



Ohio Administrative Code

Rule 3301-51-01 Applicability of requirements and definitions.

Effective: July 1, 2014

(A) Applicability of requirements

The purpose of Chapter 3301-51 of the Administrative Code is to ensure that all children with disabilities residing in Ohio between the ages of three and twenty-one years, inclusive, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE), as provided by Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) at 20 U.S.C. 1400 (Public Law 108-446 of the 108th Congress, December 3, 2004), related federal regulations at 34 C.F.R. Part 300 (October 13, 2006), Chapter 3323. of the Revised Code, the provisions of this chapter of the Administrative Code, and applicable state policies, procedures, and guidelines issued by the superintendent of public instruction.

(1) The provisions of this chapter shall provide that:

(a) Children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and

(b) The rights of children with disabilities and their parents are protected.

(2) School district of residence

(a) The child's school district of residence is responsible, in all instances, for ensuring that the requirements of paragraph (A) of this rule for making FAPE available are met for every eligible child in its jurisdiction, regardless of whether services are provided by another school district, other educational agency, juvenile justice facility, or other facility, agency, department, or entity unless Chapter 3323. of the Revised Code, or a rule adopted by the state board of education specifies that another school district, other educational agency, or other agency, department, or entity is



responsible for ensuring compliance with Part B of the IDEA.

(b) Notwithstanding paragraph (A)(2)(a) of this rule, a school district of residence is not required to pay for the cost of education, including special education and related services, of a child with a disability at a nonpublic school or facility if that school district made FAPE available to the child, and the parents elected to place the child in a nonpublic school or facility. However, the school district must include the child in the population whose needs are addressed consistent with the requirements of rule 3301-51-08 of the Administrative Code.

(3) School district other than school district of residence

(a) Each school district is responsible for serving a child with a disability who is living in its school district, even though the school district is not the child's school district of residence. The child's school district of residence retains responsibility for making FAPE available to the child.

(b) Serving a child with a disability means educating the child which includes making special education and related services available to the child.

(i) The responsibility to serve a nonresident child with a disability living in the school district includes, but is not limited to, a child with a disability placed in a juvenile justice facility, institution, hospital, agency, department, home as defined in section 3313.64 of the Revised Code, or other facility or entity located in the school district.

(ii) The responsibility to serve a nonresident child with a disability does not apply to the school district in which the child is living if the child is already being served by another school district, a nonpublic school, county board of developmental disabilities (county board of DD), other educational agency, a state or local agency or institution, or other provider, including an open enrollment school district, the Ohio department of youth services, or provider for the Autism Scholarship Program established by section 3310.41 of the Revised Code, or a provider of the "Jon Peterson Special Needs Program" established by section 3310.52 of the Revised Code. However, if the child is placed in a nonpublic school in the school district, the school district must include the child in the population whose needs are addressed consistent with the requirements of rule 3301-51-08 of the Administrative Code.



(4) Funding for special education

No school district, county board of DD, or other educational agency shall receive state or federal funds for special education and related services or provide special education and related services unless such special education and related services are provided in accordance with all applicable provisions of the IDEA and related federal regulations, Chapter 3323. of the Revised Code, this chapter of the Administrative Code, and related state policies, procedures, and guidelines issued by the superintendent of public instruction.

(5) Plan

Each school district, county board of DD, or other educational agency, in providing for the education of children with disabilities within its jurisdiction, must have in effect a plan, written policies and procedures, and programs that are consistent with the states policies and procedures related to the implementation of Part B of the IDEA. The plan shall provide assurances to the superintendent of public instruction that the school district, county board of DD, or other educational agency meets each of the applicable conditions in 34 C.F.R. 300.201 to 300.213 (October 13, 2006). Each school districts plan shall also meet the requirements of section 3323.08 of the Revised Code. Each school district, county board of DD, or other educational agency shall submit its plan to the superintendent of public instruction as part of its comprehensive continuous improvement plan.

(6) Documentation and information

The superintendent of public instruction may require a state agency, school district, county board of DD, or other educational agency to provide documentation that special education and related services for children with disabilities provided by the public agency are provided in compliance with the requirements specified in paragraph (A) of this rule.

(a) A school district, county board of DD, or other educational agency must provide the superintendent of public instruction with information necessary to enable the superintendent to carry out the states duties under Part B of the IDEA, including, information relating to the performance of children with disabilities participating in programs carried out under Part B of the IDEA.



