Head Start Program Performance Standards

45 CFR Chapter XIII
RIN 0970-AC63

Preamble - Part I

Department of Health and Human Services
Administration for Children and Families

Agency:

Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

Action:

Final rule.

Summary:

This final rule modernizes the Head Start Program Performance Standards, last revised in 1998. In the Improving Head Start for School Readiness Act of 2007, Congress instructed the Office of Head Start to update its performance standards and to ensure any such revisions to the standards do not eliminate or reduce quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services programs provide. This rule responds to public comment, incorporates extensive findings from research and from consultation with experts, reflects best practices, lessons from program input and innovation, integrates recommendations from the Secretary's Advisory Committee Final Report on Head Start Research and Evaluation, and reflects the Obama Administration's deep commitment to improve the school readiness of young children. These performance standards will improve program quality, reduce burden on programs, and improve regulatory clarity and transparency. They provide a clear road map for current and prospective grantees to support high-quality Head Start services and to strengthen the outcomes of the children and families Head Start serves.

Dates:

Effective Date: Provisions of this final rule become effective November 7, 2016.

Compliance Date(s): To allow programs reasonable time to implement certain performance standards, we phase in compliance dates over several years after this final rule becomes effective. In the SUPPLEMENTARY INFORMATION section below, we provide a table, Table 1: Compliance Table, which lists dates by which programs must implement specific standards.

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I. Executive Summary

Head Start currently provides comprehensive early learning services to more than 1 million children from birth to age five each year through more than 60,000 classes, home visitors, and family child care partners nationwide.[1] Since its inception in 1965, Head Start has been a leader in helping children from low-income families enter kindergarten more prepared to succeed in school and in life. Head Start is a central part of this Administration's effort to ensure all children have access to high-quality early learning opportunities and to eliminate the education achievement gap. This regulation is intended to improve the quality of Head Start services so that programs have a stronger impact on children's learning and development. It also is necessary to streamline and reorganize the regulatory structure to improve regulatory clarity and transparency so that existing grantees can more easily run a high-quality Head Start program and so that Head Start's operational requirements will be more transparent and seem less onerous to prospective grantees. In addition, this regulation is necessary to reduce the burden on local programs that can interfere with high-quality service delivery. We believe these regulatory changes will help ensure every child and family in Head Start receives high-quality services that will lead to greater success in school and in life.

In 2007, Congress mandated the Secretary to revise the program performance standards and update and raise the education standards.[2] Congress also prohibited elimination of, or any reduction in, the quality, scope, or types of services in the revisions.[3] Thus, these regulatory revisions are additionally intended to meet the statutory requirements Congress put forth in the bipartisan reauthorization of Head Start in 2007.

The Head Start Program Performance Standards are the foundation on which programs design and deliver comprehensive, high-quality individualized services to support the school readiness of children from low-income families. The first set of Head Start Program Performance Standards was published in the 1970s. Since then, they have been revised following subsequent Congressional reauthorizations and were last revised in 1998. The program performance standards set forth the requirements local grantees must meet to support the cognitive, social, emotional, and healthy development of children from birth to age five. They encompass requirements to provide education, health, mental health, nutrition, and family and community engagement services, as well as rules for local program governance and aspects of federal administration of the program.

This final rule builds upon extensive consultation with researchers, practitioners, recommendations from the Secretary's Advisory Committee Final Report on Head Start Research and Evaluation,[4] and other experts, public comment, as well as internal analysis of program data and years of program input. In addition, program monitoring has also provided invaluable experience regarding the strengths and weaknesses of the previous program performance standards. Moreover, research and

[1] U.S. Department of Health and Human Services, Administration for Children and Families (2015). *Office of Head Start Program Information Report, 2014-2015*. Washington, DC: Author.

[2] *See* https://www.congress.gov/congressional-report/110th-congress/house-report/439/1 and 42 U.S.C. 9836A(a)(1)(B).

[3] 42 U.S.C. 9836A(a)(2)(C)(ii).

[4] *Advisory Committee on Head Start Research and Evaluation: Final Report*. (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services. *See* https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf

practice in the field of early childhood education has expanded exponentially in the 15 years since the program performance standards governing service delivery were last revised, providing a multitude of new insights on how to support improved child outcomes.

The Secretary's Advisory Committee, which consisted of expert researchers and practitioners chartered to provide "recommendations for improving Head Start program effectiveness" concluded early education programs, including Head Start, are capable of reducing the achievement gap, but that Head Start is not reaching its potential.[5] As part of their work, the Committee provided recommendations for interpreting the results of both the Head Start Impact Study (HSIS),[6] a randomized control trial study of children in Head Start in 2002 and 2003 through third grade, and the Early Head Start Research and Evaluation Project (EHSREP),[7] which was initiated in 1996 and followed children who were eligible to participate in Early Head Start. The Committee concluded that these findings should be interpreted in the context of the larger body of research that demonstrates Head Start and Early Head Start "are improving family well-being and improving school readiness of children at or below the poverty line in the U.S. today."[8] The Committee agreed the initial impact both Head Start and Early Head Start have demonstrated "are in line with the magnitude of findings from other scaled-up programs for infants and toddlers . . .and center-based programs for preschoolers . . ." but also acknowledged "larger impacts may be possible, *e.g.*, by increasing dosage in [Early Head Start] and Head Start or improving instructional factors in Head Start."[9] The Committee also addressed the finding that these impacts do not seem to persist into elementary school, stating the larger body of research on Head Start provides "evidence of long-term positive outcomes for those who participated in Head Start in terms of high school completion, avoidance of problem behaviors, avoidance of entry into the criminal justice system, too-early family formation, avoidance of special education, and workforce attachment." Overall, the report determined a key factor for Head Start to realize its potential is "making quality and other improvements and optimizing dosage within Head Start [and Early Head Start]." The final rule aims to capitalize on the advancements in research, available data, program input, public comment, and these recommendations in order to accomplish the critical goal of helping Head Start reach its full potential so more children reach kindergarten ready to succeed.

This final rule reorganizes previous program performance standards to make it easier for grantees to implement them and for the public to understand the broad range of Head Start program services. Our previous program performance standards consisted of 1,400 provisions organized in 11 different sections that were amended in a partial or topical fashion over the past 40 years. This approach

[5] *Ibid*, (p.1).

[6] Puma, M., Bell, S., Cook, R., Heid, C., Broene, P., Jenkins, F., & Downer, J. (2012). *Third grade follow-up to the Head Start impact study final report*. U.S. Department of Health and Human Services Office of Planning, Research and Evaluation.

[7] Cohen, R. C., Vogel, C. A., Xue, Y., Moiduddin, E. M., Carlson, B. L., Twin Peaks Partners, L. L. C., & Kisker, E. E. (2010). *Early Head Start Children in Grade 5: Long-Term Follow-Up of the Early Head Start Research and Evaluation Project Study Sample*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research, and Evaluation, (6933).

[8] *Advisory Committee on Head Start Research and Evaluation: Final Report*. (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services. *See* https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf (p. 30).

9 *Ibid*, (p.30).

resulted in a somewhat opaque set of requirements that were unnecessarily challenging to interpret and overburdened grantees with process-laden rules.

This rule has four distinct sections: (1) *Program Governance*, which outlines the requirements imposed by the Head Start Act (the "Act") on Governing Bodies and Policy Councils to ensure well-governed Head Start programs; (2) *Program Operations*, which outlines all of the operational requirements for serving children and families, from the universe of eligible children and the services they must be provided in education, health, and family and community engagement, to the way programs must use data to improve the services they provide; (3) *Financial and Administrative Requirements*, which lays out the federal requirements Head Start programs must adhere to because of overarching federal requirements or specific provisions imposed in the Act; and (4) *Federal Administrative Procedures*, which governs the procedures the responsible HHS official takes to determine the results of competition for all grantees, any actions against a grantee, whether a grantee needs to compete for renewed funding, and other transparency-related procedures required in the Act.

We also reorganized specific sections and streamlined provisions to make Head Start requirements easier to understand for all interested parties—grantees, potential grantees, other early education programs, and members of the general public. We reorganized subparts and their sections to eliminate redundancy, and we grouped together related requirements. Additionally, we systematically addressed the fact that many of our most critical provisions were buried in subparts that made them difficult to find and interpret, and did not reflect their centrality to the provision of high-quality services. For example, we created new subparts or sections to highlight and expand, where necessary, upon these important requirements.

We also streamlined requirements and minimized administrative burden on local programs. In total, we significantly reduced the number of regulatory requirements without compromising quality. We give programs greater flexibility to determine how best to achieve their goals and administer a high-quality Head Start program without reducing expectations for children and families. We anticipate these changes will help move Head Start away from a compliance-oriented culture to an outcomes-focused one. Furthermore, we believe this approach will support better collaboration with other programs and funding streams. We recognize that grantees deliver services through a variety of modalities including child care and state pre-kindergarten programs. Additionally, we removed other overly prescriptive requirements related to governing bodies, appeals, and audits.

We include several provisions to support local flexibility to meet community needs and to promote innovation and research. We give Head Start programs additional flexibility in the structural requirements of program models, such as group size and ratios. Further, we permit local variations for effective and innovative curriculum and professional development models, giving flexibility from some of these requirements if the Head Start program works with research experts and evaluates the effectiveness of their model. We also support local innovation through a process to waive individual eligibility verification requirements, which will allow better coordination with local early education programs without reducing quality. Collectively, these changes will allow for the development of innovative program models, alleviate paperwork burdens, and support mixed income settings.

We believe the benefits of these changes will be significant for the children and families Head Start serves. Strengthening Head Start standards will improve child outcomes and promote greater success in school as well as produce higher returns on taxpayer investment. Reorganizing, streamlining,

and reducing the requirements in the regulation will make Head Start less burdensome for existing grantees and more approachable for potential grantees, which may result in more organizations competing for Head Start grants. These changes are central to the Administration's belief that every child deserves an opportunity to succeed.

II. Tables

Table 1: Compliance Table

Performance Standard	Compliance Date
Early Head Start center-based service duration (unless granted a waiver under §1302.24) **§1302.21(c)(1):** By August 1, 2018, a program must provide 1,380 annual hours of planned class operations for all enrolled children. A program that is designed to meet the needs of young parents enrolled in public school settings may meet the service duration requirements in §1302.21(c)(1)(i) if it operates a center-based program schedule during the school year aligned with its local education agency requirements and provides regular home-based services during the summer break.	**August 1, 2018**
Head Start center-based service duration: **50 percent at 1,020 annual hours** (unless granted a waiver under §1302.24) **§1302.21(c)(2)(iii) and (v):** By August 1, 2019, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for at least 50 percent of its Head Start center-based funded enrollment. A Head Start program providing fewer than 1,020 annual hours of planned class operations or fewer than eight months of service is considered to meet the requirements described in paragraphs §1302.21(c)(2)(iii) and (iv) if its program schedule aligns with the annual hours required by its local education agency for grade one and such alignment is necessary to support partnerships for service delivery.	**August 1, 2019**

Head Start center-based service duration: 100 percent at 1,020 annual hours (unless granted a waiver under §1302.24) **§1302.21(c)(2)(iv):** By August 1, 2021, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for all of its Head Start center-based funded enrollment.	**August 1, 2021**
Early Head Start home-based service duration (unless granted a waiver under §1302.24) **§1302.22(c)(1):** By August 1, 2017, an Early Head Start home-based program must provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 46 visits per year; and, provide, at a minimum, 22 group socialization activities distributed over the course of the program year.	**August 1, 2017**
Curricula for center-based and family child care programs **§1302.32(a)(1)(ii) and (iii):** Implement curricula that are aligned with the Head Start Early Learning Outcomes Framework: Ages Birth to Five and, as appropriate, state early learning and development standards; and are sufficiently content-rich to promote measurable progress toward development and learning outlined in the Framework; and, have an organized developmental scope and sequence that include plans and materials for learning experiences based on developmental progressions and how children learn. **§1302.32(a)(2):** A program must support staff to effectively implement curricula and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.	**August 1, 2017**

§1302.32(b): A program that chooses to make significant adaptations to a curriculum or a curriculum enhancement described in §1302.32(a)(1) to better meet the needs of one or more specific populations must use an external early childhood education curriculum or content area expert to develop such significant adaptations. A program must assess whether the adaptation adequately facilitates progress toward meeting school readiness goals, consistent with the process described in §1302.102(b) and (c).	
Assessment **§1302.33(b)(1) through (3):** A program must conduct standardized and structured assessments, which may be observation-based or direct, for each child that provide ongoing information to evaluate the child's developmental level and progress in outcomes aligned to the goals described in the Head Start Early Learning Outcomes Framework: Ages Birth to Five. Such assessments must result in usable information for teachers, home visitors, and parents and be conducted with sufficient frequency to allow for individualization within the program year. A program must regularly use information from §1302.33(b)(1) along with informal teacher observations and additional information from family and staff, as relevant, to determine a child's strengths and needs, inform and adjust strategies to better support individualized learning and improve teaching practices in center-based and family child care settings, and improve home visit strategies in home-based models. If warranted from the information gathered from §1302.33(b)(1) and (2) and with direct guidance from a mental health or child development professional and a parent's consent, a program must refer the child to the local agency responsible for implementing IDEA for a formal evaluation to assess a child's eligibility for services under IDEA. **§1302.33(c)(2) and (3):** If a program serves a child who speaks a language other than English a program must use qualified bilingual staff, contractor, or consultant to:	**August 1, 2017**

• Assess language skills in English and in the child's home language, to assess both the child's progress in the home language and in English language acquisition; • Conduct screenings and assessments for domains other than language skills in the language or languages that best capture the child's development and skills in the specific domain; and, • Ensure those conducting the screening or assessment know and understand the child's language and culture and have sufficient skill level in the child's home language to accurately administer the screening or assessment and to record and understand the child's responses, interactions, and communications. If a program serves a child who speaks a language other than English and qualified bilingual staff, contractors, or consultants are not able conduct screenings and assessments, a program must use an interpreter in conjunction with a qualified staff person to conduct screenings and assessments as described in §1302.33(c)(2)(i) through (iii).	

Curriculum for home-based programs
 	
§1302.35(d)(1) through (3):
 	
A program that operates the home-based option must:
• Ensure home-visiting and group socializations implement a developmentally appropriate research-based early childhood home-based curriculum that:
  ○ Promotes the parent's role as the child's teacher through experiences focused on the parent-child relationship and, as appropriate, the family's traditions, culture, values, and beliefs;
  ○ Aligns with the Head Start Early Learning Outcomes Framework: Ages Birth to Five and, as appropriate, state early learning standards, and, is sufficiently content-rich within the Framework to promote measurable progress toward goals outlined in the Framework; and,
  ○ Has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn.
	August 1, 2017

• Support staff in the effective implementation of the curriculum and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development. ○ If a program chooses to make significant adaptations to a curriculum or curriculum enhancement to better meet the needs of one or more specific populations, a program must partner with early childhood education curriculum or content experts; and, assess whether the adaptation adequately facilitates progress toward meeting school readiness goals consistent with the process described in §1302.102(b) and (c).	
Quality Rating and Improvement Systems (QRIS) and Data Systems **§1302.53(b)(2):** A program, with the exception of American Indian and Alaska Native programs, must participate in its state or local Quality Rating and Improvement System (QRIS) if: • Its state or local QRIS accepts Head Start monitoring data to document quality indicators included in the state's tiered system; • Participation would not impact a program's ability to comply with the Head Start Program Performance Standards; and, • The program has not provided the Office of Head Start with a compelling reason not to comply with this requirement. **§1302.53(b)(3): Data systems.** A program, with the exception of American Indian and Alaska Native programs unless they would like to and to the extent practicable, should integrate and share relevant data with state education data systems, to the extent practicable, if the program can receive similar support and benefits as other participating early childhood programs.	**August 1, 2017**

Complete background check procedures **§1302.90(b)(2):** A program has 90 days after an employee is hired to complete the background check process by obtaining whichever check listed in §1302.90(b)(1) was not obtained prior to the date of hire; and, child abuse and neglect state registry check, if available. **§1302.90(b)(4):** A program must ensure a newly hired employee, consultant, or contractor does not have unsupervised access to children until the complete background check process described in §1302.90(b)(1) through (3) is complete. **§1302.90(b)(5):** A program must conduct the complete background check for each employee, consultant, or contractor at least once every five years which must include each of the four checks listed in §1302.90(b)(1) and (2), and review and make employment decisions based on the information as described in §1302.90(b)(3), unless the program can demonstrate to the responsible HHS official that it has a more stringent system in place that will ensure child safety.	**August 1, 2017**
Child Development Specialist staff qualification **§1302.91(e)(4)(ii):** By August 1, 2018, a child development specialist, as required for family child care in §1302.23(e), must have, at a minimum, a baccalaureate degree in child development, early childhood education, or a related field.	**August 1, 2018**
Home visitor staff qualifications **§1302.91(e)(6)(i):** A program must ensure home visitors providing home-based education services have a minimum of a home-based CDA credential or comparable credential, or equivalent coursework as part of an associate's or bachelor's degree.	**August 1, 2018**

Coordinated coaching strategy and coaching staff qualifications **§1302.92(c):** A program must ensure coaches meet staff qualifications in §1302.91(f) and must implement a research-based, coordinated coaching strategy for education staff as described in §1302.92(c).	**August 1, 2017**
Management of program data **§1302.101(b)(4):** At the beginning of each program year, and on an ongoing basis throughout the year, a program must design and implement program-wide coordinated approaches that ensure the management of program data to effectively support the availability, usability, integrity, and security of data. A program must establish procedures on data management, and have them approved by the governing body and policy council, in areas such as quality of data and effective use and sharing of data, while protecting the privacy of child records in accordance with subpart C of part 1303 and applicable federal, state, local, and tribal laws.	**August 1, 2017**

Table 2: Redesignation Table

This final rule reorganizes and redesignates the Head Start Program Performance Standards under subchapter B at 45 CFR chapter XIII. We believe our efforts provide current and prospective grantees an organized road map on how to provide high-quality Head Start services.

To help the public readily locate sections and provisions from the previous performance standards that are reorganized and redesignated, we included redesignation and distribution tables in the NPRM. The redesignation table listed the previous section and identified the section we proposed would replace it. The distribution table in the NPRM listed previous provisions and showed whether we removed, revised, or redesignated them. We believe the public may continue to find the redesignation table useful here, so we included an updated version of it below.

Table: Redesignation Table

Previous Section	New Section
1301.1	1303.2
1301.20	1305
1301.10	1303.3

1301.11	1303.12
1301.20	1303.4
1301.21	1303.4
1301.30	1303.10
1301.31	1302.90, 1302.102
1301.32	1303.5
1301.33	1303.31
1301.34	1304.5, 1304.7
1302.1	1304.1
1302.2	1305
1302.5	1304.2, 1304.3, 1304.4
1302.10	1304.20
1302.11	1304.20
1302.30	1304.30
1302.31	1304.31
1302.32	1304.32
1303.1	1304.1, 1303.30
1303.2	1305
1303.10	1304.1
1303.11	1304.3
1303.12	1304.4
1303.14	1304.5
1303.21	1304.6
1303.22	1304.6
1304.1	1302.1
1304.3	1305
1304.20	1302.42, 1302.33, 1302.41, 1302.61, 1302.46, 1302.63
1304.21	1302.30, 1302.31, 1302, 1302.35, 1302.60, 1302.90, 1302.34, 1302.33, 1302.46, 1302.21
1304.22	1302.47, 1302.92, 1302.15, 1302.90, 1302.41, 1302.42, 1302.46
1304.23	1302.42, 1302.44, 1302.31, , 1302.90, , 1302.46
1304.24	1302.46, 1302.45
1304.40	1302.50, 1302.52, 1302.80, 1302.18, 1302.34, 1302.51, 1302.30, 1302.18, 1302.81, 1302.46, 1302.52, 1302.70, 1302.71, 1302.72, 1302.22, 1302.82
1304.41	1302.53, 1302.63, 1302.70, 1302.71
1304.50	1301.1, 1301.3 1302.102, , 1301.4
1304.51	1302.101, 1302.90, 1303.23, 1302.102, 1301.3, 1303.32

1304.52	1302.101, 1302.91, 1302.90, 1302.91, 1302.21, 1303.3, 1302.93, 1302.94, 1302.92, 1301.5
1304.53	1302.31, 1302.21, 1302.47, 1302.22, 1302.23
1304.60	1302.102, 1304.2
1305.1	1302.10
1305.2	1305
1305.3	1302.11, 1302.102, 1302.20
1305.4	1302.12
1305.5	1302.13, 1302.14
1305.6	1302.14
1305.7	1302.12, 1302.15, 1302.70
1305.8	1302.16
1305.9	1302.18
1305.10	1304.4
1306.3	1305
1306.20	1302.101, 1302.21, 1302.90, 1302.23, 1302.20
1306.21	1302.91
1306.23	1302.92
1306.30	1302.20, 1302.21, 1302.22, 1302.23
1306.31	1302.20
1306.32	1302.21, 1302.24, 1302.17, 1302.102, 1302.34, 1302.18
1306.33	1302.22, 1302.101 , 1302.91, 1302.35, 1302.44, 1302.23, 1302.31, 1301.4, 1302.47, 1302.45, 1302.24
1307.1	1304.10
1307.2	1305
1307.3	1304.11
1307.4	1304.12
1307.5	1304.13
1307.6	1304.14
1307.7	1304.15
1307.8	1304.16
1308.1	1302.60
1308.3	1305
1308.4	1302.101, 1302.61, 1302.63, 1303.75
1308.5	1302.12, 1302.13
1308.6	1302.33, 1302.42, 1302.34, 1302.33
1308.18	1302.47
1308.21	1302.61, 1302.62, 1302.34

1309.1	1303.40
1309.2	1303.41
1309.3	1305
1309.4	1303.42, 1303.44, 1303.45, 1303.48, 1303.50
1309.21	1305, 1303.51, 1303.48, 1303.50, 1303.46, 1303.47, 1303.48, 1303.55, 1303.3
1309.22	1303.49, 1303.51
1309.31	1303.44, 1303.47
1309.33	1303.56
1309.40	1303.53
1309.41	1303.54
1309.43	1303.43
1309.52	1303.55
1309.53	1303.56
1310.2	1303.70
1310.3	1305
1310.10	1303.70, 1303.71, 1303.72
1310.14	1303.71
1310.15	1303.72
1310.16	1303.72
1310.17	1303.72
1310.20	1303.73
1310.21	1303.74
1310.22	1303.75
1310.23	1303.70

III. Background

a. Statutory authority

This final rule is published under the authority granted to the Secretary of the Department of Health and Human Services under sections 640, 641A, 642, 644, 645, 645A, 646, 648A, and 649 of the Head Start Act, Pub. L. 97-35, 95 Stat. 499 (42 U.S.C. 9835, 9836a, 9837, 9839, 9840, 9840a, 9841, 9843a, and 9844), as amended by the Improving Head Start for School Readiness Act of 2007, Pub. L. 110-134, 121 Stat. 1363. In these sections, the Secretary is required to establish performance standards for Head Start and Early Head Start programs, as well as federal administrative procedures. Specifically, the Act requires the Secretary to "… modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs…" and explicitly directs a number of modifications, including "scientifically based

and developmentally appropriate education performance standards related to school readiness that are based on the Head Start Child Outcomes Framework" and to "consult with experts in the fields of child development, early childhood education, child health care, family services …, administration, and financial management, and with persons with experience in the operation of Head Start programs."[10] Not only did the Act mandate such significant revisions, there was also bipartisan and bicameral agreement in Congress that its central purpose was to update and raise the education standards and practices in Head Start programs.[11,12] As such, these program performance standards substantially build upon and improve the standards related to the education of children in Head Start programs.

b. Purpose of this rule

This rule meets the statutory requirements Congress put forth in its 2007 bipartisan reauthorization of Head Start and addresses Congress's mandate that called for the Secretary to review and revise the Head Start Program Performance Standards.[13] Program performance standards are the foundation upon which Head Start programs design and deliver comprehensive, high-quality individualized services to support the school readiness of children from low-income families. They set forth requirements local grantees must meet to support the cognitive, social, emotional, and healthy development of children from birth to age five. They encompass requirements to provide education, health, mental health, nutrition, and family and community engagement services, as well as rules for local program governance and aspects of federal administration of the program. Program performance standards in this final rule build upon field knowledge and experience to codify best practices and ensure Head Start programs deliver high-quality services to the children and families they serve.

This final rule strengthens program standards so that all children and families receive high-quality services that will have a stronger impact on child development and outcomes and family well-being. The program performance standards set higher standards for curriculum, staff development, and program duration, all based on research and effective practice, while maintaining Head Start's core values of family engagement, parent leadership, and providing important comprehensive services to our nation's neediest children. At the same time, the final rule makes program requirements easier for current and future program leaders to understand and reduces administrative burden so that Head Start directors can focus on delivering high-quality early learning programs that help put children onto a path of success.

c. Rulemaking and comment processes

We sought extensive input to develop this final rule. We began the rulemaking process with consultations, listening sessions, and focus groups with Head Start staff, parents, and program administrators, along with child development and subject matter experts, early childhood education program leaders, and representatives from Indian tribes, migrant and seasonal commu-

[10] *See* section 42 U.S.C. 9836A (a)(1) and (2).

