

program that is substantially and materially similar to the former placement is not a change in placement. We do not believe further clarification is necessary in the regulations, however, as the distinction seems to be commonly accepted and understood.

*Changes:* None.

*Comment:* Many commenters suggested requiring a public agency to pay all costs associated with providing FAPE for a child in a private preschool, including paying for tuition, transportation and such special education, related services and supplementary aids and services as the child needs, if an inclusive preschool is the appropriate placement for a child, and there is no inclusive public preschool that can provide all the appropriate services and supports.

*Discussion:* The LRE requirements in §§ 300.114 through 300.118 apply to all children with disabilities, including preschool children who are entitled to FAPE. Public agencies that do not operate programs for preschool children without disabilities are not required to initiate those programs solely to satisfy the LRE requirements of the Act. Public agencies that do not have an inclusive public preschool that can provide all the appropriate services and supports must explore alternative methods to ensure that the LRE requirements are met. Examples of such alternative methods might include placement options in private preschool programs or other community-based settings. Paying for the placement of qualified preschool children with disabilities in a private preschool with children without disabilities is one, but not the only, option available to public agencies to meet the LRE requirements. We believe the regulations should allow public agencies to choose an appropriate option to meet the LRE requirements. However, if a public agency determines that placement in a private preschool program is necessary as a means of providing special education and related services to a child with a disability, the program must be at no cost to the parent of the child.

*Changes:* None.

*Comment:* One commenter suggested clarifying that if a child's behavior in the regular classroom significantly impairs the learning of the child or others, that placement would not meet the child's needs and would not be appropriate for that child.

*Discussion:* Although the Act places a strong preference in favor of educating children with disabilities in the regular classroom with appropriate aids and supports, a regular classroom placement is not appropriate for every child with

a disability. Placement decisions are made on a case-by-case basis and must be appropriate for the needs of the child. The courts have generally concluded that, if a child with a disability has behavioral problems that are so disruptive in a regular classroom that the education of other children is significantly impaired, the needs of the child with a disability generally cannot be met in that environment. However, before making such a determination, LEAs must ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the child in the regular educational environment to accommodate the unique needs of the child with a disability. If the group making the placement decision determines, that even with the provision of supplementary aids and services, the child's IEP could not be implemented satisfactorily in the regular educational environment, that placement would not be the LRE placement for that child at that particular time, because her or his unique educational needs could not be met in that setting. (*See Roncker v. Walter*, 700 F. 2d 1058 (6th Cir. 1983); *Devries v. Fairfax County School Bd.*, 882 F. 2d 876, 879 (4th Cir. 1989); *Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036 (5th Cir. 1989); and *A.W. v. Northwest R-1 School Dist.*, 813 F.2d 158, 163 (8th Cir. 1987).)

*Changes:* None.

#### Nonacademic Settings (§ 300.117)

*Comment:* One commenter requested that the regulations clarify that children with disabilities should receive the supplementary aids and services necessary to ensure their participation in nonacademic and extracurricular services and activities.

*Discussion:* Section 300.117, consistent with section 612(a)(5) of the Act, requires that children with disabilities participate in nonacademic and extracurricular services and activities with their nondisabled peers to the maximum extent appropriate to the needs of the child. The Act places great emphasis on ensuring that children with disabilities are educated, to the maximum extent appropriate, with children who are nondisabled and are included in nonacademic and extracurricular services and activities as appropriate to the needs of the child. We believe the public agency has an obligation to provide a child with a disability with appropriate aids, services, and other supports, as determined by the IEP Team, if necessary to ensure the child's participation in nonacademic and extracurricular services and activities.

Therefore, we will clarify in § 300.117 that each public agency must ensure that children with disabilities have the supplementary aids and services determined necessary by the child's IEP Team for the child to participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that child.

*Changes:* We have added language to § 300.117 to ensure that children with disabilities receive the supplementary aids and services needed to participate in nonacademic and extracurricular services and activities.

#### Technical Assistance and Training Activities (§ 300.119)

*Comment:* One commenter requested that the regulations define "training."

*Discussion:* The Department intends the term "training," as used in § 300.119, to have its generally accepted meaning. Training is generally agreed to be any activity used to enhance one's skill or knowledge to acquire, maintain, and advance knowledge, skills, and abilities. Given the general understanding of the term "training," we do not believe it is necessary to regulate on this matter.

*Changes:* None.

#### Children in Private Schools

##### Children With Disabilities Enrolled by Their Parents in Private Schools

##### General Comments

*Comment:* Many comments were received regarding the parentally-placed private school children with disabilities requirements in §§ 300.130 through 300.144. Many commenters supported the changes to the regulations and believed the regulations simplify the processes for both private schools and public schools. Numerous commenters, however, expressed concern regarding the implementation of the private school requirements.

Many of the commenters expressed concern with the requirement that the LEAs where private elementary schools and secondary schools are located are now responsible for child find, individual evaluations, and the provision of services for children with disabilities enrolled by their parents in private schools located in the LEA. These commenters described the private school provisions in the Act and the NPRM as burdensome and difficult to understand.

*Discussion:* The revisions to the Act in 2004 significantly changed the obligation of States and LEAs to children with disabilities enrolled by their parents in private elementary