(b) A school district, county board of DD, or other educational agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the school district, county board of DD, or other educational agency under Part B of the IDEA.

(c) A school district, county board of DD, or other educational agency must cooperate in the secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965, as amended and specified in the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA) to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health, and educational information regarding those children.

(7) Ineligibility and opportunity for hearing

If the superintendent of public instruction determines that a state agency, school district, county board of DD, or other educational agency is not eligible under Part B of the IDEA for purposes of receiving assistance under Part B of the IDEA, the superintendent shall:

(a) Notify the state agency, school district, county board of DD, or other educational agency of that determination; and

(b) Provide the state agency, school district, county board of DD, or other educational agency with reasonable notice and an opportunity for a hearing.

(8) Effect of noncompliance on funding; notice to public

If the superintendent of public instruction, after reasonable notice and an opportunity for a hearing, finds that a state agency, school district, county board of DD, or other educational agency that has been determined to be eligible under Part B of the IDEA is failing to comply with any requirement in Sections 34 C.F.R. 300.201 to 34 C.F.R. 300.213 (October 13, 2006):

(a) The superintendent of public instruction must reduce or must not provide any further payment to the state agency, school district, county board of DD, or other educational agency until the state



superintendent is satisfied that the state agency, school district, county board of DD, or other educational agency is complying with that requirement.

(b) Any state agency, school district, county board of DD, or other educational agency in receipt of a notice described in paragraph (A)(8)(a) of this rule must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the state agency, school district, county board of DD, or other educational agency.

(B) Definitions

The following terms are defined as they are used in rules 3301-51-01 to 3301-51-09 and 3301-51-11 of the Administrative Code:

(1) Act or IDEA means the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 at 20 U.S.C. 1400, Public Law 108-446 of the 108th Congress, December 3, 2004 (IDEA).

(2) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(3) Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing



assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) Average daily membership means the number of children that are counted to generate state funds under the Ohio school foundation funding program.

(5) Benchmark means a specific statement of what the child should know and be able to do in a specified segment of the year. Benchmarks describe how far the child is expected to progress toward the annual goal and by when. Benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of the child's progress toward achieving the annual goals.

(6) Braille, unless otherwise specified, means a tactile system of reading and writing for individuals with visual impairments commonly known as standard English braille.

(7) Caseload for one preschool special education teacher means the number of children who collectively comprise the full time equivalency for ratios or funding.

(8) Charter school or community school has the meaning given the term in Section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA). The term charter school does not have the same meaning as chartered nonpublic school.

(9) Chartered nonpublic school means a school chartered by the state board of education pursuant to



section 3301.16 of the Revised Code and that meets the minimum standards for chartered nonpublic schools cited in the Operating Standards for Ohio's Elementary and Secondary Schools (February 2006) in rule 3301-35-12 of the Administrative Code.

(10) Child with a disability means a child evaluated in accordance with rule 3301-51-06 of the Administrative Code as having an intellectual disability (mental retardation), a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this rule as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, a developmental delay (for a child between the ages of three and five), or multiple disabilities, and who, by reason thereof, needs special education and related services.

(a) Subject to paragraph (B)(10)(b) of this rule, if it is determined, through an appropriate evaluation under rule 3301-51-06 of the Administrative Code, that a child has one of the disabilities identified in this rule, but needs only a related service and not special education, the child is not a child with a disability under this rule.

(b) If, consistent with the definition of special education in paragraph (B)(58) of this rule, the individualized education program (IEP) team considers the related service required by the child to be special education rather than a related service under state standards, the child would be determined to be a child with a disability under this rule.

(c) Children aged three through five years who are experiencing developmental delays. Child with a disability for children aged three through five years, may, subject to the conditions described in rule 3301-51-03 of the Administrative Code for the use of the term developmental delay, include a child:

(i) Who is experiencing developmental delays, as defined by rule 3301-51-11 of the Administrative Code and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development as provided by rule 3301-51-11 of the Administrative Code; and

(ii) Who, by reason thereof, needs special education and related services.



(d) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(a) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (B)(10)(d)(v) of this rule.

(b) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (B)(10)(d)(i) of this rule are satisfied.