[11] *See* http://beta.congress.gov/crec/2007/11/14/CREC-2007-11-14-pt1-PgH13876-4.pdf

[12] *See* http://beta.congress.gov/crec/2007/11/14/CREC-2007-11-14-pt1-PgS14375-2.pdf

[13] *See* http://beta.congress.gov/crec/2007/11/14/CREC-2007-11-14-pt1-PgS14375-2.pdf

nities, and other constituent groups. We heard from tribal leaders at our annual tribal consultations. We studied the final report of the Secretary's Advisory Committee on Head Start Research. We consulted with national organizations and agencies with particular expertise and longstanding interests in early childhood education. In addition, we analyzed the types of technical assistance requested by and provided to Head Start agencies and programs. We reviewed findings from monitoring reports and gathered information from programs and families about the circumstances of populations Head Start serves. We considered advances in research-based practices with respect to early childhood education and development, and the projected needs of expanding Head Start services. We also drew upon the expertise of federal agencies and staff responsible for related programs in order to obtain relevant data and advice on how to promote quality across all Head Start settings and program options. We reviewed the studies on developmental outcomes and assessments for young children and on the workforce by the National Academy of Sciences.[14,15] We also reviewed the standards and performance criteria established by state Quality Rating and Improvement Systems, national organizations, and policy experts in early childhood development, health, safety, maternal health, and related fields.

We published a notice of proposed rulemaking (NPRM) on June 19, 2015 to solicit comments from the public. We extended the notice of proposed rulemaking comment period 30 days past our original deadline to September 17, 2015, to allow for more feedback from parents, grantees, and the Head Start community in general. We received, analyzed, and considered approximately 1,000 public comments to develop this final rule. Commenters included Head Start parents, staff, and management; national, regional, and state Head Start associations; researchers; early childhood, health, and parent organizations; policy think tanks; philanthropic foundations; Members of Congress; and other interested parties.

d. Overview of major changes from the NPRM

The public comments addressed a wide range of issues. We made many changes to the program performance standards in response to those comments, which range from minor to significant. The most significant changes fall under several categories: service duration, the central and critical role of parents in Head Start, staff qualifications to support high-quality, comprehensive service delivery, and health promotion.

First, we made changes to this final rule in response to the many public comments we received on the proposal to increase the duration of services children receive in Head Start. The changes to the service duration requirements in the final rule reflect concerns about local flexibility and access to Head Start for low-income children and their families. Instead of requiring all Head Start center-based programs to operate for at least 6 hours per day and 180 days per year as proposed in the NPRM, we changed the requirement to a minimum of 1,020 annual hours of planned class operations, which grantees will phase in for all of their center-based slots over five years. Similarly for Early Head Start, we changed the requirement in the NPRM for center-based programs to operate at least 6 hours per day and 230 days per year to 1,380 annual hours in this rule, and allow two years for programs to plan and implement this increase in ser-

[14]National Academy of Sciences (October, 2008) *Early Childhood Assessment: Who, What, How.* Washington, DC.
[15]National Academy of Sciences (April, 2015) *Transforming the Workforce for Children Birth through Age 8: A Unifying Foundation.* Washington, DC.

vice duration. These requirements balance the importance of increasing service duration with allowing greater local flexibility and more time for communities to adapt and potential funding to be secured.

Research supports the importance of longer preschool duration in achieving meaningful child outcomes and preparing children for success in school.[16,17,18,19,20,21,22,23] Shorter preschool programs may not have as much time to adequately support strong early learning outcomes for children and provide necessary comprehensive services.[24,25,26] In addition, the long summer break in most Head Start programs likely results in summer learning loss that undermines gains children make during the program year.[27,28,29] Furthermore, part-day programs can undermine parents' job search, job training, and employment opportunities.

In the NPRM, we proposed to increase the positive impact of Head Start programs serving three- to five-year-olds by increasing the minimum hours and days of operation and to codify long-standing interpretation of continuous services for programs that serve infants and

[16] Robin, K. B., Frede, E. C., Barnett, W. S. (2006.) NIEER *Working Paper - Is More Better? The Effects of Full-Day vs Half-Day Preschool on Early School Achievement*. NIEER.

[17] Votruba-Drzal, E., Li-Grining, C. P., & Maldonado-Carreno, C. (2008). A developmental perspective on full- versus part-day kindergarten and children's academic trajectories through fifth grade. *Child Development*, *79*, 957-978.

[18] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-day vs. half-day kindergarten: In which program do children learn more? *American Journal of Education, 112,* 163-208.

[19] Li, W. (2012). *Effects of Head Start hours on children's cognitive, pre-academic, and behavioral outcomes: An instrumental variable analysis*. Presented at Fall 2012 Conference of the Association for Public Policy Analysis and Management.

[20] Heckman, J. J., Moon, S. H., Pinto, R., Savelyev, P. A., & Yavitz, A. (2010). The rate of return to the HighScope Perry Preschool Program. *Journal of Public Economics, 94,* 114-128.

[21] Walters, C. R. (2015). Inputs in the Production of Early Childhood Human Capital: Evidence from Head Start, *American Economic Journal: Applied Economics, 7*(4), 76–102.

[22] Wasik, B. & Snell, E. (2015). *Synthesis of Preschool Dosage: Unpacking How Quantity, Quality and Content Impacts Child Outcomes*. Temple University, Philadelphia, PA.

[23] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education*. Policy Brief. Foundation for Child Development.

[24] DeCicca, P. (2007). Does full-day kindergarten matter? Evidence from the first two years of schooling. *Economics of Education Review, 26*(1), 67-82.; Cryan, J. R., Sheehan, R., Wiechel, J., & Bandy-Hedden, I. G. (1992). Success outcomes of full-day kindergarten: More positive behavior and increased achievement in the years after. *Early Childhood Research Quarterly, 7(2),* 187-203.

[25] Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-Day versus Half-Day Kindergarten: In Which Program Do Children Learn More? *American Journal of Education, 112(2)*, 163-208.

[26] Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99* (NCES 2004–078). U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

[27] Allington, R.L. & McGill-Franzen, A. (2003). The Impact of Summer Setback on the Reading Achievement Gap. *The Phi Delta Kappan, 85(1)*, 68-75.; Fairchild, R. & Noam, G. (Eds.) (2007). *Summertime: Confronting Risks, Exploring Solutions*. San Francisco: Jossey-Bass/Wiley.

[28] Downey, D.B., von Hippel, P.T. & Broh, B.A. (2004). Are Schools the Great Equalizer? Cognitive Inequality During the Sum¬mer Months and the School Year. *American Sociological Review, 69*(5), 613–635.

[29] Benson, J., & Borman, G.D. (2010). Family, Neighborhood, and School Settings Across Seasons: When Do Socioeconomic Context and Racial Composition Matter for the Reading Achievement Growth of Young Children? *Teacher's College Record, 112*(5), 1338–1390.

toddlers, in concert with increasing standards for educational quality. Specifically, the NPRM proposed to require programs to serve three- to five-year-olds for at least 6 hours per day and 180 days per year and to require programs to serve infants and toddlers for a minimum of 6 hours per day and 230 days per year. Our proposal was consistent with research demonstrating the necessity of adequate instructional time to improve child outcomes and aligned with recommendations from the Secretary's Advisory Committee.[30,31,32,33,34,35] However, though the research is clear that longer duration matters, there is no clarity on an exact threshold or combination of hours and days needed to achieve positive child outcomes. Therefore, in response to a significant number of public comments on the NPRM, including comments from the national, state, and regional Head Start associations, the final rule defines full school day and full school year services as 1,020 annual hours for Head Start programs and defines continuous services as 1,380 annual hours for Early Head Start programs, instead of setting a minimum number of hours per day and days per year for each program. These adjusted requirements will give programs more flexibility to design their program schedules to better meet children and community needs as well as align with local school district calendars, where appropriate.

To further address the comments about service duration and ensure a smooth transition for children and families, the final rule also includes a staggered approach to increasing service duration for Head Start preschoolers over the next five years. This gradual transition will allow programs more time to plan and implement changes while also increasing families' access to full school day Head Start services and ensuring more children receive the high-quality early learning services to help them arrive at kindergarten ready to succeed. The final rule also gives the Secretary the authority to reduce the proportion of each grantee's center-based slots required to operate for a full school day and full school year if the Secretary determines that such a reduction is needed to avert a substantial reduction in slots. We believe the requirements in the final rule strike an appropriate balance between setting the policy research demonstrates will best support positive outcomes for children and families, while minimizing reduction in the number of children and families Head Start can serve.

Second, we received comments that expressed concern that the proposed changes to family engagement services and governance would result in a reduction in emphasis on family engagement processes, parent leadership, and parent influence on program policy. This was not

[30] *Advisory Committee on Head Start Research and Evaluation: Final Report.* (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services.

[31] Curenton, S.M., Justice, L.M., Zucker, T.A., & McGinty, A.S. (2014). Language and literacy curriculum and instruction. Chapter 15 in *Handbook of Response to Intervention in Early Childhood,* Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[32] Ginsburg, H.P., Ertle, B., & Presser, A.L. (2014). Math curriculum and instruction for young children. Chapter 16 in *Handbook of Response to Intervention in Early Childhood, Buysee*, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[33] Justice, L.M., Mcginty, A., Cabell, S.Q., Kilday, C.R., Knighton, K., & Huffman, G. (2010). Language and literacy curriculum supplement for preschoolers who are academically at risk: A feasibility study. *Language, Speech, and Hearing Services in Schools, 41*, 161-178.

[34] Ginsburg, H.P., Ertle, B., & Presser, A.L. (2014). Math curriculum and instruction for young children. Chapter 16 in *Handbook of Response to Intervention in Early Childhood,* Buysee, V., & Peisner-Feinberg, E. (Eds.). Baltimore: Paul H. Brookes Publishing.

[35] Clements, D.H., & Sarama, J., (2008). Experimental evaluation of the effects of a research-based preschool mathematics curriculum. *American Educational Research Journal, 4*5(2), 443-494.

our intent. The intent of the NPRM was for the family engagement standards to incorporate the changes made to governance in the 2007 reauthorization and align with the groundbreaking work Head Start has led through the development of the Parent, Family, and Community Engagement Framework. Family engagement has always been at the foundation of Head Start, and as such, the final rule retains many of the proposed improvements to family services that integrate research-based practices and provide greater local flexibility to help programs better meet family needs. However, given the perception that the changes would limit the role of parents and families in Head Start, the final rule includes several changes to more effectively reflect and maintain the important role of Head Start parents in leading Head Start programs, as well as the importance of family engagement to the growth and success of Head Start children. Specifically, we restore a requirement for parent committees, maintain and strengthen family partnership services (including goal setting), and strengthen the requirements for impasse procedures to make it clear that the policy council plays a leadership role in the administration of programs, rather than functioning in an advisory capacity. It is our expectation that the revisions to the final rule will ensure all grantees, programs, and parents understand the foundational role parents of Head Start children play in shaping the program at the local and national level.

Third, this final rule includes several changes in response to comments that suggested Head Start should use the revision of the program performance standards to set a higher bar for the delivery of quality comprehensive services. Specifically, this final rule includes a greater emphasis on staff qualifications and competencies for health, disabilities, and family services managers, as well as staff who work directly with children and families in the family partnership process. The qualification requirements represent minimum credentials we believe are critical to ensuring high-quality services. However, because we also recognize the important role of experience and community connections for such staff, these requirements are only for newly hired staff and, in some cases, give programs the flexibility to support staff in obtaining the credentials within 18 months of hire.

In response to public comments that the NPRM was not strong enough in addressing some serious public health issues, this final rule includes changes that place a greater emphasis on certain health concerns, including childhood obesity prevention, health and developmental consequences of tobacco products and exposure to lead and support for mental health and social and emotional well-being. Given the prevalence of childhood obesity across the nation, especially among low-income children, we maintained important health and nutrition requirements and made specific changes to ensure Head Start actively engage in its prevention in the classroom and through the family partnership process. Given the serious health and developmental consequences of children's exposure to tobacco products, including second and third hand smoke, and to lead, we have explicitly required that programs offer parents opportunities to learn about these health risks and safety practices they can employ in their homes. We significantly strengthened the breadth and clarity on the requirements for programs to use mental health consultants to ensure Head Start programs are supporting children's mental health and social and emotional well-being. The final rule includes new provisions in the requirements for health, education, and family engagement services that elevate the role of Head Start programs in addressing these public health problems.

Additionally, through ongoing tribal consultations and the public comment process, we received

important feedback from the American Indian and Alaska Native community. We made a number of changes specifically related to American Indian and Alaska Native programs based on these public comments and the unique and important sovereign relations with tribal governments. We added a new provision that for the first time makes it explicit that programs serving American Indian and Alaska Native children may integrate efforts to preserve, revitalize, restore, or maintain tribal language into their education services. We also clarified that, due to tribal sovereignty, American Indian and Alaska Native programs only need to consider whether or not they will participate in early childhood systems and activities in the state in which they operate.

In addition to these changes, the final rule maintains numerous changes proposed in the NPRM to strengthen program performance standards so all children and families receive high-quality services that will improve child outcomes and family well-being. We maintained and made important changes to strengthen service delivery. For example, we updated the prioritization criteria for selection and recruitment; made improvements to promote attendance; prohibited expulsion for challenging behaviors; strengthened services for children who are dual language learners (DLLs); and ensured critical supports for children experiencing homelessness or in foster care. Throughout the final rule we have made changes in response to public comments to make language clearer or more focused on outcomes rather than processes.

IV. Discussion of General Comments on the Final Rule

We received approximately 1,000 public comments on the NPRM with many commenters supporting our overall approach to revising the Head Start Program Performance Standards. Commenters appreciated our reorganization and streamlining, and agreed this made the standards more transparent and easier to understand. Commenters generally supported our approach to systems-based standards that are more focused on outcomes and less prescriptive and process-laden. They did note that how OHS monitored these standards would affect their implementation and impact. Commenters also appreciated our research-based approach. They noted our education and child development standards focused on the elements most important for supporting strong child outcomes. Commenters supported standards in the NPRM to improve services to children who are DLLs and their families. Commenters also supported our emphasis on reducing barriers and improving services to children experiencing homelessness and children in foster care. Overall, commenters agreed our proposal would improve program quality, clarify expectations, and reduce burden on programs.

We received a range of comments on our proposal to increase the minimum service duration for Head Start and Early Head Start programs. Some commenters supported the proposal to increase duration, citing the research base and its importance to achieving strong child outcomes. Many commenters stated that without sufficient funds, this would lead to a reduction in the number of children and families Head Start served and this would be an unacceptable outcome. Other commenters raised concern or opposition for a variety of other reasons. We discuss and respond to these concerns in detail our discussion of part 1302, subpart B.

Many commenters were concerned that the NPRM overall reflected a reduced commitment to the role of parents in Head Start. They also pointed to specific proposals in different subparts and sections, which they stated contributed to a diminished role for parents. It was not our intent to dimin-

ish the role of parents in the Head Start program, and we have revised provisions in the final rule to ensure our intent for parent engagement is appropriately conveyed. We believe parent engagement is foundational to Head Start and essential to achieving Head Start's mission to help children succeed in school and beyond. We address specific comments on parent involvement and engagement and our responses in the discussions of the relevant sections.

Many commenters believed there were excessive references to the Act. They asked that the final regulation translate the references to the Act with specific language or brief excerpts from the Act. We maintained the same approach as we proposed in the NPRM to reference the provisions in the Act so that the regulation will not become obsolete if the provisions in the Act change. However, we intend to issue a training and technical assistance document that integrates language from the Act into the same document as the program performance standards to address commenters' interest in having a single document.

We also received other general comments or comments not tied to a specific section or provision of the rule. For example, some commenters offered general support for the Head Start program and noted it was important for Head Start to continue. One commenter thought we should have included examples of excellent Head Start programs. Commenters stated their overall opposition to the Head Start program or the NPRM as a whole, and others did not want Head Start program to continue to receive funding. Commenters stated that services for DLLs were emphasized too heavily in the regulation or that the standards for DLLs were too prescriptive. We believe DLLs are an appropriate priority in the regulation because the provisions reflect requirements in the Act and because it is important programs effectively serve DLLs because they are a rapidly growing part of both Head Start and the broader United States population. Commenters also offered specific suggestions on ways to clarify, enhance, or add language relevant to serving culturally and linguistically diverse children and families, including children who are DLLs throughout the NPRM. We incorporated some of the suggestions into the final rule but felt some were already adequately covered while others were not feasible to include in regulation. We discuss these comments as appropriate in the relevant sections of the preamble.

Commenters also pointed out technical problems, such as incorrect cross references, typographical errors, or small inconsistencies in related provisions. We corrected these errors and made other needed technical changes, including edits to ensure descriptive titles throughout the final rule. Commenters also requested that we update existing data collections to account for changes in the program performance standards. As we make changes to the Head Start Program Information Report (PIR) and other data collections we sponsor, we will consider the final rule, but this is not a regulatory issue.

V. Discussion of Section by Section Comments on the Final Rule

We received many comments about changes we proposed to specific sections in the regulation. Below, we identify each section, summarize the comments, and respond to them accordingly.

a. Program Governance; Part 1301

This part describes program governance requirements for Head Start agencies. Program governance in Head Start refers to the formal structure in place "for the oversight of quality services for Head Start children and families and for making decisions related to program design and implementation" as outlined in section 642(c) of the Act. The Act requires this structure include a governing body and a policy council, or a policy committee at the delegate level. These groups have a critical role in oversight, design and implementation of Head Start and Early Head Start programs. The governing body is the entity legally and fiscally responsible for the program. The policy council is responsible for the direction of the program and must be made up primarily of parents of currently enrolled children. Parent involvement in program governance reflects the fundamental belief, present since the inception of Project Head Start in 1965, that parents must be involved in decision-making about the nature and operation of the program for Head Start to be successful in bringing about substantial change.[36]

We revised previous program governance requirements primarily to conform to the Act. We received many comments on part 1301. Below we discuss these comments and our rationale for any changes to the regulatory text in this subpart.

General Comments.

Comment: Many commenters offered reactions to part 1301. Commenters expressed general support for the requirements, indicating they reflect the statutory requirements, improve transparency, maintain the important role of parents, and increase local flexibility.

Other commenters stated this part was unnecessarily complicated for parents, policy council members, and staff to follow as presented in the NPRM. Many commenters suggested all governance requirements be clearly stated in the rule rather than referenced with statutory citation in order to improve clarity and reduce burden for programs, parents, and others.

Response: As noted previously, we maintained the approach to cross reference to the Act so that the regulations will not become obsolete if the provisions in the Act change. However, we plan to issue a training and technical assistance document that incorporates the language from the Act with the regulatory language.

Comment: Some commenters suggested we failed to address the role of shared governance in the Head Start program, and that we relied too heavily on the Act, which is vague and ambiguous, and leaves grantees wondering about the proper balance between the role and responsibility of the governing body and the policy council. These commenters ask that we include more specificity about shared governance in the final rule.

Response: We continue to believe the best approach is to align the governance requirements in the rule with the language and requirements specified in the Act. The statutory language has directed the governance of Head Start programs since it was passed in 2007 and there have not been any significant problems with this approach.

[36] *See* Federal Register, 40 FR 27562, June 30, 1975.

Comment: Commenters asked that we include "Tribal Council" wherever the phrase "governing body" occurs.

Response: We do not believe this is necessary, since the tribal council is acting as the governing body.

§1301.1 Purpose.

This section reiterates the requirement in section 642(c) of the Act regarding the structure and purpose of program governance. The structure as outlined in the Act includes a governing body, a policy council, and, for a delegate agency, a policy committee. We restored the requirement from the previous performance standards that programs also have parent committees as part of the governance structure, and we discuss this requirement in more detail in §1301.4. This section emphasizes that the governing body has legal and fiscal responsibility to administer and oversee the program, and the policy council is responsible for the direction of the program including program design and operations and long- and short-term planning goals and objectives.

Comment: Commenters recommended that we revise the language in this section to state clearly that each agency must establish a policy council.

Response: We proposed in the NPRM to use the term "policy group" to encompass the policy council and the policy committee more concisely. We defined "policy group" to mean "the policy council and policy committee at the delegate level." After further consideration and in response to comments, we reverted to using "policy council and policy committee at the delegate level." It is lengthier but clearer. Instead of introducing a new term, we are remaining consistent with the Act.

Comment: Some commenters raised concerns with the policy council being responsible for the direction of the Head Start program. Commenters stated it was unclear how the policy council could be effective in that role. Others said both the governing body and the policy council should be responsible for the direction of the program or that this responsibility should rest solely with the governing body.

Response: We maintained the language proposed in the NPRM because it is the statutory requirement in the Act that the policy council is responsible for the direction of the Head Start and Early Head Start programs.

§1301.2 Governing body.

In the NPRM, this section described training requirements; however, we moved training requirements to §1301.5 and this section now pertains to the governing body.

This section includes requirements for the composition of the governing body and its duties and responsibilities. It aligns with the Act's detailed requirements for the composition and responsibilities of the governing body. This section requires governing body members use ongoing monitoring results, data from school readiness goals, the information specified in section 642(d)(2) of the Act, and the information in §1302.102 to conduct their responsibilities. Para-

graph (c) permits a governing body, at its own discretion, to establish advisory committees to oversee key responsibilities related to program governance, consistent with section 642(c)(1)(E)(iv)(XI) of the Act. Below we address comments and requests for clarification.

Comment: We received some comments on the governing body's duties and responsibilities that addressed the duties and responsibilities of both the governing body and the policy council together. Some commenters requested we provide a clear illustration of the responsibilities and powers of the governing body and policy council by including a chart or diagram. Commenters also provided specific suggestions for revisions, such as: add language from the previous performance standards on the duties and responsibilities of the governing body and policy council; remove language specific to ongoing monitoring and school readiness goals, as this is addressed in another section; and require that program goals inform the governing body and policy council.

Response: We did not include a diagram or chart in this rule because we believe the governance provisions in the rule and in the Act are clear. In response to comments, we added to paragraph (b)(2) a cross-reference to the requirement in §1302.102 related to establishing and achieving program goals. By adding this cross reference, we are requiring governing bodies to use this information to conduct their responsibilities.

Comment: Some commenters offered support and raised concerns about the governing body's duties and responsibilities as laid out in paragraph (b). Some commenters supported the requirement that the governing body use ongoing monitoring results and school readiness goals to conducts it responsibilities, in addition to what is required in section 642(d)(2) of the Act. Some commenters suggested we enhance or clarify language about when programs needed to report to the responsible HHS official. Commenters also requested clarification about the governing body's responsibility to establish, adopt, and update Standards of Conduct, including reporting any violations to the regional office and about self-reporting requirements for immediate deficiencies.

Response: The Act specifies that the governing body is responsible for establishing, adopting, and periodically updating written standards of conduct, so we believe this is addressed because we incorporated this requirement from the Act. We revised §1302.90(a) to clarify the role of the governing body in standards of conduct, which we had inadvertently left out of that standard. We did not revise the requirement about self-reporting because it is addressed in §1302.102.

Comment: Many commenters stated the proposed rule was unclear about conflicts of interest. Commenters requested clarification about this provision and recommended adding language that mirrors the IRS Form 1023 Instructions, Appendix A, Sample Conflicts of Interest Policy.

Response: We did not make changes to this language. There is guidance in the nonprofit community about the various ways to structure and apply a conflict of interest policy. If an agency wants to adopt the IRS rules, that would be one option, but it might not be the right option for all programs. Additionally, the governing body is required to develop a written conflict of interest policy, which can provide greater clarity than the overarching federal requirements.

Comment: We received comments on advisory committees described in paragraph (c). Some commenters requested additional clarification, including who the advisory board is and what

groups should be included and whether the governing body may establish more than one advisory committee. Others commenters suggested revisions to the advisory committee's role advisory committee with respect to the governing body. For example, commenters stated that all areas of program governance, especially supervision of program management, should be left in the hands of the Board of Directors or the established governing body. Some commenters noted that advisory committees should not make decisions about program governance because that is not advisory in nature. Other commenters made specific suggestions for the language related to advisory committees, such as eliminating the composition requirements, eliminating the requirement that advisory committees be established in writing, and differentiating between advisory committees that act as sub-boards versus other advisory committees.

Response: To improve clarity, we revised and streamlined paragraph (c). We clarified that governing bodies may establish one or more advisory committees. We removed some of the more prescriptive requirements, such as written procedures or composition requirements, and explicitly required that when the advisory committee is overseeing key responsibilities related to program governance, it is the responsibility of the governing body to establish the structure, communication and oversight in a way that assures the governing body retains its legal and fiscal responsibility for the Head Start agency. This allows the governing body flexibility to structure their advisory committee but requires that they retain legal and fiscal responsibility for the Head Start agency. We also require the governing body to notify the responsible HHS official of its intent to establish such an advisory committee.

§1301.3 Policy council and policy committee.

In this section, we retain a number of requirements from the previous program standards and included requirements to conform to the Act. In paragraph (a), we retain the requirement for agencies to establish and maintain a policy council at the agency level and a policy committee at the delegate level, consistent with section 642(c)(2) and (3) of the Act. Paragraph (b) outlines the composition of policy councils, and policy committees at the delegate level, consistent with the Act. Paragraph (c) outlines the duties and responsibilities for the policy council and the policy committee to conform to the Act and is largely unchanged from the NPRM. Paragraph (d) addresses the term of service for policy council and policy committee members.

