(h) *Scholarship* means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, stipends, books, and travel in conjunction with training assignments.

(i) *Service obligation* means a scholar's employment obligation, as described in section 662(h) of the Act and § 304.30.

(j) *Special education* means special education as defined in section 602(29) of the Act.

(Authority: 20 U.S.C. 1462(h))

**Subpart B—Conditions That Must be Met by Grantee****§ 304.21 Allowable costs.**

In addition to the allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Cost of attendance, as defined in Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087// (HEA), including the following:

- (1) Tuition and fees.
- (2) An allowance for books, supplies, transportation, and miscellaneous personal expenses.
- (3) An allowance for room and board.
- (b) Stipends.
- (c) Travel in conjunction with training assignments.

(Authority: 20 U.S.C. 1462(h))

**§ 304.22 Requirements for grantees in disbursing scholarships.**

Before disbursement of scholarship assistance to an individual, a grantee must—

- (a) Ensure that the scholar—
  - (1) Is a citizen or national of the United States;
  - (2) Is a permanent resident of—
    - (i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or
    - (ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau during the period in which these entities are eligible to receive an award under the Personnel Development to Improve Services and Results for Children with Disabilities program; or
  - (3) Provides evidence from the U.S. Department of Homeland Security that the individual is—
    - (i) A lawful permanent resident of the United States; or
    - (ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;
- (b) Limit the cost of attendance portion of the scholarship assistance (as discussed in § 304.21(a)) to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under title IV of the HEA; and
- (c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Authority: 20 U.S.C. 1462(h))

**§ 304.23 Assurances that must be provided by grantee.**

Before receiving an award, a grantee that intends to grant scholarships under the program must include in its application an assurance that the following requirements will be satisfied:

(a) *Requirement for agreement.* Prior to granting a scholarship, the grantee will require each scholar to enter into a written agreement in which the scholar agrees to the terms and conditions set forth in § 304.30. This agreement must explain the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to § 304.31 and include the current Department address for purposes of the scholar's compliance with § 304.30(i), or any other purpose under this part.

(b) *Standards for satisfactory progress.* The grantee must establish, notify scholars of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study.

(c) *Exit certification.*

(1) At the time of exit from the program, the grantee must provide the following information to the scholar:

- (i) The number of years the scholar needs to work to satisfy the work requirements in § 304.30(d);
- (ii) The total amount of scholarship assistance received subject to § 304.30;
- (iii) The time period, consistent with § 304.30(f)(1), during which the scholar must satisfy the work requirements; and
- (iv) As applicable, all other obligations of the scholar under § 304.30.

(2) Upon receipt of this information from the grantee, the scholar must provide written certification to the grantee that the information is correct.

(d) *Information.* The grantee must forward the information and written certification required in paragraph (c) of this section to the Secretary, as well as any other information that is necessary to carry out the Secretary's functions under section 662 of the Act and this part.

(e) *Notification to the Secretary.* If the grantee is aware that the scholar has chosen not to fulfill or will be unable to fulfill the obligation under § 304.30(d), the grantee must notify the Secretary when the scholar exits the program.

(Approved by the Office of Management and Budget under control number 1820-0622)

(Authority: 20 U.S.C. 1462(h))

**Subpart C—Conditions That Must Be Met by Scholar****§ 304.30 Requirements for scholar.**

Individuals who receive scholarship assistance from grantees funded under section 662 of the Act must—

(a) *Training.* Receive the training at the educational institution or agency designated in the scholarship;

(b) *Educational allowances.* Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under section 662 of the Act and this part;

(c) *Satisfactory progress.* Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(d) *Service obligation.* Upon exiting the training program under paragraph (a) of this section, subsequently maintain employment—

- (1) On a full-time or full-time equivalent basis; and
- (2) For a period of at least two years for every academic year for which assistance was received;

(e) *Eligible employment.* In order to meet the requirements of paragraph (d) of this section for any project funded under section 662 of the Act, be employed in a position in which—

(1) At least 51 percent of the infants, toddlers, and children to whom the individual provides services are receiving special education, related services, or early intervention services from the individual;

(2) The individual spends at least 51 percent of his or her time providing special education, related services, or early intervention services to infants, toddlers, and children with disabilities; or

(3) If the position involves supervision (including in the capacity of a principal), teaching at the postsecondary level, research, policy, technical assistance, program development, or administration, the individual spends at least 51 percent of his or her time performing work related to the training for which a scholarship was received under section 662 of the Act.

(f) *Time period.* Meet the service obligation under paragraph (d) of this section as follows:

- (1) A scholar must complete the service obligation within the period ending not more than the sum of the number of years required in paragraph (d)(2) of this section, as appropriate, plus five additional years, from the date the scholar completes the training for which the scholarship assistance was awarded.

(2) A scholar may begin eligible employment subsequent to the completion of one academic year of the training for which the scholarship assistance was received that otherwise meets the requirements of paragraph (1);

(g) *Part-time scholars.* If the scholar is pursuing coursework on a part-time basis, meet the service obligation in this section based on the accumulated academic years of training for which the scholarship is received;

(h) *Information upon exit.* Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements under § 304.23(c);

(i) *Information after exit.* Within 60 days after exiting the program, and as necessary thereafter for any changes, provide the Department, via U.S. mail, all information that the Secretary needs to monitor the scholar's service obligation under this section, including social security number, address, employment setting, and employment status;

(j) *Repayment.* If not fulfilling the requirements in this section, subject to the provisions in § 304.31 regarding an exception or deferral, repay any scholarship received, plus interest, in an amount proportional to the service obligation not completed as follows:

(1) The Secretary charges the scholar interest on the unpaid balance owed in accordance with the Debt Collection Act of 1982, as amended, 31 U.S.C. 3717.

(2)(i) Interest on the unpaid balance accrues from the date the scholar is

determined to have entered repayment status under paragraph (4) of this section.

(ii) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(iii) No interest is charged for the period of time during which repayment has been deferred under § 304.31.

(3) Under the authority of the Debt Collection Act of 1982, as amended, the Secretary may impose reasonable collection costs.

(4) A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(i) The date the scholar informs the grantee or the Secretary that the scholar does not plan to fulfill the service obligation under the agreement.

(ii) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in § 304.30(f).

(iii) Any date on which the scholar discontinues enrollment in the course of study under § 304.30(a).

(5) The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(6) Any amount of the scholarship that has not been repaid pursuant to paragraphs (j)(1) through (j)(5) of this section will constitute a debt owed to the United States that may be collected

by the Secretary in accordance with 34 CFR part 30.

(Approved by the Office of Management and Budget under control number 1820-0622)

(Authority: 20 U.S.C. 1462(h))

**§ 304.31 Requirements for obtaining an exception or deferral to performance or repayment under an agreement.**

(a) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant an exception to the repayment requirement in § 304.30(j), in whole or part, if the scholar—

(1) Is unable to continue the course of study in § 304.30 or perform the service obligation because of a permanent disability; or

(2) Has died.

(b) Based upon sufficient evidence to substantiate the grounds, the Secretary may grant a deferral of the repayment requirement in § 304.30(j) during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act; or

(4) Is serving as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973.

(Authority: 20 U.S.C. 1462(h))

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