(ii) Intellectual disability (mental retardation) means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. This definition replaces the definition of mental retardation in 34 C.F.R. 300.8(c)(6) (October 13, 2006) and shall be used instead whenever the federal regulations at 34 C.F.R. Part 300 (October 13, 2006), state statutes at Chapter 3323. of the Revised Code, or the state rules in Chapter 3301-51 of the Administrative Code refer to mental retardation or cognitive disability.

(a) Significantly subaverage general intellectual functioning refers to an intelligence quotient of seventy or below as determined through a measure of cognitive functioning administered by a school psychologist or a qualified psychologist using a test designed for individual administration. Based on a standard error of measurement and clinical judgment, a child may be determined to have significant subaverage general intellectual functioning with an intelligence quotient not to exceed seventy-five.

(b) Deficits in adaptive behavior means deficits in two or more applicable skill areas occurring within the context of the child's environments and typical of the child's chronological age peers.



(c) A child who was identified by an Ohio school district as having a developmental handicap prior to July 1, 2002 shall be considered a child with a disability if the child continues to meet the definition of developmentally handicapped in paragraph N. of former rule 3301-51-01 of the Administrative Code and the eligibility requirements of paragraph F.1 of former rule 3301-51-04 of the Administrative Code that are both contained in the Rules for the Education of Handicapped Children, which were effective July 1, 1982 and were rescinded July 1, 2002. A child who meets these provisions shall be eligible to receive special education and related services in accordance with the Operating Standards for Ohio's Schools Serving Children with Disabilities effective July 1, 2008.

(iii) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(iv) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(v) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (a) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (c) Inappropriate types of behavior or feelings under normal circumstances.
- (d) A general pervasive mood of unhappiness or depression.
- (e) A tendency to develop physical symptoms or fears associated with personal or school problems.



(f) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (B)(10)(d)(v) of this rule.

(vi) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this rule.

(vii) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(viii) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(ix) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(a) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and tourette syndrome; and

(b) Adversely affects a child's educational performance.

(x) Specific learning disability.

(a) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations,



including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(b) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(xi) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(xii) Traumatic brain injury means an acquired injury to the brain caused by an external physical force or by other medical conditions, including but not limited to stroke, anoxia, infectious disease, aneurysm, brain tumors and neurological insults resulting from medical or surgical treatments. The injury results in total or partial functional disability or psychosocial impairment or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries, as well as to other medical conditions that result in acquired brain injuries. The injuries result in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. This definition replaces the definition of traumatic brain injury in 34 C.F.R. 300.8(c)(12) (October 13, 2006) and shall be used instead whenever the federal regulations at 34 C.F.R. Part 300 (October 13, 2006), state statutes at Chapter 3323. of the Revised Code, or the state rules in Chapter 3301-51 of the Administrative Code refer to traumatic brain injury.

(xiii) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance.

(a) The term visual impairment includes both partial sight and blindness;

(b) The term "visual impairment" does not include a disorder in which one or more of the basic psychological processes, such as perceptual disabilities, brain injury, minimal brain dysfunction,



dyslexia, and developmental aphasia.

(11) Community school means a public school, created in accordance with Chapter 3314. of the Revised Code, that is independent of any school district and part of the states program of education. Community schools shall be considered school districts for the purposes of this chapter of the Administrative Code.

(12) Consent means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parents native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which the parents consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(ii) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(13) Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. This term does not refer to "Ohio Core Curriculum."

(14) County board of developmental disabilities (county board of DD) means a county board of developmental disabilities as provided by section 5126.02 of the Revised Code.

(15) Day means calendar day unless otherwise indicated as business day or school day.

(a) Business day means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day).



(b) School day means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

(16) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(17) Education records means the type of records covered under the definition of education records in 34 C.F.R. Part 99 (January 14, 2013) (the regulations implementing the Family Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA)). Under that definition, the term education records means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the type of records which are listed and described as records excluded from that definition under 34 C.F.R. 99.3(b)(1) to 34 C.F.R. 99.3(b)(5) (January 14, 2013).

(18) Elementary school means a nonprofit institutional day or residential school, including an elementary community school, that provides elementary education, as determined under state law.

(19) Equipment means:

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(20) Evaluation means procedures used in accordance with rule 3301-51-06 of the Administrative Code for evaluations to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.



(21) Evaluation team means the parents and a group of qualified professionals.

(22) Evaluation team for a child suspected of having a specific learning disability means the parents and a group of qualified professionals, which must include:

(a) The child's regular teacher; or

(b) If the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child's age; or

(c) For a child of less than school-age, an individual qualified by the Ohio department of education to teach a child of the child's age; and

(d) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial teacher.