Comment: Commenters recommended we include all of the statutory language from section 642(c)(2)(A) of the Act in this section, rather than summarizing that the policy council has responsibility for the direction of the program. Another recommended the policy committee at the delegate level be renamed to "Policy Action Committee" to eliminate programs from using "PC" for both policy council and policy committee.

Response: We did not revise the concise reference to the policy council having responsibility for the direction of the program, although the Act's more expansive language is still part of the requirement. We maintain the terminology as it exists in the Act and did not rename "policy committee" at the delegate level.

Comment: Commenters supported the standard in paragraph (b) to require proportional representation on the policy council by program option but also recommended revisions and asked

for additional clarification. For example, commenters requested clarification on what proportional representation means and how to implement it within different program types.

Other commenters expressed support for the requirement that the majority of policy council members be parents but requested that language be added to the rule, rather than just citing the Act. Others requested clarification on how appropriate composition will be maintained and consistent with the Act when parents drop out.

Response: We revised paragraph (b) to clarify that parents of children currently enrolled in "each" program option must be proportionately represented on the policy council or the policy committee. We believe programs should have the flexibility to specify in their policies and procedures how the composition requirements will be maintained when parents drop out and did not make revisions to address this.

Comment: Commenters expressed disagreement with language in the preamble to the NPRM stating, "We propose to remove current §1304.50(b)(6) which excludes staff from serving on policy councils or policy committees with some exceptions…". Commenters expressed confusion and stated this language has been interpreted to mean staff would be allowed to participate as a policy council or policy committee member. Though one commenter expressed support for allowing staff to serve on the policy council because they have field experience and skills to make informed decision, the commenters generally stated it is a conflict of interest and could inhibit parent driven decision-making.

Response: In the NPRM, we proposed to remove §1304.50(b)(6), which excludes staff from serving on policy councils or policy committees with some exceptions, because it is superseded by the Act. In other words, the conflict of interest language in the Act, as well as the Act's clarity on who can serve on the policy council, means we no longer need the prohibition on staff serving on policy council or policy committee. However, commenters noted the exception related to substitute teachers is helpful and clarifying for programs. Therefore, we added the majority of the language on this topic from the previous performance standards back into paragraph (b)(2) to ensure clarity.

Comment: Commenters stated the Act gives the policy council responsibilities outside its scope of authority, and that the final rule should be modified to include language from the previous regulation related to duties and responsibilities. Commenters recommended we instead should focus the responsibilities of the policy council on program issues.

Response: In the final rule, we maintained the alignment with the Act with respect to the duties and responsibilities of the policy council. We did not add the requested language from the previous regulation because it has been superseded by the Act.

Comment: Some commenters requested that we clarify in the final rule the role of the policy council in hiring and terminating staff.

Response: We did not include a specific provision on the role of policy council in hiring and terminating program staff because we rely on the language in section 642(c)(2)(D)(vi) of the Act.

Comment: Many commenters supported allowing programs to establish in their bylaws five

one-year terms for policy council members as opposed to three. Commenters said the change would support continuity, increase understanding of the complexities of the Head Start program and regulation, and promote investment in the policy council.

Some commenters opposed the option of extending policy council terms from three one-year terms to five. They stated that five years is too long, that parents may not have children in the program for five years, and that a shorter term would allow for more new members.

Response: We did not revise this provision. This rule provides programs the discretion to establish in their bylaws the number of one-year terms of policy council members up to five one-year terms. Programs have the discretion of setting a lower limit.

Comment: We received comments about the term "reasonable expenses" in paragraph (e). Commenters recommended we add a definition of "reasonable expenses," allow that all participants on the policy council/committee be reimbursed for "reasonable expenses," and allow agencies to develop their own policies and procedures to determine eligibility based on the need of their communities.

Response: We did not clarify the definition of "reasonable" but allow programs to make a determination. We clarified that eligibility for the reimbursement is only for low-income members.

§1301.4 Parent committees.

Comment: We received many comments about our proposal to remove the requirement for the parent committee. Some commenters supported the proposal to remove the parent committee requirement. They emphasized that there are more meaningful and inclusive ways to engage parents that could allow for individual program flexibility and innovation. These commenters suggested that the focus should instead be on providing opportunities for parents to learn about their children and engage them in teaching and learning and on family engagement outcomes.

Some commenters supported the removal of the parent committee requirement with reservations, but were concerned about the challenges it would pose for electing policy council representatives, about the loss of the benefits to parents previously derived from participation in parent committees, and about the perceived erosion of a core philosophy of Head Start. Others asked that the revised requirement ensure a structure for representing parent views and offering parents other opportunities for engagement.

Many commenters opposed the removal of parent committees. Commenters urged that we reinstate the parent committee requirement as it existed in the previous standards. These commenters stressed that parents are foundational to Head Start and that parent committees are a long-standing cornerstone of the program. They stated removing the requirement for parent committees would weaken Head Start parent engagement and diminish parents' role. Commenters noted that parent committees stimulate parent participation in the program, help parents develop leadership, advocacy and other useful skills, and are critical to developing membership for policy council. Commenters disagreed with our statement in the NPRM that parent committees do not work in all models, such as Early Head Start – Child Care Partner-

ship (EHS-CCP) grantees, and suggested we help these grantees learn how to incorporate this valuable experience for parents in order to infuse a higher level of quality into child care settings. Commenters were also concerned that the removal of parent committee would result in the loss of in-kind contributions from parent involvement.

Some commenters opposed the removal of the parent committee requirement and asked that we make modifications or recommended alternative language in the final rule if the parent committee requirement is removed. These commenters stated similar concerns to those who requested that we reinstate the requirement, but made suggestions for the final rule, such as to allow individual programs to determine the design and structure of parent committees, or to support flexibility in local design of parent committees and proposals for alternate mechanisms to engage families. Some of these commenters believed that parent committees are not for all parents. These commenters asked that programs be required to have a process in place that ensures all parents of enrolled children have local site opportunities to actively share their ideas, that parents understand the process for elections or nominations to serve on the policy council, and that a communication system exist to share information between parents attending local sites and the policy council and governing body.

Response: We restored a requirement for a parent committee in this part and in a new §1301.4. We also note that a parent committee is part of the formal governance structure in §1301.1. This section clearly outlines the requirements for a program in establishing a parent committee and the minimum requirements for parent committees, which are consistent with all of the substantive requirements from the previous performance standards. We maintain the requirement that a program must establish a parent committee comprised exclusively of parents of currently enrolled children as early in the program year as possible and that the parent committee must be at the center level for center-based programs and at the local program level for other program options. In addition, in response to comments, we require programs to ensure parents of currently enrolled children understand the process for elections to policy council or policy committee or other leadership roles. Also as suggested by commenters, we allow programs flexibility within the structure of parent committees to determine the best methods and strategies to engage families that are most effective in their communities as long as the parent committee carries out specific minimum responsibilities. It requires that parent committees (1) advise staff in developing and implementing local program policies, activities, and services to ensure they meet the needs of children and families, and (2) participate in the recruitment and screening of Early Head Start and Head Start employees, both of which are retained from the previous performance standards. In response to comments we have added a requirement that the parent committee have a process for communication with the policy council and policy committee at the delegate level.

§1301.5 Training.

This section describes the training requirements for the governing body, advisory committee members, and the policy council. It reflects section 642(d)(3) of the Act that requires governing body and policy council members to have appropriate training and technical assistance to ensure they understand the information they received and can oversee and participate in the agency's programs effectively. We moved this section from §1301.2 in the NPRM to this place-

ment in the final rule to improve overall clarity of part 1301. We discuss comments and our responses below.

Comment: We received comments that requested clarification or suggested ways to improve clarity. We also received comments that expressed opposition for the requirement. For example, commenters requested clarification on what is considered "appropriate" training and what is included in training. One commenter requested clarification on the inclusion of advisory committee members in the training. Commenters recommended we move this section out of §1301.2, and others recommended we improve clarity by cross-referencing training requirements in another section. Some commenters opposed our requirement that governing bodies be trained on the standards because they thought it was unrealistic to expect Boards to have knowledge of all the operating standards and it detracted from getting input from governing bodies on program outcomes.

Response: We retained this requirement because it is required by the Act and because we believe governing bodies cannot effectively fulfill their program management responsibilities unless they have an understanding of the broader program requirements. Since governing bodies can choose to establish advisory committees, we included advisory committee members, who may be different individuals than governing body members, in this requirement.

To improve clarity, we moved these standards from §1301.2 to this section so that it follows sections with the requirements for all components of an agency's formal governance structure. We revised the section to include a cross reference to training requirements in §1302.12.

§1301.6 Impasse procedures.

This section on impasse procedures was found in §1301.5 in the NPRM and is now §1301.6 in the final rule. It describes procedural requirements for resolving disputes between an agency's governing body and policy council. We received many comments on our proposed impasse procedures. Many commenters believed our proposed impasse procedures weakened the role of parents in the Head Start program. They stated that we relegated the policy council, the majority of which is comprised of parents, to an advisory role by allowing the governing body the final decision when an impasse remained unresolved. In response to comments, we revised the impasse procedures. A discussion of the comments and our response is below.

Comment: Many commenters opposed our proposal for the dispute resolution and impasse procedures. Commenters stated our impasse procedure proposal contributed to a broader weakening of the role of parents in Head Start because it tilted the power balance toward the governing body and away from the policy council. They also stated that the standards conflicted with other program performance standards in this section and requirements in the Act. For example, they stated the proposal conflicted with the requirement for "meaningful consultation and collaboration about decisions of the governing body and policy council." Commenters stated that conflicts often result from issues related to the direction of the program, which is the responsibility of the policy council. These commenters suggested that the proposed requirements amount to capitulation to the will of the governing body and are not actually impasse procedures, in contradiction with the Act's requirement. Others commenters noted further contradiction given the standards would require the governing body and policy council

to work together yet exclude the policy council and allow the governing body to make the final decision. Some commenters stated that they embrace shared governance and provided examples of how the voice of parents has been critical to their decision-making during, for example, sequestration or previous impasses. Commenters made recommendations, such as adding formal mediation, strengthening the language related to "meaningful consultation and collaboration about decisions of the governing body and the policy council," referring to the impasse procedures as a consensus-building process, and establishing an independent arbitrator or third party to resolve disputes between the governing body and policy council.

We also received comments supporting the impasse procedures proposed in the NPRM. Some of these commenters stated that it is appropriate for the governing body, since they bear legal and fiscal responsibility, to make the ultimate decisions on issues related to the Head Start program after taking into consideration the recommendations of the policy council and policy committee, if applicable. Further, commenters asked for additional clarification about our proposed requirements, including the timeline for resolution.

Response: For clarity, we included the statutory language that requires "meaningful consultation and collaboration about decisions of the governing body and policy council," and we maintained requirements from the previous performance standards about these bodies jointly establishing written procedures for resolving internal disputes. We revised the requirements in this section to clarify the role of policy councils in the governance of Head Start programs, including processes to resolve conflicts with the governing body in a timely manner, and we included more specificity about what impasse procedures must include in order to better articulate the balanced process. In paragraph (b), we included a new standard that requires that in the event the decision-making process does not result in a resolution of the impasse, the governing body and policy council must select a mutually agreeable third party mediator and participate in a formal process that leads to a resolution. In paragraph (c), we require the governing body and policy council to select a mutually agreeable arbitrator, whose decision will be final, if no resolution resulted from mediation. Due to tribal sovereignty, we excluded American Indian and Alaska Native programs from the requirement in paragraph (c) to use an arbitrator.

b. Program Operations; Part 1302

Overview

In §1302.1, we made a technical change to remove paragraph (a) because the content of this paragraph was already included in the statutory authority for this rule and for this part and is therefore unnecessary to repeat here. Therefore what was paragraph (b) in the NPRM is an undesignated paragraph in the final rule.

1. Eligibility, Recruitment. Selection, Enrollment and Attendance; Subpart A

In this subpart, we combined all previous requirements related to child and family eligibility, and program requirements for the recruitment, selection, and enrollment of eligible families. We updated these standards to reflect new priorities in the Act, including a stronger

focus on children experiencing homelessness and children in foster care. We added new standards to reflect the importance of attendance for achieving strong child outcomes. Further, we included new standards to clarify requirements for children with persistent and disruptive behavioral issues as well as new standards to support programs serving children from diverse economic backgrounds, when appropriate. Commenters supported our reorganization of these requirements and our emphasis on special populations. Commenters were particularly appreciative of the standards throughout the section that were designed to reduce barriers to the participation of children experiencing homelessness. We made technical changes for improved clarity. We discuss additional comments and our responses below.

General Comments.

Comment: Commenters recommended adding language that specifically encouraged the recruitment and enrollment of children who are culturally and linguistically diverse, and/or prioritizing linguistically diverse children for enrollment.

Response: We do not think it is necessary to explicitly encourage recruitment or prioritization of culturally and linguistically diverse children. Twenty-nine percent of Head Start children come from homes where a language other than English is the primary language.[37] Additionally, as described in §1302.11(b)(1)(i), the community assessment requires programs to examine the eligible population in their service area, including race, ethnicity, and languages spoken. A program must then use this information when it establishes selection criteria and prioritization of participants, as described in §1302.14(a)(1).

§1302.10 Purpose.

This section provides a general overview of the content in this subpart. We received no comments directly for this section but made changes to be consistent with revisions in §1302.11.

§1302.11 Determining community strengths, needs, and resources.

This section includes the requirements for how programs define a service area for their grant application and the requirements for a community assessment. We streamlined the standards to improve clarity and reduce bureaucracy. In addition, we eliminated a prohibition on overlapping service areas, added new data as required by the Act for consideration in the community assessment to ensure community needs are met, and aligned the community assessment to a program's five-year grant cycle. We also required that programs consider whether they could serve children from diverse economic backgrounds in addition to the program's eligible funded enrollment in order to support mixed-income service delivery,

[37] U.S. Department of Health and Human Services, Administration for Children and Families (2015). *Office of Head Start Program Information Report, 2014-2015*. Washington, DC: Author.

which research suggests benefits children's early learning.[38,39] Below, we summarize and respond to the comments we received.

Comment: Many commenters opposed or expressed concern about our proposal to eliminate the prohibition on overlapping service areas. For example, commenters stated that overlapping service areas will be confusing and will cause conflict because of competition between grantees. Many commenters suggested we include a process for mediation when there are disputes. Commenters supported our decision to remove the prohibition on overlapping service areas.

Response: We believe removing the prohibition on overlapping service areas gives greater flexibility to local programs in a manner that will benefit the children and families they serve. Grantees may request additional guidance through the system of training and technical assistance. Therefore, we did not reinstate the prohibition on overlapping service areas in this rule.

Comment: We received a few different recommendations for additional criteria for defining service area. For example, many commenters recommended we include parents' job locations as part of the service area.

Response: While the service area is based on children's residence, this rule, as well as the previous regulation, is silent on whether a program can enroll a child that lives outside of the service area if their parents work in that area. We believe programs already have the flexibility to determine whether a child should be enrolled at a program closer to a parent's workplace and will clarify any existing sub-regulatory guidance to reflect this flexibility. We made no changes to this provision.

Comment: We received suggestions for paragraph (b)(1) to more explicitly address the purpose and the goal of the community needs assessment, to add additional or change criteria to the data (either on the five-year cycle or annually), and to provide more guidance on how programs should obtain data for the community needs assessment.

Response: We made changes to the section title and clarified that the community assessment should be strengths-based. We think these changes, together with using the full name of the community assessment – "community wide strategic planning and needs assessment" – better reflect the purpose of the assessment. We revised paragraph (b)(1) to clarify that this list is not exhaustive, and reorganized the list to make it more logically flow. We also revised paragraph (b)(1)(ii) to also include prevalent social or economic factors that impact their well-being. We did not believe additional data requirements were necessary because programs already have the flexibility to include other relevant data in their community assessments. We clarified in paragraph (b)(1)(ii) that homelessness data should be obtained in collaboration with McKinney-Vento liaisons to the extent possible, but it is important that all programs consider the prevalence of homelessness in their community, however possible. The U.S. Interagency Council on Homelessness has identified data gaps in tribal

[38] Mashburn, A.J., Justice, L., M., Downer, J.T., & Pianta, R.C. (2009). Peer effects on children's language achievement during pre-kindergarten. *Child Development, 80*(3), 686-702.

[39] Henry, G.T., & Rickman, D.K., (2007). Do peers influence children's skill development in preschool? *Economics of Education Review, 26*(1), 100-112.

communities on young children experiencing homelessness, so we recognize tribal programs may need to utilize alternative methods to ensure they fully consider the prevalence of homelessness in their communities.

Comment: We received comments about our proposal in paragraph (b)(1) to change the community assessment from a three-year to a five-year timeline that would align with a program's five-year grant cycle. Some commenters supported this change because it removed unnecessary burden on programs. Commenters expressed concern that communities change rapidly and that five years is not frequent enough to review community needs.

Response: We think we strike the right balance between ensuring programs regularly assess and work to meet their community needs through an annual re-evaluation of particular criteria described in paragraph (b)(2) and §1302.20(a)(2) and reduction of undue burden through alignment of the community assessment to the five-year grant cycle. We made no revisions to this timeline.

Comment: Many commenters recommended we change the requirement in paragraph (b)(2) that programs must annually review and update the community assessment to reflect any significant changes to the availability of publicly-funded full-day pre-kindergarten. These commenters expressed concern that public pre-kindergarten programs may not meet the needs of at-risk families because they do not offer a full spectrum of comprehensive services. Commenters offered specific suggestions for other community demographics to be considered in the annual review.

Response: Since the requirement to conduct community assessments was changed from every three years to every five years, this provision was intended to ensure programs annually capture what may be quickly changing demographic and policy landscape characteristics in their community. Emergence or expansion of publicly funded pre-kindergarten may offer new opportunities for partnerships and collaborations or it may offer new opportunities to extend the hours children receive services. We retained the standard that programs review and update the annual assessment to reflect any increase in the availability of publicly-funded pre-kindergarten including but not limited to "full-day" programs. In addition, we clarify that this review and update should take into account whether the pre-kindergarten available meets the needs of the population of the grantee serves. We revised paragraph (b)(2) to also include significant shifts in community resources, because community demographics was too narrow.

Comment: We received some comments in support of our proposed standard in paragraph (b)(3) for programs to consider whether characteristics of the community allow them to operate classes with children from diverse economic backgrounds. These commenters noted research demonstrates participation in mixed-income classes is beneficial to children from low-income families and stated the standard would support a broader notion of innovative funding models. We also received many comments requesting additional guidance to ensure this standard did not result in fewer services for income eligible children.

Response: The intent of this requirement is for Head Start programs to consider whether it is feasible to implement a mixed-income delivery model. Research finds such models to

be beneficial to the educational outcomes of children from low-income families.[40,41] However, we revised this paragraph to clarify programs must not enroll children from diverse economic backgrounds if it would result in them serving less than their eligible funded enrollment. In addition, to both support consideration of innovative funding models and clarify our intent that children funded through other sources must not receive services instead of children eligible for Head Start, we revised paragraph (b)(3), and §§1302.15(d) and 1302.18(b)(2).

§1302.12 Determining, verifying, and documenting eligibility.

This section includes the process for programs to determine, verify, and document child and family eligibility for Head Start programs. We reorganized these requirements to clarify and better reflect best practices in the field. We also made technical and structural changes to standards that caused confusion in the field after publication in February 2015 of the final rule on eligibility, to eliminate duplication, and to update terms such as replacing "landbase" with "service area."

Comment: Commenters suggested changes to paragraph (a), which provides an overview of the process to determine, verify, and document eligibility. Suggestions included a recommendation to delineate more specific conditions under which alternative methods for eligibility determination would be approved and when in-person interviews would always be required.

Response: We made one revision to paragraph (a). We noted that telephone interviews could be permitted when it was more convenient for the family and eliminated the need to document the reason. Otherwise we made no revisions as we think paragraph (a)(3) is broad enough to provide flexibility and encourage innovation at the local level.

Comment: Many commenters expressed concern about the age provisions in paragraph (b). For example, some supported children transitioning to Head Start as soon as they turn three years old, whereas others suggested children stay in Early Head Start until the next program year. Others suggested that transitions should be based on developmental needs rather than birthdays. Many commenters were concerned about how the standards in this paragraph and paragraph (j) interacted with the allocation of funds for Early Head Start-Child Care Partnerships (EHS-CC Partnerships). Specifically, commenters were concerned that EHS-CC Partnerships can serve children up to 48 months of age for family child care, and paragraph (b)(1) states a "child must be an infant or a toddler younger than three years old."

Response: The ages children are eligible for Early Head Start are defined by the Act and not subject to regulatory change. The rule sets forth reasonable flexibility for transitioning children to Head Start or other early learning programs when they turn three years of age. Additional standards for this transition are in subpart G. Thus, we made no changes to

[40] Mashburn, A. J., Justice, L. M., Downer, J. T., & Pianta, R. C. (2009). Peer effects on children's language achievement during pre-kindergarten. *Child Development, 80*(3), 686-702.

[41] Henry, G. T., & Rickman, D. K. (2007). Do peers influence children's skill development in preschool? *Economics of Education Review, 26*(1), 100-112.

provisions in this section regarding children turning three years of age. Further, the EHS-CC Partnerships appropriation explicitly allowed serving children up to 48 months old for family child care, which supersedes regulatory language.

Comment: Commenters noted Head Start eligibility in paragraph (b) should not be tied to compulsory school attendance because in some states that would mean Head Start would have to serve children up to age six or seven.

Response: It is clear from program data that standard practice is that Head Start programs serve children until they are eligible for kindergarten. However, the Act explicitly references eligibility up to compulsory school age. In addition, we think the final rule allows flexibility in the very rare circumstances it is needed. We made no revisions to these provisions.

Comment: We received many comments on eligibility requirements in paragraphs (c), (d), (e), (f), and (g). For example, commenters recommended changes for income eligibility, continuous eligibility between Early Head Start and Head Start programs, new groups for categorical eligibility, and flexibility to reallocate funds at program discretion between Early Head Start and Head Start programs. Commenters also recommended changes in paragraph (j) of this section to address continuous eligibility. Commenters recommended we change prioritization requirements. Commenters also requested additional clarification for some of the proposed criteria, including on the definition of public assistance and absence of child care.

Response: Most suggestions for amendments to eligibility would require legislative action by Congress and cannot be changed through regulation. For other suggestions, we want to allow local programs the flexibility in their selection process to determine which children and families are most in need. Therefore, we made no revisions to income eligibility, groups for categorical eligibility, or prioritization requirements. We made technical changes in this section to clarify that categorical eligibility is not a separate term used for eligibility. In addition, we made changes in paragraph (c)(1)(ii) to clarify that families are eligible if the child is receiving a Temporary Assistance for Needy Families (TANF) child-only payment. Finally we made technical changes in paragraph (d)(1) to correct the wording that implied individuals were ineligible at 100-130% of poverty. Programs may request additional guidance through the system of training and technical assistance.

Comment: Commenters recommended modifying standards to allow programs to participate in a community wide and/or statewide recruitment and intake processes.

Response: Programs already have the flexibility to participate in such systems and are expected to collaborate with community partners to ensure they are serving the children most in need. No revisions were made regarding this issue.

Comment: We received some comments about verification standards for public assistance described in paragraph (i). Some commenters supported the standards, noting they would ensure uniform practices across programs. Others opposed them or expressed concerns, with some stating they would be costly, and would delay enrollment. Commenters requested additional clarification for standards in this paragraph, including what was meant by "all" tax forms.

Response: We agree that the verification standards for public assistance will ensure uniform practices across programs and believe this is important to program integrity even if it may cause some delays, so we have not changed this language. We added language to the standard in paragraph (i)(1)(i) to include proof of income from individuals who are self-employed. This is meant to clarify that income sources from informal work, such as day laborers, should be included for income eligibility. Additionally we removed "all" before tax forms. We realize that programs want to be conscientious about proper eligibility verification so we will continue to provide guidance and support about the implementation of these standards as requested.

Comment: As noted previously, some commenters submitted suggestions about eligibility duration standards in paragraph (j). Some commenters recommended changes that would facilitate eligibility from Early Head Start to Head Start. Commenters noted that the standard in paragraph (j)(4) can complicate a program's enrollment of over-income slots if an eligible family becomes more self-sufficient during their time in Head Start.

Response: The Act sets forth the requirements for the re-determination of eligibility for Head Start after Early Head Start so we do not have authority to change these standards. We believe programs have enough flexibility in their prioritization criteria in paragraph (j)(4), so we did not make changes.

Comment: Commenters requested clarification of the standards in paragraph (m) about eligibility training. For example, commenters were confused by outdated language in paragraph (m)(3).

Response: To improve clarity of this paragraph, technical changes were made to eliminate language in paragraph (m)(3), which was unnecessary and confusing because it noted an outdated timeline tied to the final eligibility rule published in February 2015.

§1302.13 Recruitment of children.

