

Questions and Answers On Highly Qualified Teachers Serving Children With Disabilities

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The final regulations for the reauthorized Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Since publication of the final regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education has received requests for clarification of some of these regulations. This is one in a series of question and answer documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of IDEA and the regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As are not intended to be a replacement for careful study of IDEA and the regulations. The statute, regulations, and other important documents related to IDEA and the regulations are found at <http://idea.ed.gov>.

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) requires that all public elementary and secondary special education teachers be “highly qualified” as special education teachers. The definition of “highly qualified special education teachers” in the IDEA [20 U.S.C. 1401(10)] is aligned with No Child Left Behind’s highly qualified requirements under that statute at section 9101 of the Elementary and Secondary Education Act (ESEA) [20 U.S.C. 7801(23)] and the implementing regulations at 34 CFR §200.56. Section 300.18(g)(1) of the IDEA regulations states that a teacher who is highly qualified under section 602(10) [20 U.S.C. 1401(10)] of IDEA shall be considered highly qualified for purposes of the ESEA. Section 300.18 of the IDEA regulations establishes requirements for special education teachers in general, as well as those teaching core academic and multiple subjects and those not teaching core academic subjects. In addition, it establishes requirements for special education teachers teaching to alternate achievement standards and describes alternative routes to certification. The regulations also clarify what it means to be a “new” special education teacher and that the highly qualified teacher requirements do not apply to teachers hired by private elementary schools and secondary schools. Section 300.156 of the IDEA regulations requires that each SEA establish and maintain personnel qualifications.

A. “New Teacher” Designation

Authority: The requirements for “new” special education teachers are found in the regulations at 34 CFR §300.18(a) through (d) and (g)(2).

Question A-1: What are the qualifications for a teacher to become highly qualified if the teacher is a “new teacher” of special education teaching children who will be learning to alternate achievement standards and taking alternate assessments?

Answer: 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 CFR §200.1(d), highly qualified means the teacher, **whether new or not new to the profession**, may either:

- Meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act (ESEA) and 34 CFR §200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
- 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 subparagraph (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.

The regulations promulgated under section 1111(b)(1) of the ESEA permit States to use alternate achievement standards to evaluate the performance of a small group of children with the most significant cognitive disabilities who are not expected to meet grade-level standards even with the best instruction. An alternate achievement standard sets an expectation of performance that differs in complexity from a grade-level achievement standard. Section 602(10)(C)(ii) of the Individuals with Disabilities Education Act (the Act or IDEA), therefore, allows special education teachers teaching exclusively children who are assessed against alternate achievement standards to meet the highly qualified teacher standards that apply to elementary school teachers.

Section 300.18(c)(2) of the regulations requires that if a teacher (who is teaching exclusively to alternate achievement standards) is teaching students who need instruction above the elementary school level, the teacher must have subject matter knowledge appropriate to the level of

instruction needed to effectively teach to those standards. The purpose of this requirement is to ensure that teachers exclusively teaching children who are assessed based on alternate academic achievement standards above the elementary level have sufficient subject matter knowledge to effectively instruct in each of the core academic subjects being taught, at the level of difficulty being taught. For example, if a high school student (determined by the IEP Team to be assessed against alternate achievement standards) has knowledge and skills in math at the 7th grade level, but in all other areas functions at the elementary level, the teacher would need to have knowledge in 7th grade math in order to effectively teach the student to meet the 7th grade math standards.

Question A-2: Is a veteran regular education teacher who continues to be employed by a district and is re-assigned as a special education teacher after obtaining special education certification considered to be “hired” as a special education teacher upon reassignment, and therefore eligible to demonstrate competence in the core academic subjects he or she is teaching as a “new” special education teacher?

Answer: Yes. A fully certified regular education teacher, who subsequently becomes fully certified or licensed as a special education teacher, would be considered a **new special education teacher** when first hired as a special education teacher. If the teacher is teaching multiple subjects as a special education teacher and is highly qualified to teach mathematics, language arts or science, he or she will have two years from the date of hiring as a special education teacher to demonstrate competence in the other core academic subjects he or she is teaching.

Question A-3: If a teacher has taught special education in one State and begins teaching in a different State, would the teacher be considered a “new” special education teacher under IDEA?

Answer: A special education teacher who has been teaching in one State and begins teaching in a different State is not considered “new to the profession.” States may choose to honor another State’s licensure or certification and determination of competence in core academic subjects based on the other State’s High Objective Uniform State Standards of Evaluation (HOUSSE) procedures. On the other hand, a State may choose to require teachers from other States to satisfy its own certification or licensure requirements, and to demonstrate competency in the core academic subjects that they teach under the new State’s standards and procedures.