(23) Re-evaluation team means the IEP team and other qualified professionals.

(24) Excess costs means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(a) Amounts received:

(i) Under Part B of the IDEA;

(ii) Under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA); and

(iii) Under Parts A and B of Title III of the ESEA and;

(b) Any state or local funds expended for programs that would qualify for assistance under any of the acts described in paragraph (B)(24)(a) of this rule, but excluding any amounts for capital outlay or



debt service. (See appendix A to Part 300 of the IDEA for an example of how excess costs must be calculated.)

(25) Free appropriate public education or FAPE means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the Ohio department of education, including the requirements of this rule;

(c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and

(d) Are provided in conformity with an IEP that meets the requirements of rule 3301-51-07 of the Administrative Code for individualized education programs.

(26) General curriculum refers to the same curriculum that is used with children without disabilities.

(27) General education means a learning environment that provides a community of students with the opportunity to acquire skills and knowledge necessary to meet state and local performance objectives.

(28) Help Me Grow means a system of early intervention services for infants and toddlers with disabilities which are provided, in accordance with Part C of the IDEA, federal regulations, state law, and state rules, by the lead agency selected by the governor of the state.

(29) Highly qualified special education teacher:

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA) and 34 C.F.R. 200.56 (July 1, 2007), except that the requirements for highly qualified also:



- (i) Include the requirements described in paragraph (B)(29)(b) of this rule; and
 - (ii) Include the option for teachers to meet the requirements of Section 9101 of the ESEA by meeting the requirements of paragraphs (B)(29)(c) and (B)(29)(d) of this rule.
- (b) Requirements for special education teachers in general
- (i) When used with respect to any public elementary school or secondary school special education teacher who is teaching in the state, highly qualified requires that:
 - (a) The teacher has obtained full state certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher, except that when used with respect to any teacher teaching in a community school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the states community school law;
 - (b) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - (c) The teacher holds at least a bachelor's degree.
 - (ii) A teacher will be considered to meet the standard in paragraph (B)(29)(b)(i)(a) of this rule if that teacher is participating in an alternative route to special education certification program under which:
 - (a) The teacher:
 - (i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
 - (ii) Participates in a program of intensive supervision that consists of structured guidance and regular



ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(b) The state ensures, through its certification and licensure process, that the provisions in paragraph (B)(29)(b)(ii)(a) of this rule are met.

(iii) Any public elementary school or secondary school special education teacher teaching in Ohio, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (B)(29)(b)(i) or the requirements in paragraphs (B)(29)(b)(i)(c) and (B)(29)(b)(ii) of this rule.

(c) Requirements for special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 C.F.R. 200.1(d) (July 1, 2007), highly qualified means the teacher, whether new or not new to the profession, may either:

(i) Meet the applicable requirements of Section 9101 of the ESEA and 34 C.F.R. 200.56 (July 1, 2007) for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) Meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

(d) Requirements for special education teachers teaching multiple subjects



Subject to paragraph (B)(29)(e) of this rule, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either:

(i) Meet the applicable requirements of Section 9101 of the ESEA and 34 C.F.R. 200.56(b) or (c) (July 1, 2007);

(ii) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 C.F.R. 200.56(c) (July 1, 2007) which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(iii) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 C.F.R. 200.56(c) (July 1, 2007), which may include a single HOUSSE covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers

Provided that any adaptations of the states HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers:

(i) A state may develop a separate HOUSSE for special education teachers; and

(ii) The standards described in paragraph (B)(29)(e)(i) of this rule may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this



rule, nothing in this rule shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular Ohio department of education or school district employee to be highly qualified, or to prevent a parent from filing a complaint under rule 3301-51-05 of the Administrative Code about staff qualifications with the Ohio department of education as provided for under this rule.

(g) Applicability of definition to ESEA; and clarification of new special education teacher

(i) A teacher who is highly qualified under this rule is considered highly qualified for purposes of the ESEA.

(ii) For purposes of paragraph (B)(29)(d)(iii) of this rule, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Nonpublic school teachers not covered

The requirements in this rule do not apply to teachers hired by nonpublic elementary schools and secondary schools including nonpublic school teachers hired or contracted by school districts to provide equitable services to parentally placed nonpublic school children with disabilities under rule 3301-51-08 of the Administrative Code.