This section maintained and streamlined standards from the previous rule about the goal of recruitment efforts and some specific efforts a program must make.

Comment: We received some comments on this section, including requests for clarification and recommendations for additional emphasis on recruitment of certain populations.

Response: Programs are required to serve children with disabilities as at least 10 percent of their funded enrollment. Therefore, requiring active recruitment for this specific population is appropriate. We added that programs should also actively recruit other vulnerable populations, including homeless children and children in foster care, and provided programs with the flexibility to define these populations based on their community assessment.

§1302.14 Selection process.

This section describes the selection process and specific criteria programs must use to weigh the selection of eligible children. It includes a new requirement for programs to prioritize serving younger children if they operate in a service area with high-quality publicly

funded pre-kindergarten. This section also included standards to conform with provisions from the Act that require at least 10 percent of a program's total enrollment to be children eligible for services under the Individuals with Disabilities Education Act (IDEA). Commenters appreciated the emphasis on a priority for children experiencing homelessness and children in foster care. We address these and other suggestions below.

Comment: For a number of reasons, many commenters opposed the standard in paragraph (a)(3) that would require programs to prioritize serving younger children if publicly-funded pre-kindergarten is available for a full school day. For example, commenters were concerned this requirement would limit families with 4-year-olds from receiving the full range of comprehensive services and supports offered by Head Start. They were also concerned it would interfere with or even unravel partnerships with publicly-funded pre-kindergarten programs. Some commenters stated this provision interfered with tribal sovereignty. Some commenters supported greater priority for younger children and some recommended we include additional standards to further this goal. Commenters also recommended that American Indian and Alaska Native programs be exempt from this requirement.

Response: We have maintained this requirement because we believe programs should be serving more 3-year-olds and infants and toddlers in areas where there is high-quality, accessible pre-kindergarten for 4-year-olds. We revised this standard to reflect that the high-quality publicly funded pre-kindergarten must be accessible for the requirement to apply and clarified that this priority is part of the selection criteria programs establish as described in paragraph (a)(1). This, for example, would give programs flexibility to weigh other criteria that would not disrupt programs serving siblings or a child with a disability if it was determined this was the best placement. We also clarified that this prioritization would not be required if it interfered with partnerships with local educational agencies. Finally, we revised this requirement to clarify that American Indian and Alaska Native and Migrant and Seasonal Head Start programs must only consider this prioritization.

Comment: We received some comments about the requirement in paragraph (b) for 10 percent of a program's funded enrollment to be composed of children eligible for services under IDEA. Some commenters supported this standard. Some commenters stated it was a difficult standard to meet in rural communities, and others recommended it be calculated across a grantee's Early Head Start and Head Start enrollment. Some commenters requested additional clarification, and some commenters requested we add specific criteria for the waiver for this standard and requested children with disabilities be given the first priority on any waiting list until the 10 percent requirement is met.

Response: This standard is required by the Act. Therefore, we cannot revise its calculation. We slightly revised the language in paragraph (b)(1) to better clarify the 10 percent is calculated from a program's total funded enrollment. Our current waiver process evaluates whether programs are making reasonable efforts to comply with the 10 percent requirement. Nationally, more than 12 percent of Head Start enrollment is comprised of children with disabilities, so we do not believe a change is necessary.[42]

[42]U.S. Department of Health and Human Services, Administration for Children and Families (2015). *Office of Head Start Program Information Report, 2014-2015*. Washington, DC: Author.

Comment: Some commenters recommended changes to waiting list requirements in paragraph (c). Some recommended less focus on a waitlist and some recommended more focus and specificity.

Response: We believe the standard in paragraph (c) is appropriate to ensure any openings during the program year get filled promptly. We made no revisions.

§1302.15 Enrollment.

This section reorganized and revised previous standards about enrollment. It includes requirements about how quickly programs must fill vacancies and efforts they must undertake to maintain enrollment of eligible children for subsequent years. It includes standards to reduce barriers to enroll children experiencing homelessness. This section includes new standards about reserving slots for pregnant women, children experiencing homelessness, and children in foster care. This section also includes a new standard to allow the enrollment of children who are funded through non-Head Start sources, including private pay. Further, this section includes a standard that clarified current policy that required programs to follow their state immunization enrollment and attendance requirements. We moved the standard from §1302.17(c) in the NPRM to paragraph (f) to improve clarity. We received many comments on this section, which we discuss below.

Comment: We received comments opposed to our proposal in paragraph (a) that programs must fill any vacancy within 30 days because the previous performance standards did not require programs to fill a vacancy within 60 days of the end of the program year. Commenters expressed a variety of reasons for their opposition, such as difficulty meeting all of the comprehensive service requirements in the allotted time period.

Response: We retained this provision with minor technical changes because we believe the provision of comprehensive services is beneficial to children – even during a period of 60 days or less. In addition, in some programs, 60 days represents one-quarter of the program year and allowing such a long period of vacancy represents lost opportunity and wasted funds. Furthermore, enrollment within the last 60 days of the program year will facilitate service delivery for the following program year.

Comment: We received comments that the standard proposed on eligibility duration that appeared in paragraph (b)(2) of the NPRM was redundant and unnecessary because of standards in §1302.12(j)(2) and (3).

Response: We agree and have struck the provision that was paragraph (b)(2) in the NPRM.

Comment: We received many comments recommending changes to the standard in paragraph (b)(2) (formerly paragraph (b)(3) of the NPRM) that allows a program to maintain a child's enrollment for a third year under exceptional circumstances as long as family income is re-verified. For example, some commenters recommended we strike this provision because it was inconsistent with §1302.12(b)(2) and the Act. Other commenters requested we define "exceptional circumstances" for better clarity. Many commenters recommended the standard be clarified to apply specifically to Head Start and include services for five-year-olds in states where compulsory education does not begin until age six.

Response: This standard is not new and we do not believe it has caused significant confusion in the past. However, we made revisions to clarify this requirement is specific to Head Start. Programs may request additional guidance, if needed.

Comment: Some commenters recommended we revise paragraph (b) to establish continuous eligibility for children from the time they enroll in Early Head Start until they enter kindergarten.

Response: As previously noted, eligibility is set by statute. Such a change is outside the scope of this rule.

Comment: We received many comments that supported the provision in paragraph (b)(3) (formerly paragraph (b)(4) in the NPRM) that programs maintain enrollment for children who are homeless or in foster care. Some commenters expressed concern about the proposed standard. Commenters supporting the provision noted its importance to support stability and continuity for children experiencing homelessness and children in foster care. Some commenters stated the standard should be made stronger. Some commenters were concerned about the provision and recommended it be struck because maintaining enrollment would be too costly.

Response: We retained this provision with no revisions. Programs may request technical assistance to support their efforts to maintain enrollment for these children.

Comment: We received comments that supported the provision in paragraph (c) to require a program to use their community assessment to determine if there are families experiencing homelessness or children in foster care in the area who could benefit from services and allowing programs flexibility to reserve up to three percent of slots for special populations. Commenters noted its importance in Head Start serving vulnerable children. Others supported the standard but recommended we expand it in a variety of ways. Others recommended changes, such as making the slot reservation a requirement instead of an allowance, adding additional subgroups for whom slots could be reserved, or allowing up to six percent of slots be reserved. Some commenters requested additional guidance on implementation.

Response: We believe we have achieved an appropriate balance between reserving slots for particularly vulnerable children while maintaining availability for other eligible children who need Head Start services. Reserved enrollment slots will not be counted as under-enrollment. Programs may request additional guidance on implementation as necessary. We made no revisions to this standard.

Comment: Some commenters expressed concern about the flexibility to reserve slots for the specified populations and concerns about the timeline allowed for such reservation, as described in paragraph (c). Some commenters were concerned the slots would remain unused throughout the year and some were concerned that it was unrealistic to fill the slots within 30 days. Others were concerned that the record keeping would be too burdensome.

Response: The rule is clear that if the reserved enrollment slot is not filled within 30 days, the slot becomes vacant and then must be filled within an additional 30 days. We believe we have achieved an appropriate balance between reserving slots for particularly vulnerable

children for an appropriate length of time while maintaining availability for other eligible children. We believe this provision will foster enrollment of particularly vulnerable children and do not agree that it is too burdensome. We note that programs are allowed but not required to reserve such slots.

Comment: We received comments in support of and opposed to the standard proposed in paragraph (d) for programs to consider the feasibility to enroll children from diverse economic backgrounds who would be funded from other sources. Commenters were concerned this standard could lead to serving fewer Head Start eligible children. Other commenters requested clarifications.

Response: As noted previously, we revised a related standard in §1302.11(b)(3) to better clarify that programs must consider the feasibility of operating mixed-income programs but that they must not enroll children from diverse economic backgrounds if it would result in a program serving less than their eligible funded enrollment. We believe this additional clarification addresses commenters' concerns that the proposed standard would mean fewer eligible Head Start children would be served. To further clarify our intent, we revised the standard in paragraph (d) to reduce redundancy and make it clear that children from diverse economic backgrounds who are funded with other sources are not considered part of a program's eligible funded enrollment. We think §1302.11, which addressed how a program should consider their community assessment, is the more appropriate placement for consideration of the feasibility of mixed-income groups.

§1302.16 Attendance.

This section included provisions to support attendance. Research finds that attendance is essential for children to benefit from program experiences that promote success in preschool and beyond.[43,44,45] Therefore, in addition to provisions from the Act to address systemic issues of a program's low monthly average daily attendance, we included new proposals to emphasize the importance of regular attendance for each child. Commenters generally supported the new emphasis and some commenters noted it would help programs identify family needs. However, many commenters opposed or expressed concern about the specific proposals and offered alternative suggestions. We discuss these comments below.

Comment: We received many comments about the requirement in paragraph (a)(1) that programs contact parents if a child is unexpectedly absent and the parent has not contacted the program within one hour. Many commenters opposed the requirement, and stated it was too prescriptive and cumbersome. Some commenters also found the provision unclear and objected to the one-hour timeline. Some commenters supported the one-hour timeline because it promoted child safety and reduced the risk of a child being left in a car or on a bus.

[43]Ehrlich, S. B., Gwynne, J. A., Pareja, A. S., & Allensworth, E. M. (2013). Preschool Attendance in Chicago Public Schools. *Research Summary*. University of Chicago Consortium on Chicago School Research.

[44]Community Action Project Tulsa County. (2012). *Attendance Works Peer Learning Network Webinar*.

[45]Connolly, F., & Olson, L. S. (2012). Early Elementary Performance and Attendance in Baltimore City Schools' Pre-Kindergarten and Kindergarten. *Baltimore Education Research Consortium*.

Response: We believe it is critically important that programs contact parents in a very timely manner to ensure children's well-being. We revised the requirements in paragraphs (a)(1) and (2) to be more systems-focused and have clarified that the program must "attempt to" contact the parent because it may not always be possible to reach the parent. However, we believe it is important for programs to ensure children's well-being by contacting parents when children are unexpectedly absent and parents have not contacted the program within one hour of program start time, so we have maintained this requirement.

Comment: We received many comments on the provision in paragraph (a)(2) about steps a program must take to improve attendance for children who have four or more consecutive unexcused absences or are frequently absent. Some commenters were generally supportive of this provision. Many commenters expressed concerns that the requirements were too prescriptive or too costly for programs. Some commenters were concerned that since low attendance was often linked to family crises, home visits would pose significant challenges. Many commenters stated the emphasis on attendance should be more systems-focused. Commenters recommended alternative language. Some commenters requested additional guidance for implementation.

Response: We believe regular and consistent attendance is essential for programs to support children's early learning. We also think that inconsistent attendance often indicates a program needs to make more efforts to engage with and support families. We think it is very important for programs to realize the importance of regular attendance and work with families when appropriate to foster regular attendance. Therefore, we retained a strong focus on supporting attendance in the final rule. To further strengthen this requirement and clarify when frequent absences must be addressed, we revised paragraph (a)(2)(iii) to reflect that programs must conduct a home visit or other direct contact with parents if children experience multiple unexplained absences, such as two or more consecutive unexplained absences. Unexplained absences would not include days a child is sick if the parent let the program know that the child was out because of an illness. We also added paragraph (a)(2)(iv) to require programs to use individual child attendance data to identify children with patterns of absence that put them at risk of missing ten percent of program days per year and develop appropriate strategies to improve individual attendance among identified children, such as direct contact with parents or intensive case management as necessary. Programs may request technical assistance to address the causes of absenteeism.

Comment: Some commenters stated the requirement about program-wide attendance in paragraph (b) should be triggered at a lower percentage for infants and toddlers.

Response: We believe the 85 percent threshold is appropriate for Early Head Start and Head Start programs and has been the long-standing threshold in the previous Head Start regulation. We retained this provision as proposed.

Comment: We received many comments about the provision in paragraph (c)(1), which provides flexibility to support the attendance of children experiencing homelessness. Many commenters were concerned about the reference to birth certificates in our proposal for fear it implied programs can require birth certificates for enrollment. Many commenters supported the flexibility but were concerned about how to satisfy federal and state require-

ments when they are in conflict. Some commenters were concerned this standard would pose a public health concern.

Response: Birth certificates are not required for enrollment. We have revised paragraph (c) to eliminate confusion. Additionally, in order to address the conflict between the program performance standards and state licensing requirements and any public health concerns, we have clarified that programs must defer to state licensing requirements. However, since it is important that children without proper immunizations get up to date and attend Head Start as soon as possible, we also strengthened the standard to require programs to work with families to get children immunized as soon as possible.

Comment: Some commenters stated the provision in paragraph (c)(2) about providing transportation for children experiencing homelessness where possible was too stringent. Some commenters stated it was not strong enough and recommended requirements that mirror those in the McKinney-Vento Act. Some commenters requested additional clarification about using program funds if community resources are unavailable.

Response: A program may use program funds to provide transportation to all children in the program or to a subset, such as homeless children. However, approximately 40 percent of programs provide transportation services. We believe the requirement for programs to use community resources if available to transport homeless children while allowing but not requiring the use of program funds to do so is the appropriate approach, and have not changed this provision.

§1302.17 Suspension and expulsion.

This section outlines the program performance standards pertaining to the suspension and expulsion of Head Start children. These standards codify long-standing practice to prohibit expulsion of Head Start children. However, given recent research that indicates suspensions and expulsions occur at high rates in preschool settings,[46,47,48] we explicitly require all programs to prohibit expulsion and limit suspension in Head Start and Early Head Start settings and further require programs to take steps, based on best practices, to support the social, emotional and other development of children who demonstrate serious behavioral issues.

In general, many commenters were supportive of the standards described in this section. However, some commenters expressed concern about the implementation of these standards if, for example, parents refuse mental health consultation, programs lack specialized staff, and alternative placements for children are not available. Below, we summarize and respond to these and other comments on this section.

Comment: Commenters recommended we define "suspension" and "expulsion."

[46] Gilliam, W. S. (2005). Prekindergarteners left behind: Expulsion rates in state prekindergarten systems. New York, NY: Foundation for Child Development.

[47] Gilliam, W.S., & Shahar, G. (2006). Preschool and child care expulsion and suspension: Rates and predictors in one state. *Infants & Young Children, 19*, 228–245.

[48] Lamont, J. H., Devore, C. D., Allison, M., Ancona, R., Barnett, S. E., Gunther, R., & Young, T. (2013). Out-of-school suspension and expulsion. *Pediatrics, 131*(3), e1000-e1007.

Response: We did not add definitions for these terms. We note that other Federal laws contain requirements and safeguards when children with disabilities are suspended or expelled. IDEA's discipline procedures apply to children with disabilities as defined in section 602(3) of IDEA in Head Start Programs. See IDEA section 615(k), 20 U.S.C. 1415(k) and 34 CFR 300.530 through 300.536.

There are other safeguards for children who are not served under IDEA but who are protected under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794, and Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. 12131 et seq., because they satisfy the definition of disability in those Acts. Those statutes, IDEA, Section 504, and Title II also do not contain definitions for the terms "suspension" or "expulsion." We expect programs to consider their ordinary and customary meanings. However, we think this section makes clear our expectations about supporting children instead of suspending and expelling them.

Comment: Some commenters suggested we revise the suspension requirements in paragraph (a) to provide more support for children who may be temporarily suspended for challenging behavior. Others recommended we completely prohibit suspension instead of requiring programs to severely limit the use of suspension. Some commenters suggested we require programs document the support services provided to each child during a temporary suspension and upon their return. Commenters also recommended we require programs to conduct home visits during any temporary suspension. Other commenters requested we require specific interventions, such as early childhood mental health consultation before a temporary suspension is permitted.

Response: We agree that instances where temporary suspensions are appropriate should be considered extremely rare. Young children with challenging behaviors should be supported and not excluded. Therefore, the provision in paragraph (a)(1) requires the program to prohibit or severely limit the use of suspension. We agree that our requirements for limitation on suspension did not appropriately focus enough on preventive and support services. We revised paragraphs (a)(3) and (4) to ensure appropriate support services in the extremely rare circumstances where programs consider suspension for the safety of children or staff. We revised paragraph (a)(3) to require programs to engage with mental health consultants and parents before a program decides on a temporary suspension. In addition, we revised paragraph (a)(4) to engage with a mental health consultant and parents and provide supportive services such as home visits, and written plans of action, to support a child during a temporary suspension to facilitate their full participation in all program activities.

Comment: Many commenters generally supported our requirements, described in paragraph (b), to prohibit expulsion. Many commenters appreciated our focus on positive interventions instead of punishment, indicated that they already prohibit expulsion in their programs, or wanted clarification that expulsion would not be permitted under any circumstances. Some commenters suggested that Head Start programs do not suspend or expel children often enough to warrant federal requirements, and questioned why such requirements were necessary.

Some commenters were concerned about an outright prohibition on expulsion in paragraph

(b). Commenters were worried it limited their options and raised concerns about how to effectively and safely implement this in their programs. Commenters raised a number of different issues, including parents refusing mental health consultation or disagreeing that their child needs additional services; danger to other children and staff; liabilities to programs; programs not having the specialized staff or access to appropriate services; and potential conflicts with state licensing. Some commenters suggested that expulsion should be allowed as a last resort for programs, that in some instances the threat of expulsion prevents parents from being disruptive to programs, and suggested that keeping children in the program may not be in their best interest. Finally, some commenters requested additional guidance on how to effectively and appropriately implement these requirements, some expressing concern about losing funding if programs are "forced" to suspend a child.

Commenters also offered recommendations they felt made the requirement stronger, including requiring programs to provide staff with access to in-service training to prevent child suspension and expulsion, implementing specific strategies to address challenging behaviors such as trauma assessments, and providing extra funding to hire additional trained staff. Some commenters suggested we add a requirement for parents to consent to mental health consultation to address their concern.

Response: We do not think young children should be expelled from Head Start because of their behavior. Though we do not believe it to be a widespread problem in Head Start, recent research finds that preschool children are being expelled at alarming rates nationwide.[49] Stark racial and gender disparities exist in these practices. Young boys of color are suspended and expelled at much higher rates than other children in early learning programs and African American girls are suspended at much higher rates than other girls.[50] Suspension and expulsion in the preschool early years is related to less educational achievement later and negative long-term outcomes.[51,52] For these reasons, HHS has recommended this problem receive immediate attention from the early childhood and education fields.[53] It is Head Start's mission to provide high-quality early education to vulnerable children and therefore, it is especially critical that Head Start ensure children with challenging behaviors are supported, rather than expelled.

We understand commenters' concerns but believe we struck the appropriate balance. Children and staff will be best supported by our firm stance against expulsion; our requirements for best practice for prevention and intervention for children's mental health and social and emotional well-being in §1302.45; requirements in paragraph (a)(2) that permit a program to temporarily suspend a child if there is a serious safety threat that cannot be addressed through the provision of reasonable modifications; and our requirements in

[49] Gilliam, W. S., & Shahar, G. (2006) Preschool and Child Care Expulsion and Suspension: Rates and Predictors in One State. *Infants and Young Children, 19(*3), 228-245.

[50] U.S. Department of Education, Civil Rights Data Collection (2016). Retrieved from: http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf

[51] Lamont, J. H., Devore, C. D., Allison, M., Ancona, R., Barnett, S. E., Gunther, R., & Young, T. (2013). Out-of-school suspension and expulsion. *Pediatrics, 131*(3), e1000-e1007.

[52] American Psychological Association, Zero Tolerance Task Force Report (2008). An evidentiary review and recommendations.

[53] https://www.acf.hhs.gov/sites/default/files/ecd/expulsion_suspension_final.pdf

paragraph (b)(2) for supportive best practices when a child exhibits persistent and serious challenging behaviors. As a last resort, as described in paragraph (b)(3), a program may transition a child directly to a more appropriate placement if it has explored and documented all possible steps and collaborated with all parties involved in the child's care. Programs should provide children with the accommodations they need based on screenings and evaluations while they are awaiting a more appropriate placement.

We believe it is critical to support parents from the time their children enroll in Head Start and to partner with them to address challenging behaviors. We understand that some parents may be reluctant to engage in mental health consultations. Programs must work to support a program-wide culture that promotes child mental health and social and emotional well-being as described in §1302.45 and as part of that process, take steps to normalize the mental health consultation process. We revised §1302.45(a)(3) to require programs obtain parental consent for mental health consultation services when they enroll children in the program. This should facilitate mental health consultation and help remove stigma around behavioral supports.

Finally, we agree it is important for programs to have the tools necessary to address behavioral problems in children without the use of suspension and expulsion. Programs are required under §1302.92(c)(4) to implement a system of professional development that supports teachers' ability to address challenging behaviors. Finally, Head Start has a long-standing history of preventing suspension and expulsion practices, and as such, programs should be able to budget accordingly.

Comment: Some commenters suggested revisions to the requirements in paragraphs (b)(2) and (3) that detailed specific steps programs must take to support a child when they exhibit persistent and serious challenging behaviors. For example, commenters stated it was unrealistic to require programs consult with a child's physician since programs cannot compel physicians to participate in a consultation process. Some commenters also stated the phrase "exhaustive steps" was too subjective and requested clarification.

Response: We agree and made revisions accordingly. We revised both paragraphs to require consultation with a child's teacher instead of their physician, and revised paragraph (b)(2) to include consideration of the appropriateness of providing needed services and supports under Section 504 of the Rehabilitation Act. We also revised both paragraphs to replace "exhaustive steps" with "explore all possible steps and document all steps taken." We think this reflects best practice, clarifies our intent, and gives programs appropriate flexibility to implement best practices that are most appropriate for a particular child.

Comment: Many commenters stated we needed to revise our expulsion requirements to allow programs to transfer children with behavioral problems to the home-based option. Some commenters stated a classroom setting was not developmentally appropriate for some children.

Response: We believe programs must make significant efforts to support the full integration of all children into every program option. Effective implementation of the requirements to support children's mental health and social and emotional well-being, described in §1302.45 will support positive learning environments, integrate preventive efforts to address problem

behaviors, and engage mental health consultants to support families and staff when challenging behaviors arise. These types of comprehensive services are foundational to Head Start. If a child exhibits problem behaviors in the classroom, the child may be eligible for appropriate special education and related services, to be included in an Individualized Education Program (IEP) developed in accordance with section 614(d) of the IDEA or an Individualized Family Service Plan (IFSP) developed in accordance with section 635 of the IDEA, or it may be appropriate to provide the child needed supports under Section 504 if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. We think moving a child to a home-based option without first exploring all the possible steps described in paragraph (b)(2) is a form of expulsion. If a child is exhibiting persistent and serious challenging behaviors in the classroom setting, programs must implement the process described in paragraphs (b)(2) and (3) to facilitate the child's safe participation in the program. Only as a last resort, and after exploring all possible steps and documenting all steps taken, programs may determine if a child needs an alternate placement such as on-going participation in a home-based program model.

Comment: Some commenters recommended we explicitly prohibit suspension or expulsion of children for poor attendance or because they are picked up late from the program.

Response: We agree children should not be suspended or expelled for poor attendance or parental tardiness. In §1302.16(a)(1) and (2), we already describe steps programs must take if a child is unexpectedly absent, has multiple consecutive unexpected absences, or is frequently absent.

Comment: Many commenters stated our requirement in paragraph (c) that states parent participation is voluntary and not required as a condition of a child's enrollment was too vague.

Response: This requirement was also in the previous Head Start Program Performance Standards. We moved this provision to §1302.15(f) to improve clarity.

§1302.18 Fees.

This section describes our policy on fees. We maintain the overarching policy that programs are prohibited from charging parents of eligible children a fee for their child's participation in a Head Start program. We made revisions to improve clarity.

Comment: Some commenters requested clarification of the requirement in paragraph (b)(1). For example, some commenters requested clarity on how long the program day could be, and how long the additional funded hours could be. Additionally, some commenters expressed concern about whether they would be able to assess fees for the pre-k funded portion of the day.

Response: Hours per day, and thereby additional funded hours, depend on the length of the day the program is operating Head Start. Programs may assess fees only for additional hours beyond the Head Start day. The ability to assess fees for hours beyond the Head Start day is subject to state and local requirements. We revised this provision to improve clarity.

Comment: Commenters requested clarity about the impact that paragraph (b)(2) would have on cost allocation. Specifically, some commenters expressed concern that programs should not be able to "double dip" in funding, stating that we would need to ensure additional funds go to additional services. Other commenters asked whether collected fees would supplant current funding. Some commenters requested clarity about whether private pay children would be considered Head Start children or would be counted as part of enrollment.