B. Enforcement and Sanctions

Authority: The requirements for ensuring that special education teachers are highly qualified are found in the regulations at 34 CFR §300.156.

Question B-1: What are the consequences for an SEA or an LEA for not meeting HQT under IDEA and how will the HQT requirements be enforced under IDEA?

Answer: The SEA must make sure that all special education teachers are highly qualified and that the LEA is taking measurable steps to recruit, train, hire and retain highly qualified special education teachers. If an LEA is failing to pursue these actions, the SEA must take measures, appropriate to the situation, to bring the LEA into compliance with the Act.

The Office of Elementary and Secondary Education (OESE) currently monitors the implementation of the highly qualified teacher standards for teachers of core academic subjects under the ESEA. This includes special education teachers who teach core academic subjects.

The Office of Special Education Programs (OSEP) collects data about special education personnel qualifications and requires that SEAs establish and maintain qualifications to ensure that personnel who are essential to carry out Part B of the Act are appropriately and adequately prepared and trained. Those personnel must also have the content knowledge and skills to serve children with disabilities, consistent with 34 CFR §300.156.

C. Due Process

Authority: The provisions regarding limiting access to due process for failure to comply with the HQT requirements are found in the regulations at 34 CFR §§300.18(f) and 300.156(e).

Question C-1: May a parent file a due process request with violations other than the school's failure to provide a HQT and then include the violation of failure to provide a HQT as a part of the due process? **Or** is the failure to provide a HQT never allowed to be included in a due process hearing?

Answer: Questions about whether a teacher is highly qualified are not ones on which parents or students can get any relief through a due process hearing. See 34 CFR §§300.18(f) and 300.156(e). The language in the regulation that 'nothing in this part shall be construed to create a right of action' means that a claim that a teacher is not highly qualified may not serve as a basis for relief for an individual student or class of students under IDEA.

If concerns arise about whether a special education teacher is highly qualified, the Department encourages parents to try to resolve issues at the school level. It would make sense for them to talk to their child's principal first, before doing anything else, to find out what the school is doing to ensure that the teacher gets the training that he or she needs to meet the highly qualified standards. If they are not satisfied with the steps the LEA is taking, they could file a complaint with the State educational agency (SEA). An organization or an individual other than a parent of a child served under IDEA may also file a complaint about staff qualifications with the SEA, consistent with the State complaint procedures in 34 CFR §§300.151 through 300.153.

D. Charter Schools

Authority: The requirements regarding highly qualified special education teachers in charter schools are found in the regulations at 34 CFR §300.18(a) through (h).

Question D-1: What are the highly qualified teacher requirements for a teacher in a charter school?

Answer: To be highly qualified, a teacher in a charter school must meet the certification and licensing requirements, if any, set forth in the State's public charter school law, hold at least a bachelor's degree and, if the teacher is teaching core academic subjects, demonstrate competency in the core academic areas he or she teaches. The certification requirements for charter school teachers are established in a State's public charter school law, and may differ from the requirements for full State certification for teachers in other public schools.

E. Preschool

Authority: The definition of “highly qualified special education teachers” is at 34 CFR §300.18.

Question E-1: What are the HQT requirements for preschool teachers?

Answer: The highly qualified special education teacher requirements apply to all public elementary and secondary school special education teachers, including early childhood or preschool teachers if a State includes the early childhood or preschool programs as part of its elementary and secondary school system. If the early childhood or preschool program is not a part of a State's public elementary and secondary school system, the highly qualified special education teacher requirements do not apply.

F. High Objective Uniform State Standards of Evaluation (HOUSSE)

Authority: HOUSSE is specifically discussed in the regulations at 34 CFR §§300.18(d)(2) and (3) and 300.18(e).

Question F-1: Recently, the Department released guidance asking States to phase out the HOUSSE procedures. What is the Department's current guidance on HOUSSE, especially as it relates to special education teachers?