(30) Homeless children has the meaning given the term homeless children and youths in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431.

(31) Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(32) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question.

(33) Individualized education program or IEP means a written statement for a child with a disability



that is developed, reviewed, and revised in accordance with rule 3301-51-07 of the Administrative Code.

(34) Individualized education program team or IEP team means a group of individuals described in paragraph (I) of rule 3301-51-07 of the Administrative Code that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(35) Institution of higher education:

(a) Has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended and specified in the Higher Education Amendments of 1998, January 1998, 20 U.S.C. 1021 (HEA); and

(b) Also includes any community college receiving funds from the secretary of the interior under the Tribally Controlled Community College or University Assistance Act of 1978 (renamed Tribally Controlled College or University Assistance Act of 1978), October 1978, 25 U.S.C. 1801.

(36) Itinerant services for a preschool child who is eligible for special education services means services provided by intervention specialists or related services personnel which occur in the setting where the child, the child and parent(s), or the child and caregiver are located as opposed to services provided at a centralized location.

(37) Limited English proficient has the meaning given the term in Section 9101(25) of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA).

(38) Native language:

(a) When used with respect to an individual who is limited English proficient, native language means the following:

(i) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (B)(38)(a)(ii) of this rule.



(ii) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

(39) Non-chartered nonpublic school means a school, that is not chartered or seeking a charter from the state board of education because of truly held religious beliefs. Such school shall annually certify in a report to the parents of its pupils that the school meets Ohio minimum standards for non-chartered, non-tax supported schools cited in the Operating Standards for Ohios Elementary and Secondary Schools in paragraphs (A) to (H) of rule 3301-35-12 of the Administrative Code.

(40) Nonpublic school means a private school which is recognized by the Ohio department of education as either a chartered school as defined in section 3301.16 of the Revised Code or a non-chartered school as described in rule 3301-35-08 of the Administrative Code. This definition shall apply whenever the term private school is used in the federal regulations at 34 C.F.R. Part 300 (October 13, 2006) or whenever the term nonpublic school is used in this chapter of the Administrative Code or in guidelines issued by the Ohio department of education for each school district to provide equitable services for children who are attending nonpublic schools located within the school district.

(41) Objective means a smaller, more manageable learning task that a child must master as a step toward achieving an annual goal. Objectives break the skills described in the annual goal into discrete components that, when mastered, allow the child to successfully obtain the goal.

(42) Other educational agency means a joint vocational school district; department; division; bureau; office; institution; board; commission; committee; authority; or other state or local agency, other than a school district or an agency administered by the department of developmental disabilities, that provides or seeks to provide special education or related services to children with disabilities.

(43) Paraprofessional services include services provided by school, county board of DD, and other



educational agency employees who are adequately trained to assist in the provision of special education and related services to children with disabilities. Paraprofessionals work under the supervision of teachers, intervention specialists, and/or related service providers. Other titles used to identify these service providers include teacher assistants, educational aides, school psychology aides, occupational therapy assistants, physical therapist assistants, and job coaches.

(44) Parent means:

(a) A biological or adoptive parent of a child but not a foster parent of a child;

(b) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state);

(c) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) A surrogate parent who has been appointed in accordance with rule 3301-51-05 of the Administrative Code.

(e) Except as provided in paragraph (B)(44)(f) of this rule, the biological or adoptive parent, when attempting to act as the parent under this rule and when more than one party is qualified under this rule to act as a parent, must be presumed to be the parent for purposes of this chapter of the Administrative Code unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(f) If a judicial decree or order identifies a specific person or persons under paragraphs (B)(44)(a) to (B)(44)(c) of this rule to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

(45) Parent mentor means a parent of a child with a disability employed by a school district to assist education personnel and families by providing training, support, and information services.



(46) Parent training and information center means a center assisted under Sections 671 or 672 of the IDEA.

(47) Parentally placed nonpublic school children with disabilities means children with disabilities enrolled by their parents in nonpublic, including religious, schools or facilities that meet the definition of elementary school or secondary school in this rule, other than children with disabilities in nonpublic schools who are placed or referred by public agencies.

(48) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

(49) Personally identifiable means information that contains:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(50) Preschool child who is eligible for special education services means a child who:

(a) Is at least three years of age and not six years of age; and

(b) Meets the definition of a child with a disability in paragraph (B)(10) of this rule or, at the discretion of the school district, is a child who:

(i) Is experiencing developmental delays, as defined in rule 3301-51-11 of the Administrative Code and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and



(ii) Who, by reason thereof, needs special education and related services.