Response: All grantees receiving Head Start funds are required to comply with the provisions of 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Part 75 includes regulations requiring that all costs be allocated among multiple funding sources in accordance with relative benefits received. These regulations assure that programs cannot "double dip" or charge the same expense to more than one funding source. Head Start is designed to increase the number of low-income children receiving high-quality, comprehensive early education services that help facilitate healthy development, including physical and social and emotional development, and prepare them for school success. To meet this goal, it is critical that Head Start funds do not supplant existing services. Existing laws and regulations addressing cost allocation and non-supplantation are not re-stated in the proposed regulation. However, to improve clarity, we revised paragraphs (b)(1) and (2) to better articulate when fees may be charged to enrolled and non-enrolled families.

Comment: Some commenters supported the standard in paragraph (b)(2) to encourage mixed income settings and the ability of Head Start programs to charge a fee to private pay or otherwise funded children. Other commenters expressed concern about these provisions or explicitly opposed the requirement in paragraph (b)(2) that allowed programs to charge fees to children who are not Head Start eligible to encourage mixed-income settings. For example, some commenters were concerned this would put Head Start in competition with other private pay providers in the community or were concerned about unintended consequences for eligible children in terms of access.

Response: Research on peer influences suggests that low-income children achieve better learning outcomes in mixed-income settings.[54,55] We do not believe that allowing Head Start programs to operate mixed-income classes will have a negative impact on other private pay providers in a community. This requirement does not allow programs to serve fewer eligible children than their Head Start funded enrollment. However, to further clarify our intent mixed-income settings must in no way displace Head Start eligible children, we revised §§1302.11(b)(3), 1302.15(d), and paragraph (b)(2) in this section.

Comment: Some commenters asked for clarification or suggested revisions for additional specificity in paragraph (b)(2). For example, commenters requested clarity about the definition of "diverse economic backgrounds" and whether over-income tuition could be applied to non-federal match requirements. Some commenters asked for clarity about whether

[54]Mashburn, A. J., Justice, L. M., Downer, J. T., & Pianta, R. C. (2009). Peer effects on children's language achievement during pre-kindergarten. *Child Development, 80(3)*, 686-702.

[55]Henry, G. T., & Rickman, D. K. (2007). Do peers influence children's skill development in preschool? *Economics of Education Review, 26(1)*, 100-112.

paragraph (b)(2) allows programs to charge fees to Head Start eligible children during the non-Head Start portion of the day. Additionally, commenters requested clarity about whether Head Start children can be expelled if their parents do not pay the fees for non-Head Start hours. Some commenters suggested that expulsion should be possible, because otherwise it would be impossible to hold parents accountable for paying fees. Other commenters suggested that we ensure Head Start children cannot be turned away if the portion of day funded by child subsidies requires fee and the parents cannot pay.

Response: We believe that it is important for programs to have local flexibility to define what economic diversity means in their own communities so did not include a definition. Any non-federal match must support services to Head Start eligible children during the Head Start day. Programs can charge fees to Head Start eligible children during the non-Head Start portion of the day. However, programs cannot predicate a child's participation in the Head Start portion of the day on enrollment in the non-Head Start portion of the day or payment of any fees.

Comment: Some commenters requested clarification about the proposed regulations covering fees for services under Part C of IDEA in paragraph (b)(3). Commenters noted the provision referenced Part B of IDEA, not Part C.

Response: We agree with commenters that the reference to IDEA in paragraph (b)(3) was incorrect and unnecessary. We removed this requirement.

Comment: Commenters noted that both standard fees and "de facto fees" should be prohibited, including requiring parents to provide diapers, formula, or food and asked whether fees for special events like field trips were included.

Response: We have codified the requirement to provide diapers and formula in Head Start programs in §1302.42(e)(1) of the standards and clarified here that fees are not allowed for activities, such as field trips, that are part of the Head Start day.

2. Program Structure; Subpart B

In this subpart, we combined all previous performance standards related to program options into one coherent section and indicated different requirements for Head Start and Early Head Start when necessary. We set standards for how programs should choose a program option; defined the requirements for ratios, group size, and service duration for each of the program options; and outlined the waiver requirements to operate locally designed program options. The majority of the comments submitted on the NPRM provided input on this subpart. In particular, most commenters raised concerns with the proposal to increase the service duration for Head Start children to a full school day and full school year. We discuss the comments and our rationale for any changes other than technical changes to the regulatory text below.

§1302.20 Determining program structure.

This section describes how programs must select a program option and develop a program calendar. The provisions in this section also require that all program options provide com-

prehensive services, outline the process for conversion of Head Start slots to Early Head Start slots, allow American Indian and Alaska Native programs to reallocate funding, and clarify what are considered Head Start and Early Head Start hours of service.

Comment: Commenters expressed some concerns about the proposed provision in paragraph (a)(1) that programs annually consider whether local needs would be better met through conversion of existing part-day to full-day slots or full-day to full working day slots. Some stated that annual consideration was too often and too burdensome and suggested less frequent alternatives. In addition, the proposals in paragraphs (a)(2) and (3) created some confusion. Some commenters opposed the provision that programs consider conversion to a full year program and others found the language unclear in regards to whether this conversion was mandatory and whether full year meant calendar or academic year. Commenters requested clarification on the proposal in paragraph (a)(3) that requires programs to try to identify alternate funding sources before using program resources to cover extended hours because they found the term "extended hours" confusing and were unsure how meeting this requirement would be evaluated.

Response: We revised paragraphs (a)(1) and (2) and struck paragraph (a)(3) from the NPRM to improve clarity of what is required of programs. The requirement for programs to annually consider whether they should convert to a full year program was not meant to require actual conversion but rather for programs to annually consider whether such a conversion would better meet the needs of their community. Paragraph (a)(2) now makes clear that consideration of conversion and ways to promote continuity of care should take place as part of the annual review of the community assessment described in §1302.11(b)(2). In addition, we replaced the term "extended hours" in what was paragraph (a)(3) in the NPRM with "full working day services" for improved clarity in paragraph (a)(2) in the final rule. We believe annual reconsideration of whether a program's model is meeting local needs is appropriate.

Comment: We received comments on provisions in paragraphs (a)(1) and (3) of the NPRM regarding conversion to Early Head Start. Some commenters strongly supported these provisions. Some stated that annual consideration was too often and too burdensome and suggested less frequent alternatives. Some commenters requested that additional clarification be added to the regulation, such as noting that conversion was allowable for grantees who did not currently operate Early Head Start and that regional offices should approve or deny conversion requests within a stated timeline. Other commenters suggested the standards should explicitly allow a reduction in funded enrollment for programs that choose to convert Head Start slots to Early Head Start slots.

Response: No changes were made to the provisions regarding conversion of slots to Early Head Start, which we believe are appropriately addressed in paragraph (c), with the exception of a technical correction that the policy council would also need to approve the request and a clarification that programs should update their school readiness goals to reflect the ages of children they serve. There are no statutory or regulatory prohibitions to prevent grantees that do not currently operate Early Head Start from converting slots. We agree that a reduction in funded enrollment is a likely outcome of conversion because of the higher relative costs of serving infants and toddlers, but this does not need to be included

in the regulation. We understand there is concern about the time required to process conversion requests but note that the process follows the clear requirements set forth in statute and further clarified in this rule.

Comment: Some commenters asked for clarification about whether a blended or braided funding model would be allowed to achieve the full school day requirement. Some sought additional clarification about which Head Start standards would need to be met during hours of operation not funded by Head Start. Some commenters also sought additional clarification about which hours must meet Head Start standards and noted that they would not be able to meet Head Start standards for before and after care. Similarly, commenters asked for clarification about whether the ratio and group size requirements only referred to program hours funded by Early Head Start or Head Start.

Response: The NPRM intended to convey that hours of service that meet Head Start standards would be counted toward calculation of Head Start service duration, regardless of whether those hours were funded by federal Head Start funding or another source. We understand the need for innovative funding models to leverage funds to more efficiently meet the needs of children and families. To eliminate confusion about whether these funding models are an allowable approach to meet the service duration minimum requirements, we added paragraph (d) to clearly state that programs may consider hours of service that meet the Head Start Program Performance Standards, regardless of the source of funding, as hours of planned class operations. We encourage programs to continue to seek innovative ways to fund their program models while meeting high-quality standards throughout the day. However, we acknowledge that ratio requirements, as well as all Head Start program performance standards, apply only during the hours of planned class operations for Head Start and Early Head Start.

§1302.21 Center-based option.

This section defines the setting for the center-based program option and sets requirements for ratios, group size, service duration, calendar planning, licensing, and square footage. Most comments addressed the service duration proposal for Head Start center-based programs.

Comment: The NPRM proposed to increase the minimum hours and days of program operation for Head Start preschoolers in the center-based option. The majority of comments addressed this proposal. The NPRM also proposed making the double session model only available as a locally designed program option, instead of as a standard program model. Some commenters supported the proposed increase in the hours per day and days per year, regardless of available funding. Some specifically supported the move to full school day (minimum of 6 hours per day) or full school year (minimum of 180 days per year), and still others supported both provisions as the standard option for Head Start. Reasons for their support included: significant increases in school readiness; the strong research base; alignment with state pre-K and K-12 systems; increases in the employment rates of low-income parents; child needs for more time to reach learning goals; doubling the amount of time Head Start children would be exposed to high-quality instruction and services; and better

meeting parent needs. Others recommended we re-calculate the cost per child needed for each grantee to move to the proposed standard dosage for center-based services.

Some commenters supported the proposal to increase program duration for Head Start preschoolers, but only if funding is available to support the changes. These commenters noted the research base and potential improvement for children's outcomes, but stated that they would not support the policy without adequate funding because it would deprive many children of early learning opportunities due to a decrease in available Head Start slots. Some commenters generally agreed we should increase program duration for Head Start preschoolers, but they also raised concerns. We discuss those concerns in more detail below.

Some commenters suggested alternative minimums to the 180 days per year and 6 hours per day proposed in the NPRM. Some suggested that the requirements for the length of day and year be shorter than those proposed in the NPRM, but longer than previous standards. Commenters suggested taking an annual hours approach to program duration, such as 1,020 or 1,080 hours per year for Head Start preschoolers, to allow programs greater flexibility to design what works best for their community. Other commenters suggested requiring a specific percent of slots for each grantee, such as 50 or 75 percent, meet an increased duration requirement and allowing the remaining slots to be more flexible. Other commenters suggested that the minimum duration requirements should vary based on child age. Some suggested that the increase in duration should be encouraged, or optional, but not required. Some commenters asked if programs currently operating at a lower dosage would be "grandfathered in" and allowed to continue operating under the old program performance standards. Others suggested that the required hours per day should be less than what would trigger a nap requirement under local licensing rules. Some commenters recommended allowing programs to offer a "menu" of varied program models based on community assessments with an ability to shift slots between models over the course of the grant to meet changing needs. Some other commenters suggested that the increased duration requirements for Head Start (180 days) should align with the requirements for Early Head Start (230 days). Some commenters asked why duration requirements are not higher than those proposed in the NPRM, given the research on summer learning loss and evidence that children benefit from longer duration, and the need for a longer day to accommodate working families.

Many commenters raised concerns about the impact of these changes on partnerships and collaborations with public schools. Commenters proposed alternative minimums or suggested that programs be allowed to align their calendar with the local school district or state requirements for K-12, to facilitate partnerships with schools. Some noted that their school district or state tracks time in hours per year and suggested that this same flexibility be applied to Head Start. Commenters also raised concerns about the challenges of operating longer than their local schools. Specific concerns included disruptions to transportation, facility space, and food service; the ways service days are calculated; and union agreements. Some commenters stated that double sessions are sometimes the best option when working with school districts due to space limitations and transportation. Others stated that attendance is low when Head Start is in session but the school district is not.

The majority of commenters either opposed or expressed significant concerns with the

provisions to increase the program day and year for Head Start preschoolers, with many citing multiple reasons for their concerns or opposition. Some of these commenters were generally against the proposal to increase program duration, without going into specific reasons for their opposition. Many commenters were concerned or opposed due to the loss of Head Start slots that would occur without appropriate funding. In this context, some were specifically concerned with the elimination of double sessions and only being able to serve half the number of children in their community. Some commenters agreed that children would benefit from the increased exposure to Head Start, but they felt that this benefit was not worth other children and families no longer receiving Head Start services. Some suggested that the reduction in the number of slots could cause additional instability in already fragile communities and that there are no other high-quality early childhood education options available in some communities. Some commenters suggested delaying implementation of the new requirements until sufficient funding is in place to prevent enrollment reduction. Others expressed that any additional money should be used to increase access to Head Start, as opposed to program duration.

Some commenters stated that the increased duration was not developmentally appropriate for preschoolers. Some noted that transportation in rural areas would make the day even longer for children. Some suggested that a 6-hour day may not be appropriate for certain groups of children, such as 3-year-olds, children with challenging behaviors or special needs, or DLLs. Some commenters asserted that a longer year is not appropriate for preschoolers. Others specifically stated that moving to a program that operates five days per week (as opposed to 4 days) is not appropriate for children this age.

Many commenters expressed concern or opposition to the proposed operation minimums for preschoolers because they would limit the ability of programs to address the unique needs of the local communities and families they serve and/or because the proposed requirements do not take into account parental choice or preferences. Commenters stated the proposed requirements would prevent creative and innovative program designs that would be more responsive to community needs. Some commenters said that it does not support the cultural values of all families, such as American Indian and Alaska Native or immigrant families.

Some commenters opposed or expressed concerns about the proposed increase in service duration for Head Start because of the logistical challenges programs would face, including significant disruptions to community collaborations. Some commenters stated that collaborations they use for transportation would be severely disrupted. Others noted they would lose access to facilities because their community partnership would not be able to provide full-day space. Many of these commenters raised concerns about the lack of adequate or reasonably priced facilities in their area. Some commenters were concerned with the challenges they would face finding enough high-quality teachers for new classes. Some commenters raised concerns about negative impacts on partnerships with child care providers and family eligibility for child care subsidies to provide families with care for a full working day. Some commenters noted that children who currently receive full day services through the combination of a half-day of Head Start and half-day of state pre-k could be negatively impacted by the duration proposal.

Some commenters opposed or expressed concerns about the proposed increase in duration for Head Start preschoolers because of the potential impact on teachers and other staff. Some commenters were concerned about the loss of staff jobs that would result without adequate funding to support the increased duration, noting this would have a negative impact on the economy and local community. Commenters were concerned about how the move to a longer school day or longer school year would increase the burden on teachers and reduce time for other necessary activities, which would undermine program quality. Some suggested that this would increase teacher stress, burnout, and turnover. These issues were of particular concern to some programs that believed they would have to move from a 4-day per week to a 5-day per week schedule. Commenters were also concerned that the proposed model would make it more difficult to recruit and retain highly qualified staff. Commenters noted the need to pay teachers more in order to offset the workload associated with the increased program duration. Some commenters were concerned about the loss of staff jobs that would result without adequate funding to support the increased duration and stated this would have a negative impact on the economy and local community.

Some commenters stated that the research cited in the NPRM was not adequate or appropriate to justify the longer day and/or year for Head Start preschoolers. Some commenters stated that longer duration is not necessarily an indicator of higher program quality. Some commenters stated that moving to full school day services would not increase instructional time because of time that would need to be devoted to naps, meals, and transitions. Some commenters expressed concern with increasing duration for Head Start preschoolers because their state or municipality still has part-day, part-week, or optional kindergarten, or part-day state-funded preschool. Some commenters expressed concern about state licensing laws that would become applicable with a longer program day. Some commenters raised concerns about the impact on their non-federal share match if they served fewer families.

Response: We made significant changes in paragraph (c) to the requirements for service duration for preschoolers in Head Start center-based settings. We believe, and research indicates, that strong child outcomes are best fostered through high-quality early education programs that provide at least a full school day and full school year of services and that children are best served if Head Start programs continue to move toward this goal. We do not agree that the increased service duration is developmentally inappropriate for preschoolers, including three-year-olds, or that the research we cited is inadequate to justify these proposals. While the research does not identify a specific threshold, there is ample research that points to increased duration in achieving positive child out-

comes.[56,57,58,59,60,61,62,63,64,65,66] Many Head Start programs, as well as State funded preschool programs already operate for a full school day and a full school year.

However, we agree with commenters about the negative effects of implementing this model in such a way that could lead to significant reductions in the number of children and families served by Head Start programs, and recognize the need to allow programs and communities sufficient time to thoughtfully plan and adjust their operations. Therefore, we made significant changes to the service duration minimums in subpart B for Head Start preschoolers in center-based settings that we believe strike the right balance of giving more children access to a program with full school day and full school year services, while allowing greater local flexibility and more time for communities to adapt and potential funding to be appropriated.

Revisions in paragraph (c)(2) specify a timeline, process, and requirements for programs to phase in full school day and full school year services for all preschool children served in center-based settings. In this rule, we require that each program offer full school day and full school year services, defined as 1,020 annual hours, for at least 50 percent of its Head Start center-based funded enrollment by August 1, 2019, and for all of its Head Start center-based funded enrollment by August 1, 2021. Exceptions to these requirements may be granted through a simplified waiver process, described in §1302.24 and discussed in further detail in that section below. Paragraph (c)(2)(i) specifies that until the new requirement in paragraph (c)(2)(iv) or (v) is effective, programs that operate five days per week must provide at least 160 days per year of planned class operations for a minimum of 3.5 hours per

[56]Lee, V. E., Burkam, D. T., Ready, D. D., Honigman, J., & Meisels, S. J. (2006). Full-Day versus Half-Day Kindergarten: In Which Program Do Children Learn More? *American Journal of Education, 112(2)*, 163-208.

[57]Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (NCES 2004–078)*. U.S. Department of Education, National Center for Education Statistics. Washington, DC: U.S. Government Printing Office.

[58]Sloan McCombs, J. et al., (2011). Making Summer Count. How Summer Programs Can Boost Children's Learning. Santa Monica, Calif.: RAND Corporation.

[59]Downey, D.B., von Hippel, P.T. & Broh, B.A. (2004). Are Schools the Great Equalizer? Cognitive Inequality During the Sum¬mer Months and the School Year. American Sociological Review, 69(5), 613–635.

[60]Ehrlich, S.B., Gwynne, J.A…,..Sorice, E. (2014). *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences.* University of Chicago Consortium on Chicago School Research. Research Report.

[61]Peisner-Feinberg, E. S., Schaaf, J. M., LaForett, D. R., Hildebrandt, L.M., & Sideris, J. (2014). *Effects of Georgia's Pre-K Program on children's school readiness skills: Findings from the 2012–2013 evaluation study.* Chapel Hill: The University of North Carolina, FPG Child Development Institute.

[62]Barnett, W.S., Jung, K., Youn, M.J., and Frede, E.C. (2013). *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up*. National Institute for Early Education Research Rutgers—The State University of New Jersey.

[63]Gormley, G.T., Gayer, T., Phillips, D., & Dawson, B. (2005). The effects of universal pre-k on cognitive development. *Developmental Psychology, 4*(6), 872-884.

[64]Weiland, C., & Yoshikawa, H. (2013). Impacts of a prekindergarten program on children's mathematics, language, literacy, executive function, and emotional skills. *Child Development, 84*, 2112–2130.

[65]Walters, C. R. (2015). Inputs in the Production of Early Childhood Human Capital: Evidence from Head Start, *American Economic Journal: Applied Economics*, 7(4), 76–102.

[66]Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education.* Policy Brief. Foundation for Child Development.

day and programs that operate 4 days per week must provide at least 128 days per year of planned class operations for a minimum of 3.5 hours per day. In paragraph (c)(2)(ii) double session variations are in effect permitted until July 31, 2021, which gives grantees operating double session slots ample time to plan for full implementation of the new duration standards. Until this time, double session programs must operate for the same minimums described above. These service duration minimums in paragraphs (c)(2)(i) and (ii) are consistent with the previous program performance standards.

Paragraphs (c)(2)(iii) and (iv) set forth an incremental timeline and process for grantees to shift their programs to provide at least a full school day and a full school year of services to all preschoolers in center-based settings. We made this service duration requirement less burdensome by changing the requirement to a total of 1,020 hours annually, as opposed to a minimum number of days per year and hours per day as proposed in the NPRM. This annual hours approach will allow more local flexibility and is consistent with how the majority of states set minimum requirements for how local education agencies set their calendars. In Head Start, it will provide programs greater flexibility to design schedules that meet the unique needs of their communities while maintaining high standards for the amount of instructional time children receive. As stated in paragraph (c)(2)(iii), each grantee will have until August 1, 2019 to provide at least 1,020 annual hours of planned class operations over the course of a minimum of 8 months to at least 50 percent of its Head Start center-based funded enrollment. As noted later, "hours of planned class operations" is defined in part 1305 to clarify that only the hours when children are scheduled to attend count towards the 1,020 annual hours requirement. Paragraph (c)(2)(iv) states that by August 1, 2021 programs must provide at least 1,020 annual hours of planned class operations over the course of at least 8 months for all of their Head Start center-based funded enrollment.

Programs may design a variety of different schedules within the minimum requirements that meet the specific needs of their families, communities, and staff. For example, programs may choose to operate for four or five days a week for either an 8-month program year or year-round, depending on the length of the day they select, as long as they meet the 1,020 annual hour minimum. This flexibility will allow programs to address many of the concerns that were raised in the comments, such as alignment of the summer break with the local education agency's calendar, the availability of facilities, the continuation of partnerships, and state licensing requirements. We clarify in §1302.20(d) that all hours of service that meet the program performance standards may be considered Head Start hours regardless of their source of funding.

We believe the flexibility of the annual hours requirement will also allow programs to design schedules to minimize additional staff burden that would exacerbate challenges with attracting and retaining qualified staff. There are a variety of successful Head Start models across the country where programs currently provide full school day and full school year services. To address anticipated challenges, programs may choose to develop budgets that increase staff salaries to reflect the additional workload and to design innovative schedules that build adequate time for teacher planning and other activities into each week.

Although some commenters were concerned that instructional time would not increase under increased duration minimums due to time required for naps, meals, and transitions, we

believe having the chance to nap during the Head Start day can be very beneficial to consolidate learning and improve overall health.[67,68,69] If a program feels their children would be best served by a day without a nap at Head Start, we designed a flexible enough requirement for programs to design a schedule that would not necessitate a nap under state licensing requirements.

Some commenters believed parents do not want or need Head Start services for a longer program day and year. If parents in a particular community truly do not want full school day or full school year services and a program can demonstrate its model effectively supports child learning, then the program can apply for a waiver in accordance with the requirements described in §1302.24.

Paragraph (c)(3) provides the Secretary the discretion to lower the required percentage of funded enrollment slots for which grantees must offer 1,020 annual hours of planned class operations to the percentage the Secretary estimates available appropriations can support. This provision will allow the Secretary the flexibility to balance the important policy goal of providing all preschoolers with a full school day and a full school year of services in Head Start with the disruption and potential slot loss such a policy might create in the absence of sufficient funding.

In response to concerns about service duration requirements disrupting partnerships with local education agencies, and to reduce burden on programs that would need to seek waivers in these types of situations, paragraph (c)(2)(v) clarifies that a program providing fewer than 1,020 annual hours of planned class operations or fewer than 8 months of service will be considered to meet the service duration requirements if their program schedule aligns with the annual hours provided by their local education agency's requirements for first grade and such alignment is necessary to support partnerships for service delivery.

Additionally, commenters were concerned about the availability of adequate facilities to serve children for a full school day and a full school year. Congress appropriated $294 million in fiscal year (FY) 2016 for grantees to increase service duration. Our cost estimates included in the Regulatory Impact Analysis are for annual operating costs, and we anticipate that a portion of the first annual awards will be available for the purchase or renovation of facilities before programs begin serving children at the higher duration. We also encourage programs to consider partnerships with school districts and child care centers to use existing facilities, which have proven to be successful models for many current Head Start and Early Head Start-Child Care Partnership grantees.

Comment: In addition to proposing to increase service duration for preschoolers, the NPRM proposed to codify long-standing interpretation for Early Head Start in the Act, which describes it as a "continuous" program. We have long interpreted this to mean a

[67] Bates, J. E., Viken, R. J., Alexander, D. B., Beyers, J., & Stockton, L. (2002). Sleep and adjustment in preschool children: Sleep diary reports by mothers relate to behavior reports by teachers. *Child Development, 73*(1), 62-75.

[68] Lam, J. C., Mahone, E. M., Mason, T. B., & Scharf, S. M. (2011). The effects of napping on cognitive function in preschoolers. *Journal of Developmental and Behavioral Pediatrics, 32*(2), 90.

[69] Kurdziel, L., Duclos, K., & Spencer, R. M. (2013). Sleep spindles in midday naps enhance learning in preschool children. *Proceedings of the National Academy of Sciences, 110*(43), 17267-17272.

minimum of a full school day and full-year of services for infants and toddlers, and defined this in the NPRM as a minimum of 230 days of service per year for a minimum of 6 hours per day. Some commenters wrote in support of the proposal. Others expressed concerns or opposed the proposal for multiple reasons, including concern about a long day for infants, parents would not want services for this long, and program quality would decrease because teachers would have less preparation and professional development time. Some commenters suggested slightly lower minimums, using annual hours or weeks instead of number of days, and/or recommended changing the requirement to allow time for activities like professional development, parent-teacher conferences, and holidays.