Answer: On September 5, 2006, the Secretary sent a letter to Chief State School Officers noting that a number of States had proposed actions to limit the use of HOUSSE, and further expressing the Department's intent to pursue a phase-out of HOUSSE procedures through the reauthorization of the No Child Left Behind Act (NCLB). The Secretary also strongly encouraged States to eliminate the use of HOUSSE procedures, to the extent practicable. In particular, she expressed concern about the practice of allowing teachers assigned to new subjects to use non-rigorous HOUSSE procedures to quickly demonstrate subject-matter competency. However, the September 5 letter recognized continued use of HOUSSE procedures in certain circumstances, including for special education teachers teaching multiple subjects who were highly qualified in language arts, mathematics, or science at the time of hire.

Question F-2: How does HOUSSE work for multi-subject teachers of special education students?

Answer: Currently, special education teachers who are not new to the profession and teach two or more core academic subjects exclusively to children with disabilities are permitted to demonstrate competence in all the core academic subjects that the teacher teaches in the same manner as other elementary, middle, and secondary school teachers who are not new to the profession, including through HOUSSE covering multiple subjects. A new special education teacher who is highly qualified to teach math, language arts, or science has up to two years from the date of employment to demonstrate competence in the other core academic subjects he or she teaches, including through the use of a HOUSSE. The State may develop a separate HOUSSE for special education teachers, which may include a single HOUSSE evaluation for multiple subjects, provided that it would not establish a lower standard for content knowledge requirements for special education teachers.

G. State Examinations/Qualifications/Certifications

Authority: The provisions concerning State examinations, qualifications, and certifications are found in the regulations at 34 CFR §300.18.

Question G-1: Does a resource special education teacher need to pass core academic subject tests to consult with regular education teachers?

Answer: A special education resource teacher who only consults with regular education teachers does not need to demonstrate competence in core academic subjects. He or she must, however, hold special education certification. If the special education resource teacher is also teaching core academic subjects, he or she will need to demonstrate competence in those subjects.

Question G-2: My State does not have a special education teacher exam. How will I become highly qualified in special education?

Answer: To be considered highly qualified, all special education teachers must hold full certification or licensure in special education in the State where they are teaching and have at least a bachelor's degree. States determine what is required for certification and licensure, which may or may not involve an exam. In addition, if special education teachers are teaching core academic subjects, they must demonstrate competency in the core academic subjects they teach.

Question G-3: If a qualified special education teacher provides direct student "supplemental" instruction in one or more core academic subjects in support of the general education teacher's instruction in the core academic subject(s), does the special education teacher need to be highly qualified in the core subjects?

Answer: All special educators need to be highly qualified as defined in IDEA, but special educators are not required to demonstrate subject matter competence in any core academic subject, if they are only (1) providing consultation services to other teachers, such as adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations for children with study skills or organizational skills or (2) reinforcing instruction that the child has already received from a highly qualified teacher in that core academic subject.

H. Highly Qualified Special Education Teachers and Private Schools

Authority: The provisions regarding highly qualified special education teachers and private schools are found in the regulations at 34 CFR §§300.18(h), 300.138, and 300.146(b).

Question H-1: Do private school special education teachers who are providing special education to children with disabilities have to have a bachelor's degree and be fully certified?

Answer: The HQT requirements do not apply to special education teachers hired by private elementary and secondary schools, including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under 34 CFR §300.138.

Question H-2: If a local educational agency sends a special education teacher (employed by the LEA) to a private school to fulfill a student's IEP, does that teacher have to be highly qualified?

Answer: Yes, any public elementary or secondary school teacher must meet the highly qualified requirements under both NCLB and IDEA.

Question H-3: If an SEA or an LEA places a child with a disability in a private school, does the private school teacher have to be highly qualified? Are there any certification or licensure requirements for private school teachers when the SEA or LEA is placing students with disabilities in private schools?

Answer: Each SEA must ensure that a child with a disability who is placed in, or referred to, a private school or facility by a public agency is provided an education that meets the standards that apply to education provided by the SEA and LEA. However, the HQT requirements do not apply to teachers hired by private elementary and secondary schools. This includes teachers hired by private elementary schools and secondary schools who teach children with disabilities placed in those schools by public agencies.

I. General

Authority: The requirements for paraprofessional qualifications are found in the regulations at 34 CFR §300.156(b).

Question I-1: What are the requirements regarding paraprofessional qualifications needed to provide services to children with disabilities?

Answer: Qualifications for paraprofessionals must be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. Paraprofessionals and assistants may be used to assist in the provision of special education and related services to children with disabilities if they are appropriately trained and supervised, in accordance with State law, regulation, or written policy.

Authority: The requirements for core academic subjects are found in the regulations at 34 CFR §300.10.

Question I-2: What are the core academic subjects?

Answer: “Core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.