(51) Public agency includes the school districts, county boards of developmental disabilities, other educational agencies, community schools and any other political subdivisions of the state that are responsible for providing education to children with disabilities.

(52) Qualified personnel means personnel who have met Ohio department of education-approved or Ohio department of education-recognized certification, licensing, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

(53) Referral means the date the public school district or community school receives a parents, school districts, or other educational agencies request for an initial evaluation or reevaluation.

(54) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(a) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(i) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(ii) Nothing in paragraph (B)(54)(a)(i) of this rule:

(a) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive



related services (as listed in this rule) that are determined by the IEP team to be necessary for the child to receive FAPE.

(b) Limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in rule 3301-51-02 of the Administrative Code.

(b) Individual related services terms defined. The terms used in this rule are defined as follows:

(i) Attendant services are those that assist children with disabilities with personal health care needs.

(ii) Audiology includes:

(a) Identification of children with hearing loss;

(b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(c) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(d) Creation and administration of programs for prevention of hearing loss;

(e) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(f) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(iii) Counseling services means services provided by qualified social workers, psychologists,



guidance counselors, or other qualified personnel.

(iv) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(v) Interpreting services includes:

(a) The following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(b) Special interpreting services for children who are deaf-blind.

(vi) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(vii) Occupational therapy

(a) Means services provided by a qualified occupational therapist licensed under Chapter 4755. of the Revised Code; and

(b) Includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(viii) Occupational therapy assistant services means services provided by an occupational therapy



assistant licensed under Chapter 4755. of the Revised Code and includes assisting in the practice of occupational therapy under the direction and supervision of an occupational therapist.

(ix) Orientation and mobility services:

(a) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(b) Includes teaching children the following, as appropriate:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(x) Parent counseling and training means:

(a) Assisting parents in understanding the special needs of their child;

(b) Providing parents with information about child development; and

(c) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(xi) Physical therapy means services provided by a qualified physical therapist licensed under Chapter 4755. of the Revised Code.



(xii) Physical therapist assistant services means services provided by a physical therapist assistant licensed under Chapter 4755. of the Revised Code who performs such services under the direction and supervision of a physical therapist.

(xiii) Psychological services

(a) Include but are not limited to:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members to plan and develop school programs and interventions to meet the educational needs or special education needs of children or groups of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Conducting and monitoring interventions;

(vi) Diagnosing psychological disorders that effect learning and/or behavior;

(vii) Planning and managing a program of psychological services, including psychological counseling for children and parents;

(viii) Participating in the provision of a program of mental health services; and

(ix) Assisting in developing positive behavioral intervention strategies.

(b) The services of a school psychology aide shall be under the direct supervision of a school psychologist.



(c) The school psychologist intern program shall be organized under guidelines approved by the Ohio department of education, office for exceptional children.

(xiv) Reader services means assisting learners with visual impairments by orally reading written materials.

(xv) Recreation includes:

(a) Assessment of leisure function;

(b) Therapeutic recreation services;

(c) Recreation programs in schools and community agencies; and

(d) Leisure education.

(xvi) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended and specified in the Rehabilitation Act Amendments of 1998, August 1998, 29 U.S.C. 701.

(xvii) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(xviii) Social work services in schools includes:

(a) Preparing a social or developmental history on a child with a disability;



- (b) Group and individual counseling with the child and family;
 - (c) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - (d) Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
 - (e) Assisting in developing positive behavioral intervention strategies.
- (xix) Speech-language pathology services includes:
- (a) Identification of children with speech or language impairments;
 - (b) Diagnosis and appraisal of specific speech or language impairments;
 - (c) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (d) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (e) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (xx) Transportation includes:
- (a) Travel to and from school and between schools;
 - (b) Travel in and around school buildings; and
 - (c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.



(55) School district means a city, local, exempted village school district, or a community school.

(56) School district of residence means:

(a) The school district in which the child's parents reside;

(b) If the child is enrolled in a community school, the community school is considered to be the school district of residence;

(c) If the school district specified in paragraph (B)(56)(a) or (B)(56)(b) of this rule cannot be determined, the last school district in which the child's parents are known to have resided if the parents' whereabouts are unknown;

(d) If the school district specified in paragraph (B)(56)(c) of this rule cannot be determined, the school district determined by the court under section 2151.362 of the Revised Code, or if no district has been so determined, the school district as determined by the probate court of the county in which the child resides.