Response: We believe it is important to retain the continuous service model for Early Head Start that has existed since the program's inception. However, to provide greater local flexibility and alignment with the policy decision made for Head Start preschoolers, we changed the NPRM requirement from a minimum number of hours per day and days per year to a total number of annual hours of planned class operations. This requirement of 1,380 annual hours can be found in paragraph (c)(1) and must be met by August 1, 2018. Based on our latest data,[70] approximately three-quarters of children attending Early Head Start center-based programs already receive services for 1,380 hours. In paragraph (c)(1)(ii), we also consider Early Head Start center-based programs that are designed to meet the needs of young parents enrolled in public school settings to meet the annual hours requirement if their program schedule aligns with the schedule of their local education agency (LEA), and they provide regular home-based services over the summer break. This specifically supports the innovative models local programs develop to support teen parents and their children.

Comment: Commenters requested clarification on the definition of days (or hours) of planned class operation and whether it would include activities such as professional development, transportation time, and other types of activities or emergencies. Some commenters recommended that the required duration be inclusive of these types of activities. Some commenters were also confused about the definition of "full year" services, interpreting the requirement as a full calendar year without a summer break. Others were unclear about whether programs would still be allowed to operate 4 days per week under the increased minimums.

Response: As noted above, we added a definition to part 1305 for "hours of planned class operations" to clarify that these are hours when children are scheduled to attend and to specify what activities are and are not included in this calculation. Activities such as professional development, teacher planning, parent-teacher conferences, classroom sanitation, and transportation do not count toward the hours of planned class operations. Programs can choose to structure their calendar year to include a summer, holiday, and other breaks to be responsive to their community's cultural traditions and family needs while still meeting the minimum service duration requirements described in paragraph (c). Similarly, programs can choose to operate 4 days per week as long as they meet the service duration minimums. We made additional minor changes to the calendar planning provisions in paragraph (c)(5) to further simplify and clarify the process.

[70] Submitted by grantees through the FY 2015 Grant Application Budget Instrument.

Comment: Commenters wrote in response to the proposed teacher:child ratios and group size for the center-based option described in this section. Some commended the proposal for maintaining strong ratios and group size because it demonstrated commitment to quality and allowed individualization and good classroom management. Others expressed concern that the ratios were too high for all ages and should be lowered. Others recommended greater flexibility. Some commenters requested more flexibility to set ratios for infants that would still meet high standards but align with their state licensing requirements. Some commenters asked for clarification or flexibility on ratios during naptime and other program hours. For example, some were specifically concerned about or seeking flexibility to allow ratios to be met by persons other than teachers. Some commenters were confused about whether class size and group size had the same meaning. We received comments both in support of and against our proposal for how programs should determine the age of the majority of children in a class to set ratios and group size.

Response: We believe this provision allows for the right balance of flexibility while also recognizing the importance of continuity of care. However, in paragraph (b)(2), we added new regulatory language to allow a group size of nine without needing a waiver for infant and toddler classes when the teacher to child ratio is 1:3 or lower. In paragraph (b)(1)(i), we clarify that brief absences of a teaching staff member that cause the group to be out of ratio for less than five minutes are acceptable. In paragraph (b)(1)(ii), we clarify that during naptime, one teaching staff member may be replaced by an adult who does not meet the teaching qualifications required. Thus, while the adult to child ratio requirement remains unchanged during naptime, additional flexibility is granted in how a program must meet that ratio. We believe this provides reasonable flexibility while maintaining high standards. Teachers that are present or staff that are substituted during nap times must have completed the safety training required for their role as staff in §1302.47(b)(4)(i), including safe sleep practices. Ratios and group size requirements for double sessions are also now included in paragraph (b), as double sessions are now permitted as a standard option until the year 2021, and after but only as a locally designed option. These requirements are consistent with the previous regulation for double sessions. We did not make any changes to the provision in paragraph (b)(1) regarding determination of the primary age of the class. Throughout subpart B, we substituted the word "group" or "class" for "classroom" and replaced "class size" with the more commonly used "group size" to eliminate confusion. Because of this change, and to make clear that the importance of the learning environment as described in §1302.31 applies to all groups regardless of the characteristics of the physical space, we have added a new paragraph (d)(3) to clarify appropriate ways to make divisions among groups when they are not in physically separate classrooms.

Comment: Commenters also wrote about our proposal in paragraph (b)(2) to support continuity of care through consideration of mixed age groups for children under 36 months of age. Some found the mixed age groups concept to suggest developmentally inappropriate practice. Others wrote in support of continuity of care practices because of the benefits to children and their parents. Some offered slight changes to the regulatory language and others recommended we provide guidance on implementation of best practices for continuity of care.

Response: We recognize there was some confusion about what mixed age groups might

mean in practice. However, we believe best practices for continuity of care will be best delivered through technical assistance and guidance and not through the regulatory process. The provisions in this section facilitate but do not require continuity of care practices.

Comment: Commenters wrote in regard to the center-based licensing and square footage requirements in paragraph (d). Some commenters expressed concern about licensing requirements in relation to schools, seeking greater clarification and noting that some states do not require public schools to be licensed. Commenters also requested clarity on whether programs have to meet licensing standards, or be licensed. Some comments supported and some opposed the center-based square footage requirements, while some stated they were too strict, others suggested they were not strong enough, and others commended the proposal to exclude square footage requirements from the waiver.

Response: We modified the provision in paragraph (d) to make it clear that programs must meet local or state licensing requirements regardless of whether the licensing entity requires that they be licensed. However, we are not requiring that all center-based programs actually be licensed because some states or local jurisdictions may not be able to license entities, such as schools, that are not required to be licensed by state or local law. We believe this provision ensures quality and child safety while allowing for the appropriate amount of local flexibility and variance in types of grantees. As proposed in the NPRM, licensing and square footage requirements will not be eligible for waivers.

§1302.22 Home-based option.

This section defines the setting for the home-based program option for Head Start and Early Head Start and sets requirements for home visitor caseload, service duration, and licensing. We received many comments about our proposal to limit home-based models as a standard option to Early Head Start only. We discuss these and other comments below.

Comment: Some commenters were in favor of removing home-based as a standard option for preschoolers. Commenters stated that home-based models do not meet the educational needs of preschool-age children. Commenters also expressed that, given the significant federal investment in home visiting through the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program, limited available Head Start funding should be targeted towards providing access to center-based programs rather than home-based programs for preschool-age children.

Alternatively, many commenters opposed the removal of the home-based option as a standard option for Head Start preschoolers, citing a number of different reasons. Commenters stated that home-based was the most appropriate delivery model in particular communities, such as rural areas, communities where home schooling is prevalent, and areas with large immigrant or non-English speaking populations. Some commenters suggested that the home-based option is a more appropriate setting for young children, children with severe special needs, disabilities, health problems, or behavior issues, and parents who request home-based to meet children's individual needs. Some commenters stated that center-based programs may not be what parents want for their child. Further, these commenters suggested that many parents are not familiar with resources in the community, do not speak

English, or have other barriers that prevent them from taking their children to center-based care. Some commenters cited research or included data demonstrating that home visiting improves outcomes for preschool children.

Response: We agree that a home-based preschool option for Head Start may be appropriate for certain communities, which is why we proposed programs could apply to operate the model through the waiver process. However, to reduce burden on grantees, we reinstated home-based as a standard option for preschoolers in paragraph (c)(2) of this section. Though research indicates that high quality, full-day and full-year center-based settings produce strong outcomes for preschoolers, we recognize that there may be a small number of situations where the home-based model best meets the needs of the child and family. For example, as commenters suggested, in communities with a high home schooling rate, parents would likely prefer home-based services. We do not believe, however, that this model should be used as a means of excluding children from center-based settings. We also do not believe this model should be the only one available to preschoolers and therefore require that it may not be the only option available for Head Start unless the program seeks and receives a locally designed option within the parameters established in §1302.24. We believe the greater clarity in the community needs provisions in subpart A and the system of program management and quality improvement in subpart J will help programs ensure that the program options they offer truly meet the early learning needs of children and the local needs of the community. Clear minimum requirements for the number of home visits and group socializations for preschoolers in the home-based option have been added in paragraph (c)(2), along with expectations for meeting those minimums in paragraph (c)(3) and for maximum caseloads per home visitor in paragraph (b). These requirements are consistent with the previous standards.

Comment: Commenters also addressed the proposal to increase the service duration for the Early Head Start home-based model to 46 home visits and 22 group socializations per year. Some supported the proposal to increase the number of home visits or suggested a higher number. Other commenters expressed concerns about or opposition to the proposed minimums. Some cited the need for home visitors to have time for paperwork, professional development, and other duties. Some noted difficulty getting families to complete 46 home visits and described family cancellation of scheduled home visits as a key inhibitor. Some of these commenters requested flexibility to allow for visits cancelled by the family. Further, some commenters suggested that the group socialization minimum was too high. Others suggested that 22 was an acceptable minimum number of socializations but requested flexibility for the number of socializations per month. Some commenters objected to the language that programs not replace home visits with medical or social services visits with the home visitor.

Response: Early Head Start was established by Congress as a continuous program. As with the Early Head Start center-based model, the NPRM proposal codified long-standing interpretation of a "continuous program" for Early Head Start in the home-based model by requiring 46 home visits per year. We retained this requirement in paragraph (c)(1)(i). We believe this level of service delivery is central to a successful home-based model and therefore no changes are being made to allow home visits or group socializations to be replaced by medical or social service appointments for the purposes of meeting service duration

minimums. However, this does not limit the flexibility of programs to use scheduled home visit time to identify needs and schedule necessary medical or social service appointments. Home visitors should have the flexibility to determine how to best meet their families' immediate needs and still reach the minimum visits focused on child development and education. However, we believe greater flexibility for meeting the number of group socializations is appropriate and changed the requirement in paragraph (c)(1)(ii) to clarify that the number of required group socializations are for each family, not each child. In addition, instead of prescribing two group socializations per month, the standards require the group socializations to be distributed over the course of the program year. Although we expect programs to space group socializations relatively evenly throughout the year, we believe this change will maintain high-quality while allowing local flexibility to address shifting and unexpected needs and schedules of the families programs serve. To address the confusion about requirements to make up cancelled visits, paragraph (c)(3) clarifies that a program must make up planned home visits or scheduled group socializations if canceled by the program in order to meet minimum service duration requirements, and that they should attempt to make up planned home visits when cancelled by the family.

Comment: Many commenters questioned the need to require licensing for group socialization sites. Commenters believed this requirement would put an unreasonable burden on programs by limiting the locations for socializations. Many also stated that group socialization sites should only need to be licensed if they occur in Head Start facilities. Further, some commenters wanted clarification on the conflict between paragraph (a) and (d), noting that community facilities (including libraries and churches), homes, and field trip locations likely would not be licensed.

Response: The language to require licensing for group socialization sites existed in the previous regulation, but we agree this is potentially confusing, unnecessarily limiting, and that not all group socialization sites need to be licensed. However, we do believe it is important that all sites are safe for children and their families. Therefore, to clarify our intent, we removed the proposed licensing requirement for group socialization sites and replaced it with a requirement in paragraph (d) that the areas for learning, playing, sleeping, toileting, preparing food, and eating in facilities used for group socializations meet relevant safety standards.

Comment: Some commenters wrote in reference to the proposal in paragraph (b) that "programs must maintain appropriate ratios during all hours of program operation" and noted this language was unnecessary for the home-based option.

Response: We agree that including ratio requirements for the home-based option was an error and removed that requirement.

§1302.23 Family child care option.

This section defines the family child care setting and the relationship between the program and the family child care provider, and sets requirements for ratios, group size, service duration, licensing, and the involvement of a child development specialist. Within this section,

commenters asked for clarity regarding the relationship with the family child care providers and the program or the requirements for ratios and group size.

Comment: As described in the preamble for §1302.21, we received many comments on the service duration requirements for center-based and family child care programs, some in favor and some opposed. The comments typically addressed the service duration proposal generally without explicitly referring to the family child care option.

Response: Because the previous program performance standards required that family child care programs operate for hours that meet the needs of families, nearly all family child care providers already meet the increased duration requirements of 1,020 annual hours for Head Start and 1,380 annual hours for Early Head Start. In fact, most family child care programs provide many more hours than these minimums to meet family needs. Therefore, we removed the service duration requirements in §1302.23(c) proposed in the NPRM, and instead require that family child care programs must operate for sufficient hours to meet the child care needs of families and cannot operate for less than 1,380 hours per year in paragraph (c).

Comment: Some commenters had concerns or questions about requirements specifically related to programs that operate in a family child care setting. Some commenters supported the family child care employment requirements in paragraph (a)(1) because it is important to ensure transparency and a successful partnership. Some commenters suggested the need for greater clarity regarding the ability for programs to either employ or contract with family child care providers. Others opposed the requirement that the program be the employer of the family child care provider, stating that it was overly restrictive and could hinder innovative employment strategies. Some sought additional guidance and other commenters were unclear about, opposed to, or had concerns about the proposed "legally binding agreement" between the program and family child care providers, and recommended we define this phrase.

Some commenters requested general clarity on the family child care option section, including requirements for ratios and group sizes, as well as expectations for identifying alternate sources of funding for extended hours and expectations under paragraph (a)(2) regarding accessibility and the definition of "as appropriate." A commenter recommended that grantees be required to annually share a list of their family child care contracts with the State Collaboration Office for better collaboration with the subsidy program.

Response: We adjusted the language in paragraph (a)(1) to clarify that a program must either have a legally binding agreement with family child care providers or be the employer of the provider(s). We also considered terminology that could be used in place of "legally binding agreement," such as "legally enforceable agreement or contract," but determined that the original phrase accurately represents the necessary legal relationship and is inclusive of contracts. We also adjusted the language in paragraph (a)(2) to clarify that programs using the family child care option need to be able to accommodate children and families with disabilities. Additionally, we revised paragraph (b) to improve clarity of the ratio and group size requirements for the family child care option. We will not require grantees to share a list of

family child care contracts with the State Collaboration Office as we do not believe that this is necessary for successful collaboration with subsidy programs.

Comment: Some commenters asked for clarification about the standard in paragraph (b)(4) that requires family child care programs to maintain appropriate ratios during all hours of operation.

Response: In paragraph (b)(4), we restored standards from the previous rule to clarify how family child care programs maintain appropriate ratios. Specifically, we revised paragraph (b)(4) to require programs to make substitute staff and assistant providers available and required a family child care program to ensure providers have systems to ensure the safety of any child not within view for any period.

§1302.24 Locally-designed program option variations.

This section describes the requirements for programs to request a waiver to operate a locally designed program option. The comments we received on this section mainly addressed the timeline and process for approval of waivers.

Comment: Commenters expressed a range of opinions on the proposed locally-designed option waiver process. Some commenters were in favor of requiring a waiver based on evidence of community needs and child progress, and noted these requirements would promote accountability, objectivity, and continuous improvement for grantees in evaluating their program design, but still allow for innovation. Others were concerned about the process being burdensome and time-consuming and recommended alternative periods and processes for approval. Commenters were concerned that the criteria that would be used to approve or deny waivers for locally-designed program options would be inconsistent or unfair and requested clarification about what evidence of outcomes would be sufficient to justify approval of a waiver. Commenters expressed concern about waivers being approved in a timely manner.

Commenters also recommended changes to limit the use of waivers. Some commenters recommended locally-designed options should be standard program options and should not require a waiver. Others recommended retaining all program options from the previous regulation as standard options instead of requiring a waiver, or other structures such as having a number of standard duration options that would include part-day/part-year services.

Some commenters expressed support for requiring approval for a locally-designed option every two years, particularly for programs that would seek to waive the requirements for increased service duration, but others opposed this requirement because it would be too burdensome for programs and suggested longer approval periods. Many of these commenters recommended a five-year period of approval that would align with the community assessment and the five-year grant cycle and would strike a better balance between accountability and burden. Some commenters recommended that programs be allowed to shift their program options annually or within their five-year grant if local needs warrant a change without requiring a new waiver.

Response: We made a number of changes to the locally-designed program option waiver

described in this section. As described in paragraph (b), we have changed the period of approval for locally designed option waivers to the full project period of the grant to align with the new five-year grant cycles. In addition, due to other changes made in subpart B, we believe many fewer programs will seek waivers, which will improve the timeliness of the process to review and make determinations. In order to ensure programs thoughtfully determine the appropriate program design that supports their long-term goals, we revised paragraph (a) to link the waiver request to achieving program goals in subpart J.

We revised paragraph (c) to clarify exactly which requirements may be waived. Paragraph (c) more clearly states that the responsible HHS official may waive one or more of the requirements contained in §1302.21(b), (c)(1)(i), (c)(2)(iii), and (c)(2)(iv); §1302.22(b) and (c); and §1302.23(b) and (c). These requirements include ratios and group size in center-based settings for children 24 months and older, Early Head Start service duration, Head Start service duration requirements for the percentage of each grantee's slots operating at 1,020 hours, caseload and service duration requirements for the home-based option, and ratios, group size, and service duration for the family child care option. However, if a waiver of group size for children over 24 months is permitted, paragraph (c)(2) specifies upper limits that are allowable under a waiver, which are included to ensure program quality and child safety. Additionally, paragraph (c)(1) clarifies that waivers are not allowable for ratios or group size for children under 24 months, which is discussed in more detail below. Provisions in the NPRM specific to double session requirements under a locally-designed option were struck because double sessions have been retained as a standard option until August 2021. We added additional language in paragraph (c)(3) to clarify the minimum center-based service duration requirements Head Start programs must meet when seeking a waiver from the 1,020 annual hours provisions in §1302.21(c)(2)(iii) and (iv).

We revised paragraph (c)(4) and added paragraph (c)(5) to clarify what programs must demonstrate in order to receive a waiver. Specifically, in paragraph (c)(4) we require programs seeking any waiver under this section to provide evidence that their locally-designed variation effectively supports appropriate development and progress in children's early learning outcomes. In addition, in paragraph (c)(5), we require programs seeking waivers of service duration to also provide supporting evidence that their variation better meets the needs of parents than the options described in §§1302.21 through 1302.23 and to evaluate the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes. We believe local flexibility is important but that tax dollars should be spent on program models that are effective in helping close the achievement gap.

Comment: Commenters stated American Indian and Alaska Native programs should not be required to apply for locally-designed option waivers for some of the provisions in subpart B, and specifically requested a tribal exemption from some of the requirements, including extending the length of the day and length of the year.

Response: We provided greater flexibility in subpart B for programs to design their program schedules in a way that best meets their community needs, including the ability to determine the length of summer breaks and the length of the day, while still ensuring American Indian and Alaska Native children reap the full benefits of greater exposure to high-quality early

learning. We think this will allow most programs to accommodate important cultural practices and subsistence activities. However, when this additional flexibility is not adequate to meet community needs, we believe it is appropriate that tribal programs, like all programs, would be able to apply for a locally-designed option.

Comment: Some commenters addressed the standard in paragraph (c)(1) to allow programs to seek waivers from ratio requirements for classes serving children who are at least two years old. Some opposed the proposal to allow programs to apply for a waiver for teacher:child ratios for two-year-olds because such waivers would decrease program quality and lessen children's individualized care. Others supported this waiver because it would allow programs the flexibility to better address extreme unmet need in their communities. Some commenters recommended that we set upper limits for ratios approved by waivers so that flexibility could be sought without compromising quality.

Response: We agree with the need for clear limits to group size and teacher:child ratios in locally-designed options so that high-quality is maintained. Therefore, waiver requirements are clarified in paragraph (c)(2)(i) to specify that even with a waiver, a class serving children 24 to 36 months of age may have no more than ten children. Furthermore, in paragraph (c)(2)(ii), we clarify even with a waiver, a class that serves predominantly three-year-old children must have no more than twenty children and in paragraph (c)(2)(iii), a class that serves predominantly four-year-old children must have no more than twenty-four children. As proposed in the NPRM, ratios and group size may not be waived for children younger than 24 months of age.

Comment: Some commenters opposed the proposal to remove the combination option as a standard option. Some commenters felt combination options met their community and parent needs better than the proposed center-based or family child care options, which were the only program options for preschoolers included in the NPRM. Some stated they were against the removal of the combination option because it is an essential part of their service delivery for rural, isolated communities with no other services and not enough children for a center-based program.

Response: We acknowledge there may be some instances in which a combination option can effectively serve a community but think these services are best achieved through the locally-designed option variation described in this section. This locally designed waiver process will ensure these more unique program models are specifically designed to respond to community needs while effectively meeting children's developmental and learning needs and that tax dollars are being effectively spent. As noted below, in changing the waiver approval process from two years to five years, we believe we struck the appropriate balance between accountability and flexibility.

Effective Dates of Subpart B Program Structure Provisions

In the NPRM, we specifically requested comment on the effective dates of the service duration requirements throughout subpart B. We received many comments on what the effective dates should be and discuss those comments and our responses below. The effec-

tive date of this rule and dates for specific requirements that will go into effective after the remainder of the regulation are included in the compliance table in the Dates section.

Comment: Commenters raised concerns with the timeline for phasing in the increased service duration requirements. Many of these commenters stated that one year after the rule is final is too fast for careful planning and implementation. Some commenters suggested that grantees be allowed to phase the requirements in as part of their five-year grant cycle, to allow for thoughtful planning among many stakeholders, time to consider funding options, and time to find adequate facilities and qualified teachers. Some commenters suggested that the effective date of the duration provisions should be tied to Congressional appropriation of funds.

Response: We acknowledge the importance of giving grantees sufficient time for thoughtful planning, consideration of community needs, and management of logistics when increasing the duration of their center-based services. Accordingly, we adjusted the effective dates of the increased service duration provisions to better facilitate thoughtful implementation. However, we are also mindful of moving forward to ensure more children receive the higher levels of service duration that we think are important to achieve strong child outcomes.

The requirements for Early Head Start center-based and home-based service duration in §§1302.21(c)(1) and 1302.22(c)(1) are effective August 1, 2018 and August 1, 2017, respectively. The majority of Early Head Start programs already operate in accordance with the service duration requirements we establish in this final rule. Therefore, only a small share of Early Head Start programs must increase their service duration to meet the new requirements. Additionally, funding in FY 2016 is available to support all Early Head Start center-based programs that need to increase their service duration and there should be time and resources for them to meet these minimums by 2018.

The requirement for 50 percent of each grantee's Head Start center-based slots to operate for a full school day and full school year in §1302.21(c)(2)(iii) is effective on August 1, 2019, which is approximately three years following the publication of this final rule. This interim requirement will mean many more families will have access to the educational services for a full school day and full school year within three years. This requirement will increase from 50 percent to 100 percent effective August 1, 2021, as described in §1302.21(c)(2)(iv). This effective date is approximately five years following the publication of this final rule. The gradual phase-in allows ample time for grantees to plan implementation and align changes with their five-year grant cycle if they choose. The service duration provisions for the Head Start home-based option described in §1302.22(c)(2), which are unchanged from the previous performance standards, do not require a delayed phase-in.

We also revised the service duration requirement for the family child care option described in §1302.23(c) to reflect language from previous standards to state that programs must meet the child care needs of families. Although the provision is not explicit that family child care programs must operate for a minimum of 1,380 annual hours, most family child care programs provide many more hours than this to meet family needs and therefore this provision does not require a delayed phase-in.

We clarify in §1302.24(d) that programs currently approved to operate program models

that do not meet the requirements described in subpart B of this rule, such as combination options, may continue to operate in their existing approved program option until July 31, 2018. However, programs must have either an approved waiver to operate a locally designed program option that meets the requirements in §1302.24 or adopt one or more of the standard program options described in §§1302.21 through 1302.23 no later than August 1, 2018.

While we believe the respective August 1, 2018 and August 1, 2019 effective dates of the center-based service duration provisions described in §§1302.21(c)(1) and (c)(2)(iii) should give the vast majority of programs enough time to make changes to their service delivery, there may be unforeseen circumstances that arise which may necessitate additional time to complete the transition without disrupting services to children. Therefore, under §1302.21(c)(4), programs may request a one-year extension of the increased service duration requirements for center-based Head Start and Early Head Start described in §1302.21(c)(1) and (c)(2)(iii) if necessary to prevent displacement of children enrolled in the program at the time this rule becomes effective.

3. Education and Child Development Program Services; Subpart C

In this subpart, we combined all previous program standards related to education and child development services. We significantly updated and restructured these requirements to reflect the Act, current research, and best practices in teaching and learning, to strengthen curriculum requirements, and to integrate the Head Start Early Learning Outcomes Framework: Ages Birth to Five. We also corrected an imbalance between Early Head Start and Head Start education standards with a unifying birth to five approach.

We received comments on all sections of this subpart. Overall, commenters were supportive and positive about the provisions in subpart C. Commenters noted the subpart provided a much clearer picture of what high-quality early education looks like, reflected research on how children learn, and appreciated our strong focus on practices that promote intentional and effective teaching. Commenters also expressed their support for our focus on intentional teaching practices but recognizing and requiring play and exploration as important to developing school readiness. Commenters supported the curriculum requirements, including the integration of professional development into curriculum implementation. They also agreed with our provisions to use assessments to individualize services. Commenters supported the integration of the Head Start Early Learning Outcomes Framework: Ages Birth to Five through subpart C and appreciated our birth to five approach.

We made some changes in response to public comments that further strengthen this subpart. For example, we modified some language and structure to ensure the subpart consistently and appropriately addressed children from birth to age five. In addition, we made changes to further strengthen and clarify effective services for DLLs. There were some recommendations we thought were too prescriptive, did not reflect best practice or research, were outside the scope of this regulation, sought guidance more appropriate for technical assistance, or were not consistent with current research-based practices. Therefore, we did not make changes based on these comments. We address additional comments below.

General Comments.

Comment: Some commenters recommended adding language throughout this subpart to recognize family child care providers separately from teachers.

Response: While we recognize the unique role of family child care providers, we believe that it is important that family child care providers be recognized as the teachers of the children they serve, and therefore use the term teachers in §§1302.30 through 1302.34 to be inclusive of family child care providers.

Comment: Some commenters expressed concern there were instances throughout this subpart that did not use language appropriate for infants and toddlers.

Response: This subpart addresses Head Start children of all ages. We only included separate standards when developmental differences made it appropriate to do so. We made revisions throughout the subpart, including for example, requirements for responsive care, a broader reference to children's learning experiences as well as activities, and changes discussed in detail below above developmental scope and sequence in curricula. These changes ensure all sections are appropriate for children from birth to age 5.

Comment: Some commenters suggested we specifically include the principles of universal design (UD) and universal design for learning (UDL) in requirements for curriculum objectives, learning materials and spaces, teaching practices, and assessments.

Response: Though we did not revise the regulation to specifically reference UDL, many of its principles are long standing Head Start and Early Head Start requirements that are expanded and enhanced in this final rule. We also did not incorporate the suggestion to require that programs adhere to UD. We agree that UD principles are beneficial for all users of a facility but think we can effectively promote the principles of UD through technical assistance provided for renovation and construction projects.

Comment: Some commenters suggested that we needed to address teacher compensation in order for this subpart to be effectively implemented.

Response: We agree that teacher compensation is vitally important to attracting and retaining effective teachers. However, addressing compensation is outside the scope of this regulation because teacher compensation is determined by Congressional appropriations and local decisions.

Comment: Some commenters stated that the regulation failed to recognize that supporting the home language of DLLs is important in and of itself, separate from the goal of supporting English acquisition.

Response: We believe there is clear language in §1302.31(b)(2) that emphasizes the importance of supporting the home language of DLLs, separate from the goal of English acquisition. The Act requires that Head Start programs support the acquisition of English for children who are DLLs.

§1302.30 Purpose.

This section provides an overarching statement of the general purpose and goals for education services in center-based, family child care, and home-based settings for Early Head Start and Head Start programs. We received some suggestions for this section.

Comment: Some commenters recommended the section include a statement that the goal of Head Start is to close the achievement gap.

Response: The purpose of Head Start is stated in the Act and is the foundation for this section, so we made no changes.

§1302.31 Teaching and the learning environment.

This section includes the key research-based elements of teaching practices and the learning environment and is central to preparing children to succeed in school. It provides programs with the elements for delivering a more intentional and focused education and learning experience that will better promote skill growth and stronger child outcomes without micromanaging local decision-making and creating undue burden.

Commenters were very supportive and expressed that the section appropriately reflected best practice and effectively elevated the research-based teaching practices that support children's learning and development.[71,72,73,74,75] Commenters supported the alignment with the Framework as well as the explicit recognition of nurturing and responsive interactions as components of effective teaching practices. Commenters noted the benefits of integrating each child's assessment information into teaching practices and supported the focus on development of skills children need to enter kindergarten ready to succeed. Commenters also appreciated the inclusion of play and exploration as key aspects of effective education programming. Others praised our approach to include meals and daily routines in the education section because it denoted their importance as opportunities for learning experiences and activities. We made some changes in response to comments, including minor structural changes to clarify our intent. Additional comments are addressed below.

Comment: Some commenters thought this section should include additional integration of professional development.

Response: We agree that integration of professional development to support effective

[71] Hamre, B. K., & Pianta, R. C. (2001). Early teacher–child relationships and the trajectory of children's school outcomes through eighth grade. *Child Development, 72*(2), 625-638.

[72] Burchinal, M., Howes, C., Pianta, R., Bryant, D., Early, D., Clifford, R., & Barbarin, O. (2008). Predicting child outcomes at the end of kindergarten from the quality of pre-kindergarten teacher–child interactions and instruction. *Applied Development Science, 12(*3), 140-153.

[73] National Institute of Child Health and Human Development (NICHD) Early Child Care Research Network. (2000). Characteristics and quality of child care for toddlers and preschoolers. *Applied Developmental Science, 4*(3), 116-135.

[74] Rowe, M. L. (2008). Child-directed speech: relation to socioeconomic status, knowledge of child development and child vocabulary skill. *Journal of Child Language, 35*(1), 185.

[75] Zimmerman, F. J., Gilkerson, J., Richards, J. A., Christakis, D. A., Xu, D., Gray, S., & Yapanel, U. (2009). Teaching by listening: the importance of adult-child conversations to language development. *Pediatrics, 124*(1), 342-349.

teaching practices is a key component of a high-quality early education program. Therefore, we specifically addressed this in paragraph (a) to ensure the system of individualized and ongoing professional development supports teachers and in curriculum requirements in §1302.32. While professional development revisions to this section were limited to those changes, we also increased the standards for the quality of professional development in subpart I.

Comment: Some commenters suggested that paragraph (b)(2) include a focus on "biliteracy" in addition to bilingualism. Commenters noted that the term biliteracy expands on the goals of bilingualism to include a focus on reading, and eventually writing, in the home language.

Response: We agree with this suggestion and we incorporated "biliteracy" into paragraph (b)(2) as well as in the home-based option in §1302.35(c)(4).

Comment: Commenters asked for clarification and raised concerns about paragraphs (b)(2)(i) and (ii) related to finding bilingual staff or interpreters to work with DLLs, such as lack of bilingual staff with appropriate credentials, especially in rural areas; lack of interpreters due to the rarity of some languages; and a high diversity of languages in the same class. Some commenters suggested this may be particularly challenging with refugee populations.

Response: Based on the best research available, we believe it is critically important to support the development of both English and the home language for children who are DLLs.[76,77,78,79,80] Additionally, we believe that all teachers, including those who only speak English, can support the development of DLLs. However, we also understand that in certain instances, such as when there are multiple non-English languages in the same class, it may be difficult to have program staff or interpreters present that speak all languages. In these instances, we encourage programs to collaborate with outside entities to ensure the presence of multiple languages in the class. Further we require programs to work to identify volunteers who can be trained to work in the classroom that can provide high-quality input in children's home language(s). We added new language to the final rule under paragraph (b)(2)(iii) to reflect these realities.

Comment: Some commenters recommended we add more specificity to paragraphs (b) and (c), including on the structure of the day, the data teachers use to plan, and the types of learning experiences provided.

Response: We believe it is important to include the key elements of the teaching and learn-

[76]Bialystok, E. (2001). *Bilingualism in development: Language, Literacy, & Cognition.* Cambridge: Cambridge University Press.

[77]Genesee, F., Paradis, J., & Crago, M.B. (2004). *Dual language development and disorders: A handbook on bilingualism and second language learning*. Baltimore: Paul H. Brookes.

[78]Castro, D. C. & Espinosa, L. M. (2014). Developmental characteristics of young dual language learners: Implications of policy and practice in infant and toddler care. *Zero To Three,* January, 2014.

[79]Espinosa, L. (2010). *Getting it right for young children from diverse backgrounds: Applying research to improve practice.* Upper Saddle River, NJ: Pearson.

[80]McCAbe, A., Tamis-LeMOnda, C.S., Bornstein, M.H., Cates, C.B., Golinkoff, R., et al. (2013). Multilingual children: Beyond Myths and towards Best Practices. *Society for Research in Child Development: Social Policy Report, 27* (4).

ing environment so programs clearly understand the components they need to implement to have high-quality education programming. However, flexibility is also needed to allow for innovation, individualization for a class or a child, and effective implementation. Therefore, we did not incorporate the suggested revision.

Comment: Some commenters noted the term "classroom" in paragraph (c) was not inclusive of family child care terminology.

Response: We agree and revised paragraph (c) to reference "learning environments" instead of "classrooms."

Comment: Some commenters opposed or expressed concern about the proposal in paragraph (e)(1) to require an age appropriate approach that accommodates children's need to nap or rest. Some were concerned about logistical challenges such as cost, staffing, and space. Some commenters supported the proposal to promote learning through approaches to rest, noting that adequate rest is closely tied to learning and health.

Response: We made no changes to the requirements to have an intentional and age appropriate approach to children's need to nap or rest except to clarify for programs serving preschoolers, it applied for programs operating 6 or more hours per day. Though maximizing learning time is important, research shows a clear link between adequate sleep and learning.[81,82,83] We believe this provision will support children's health and increase the learning children can gain from other portions of the day. Moreover, most states already require center-based programs to provide naps if they operate for fewer hours than the 6-hour threshold. Therefore, many programs are already subject to a more stringent requirement.

Comment: Some commenters opposed the proposal in paragraph (e)(2) that replaced the requirement for family style meals with an approach that was less prescriptive but retained most of the key characteristics of family style meals and ensured mealtimes were considered part of the learning day. Some commenters felt strongly that family style meals were integral to Head Start's culture. Commenters also raised concerns about eliminating an important research-based requirement because family style meals are important to teach lifelong healthy food habits and they support socialization and conversation during mealtime. Some commenters seemed concerned that family style meals would be prohibited under our proposal or that the proposal conflicted with requirements in the Child and Adult Care Food Program (CACFP).

Some commenters wrote in support of our proposal to replace the family style meal requirement with a less prescriptive proposal that focused on meals as a time for learning, socialization, and conversation. Some commenters stated that our proposal allowed for better collaboration with community partners like schools, while still retaining important parts of

[81] Bates, J. E., Viken, R. J., Alexander, D. B., Beyers, J., & Stockton, L. (2002). Sleep and adjustment in preschool children: Sleep diary reports by mothers relate to behavior reports by teachers. *Child Development, 73*(1), 62-75.

[82] Lam, J. C., Mahone, E. M., Mason, T. B., & Scharf, S. M. (2011). The effects of napping on cognitive function in preschoolers. *Journal of Developmental and Behavioral Pediatrics, 32*(2), 90.

[83] Kurdziel, L., Duclos, K., & Spencer, R. M. (2013). Sleep spindles in midday naps enhance learning in preschool children. *Proceedings of the National Academy of Sciences, 110*(43), 17267-17272.

family style meals. Others agreed it would support intentional teacher practices, focus on conversations, learning, and socialization, and eliminate overly prescriptive requirements.

Many commenters recommended we change the provision to explicitly encourage family style meals. Some of these commenters noted that the proposal included many central characteristics of family style meals and appreciated our focus on mealtime as a learning activity. They also noted they understood the benefits of our approach since it made it easier to partner with other programs because some of the specifics of family style meals were logistically challenging for some partnerships. However, these commenters strongly recommended we add language to encourage use of family style meal so it would be consistent with CACFP and because the benefits were important.

Response: We believe it is essential that programs structure and implement meals and snacks in ways that support development and learning. Family style meal service is one effective method of accomplishing this goal. Therefore, we revised the provision in paragraph (e)(2) to make clear that programs are encouraged but not required to meet the requirement to support development and learning during meals times through the use family style meals when children are old enough for this to be developmentally appropriate practice. This is consistent with CACFP, which encourages but does not require family style meals. However, we also believe it is appropriate to not be overly prescriptive, to support partnerships, and to allow flexibility in how a program promotes learning during meals.

Comment: Some commenters expressed support for our retention of requirements in paragraph (e)(2) that children be given sufficient time to eat, should not be forced to finish their food, and that food should not be used as a reward or punishment. Some commenters wrote that we should add requirements around food activities, including retaining a requirement from the previous program standards about participating in food activities.

Response: We agree that participating in food activities can be part of good practice but think this is overly prescriptive and did not make these suggested changes.

Comment: Some commenters recommended we add requirements for physical activity, including parameters about how much time children should be physically active. They suggested requirements based on the National Health and Safety Performance Standards: Guidelines for Out-of-Home Childcare, including that we require at least 60 minutes of moderate to vigorous physical activity for children in Early Head Start and at least 90 minutes of moderate to vigorous physical activity for children in Head Start.

Response: We agree that physical activity is important for young children. Not only is it important for children's health, but movement and physical activity are important to children's learning and development.[84,85,86] Developmentally appropriate practice is clear that

[84]Becker, D. R., McClelland, M. M., Loprinzi, P., & Trost, S. G. (2014). Physical activity, self-regulation, and early academic achievement in preschool children. *Early Education & Development, 25*(1), 56-70.

[85]Timmons, B. W., LeBlanc, A. G., Carson, V., Connor Gorber, S., Dillman, C., Janssen, I., ... & Tremblay, M. S. (2012). Systematic review of physical activity and health in the early years (aged 0–4 years). *Applied Physiology, Nutrition, and Metabolism, 37*(4), 773-792.

[86]Hodges, E. A., Smith, C., Tidwell, S., & Berry, D. (2013). Promoting physical activity in preschoolers to prevent obesity: a review of the literature. *Journal of Pediatric Nursing, 28*(1), 3-19.

young children need to move and be physically active. For example, the Office of Head Start's initiative I Am Moving I Am Learning has been well-received by programs and helped institute healthy practices. However, we do not believe we should dictate to local programs the amount of time children should engage in such activities. To ensure that programs recognize the role of physical activity in children's learning and health, we added a new provision in paragraph (e)(4) that reads: "A program must recognize physical activity as important to learning and integrate intentional movement and physical activity into curricular activities and daily routines in ways that support health and learning. A program must not use physical activity as a reward or punishment." We believe this provision will allow local programs to implement policies appropriate to their program design and the needs of their children.

Comment: Some commenters recommended we include new requirements with specific limitations on screen time.

Response: We agree that children should have limited exposure to screen time and believe that if programs are implementing the standards in this section for nurturing, responsive, rich learning environments and experiences that effectively support strong child outcomes, screen time will, by necessity, not be available or will be appropriately limited to interactive educational activities that evidence shows support learning. However, as even the meaning of screen time is currently evolving and the research on technology use and children's learning is an emerging field, we chose not to add any specific requirements.

§1302.32 Curricula.

This section includes requirements for the curriculum or curricula programs use. It reflects new requirements from the Act, the current role and use of curricula in the early education field, and a deeper understanding of the curriculum qualities associated with improved child outcomes. This applies to center-based and family child care programs. Curriculum requirements for home-based programs are found in §1302.35. Some commenters were supportive of the curriculum provisions. We also received comments with concerns and suggestions that we discuss below.

Comment: Commenters were generally supportive of our curriculum provisions. They stated the section included important changes that would raise the quality of curriculum and its implementation. Commenters noted the importance of the requirements for content rich curricula, and the benefits of requiring a clear scope and sequence and integration of professional development and support for teachers. They also supported the focus on implementation fidelity and the qualities of an effective curriculum, including alignment with early learning standards.

Response: We believe it is essential that programs intentionally review the curriculum or curricula they are using to ensure it meets each criterion in the final rule and appropriately supports children's development and learning. In some instances, we believe it will be necessary for programs to use curricula enhancements to ensure their programming is sufficiently content rich and to achieve strong child outcomes. We expect programs to be thorough in reviewing their curriculum and the professional development system that sup-

ports teachers' implementation of curriculum. For this reason, as proposed in the NPRM, programs have approximately one year after publication of this rule to implement this standard.

Comment: Some commenters recommended we include a list of acceptable curricula to ensure programs use effective ones and to help guide state pre-kindergarten curriculum choices.

Response: Development of curricula that can effectively impact child outcomes is a growing field. Programs should not just accept the publisher's word that their curriculum meets Head Start standards, but should continuously evaluate its effectiveness as part of the program management approach. We did not include a specific list of acceptable curriculum so programs have the flexibility to implement appropriate curricula for the children they enroll, supplement curricula as needed, and make changes as the field advances.

Comment: Some commenters expressed concerns about the provision in paragraph (a)(1)(iii) that requires curriculum to include an "organized developmental scope and sequence." Others supported this standard. Some commenters were concerned that "scope and sequence" would not be interpreted in a developmentally appropriate manner. Others were concerned its interpretation was not clear for infants and toddlers.

Response: We revised paragraph (a)(1)(iii) to clarify our meaning of developmental scope and sequence. This standard now reads: "has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn." We made similar changes to the comparable provision for curricula in home-based programs in §1302.35 for the same reasons. As part of this revision, we moved our requirement that curricula be sufficiently content-rich to promote measurable progress to paragraph (a)(1)(ii). This reorganization was for clarity; we did not change the substance.

Comment: Some commenters were concerned the curriculum requirements were not developmentally appropriate. Some were confused about narrative in the NPRM's preamble that noted that research finds that strong child outcomes for children are supported by activities that intentionally engage children in activities like math or language for 15 to 20 minutes multiple times each week.

Response: We are clear in paragraph (a)(1) that programs must implement developmentally appropriate curricula and we do not believe any of the criteria required in paragraph (a)(1) are developmentally inappropriate. Therefore, we do not need to revise this section to address this concern. Neither the proposed rule nor the final rule included any requirements about the specific amount of time teachers should spend on any particular activity. Content-rich curriculum, in which children intentionally engage in a math activity (for example), does not require children sit still or be passive recipients of rote instruction. For example, if implemented correctly, content-rich learning activities are interesting, appropriate, and engaging for children. Developmentally appropriate practice and effective intentional teaching with young children does not mean rote instruction, sitting still for lengthy periods while adults talk at them, or "drill and kill." Such teaching practices would not meet the requirements in this subpart.

Comment: Commenters supported the provisions in what were paragraphs (a)(2) and (3) that addressed professional development support for curriculum implementation and fidelity of implementation. Some commenters offered suggestions for further clarifying and strengthening the goals of these provisions.

Response: We retained the two key concepts of the provisions in paragraph (a)(2) – professional development – and paragraph (a)(3) – curriculum fidelity, but integrated and streamlined them into paragraph (a)(2) to improve clarity and implementation. Our revisions place more focus on staff support and are less compliance oriented. In paragraph (a)(2), we more clearly articulate the important requirement of supporting all teachers with support, feedback, and supervision in order to continuously improve curriculum implementation. In addition, whereas in the proposed rule, curriculum fidelity kits were likely the main way programs would comply with paragraph (a)(3), we revised paragraph (a)(2) to focus on the requirement not the method. We made similar changes to the comparable provisions for home-based programs in §1302.35 for the same reasons.

Comment: Many commenters expressed concern or sought clarity on the provisions in paragraph (b) that proposed requirements for when programs sought to make significant adaptations to curriculum. Many commenters requested greater flexibility in curriculum requirements in paragraphs (a) and (b) so programs who serve culturally diverse communities for whom curricula have not been designed or validated. Some commenters were not clear how much adaptation would necessitate partnerships with researchers. Others thought the provision was too burdensome and unnecessary. Some supported the requirement and suggested we make it more stringent.

Response: We agree our proposal in paragraph (b) lacked sufficient clarity and flexibility. We revised paragraph (b) to require that programs that need to make significant adaptations to a curriculum or curriculum enhancement, must partner with early childhood education curriculum or content experts. For example, programs would not need to seek external expertise if they are adding a research-based curriculum supplement to an underlying curriculum in order to make it sufficiently content rich. Programs would also not need to seek external expertise if they were supplementing the curriculum's set of picture books if they were replacing them with books that reflect the diversity of culture and languages spoken in the classroom. However, a program seeking to significantly adapt a curriculum by translating major portions of it to respond to the needs of children learning more than one language would need to seek external review by a curriculum expert to ensure such translation maintained the scientifically valid characteristics of the underlying curriculum. This will ensure programs implement high-quality curricula that meet the requirements in paragraph (a). We eliminated the proposed requirement for a research evaluation of the adaptation to improve flexibility, but still encourage programs to partner with outside evaluators. To ensure accountability, paragraph (b) requires programs to assess whether the adaptation adequately facilitates progress toward meeting school readiness goals as part of the program management process described in subpart J. We believe this provision provides better clarity and strikes the right balance between flexibility and maintaining high standards for curriculum quality. We made similar changes to the comparable provision for home-based programs in §1302.35 for the same reasons. We note that paragraph (a)(1) allows curricular enhancements and does not require the partnerships described in paragraph (b). Likewise,

small changes to curricula to make them more culturally appropriate for the children being served do not require the partnerships described in paragraph (b). While not required, we encourage programs to work with a researcher or evaluator to examine their adaptations, if possible. We retain the requirement from the NPRM that programs must report curricula variations to the responsible HHS official.

§1302.33 Child screenings and assessments.

This section applies screening and assessment requirements to all program options and includes significant revisions to the previous program performance standards in order to integrate advances from research, reflect best practice, and implement provisions from the Act. It includes requirements for the appropriate use of developmental screening and on-going child assessment that are integral to high-quality programs.

Commenters supported many of the changes in this section, including the clear process for referral for formal evaluation and the updates to individualize services for children. We made changes to strengthen and clarify the provisions in this section.

Comment: Some commenters noted the importance of maintaining the 45-day requirement for developmental screenings in paragraph (a)(1), but some commenters stated the timeline for screening was too short and some stated it was too long. Some commenters noted we dropped the timeline from the previous regulation for developmental screenings in Migrant and Seasonal Head Start programs, and many commenters noted we inadvertently dropped the requirement to programs to obtain screenings instead of only explicitly completing them.

Response: The final rule retains the 45-day timeline for developmental screening. We believe it is both reasonable and important to complete screenings quickly so that individualized needs can be promptly identified. We restored the 30-calendar day timeline for Migrant and Seasonal Head Start programs to paragraph (a)(1), which is consistent with the previous regulation and was inadvertently dropped from the proposed rule. In addition, in paragraph (a)(1), we clarified that a program can meet the development screening requirement either by completing it themselves or obtaining the results from another source, and that the screening must be current.

Comment: Some commenters noted that what was paragraph (a)(2) in the NPRM for programs to adhere to a prompt timeline for referrals that they cannot control.

Response: We made revisions in paragraph (a)(3) to address these concerns. We believe it is important for programs to refer children to the local agency responsible for determining IDEA eligibility for a formal evaluation as soon as possible, and not to exceed timelines required under IDEA, but understand programs cannot control how quickly the IDEA agency completes the formal evaluation

Comment: We received comments both in support and opposition of the proposal in what was paragraph (a)(3) in the NPRM to waive the 45-day developmental screening requirement for children with a current individualized family service plan (IFSP) or IEP. Some commenters supported the proposal and noted it was good to eliminate redundant and un-

necessary screening. Some commenters opposed the provision and stated that relying only on an IFSP or IEP would lead programs to miss important information about the children they serve.

Response: We revised the final rule to remove the provision to waive the 45-day screening for children with a current IFSP or IEP. We note that developmental screenings are not overly time consuming, are not a burden for children, and agree that there is the potential for developmental issues to be missed if a program only relies on an IFSP or IEP. We believe that screenings can also serve as an important mechanism to build teacher-family partnerships, celebrate children's developmental milestones, and provide valuable information to both teachers and families on supporting children's holistic development, across settings.

Comment: Some commenters supported our proposal in paragraph (a)(5) for programs to help parents access services and support if their child has a significant delay in one or more areas of development that were likely to interfere with the child's development and school success. Some commenters suggested this was an important provision because it would ensure a specific at-risk population was better served. Some commenters supported the provision but stated that it was too vague and that further information or definitions were needed to clarify what we meant by "significant delay" and "supports and services." Some commenters also recommended referencing Section 504 and the Americans with Disabilities Act (ADA) requirements or clarity about these services being provided in the natural environment. Some commenters who supported the provision stated that these children should be counted in the program's calculation for meeting the requirement that 10 percent of children in Head Start be eligible for services under IDEA.

Many commenters were opposed to our proposal in paragraph (a)(5). They acknowledged it would be an important service but opposed it because of associated costs. Other commenters opposed the provision for reasons that included: they did not think programs had the expertise to make the decision or provide the services; they believed it was inappropriate if other specialists already deemed special education services unnecessary; or they were concerned it would undermine their partnerships with local educational agencies. Some commenters felt it was unnecessary because programs already individualize services. Some commenters agreed it could be helpful to children but that it should be a recommendation not a requirement. Other commenters who opposed the requirement requested that if we implemented the provision, the children should count toward the program's 10 percent disability enrollment requirement.

Response: We believe that when a formal assessment finds a child has a significant delay, it is important that the program work with parents to address the identified needs, even if the child is not found eligible for early intervention or special education and related services under IDEA. Therefore, the final rule retains the policy in paragraph (a)(5) but makes changes to the provision to better clarify what is and is not expected of the program. We clarified that programs are required to partner with parents to determine if needed supports and services are available through a child's health insurance and/or whether it is appropriate to provide supports for the child pursuant to Section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act.