(e) Notwithstanding paragraphs (B)(56)(a) to (B)(56)(d) of this rule, if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child's school district of residence.

(57) Scientifically based research has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended and reauthorized by the No Child Left Behind Act of 2001, January 2002, 20 U.S.C. 6301 (ESEA).

(58) Secondary school means a nonprofit institutional day or residential school, including a secondary community school that provides secondary education, as determined under state law, except that it does not include any education beyond grade twelve.

(59) Services plan means a written statement that describes the special education and related services the school district will provide to a parentally placed child with a disability enrolled in a nonpublic



school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with rule 3301-51-08 of the Administrative Code, and is developed and implemented in accordance with rule 3301-51-08 of the Administrative Code.

(60) Special education:

(a) General.

(i) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

(a) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(b) Instruction in physical education.

(ii) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (B)(60)(a)(i) of this rule:

(a) Speech-language pathology services, or any other related service, if the IEP team considers the service special education rather than a related service under state standards;

(b) Travel training; and

(c) Vocational education.

(b) Individual special education terms defined. The terms in this rule are defined as follows:

(i) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(ii) Physical education means:



(a) The development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(b) Includes special physical education, adapted physical education, movement education, and motor development.

(iii) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this rule, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the school district that apply to all children.

(iv) Travel training means providing instruction, as appropriate, to children with significant cognitive (intellectual) disabilities, and any other children with disabilities who require this instruction, to enable them to:

(a) Develop an awareness of the environment in which they live; and

(b) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(v) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.



(61) Special class or center based services for a preschool child who is eligible for special education services means a classroom program that provides group educational experiences to children of similar ages or developmental levels on a regularly scheduled basis and in a central location.

(62) Supervisory and coordinator services includes providing information and explanation regarding state and federal laws, recommended practice, and other topics essential for the delivery of services to learners with disabilities; helping school district personnel evaluate the effectiveness of special education and related services; and providing in-service education to parents and personnel involved in educating children with disabilities.

(63) Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the requirements for least restrictive environment in rule 3301-51-09 of the Administrative Code.

(64) Transition from Part C early intervention services means the transition of children from the Part C programs to preschool programs as specified in rule 3301-51-11 of the Administrative Code.

(65) Transition services:

(a) Means a coordinated set of activities for a child with a disability that:

(i) 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;

(ii) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:



- (a) Instruction;
 - (b) Related services;
 - (c) Community experiences;
 - (d) The development of employment in an integrated competitive environment and other post-school adult living objectives; and
 - (e) When assessment data supports a need, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) Shall be provided by individuals who have the competencies, experiences, and training to meet the individual students transition services needs. Individuals coordinating transition shall either:
- (i) Obtain the transition to work endorsement; or
 - (ii) Possess the skills and knowledge to:
 - (a) Facilitate a planning process among multiple agencies, students and families to support a students secondary transition process;
 - (b) Plan for the collection, sharing and utilization of students transition data that is relevant to the students post school outcomes, environment and support needs;
 - (c) Communicate a students individual transition plan to students, families, educators and agencies;
 - (d) Coordinate the implementation research based practices that lead to effective postsecondary transition services and outcomes;
 - (e) Utilize methods to engage students and families in the secondary transition process;
 - (f) Assist in the coordination of referral process from school to adult services systems;



- (g) Link appropriate course of study and instruction strategies to secondary transition related goals;
and
- (h) Create strategies that support the career development pathways of students with disabilities leading to career and college readiness.
- (c) 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.
- (d) Competitive environment means competitive employment in an integrated setting.
- (e) Competitive employment as defined by 34 CFR 361.5(b)(11), means work:
- (i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.
- (f) Integrated setting as defined by 34 CFR 361.5(33)(ii) and used in the context of employment outcomes, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in a comparable positions interact with other persons.
- (66) Universal design has the meaning given the term in Section 3 of the Assistive Technology Act of 1998, as amended and specified in the Assistive Technology Act of 2004, October 2004, 29 U.S.C. 3002.
- (67) Ward of the state means a child who, as determined by the state where the child resides, is:



- (a) A foster child;
- (b) A ward of the state; or
- (c) In the custody of a public child welfare agency.