A program may use Head Start funds for such services and supports when other funding is not available but the program is not required to do so. Family service, health, or other appropriate staff, together with the parents, must try to identify resources that can help provide the child with the services and supports they need. We think this clarifies what we mean by "supports and services" and did not define the term. We also note that the provision explicitly requires this determination be made with guidance from a mental health or child development professional to ensure staff with appropriate expertise guide the determination of the child's needs. We did not define "significant delay" so the mental health consultant and local experts can have appropriate flexibility.

Comment: Many commenters wrote in support of the general approach to child assessment in paragraph (b), including its research base and its clarity on using and integrating assessment information into individualization and teaching practices. However, many commenters expressed concern about the term "standardized and structured assessment" in paragraph (b)(1) and sought greater clarity on its meaning.

Response: We added language to paragraph (b)(1) to clarify that the standardized and structured assessments may be "observation-based or direct."

Comment: Some commenters recommended we add requirements about the frequency of assessments or made other suggestions for paragraph (b), such as how the data are reported.

Response: We did not revise paragraph (b) to include requirements about the frequency of assessments because we believe those determinations are best made at the local level. However, we made small changes in paragraph (b)(2) to further strengthen how programs use assessments. Specifically, paragraph (b)(2) was revised to require program "regularly" use assessment and other information to support individualized learning and that such assessment data be used to "inform" strategies for individualization.

Comment: Some commenters were unclear about the need to assess DLLs in multiple languages if they are proficient in English, as proposed in paragraph (c)(2). Some recommended that DLLs only be assessed in their non-English language if they struggle with English. Some commenters stated that assessment in both languages should not be required for program participation and asked whether programs will seek parental input or consent for screenings and assessments in both languages.

Response: Assessing the language development of a DLL child in both English and his/her home language provides a more complete picture of the child's language development, including potential strengths or concerns, even if the child is proficient in English. Additionally, as stated in §1302.34(b)(6), program staff must inform parents and family members about the purposes and results of screenings and assessments and discuss children's progress.

Comment: Commenters were concerned with the feasibility of assessing DLLs in their home language as proposed in paragraph (c)(2). Commenters raised concerns such as: lack of valid, reliable assessments in less common languages; feasibility of having interpreters for all languages; and burden on staff to assess children in both languages. Some comment-

ers requested clarification, such as if it is acceptable for an English-speaking staff person to use a Spanish interpreter to conduct assessments with DLLs and, for assessments conducted in both languages, if teachers should record the higher of the two scores.

Response: We strongly believe that programs should assess DLLs in their home language with valid, reliable assessments, when feasible. While Spanish is the home language of most DLLs in Head Start, we recognize that there are over 140 other languages spoken by Head Start children and that valid, reliable assessments are not available in every language spoken by children in Head Start. We revised paragraph (c)(2)(ii) and added new language at paragraph (c)(2)(iii) in the final rule to reflect this reality including mechanisms that support accurate and appropriate assessment processes. We also revised paragraph (c)(3) to acknowledge when interpreters may be necessary to work in conjunction with qualified staff that do not speak the language. Finally in paragraph (c)(4) we clarified that only in instances where an interpreter and qualified staff are not available can screenings and assessments be done in English, but it is particularly important that programs gather and use other information and structured observations over time about the child development, including information from the family about home language use. Assessments with DLLs should be conducted with the same frequency as that for all children – as noted in paragraph (b)(1), assessments must be conducted with sufficient frequency to allow for individualization within the program year.

Comment: Some commenters were concerned that requirements for serving DLLs might not support parental choice, including the requirement in paragraph (b)(2) to assess children in both languages, and the focus on exposure to English for infants and toddlers in §1302.31(b)(2)(i).

Response: We believe assessing children's language skills in both English and their home language is necessary to accurately capture DLL children's language development. Additionally, the Act requires Head Start programs support the acquisition of English for DLL children.

§1302.34 Parent and family engagement in education and child development services.

This section includes provisions to ensure that center-based and family child care programs structure their education services to recognize parents' important roles in their child's education. It primarily reflects the previous requirements replaced by the final rule but reorganizes them for better clarity and implementation.

Many commenters expressed an over-arching concern that the proposed rule diminished the role of the parents, though commenters generally supported this section and noted it retained the important philosophy that parents are children's first and most important teachers. Some commenters also recommended changes, some of which we felt were too prescriptive or unnecessary to support best practice. Other comments are discussed below.

Comment: Some commenters recommended changes to further clarify the important role of parents and suggested greater alignment with the Parent Family and Community Engagement Framework.

Response: We revised this section to clarify and strengthen the standards. For example, the section heading has been changed from "Parent involvement" to "Parent and family engagement in education and child development services" to better reflect the intent of this section and align the work programs have done with the Parent, Family, and Community Engagement Framework. In addition, changes were made in paragraph (a) to better reflect parents' central role in children's education. We added a new provision in paragraph (b)(2) to strengthen the engagement between teaching staff and parent. In addition, we made changes in paragraphs (b)(4), (6), and (7) to better distinguish which engagement activities are appropriate for parents as opposed to families.

Comment: Some commenters stated that we required too many home visits, and others suggested we require more home visits. Some commenters opposed the requirement in paragraph (b)(7) for teachers to complete a home visit before the start of the program year, if possible, while others supported it.

Response: In response to comments seeking some clarification, we made a few small structural changes to the provision that is now found in paragraph (b)(7) to clarify the home visit requirement. However, we did not revise the number of required teacher home visits. Further, we note that paragraph (b)(7) states that one visit should take place before the program year begins "if feasible." We believe that home visits before the start of the program year reflects best practice but that sufficient flexibility is provided when it truly is not feasible. As before, teachers can do more than two home visits if they feel that is appropriate.

Comment: Some commenters recommended combining the provisions in this section with those in §1302.51.

Response: We agree that both this section and §1302.51 address activities to engage parents and families in their children's learning. However, we did not combine the sections because this section specifically addresses services and philosophies related to children's educational services and §1302.51 includes parent services and are better organized in the parent engagement subpart.

§1302.35 Education in home-based programs.

This section includes the requirements for education services in home-based programs. It codifies and builds upon the guidance and technical assistance we provided to home-based programs for many years. We discuss comments and changes we made to the proposed rule below.

Comment: Some commenters supported the use of research or evidenced-based home visiting curriculum, the use of promising practices, and recommended we specify particular home visiting programs or curricula or asked for clarifications about the requirement.

Response: We believe the use of a research-based home visiting curriculum is critical to ensuring home-based services improve child and family outcomes. We did not revise the section to require a particular curriculum for serving children in the home-based program because we believe programs should have local flexibility to select a curriculum that best meets the needs of the children and families they serve. We clarified the language around

adaptations of curricula in the same way as in §1302.32 for center-based and family child care programs.

Comment: Some commenters suggested we include language that clearly states home visits are to help parents understand their child's development and to support responsive interactions between parent and child. Some commenters further requested clarification about how the Head Start Early Learning Outcomes Framework: Ages Birth to Five applies to home-based because it does not include family goals.

Response: We agree that home visits must reflect the critical role of helping parents support the early learning and development of their children. Therefore, we revised paragraph (b)(1) to clarify that home visitors must be able to effectively communicate with parents directly or through an interpreter. In addition, we reordered the home-based education section to put the parent and the home-based experiences in paragraph (c) prior to the discussion of curriculum now found in paragraph (d), to emphasize the central role of parents in successful home-based services. We believe this addresses the comments and that further revision is not necessary. Further, the Head Start Early Learning Outcomes Framework: Ages Birth to Five describes what children ages birth to five should know and do. We have the same expectations for all children enrolled in any Head Start option.

Comment: Many commenters suggested that we require components of the Parent, Family, and Community Engagement Framework (PFCEF) to be included in the home visit experiences in what was paragraph (d) and is now paragraph (c).

Response: Programs are required to use the PFCEF as part of their family engagement services, which are already required in paragraph (b)(4). Therefore, we did not make this revision.

§1302.36 Tribal language preservation and revitalization.

This section provides support for programs serving American Indian and Alaska Native children that wish to or are already engaging in tribal language revitalization efforts. We added this as a new section based on reviewer comments about our inconsistent inclusion and meaning of the phrase "Native language" in the proposed standards in the NPRM.

Comment: Some commenters expressed concern about the inconsistency of the inclusion of "Native language" for American Indian and Alaska Native children and requested clarity on the intent of these provisions in §§1302.31 and 1302.35.

Response: We revised the language in §§1302.31 and 1302.35 to clarify the intent of these provisions with respect to American Indian and Alaska Native children. Additionally, we added this new section to clarify that programs serving American Indian and Alaska Native children may choose to engage in efforts to preserve, revitalize, restore, or maintain the tribal language(s) for these children.

4. Health Program Services; Subpart D

In this subpart, we updated program performance standards related to health, nutrition,

mental health, and safety. We retained the core health services from the previous program performance standards, including screening, ongoing care and follow-up care both because the Act clearly links health, mental health, and nutritional services as important supports to foster children's school readiness and because research demonstrates a strong link between child health, school readiness, and long-term outcomes.[87,88,89] We further strengthened the requirements with an emphasis on oral health and parent education in health issues. We also updated the mental health requirements to reflect best practice, to ensure programs use mental health services to improve classroom management, and to support staff in effectively addressing challenging behaviors. We also streamlined program performance standards to make it easier for programs to find what they need and to implement what we require. We received many comments on this subpart. Commenters generally supported our reorganization and streamlined requirements. Some noted their support for our continued emphasis on health services as central to Head Start. Many commenters offered recommendations for additional changes. In response to comments, we made technical changes, clarified requirements, and further strengthened health, nutrition, and mental health services. We also improved family support services and strengthened and clarified safety practices. We discuss comments and our responses below.

General Comments

Comment: Some commenters were concerned we diminished the importance of health services in Head Start.

Response: We do not believe we diminished the importance of health services in Head Start. The rule is clear that programs are required to promote the health and well-being of all children in Head Start. We believe this is central to Head Start's mission of helping children succeed in school and in life. The rule clearly articulates the many health services programs must provide and allows programs better flexibility to focus on improved delivery of health and well-being services instead of process-laden requirements.

Comment: Some commenters recommended we replace the word "dental" with "oral" throughout the rule to reflect current scientific and clinical terminology.

Response: We agree "oral" is a more appropriate description than "dental." Therefore, we replaced the word "dental" with "oral" throughout the regulation.

§1302.40 Purpose.

In this section, we outline the overall goal of this subpart, which is to ensure programs provide high-quality health, mental health, and nutrition services that support each child's growth and school readiness. To improve clarity, we moved the requirement for programs

[87] Currie, J.M. (2005). Health disparities and gaps in school readiness. *The Future of Children, 15*(1), 117-138.
[88] Janus, M., & Duku, E. (2007). The school entry gap: Socioeconomic, family, and health factors associated with children's school readiness to learn. *Early Education and Development, 18*(3), 375-403.
[89] Bruner, C. (2009). Connecting child health and school readiness. (Issue Brief No. 9). Denver, CO: The Colorado Trust.

to establish and maintain a Health Services Advisory Committee from subpart E to this section.

Comment: Some commenters suggested we include oral health in the list of health services included under this section. Other commenters recommended we include the word "culturally" in the description of appropriate services.

Response: We agree oral health is an important element of overall health and might not automatically be recognized as included under health. So, we added "oral health" to the list of health services. We also agree health practices need to be culturally appropriate and revised paragraph (a) to improve clarity about service delivery.

§1302.41 Collaboration and communication with parents.

This section requires programs collaborate and communicate with parents about their children's health in a linguistically and culturally appropriate manner and communicate with them about health needs and concerns in a timely manner. It also includes program requirements for advance authorization from parents and for sharing policies for health emergencies. We received some comments on this section.

Comment: We received some comments requesting clarification on communication and collaboration with parents. For example, commenters noted that an example offered in the NPRM preamble did not appear in the regulation text. Other commenters asked which "health emergency policies" referenced in paragraph (b)(2) programs must share with parents.

Response: The preamble in the NPRM provided explanation and rationale for the proposed requirements. We offered examples as guidance to make the rule more accessible to readers. We did not revise the requirement about sharing policies for health emergencies because we think it is appropriately described. Most programs share their health emergency policies with parents through a parent handbook or other vehicle.

§1302.42 Child health status and care.

This section includes requirements for programs to determine children's source of care, to support parents in ensuring children are up-to-date for preventive and primary medical and oral health care, and to support parents to ensure children receive ongoing necessary care. It also requires programs to determine if children have health insurance and supports families in accessing health insurance if they do not. It also includes requirements for extended follow-up care where appropriate and clarifies use of program funds for medical and oral health services. Commenters generally supported this section but also requested clarification and offered additional suggestions. We address these comments below.

Comment: We received many comments about the timelines in paragraphs (a) and (b) that describe requirements for determining whether a child has an ongoing source of health care and insurance coverage, to assist families in accessing care and health coverage, and to determine if children are up-to-date on preventive and primary medical and oral health care. Some commenters stated that the 30-day and 90-day timelines in paragraphs (a) and

(b) were too long and would result in delayed services. Some commenters stated the 30-day timeline in paragraph (a)(1) was too short. Many commenters requested additional clarification on the timelines. For example, many commenters requested more specificity about what we meant by "as quickly as possible" in paragraph (a)(2). Some commenters suggested we clarify the definition for "program entry" to distinguish it from "enrollment." They stated that the perceived distinction between the two terms could result in unintended consequences, such as programs delaying child enrollment because they cannot obtain required health information before children actually attend the program

Response: We retained the 30-day and 90-day timelines from the previous standards, which we believe are appropriate to ensure children's needs are addressed in a timely manner and have not presented problems for most programs to meet. However, to improve clarity about when the timelines begin, we replaced the phrase, "from the child's enrollment" with "after the child first attends the program or, for the home-based program option, receives a home visit" in paragraphs (a)(1), (b)(1), (b)(2) and (b)(3) to clarify when requirements must be met.

Comment: Some commenters recommended we revise paragraph (a)(2) to recognize the unique role that Indian Health Services plays for many children enrolled in tribal Head Start programs.

Response: We acknowledge the role Indian Health Services plays for children enrolled in American Indian Alaska Native Head Start programs. However, we did not think it was necessary to provide additional clarity in paragraph (a)(2). Paragraph (a) clearly does not exclude any source of continuous and accessible health care.

Comment: Some commenters recommended changes or requested more clarity to the requirements in paragraph (b)(1)(i) to determine if children are up-to-date on preventive and primary care. For example, some commenters requested we specifically include oral health care services. Some commenters suggested we waive the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) requirement for blood lead testing because of concerns that local doctors refuse to do blood lead tests for children who are at low risk based on a lead risk assessment. Others suggested we allow programs to substitute a lead risk assessment in lieu of blood lead testing. Some commenters requested more clarity about the meaning of "health care professional" as it relates to oral health. Others requested more clarity about the qualifications of health care professionals.

Response: We revised paragraph (b)(1)(i) to improve clarity. We amended this paragraph to include "dental periodicity schedule" to clarify programs must determine whether the child is up-to-date on both medical health and oral health care. We agree that our use of the term "health care professional" to apply to both health and oral health was confusing. So, we amended this provision to include "oral health care professional" as well as "health care professional." We did not specify qualifications for health care professionals, because state requirements vary. We expect programs to ensure that health and oral health professionals are qualified in their respective areas per state requirements. We did not make revisions to the requirements related to EPSDT because we do not have the authority to promulgate a

regulation that contradicts how states implement EPSDT, especially in light of the potential serious health consequences of elevated lead levels.

Comment: Some commenters stated that paragraphs (b)(1)(ii) and (iii) suggested parents were not capable of or bore no responsibility to get their children up to date on immunizations. They believed the requirement would force programs to undermine the role of parents when they provide this service.

Response: It was not our intent to undermine the role of parents in getting children up-to-date with preventive and primary medical and oral health care. We consolidated what were paragraphs (b)(1)(ii) and (iii) in the NPRM into paragraph (b)(1)(ii) and revised the language to more clearly articulate our intent. We expect programs to help parents, as necessary, in their efforts to ensure their children are up-to-date with preventive and primary care. For those children who are not up to date, paragraph (b)(1)(ii) requires that programs must assist parents to make arrangements to bring their children up to date and to directly facilitate health services only with parental consent.

Comment: Some commenters were concerned that paragraph (b)(2) required programs to conduct all hearing and vision screenings, rather than accept screening results from another source. In addition, commenters suggested that children should be screened for "mental and physical trauma," as well as hearing and vision.

Response: We revised paragraph (b)(2) to clarify that programs must either conduct or obtain hearing and vision screenings. We did not make revisions to specifically include screening for mental and physical trauma. Local programs may, with parent consent, implement such screening as indicated, particularly if they serve populations with known or likely exposure to trauma.

Comment: Some commenters suggested revisions to paragraph (b)(4) that requires a program to identify children's nutritional health needs and describes specific information they must take into account. For example, some commenters opposed requirements to collect so much specific health information because it was an unhelpful "paper chase" and unnecessarily burdensome since health care providers already collect this data and provide follow up as necessary. Some commenters opposed our requirements that programs collect hematocrit or hemoglobin for each child. Some commenters suggested we require programs to collect additional information about children's health status, such as sweetened beverage consumption, physical activity, screen time levels, and consumption of healthy foods such as whole grains, fruits, and vegetables. Some commenters asked for clarification about what follow-up was necessary based on the health information. Some commenters objected to the requirement accounting for all children's body max index (BMI) when BMI is not generally used for children under age two. Other commenters expressed concern about whether Head Start staff are qualified to interpret BMI and suggested programs with concerns about children's weight, BMI, or growth refer families to their physicians for further assessment. Commenters requested clarification, including a timeline to identify nutrition needs.

Response: We believe it is appropriate to require programs collect some information about each child's nutritional health status to help meet the individual needs of children. However, we revised paragraph (b)(4) so that rather than requiring programs to collect and track

data on all children, many of whom would fall within typical or acceptable ranges, we require programs to identify each child's nutritional health needs, taking into account available health information, including the child's health records, and family and staff concerns. In addition, in paragraph (c), we required programs to work with parents to ensure children obtain necessary referral, follow up appointments, and treatments. Programs may collect height and weight data directly as a means to more regularly track growth and as part of the required periodic observations or use other appropriate strategies for new or recurring concerns. We also revised paragraph (d) to include examples of how programs would use health information that may affect children's development, learning, or behavior.

Comment: Commenters suggested we revise paragraph (c)(3) to state topical fluoride or varnish can be used for all children, not just for those that live in areas where the water is not fluoridated.

Response: We revised paragraph (c)(3) to clarify programs must provide oral health preventive care for all children including, access to topical fluoride treatments and, as indicated, fluoride supplements.

Comment: Some commenters requested we require programs to provide diapers and formula for infants and toddlers during the portion of the day they attend the program.

Response: In paragraph (e)(1), we codified a long-standing expectation that programs must provide formula and diapers as needed by children during the time they attend the program.

§1302.43 Oral health practices.

In this section, we require programs to promote effective oral health hygiene with daily tooth brushing. Research demonstrates a link between oral health, dental pain, and children's attendance in preschool programs, as well as their ability to effectively engage in class activities.[90,91,92,93] We discuss the comments we received on this section below.

Comment: Commenters offered a number of suggestions for this section. Some recommended we change the title of this section to "Tooth brushing and other evidence or best practice based preventive oral health practices." Some commenters recommended we include greater specificity. For example, some recommended we include requirements for cleaning infant gums, to use toothpaste that contains fluoride, to implement tooth brushing as soon as a child's first tooth emerges, or to ensure children brush their teeth two times per day, for two minutes each time.

[90] Abanto, J., Carvalho, T. S., Mendes, F. M., Wanderley, M. T., Bönecker, M. and Raggio, D. P. (2011), Impact of oral diseases and disorders on oral health-related quality of life of preschool children. *Community Dentistry and Oral Epidemiology, 39*, 105–114. doi: 10.1111/j.1600-0528.2010.00580.x

[91] U.S. General Accounting Office. (2000). *Oral Health: Dental Disease Is a Chronic Problem Among Low Income and Vulnerable Populations*. Washington, DC: General Accounting Office.

[92] Schechter N. 2000. The impact of acute and chronic dental pain on child development. *Journal of the Southeastern Society of Pediatric Dentistry 6*(2), 16.

[93] Altarum Institute. 2007. Issue Brief: *Oral Health Is Critical to the School Readiness of Children in Washington, DC.* Washington, DC: Altarum Institute.

Response: We revised the title of this section from "Tooth brushing" to "Oral health practices" to better reflect the connection between tooth brushing and oral health status. We also revised this section to require that all children with teeth, not just those age one or older, have their teeth brushed at least once per day with toothpaste that contains fluoride. We did not make further revisions to this section because we did not think further specificity was appropriate or supported by strong evidence.

§1302.44 Child nutrition.

This section details program performance standards for Head Start programs to meet each child's nutritional requirements and feeding needs. This section includes nutrition service requirements, including how much food should be offered and requirements for supporting breastfeeding. It also includes requirements about use of funds. Nutrition is one of the founding principles of Head Start programs. Good nutrition supports children's ability to grow, develop, and achieve and maintain a healthy weight. Commenters suggested revisions and sought clarification. Based on comments we received, we made some changes to improve clarity and further strengthen requirements. We address comments below.

Comment: Some commenters recommended we specify in paragraph (a)(1) that nutrition services must be culturally and developmentally appropriate to ensure they respond to the needs of enrolled children.

Response: We agree and made this revision.

Comment: Some commenters recommended we add additional requirements to paragraph (a)(2). For example, some commenters suggested we require programs to make drinking water available to children. They stated that if children were able to satisfy thirst with water, they may be less likely to consume large amounts of sugar sweetened beverages. Other comments suggested we require programs to serve a varied diet with an emphasis on fruits, vegetables, and whole grains rather than meet a proportion of children's daily nutritional needs.

Response: We revised this section to add a new requirement at paragraph (a)(2)(ix) to require programs make safe drinking water available to children during the program day. We did not make revisions to emphasize fruits, vegetables, and whole grains because we think the requirement that programs meet the nutritional needs of children and adhere with CACFP requirements on meal patterns is sufficiently prescriptive.

Comment: We received some comments about how our requirements in this section interact with CACFP requirements. For example, some commenters requested we remove the requirement in paragraph (a)(2)(iii) about food being high in nutrients and low in fat, sugar, and salt because it is redundant with CACFP. Some other commenters expressed concern or sought clarification about or exemption from CACFP requirements because of burden and cost.

Response: We did not revise paragraph (a)(2)(iii) because we believe it is necessary to emphasize the importance of healthy food that is high in nutrients and low in salt, fat and sugar over and above CACFP requirements regarding the nutrition content of food. We did

not revise paragraph (a)(1)(iv) because we think it is sufficiently clear. In addition, we note that we require programs to use reimbursement from CACFP, unless, as might occur in a home-based option, CACFP is not available. In that case, programs may use Head Start or Early Head Start funds for allowable food costs as we state in paragraph (b). We have no authority to change CACFP requirements and made no revisions.

Comment: Commenters suggested we retain the provision from the previous program performance standards that required programs to involve parents and appropriate community agencies in planning, implementing, and evaluating the program's nutrition services.

Response: We did not retain the previous standard that programs engage parents and the community in nutrition services. While we think this can be a valuable method to ensure cultural appropriateness and respond to local nutrition related issues, we recognize it may be difficult for some programs to regularly do this. We encourage programs to maintain this practice as much as they can, but we want to provide local flexibility to identify the approach.

Comment: Some commenters indicated that the word "appropriate" in paragraph (a)(2)(vii) that modifies snacks could vary widely in interpretation and suggested we replace "appropriate" with "healthy."

Response: We agree this requirement is clearer if we indicate snacks and meals should be "healthy" and revised the paragraph accordingly.

Comment: We received comments about our requirement to promote breastfeeding in paragraph (a)(2)(viii). Commenters were generally supportive of our focus on breastfeeding. Some commenters recommended we require programs to train staff on how to properly handle and store breast milk. Other commenters recommended we require programs to either ensure staff complete lactation counselor training or provide referrals to lactation counselors or consultants. Others asked us to clarify whether programs must have breastfeeding rooms in each center.

Response: We did not think it was necessary to add a requirement for programs to train staff on how to properly handle and store breast milk because we think that is unnecessarily prescriptive in detailing how a program must meet the requirement that they properly store and handle breast milk. Many programs will find state licensing already requires this. We also did not require programs to ensure staff complete lactation counselor training. However, we amended paragraph (a)(2)(viii) to require programs provide referrals to lactation consultants or counselors if necessary. Finally, neither the NPRM nor the final rule required programs to have separate rooms for breastfeeding in each center. Programs may meet the requirement in §1302.44(a)(2)(viii) to promote breastfeeding with a designated private area with a comfortable chair, an outlet for a pump, and access to a sink for hand washing to accommodate the needs of mothers who breastfeed or pump milk.

§1302.45 Child mental health and social and emotional well-being.

This section includes the requirements for services programs must provide related to child mental health and the support of children's social and emotional well-being. Early child-

hood mental health and healthy social and emotional well-being has been clearly linked to children's school readiness outcomes. Research estimates between 9 percent and 14 percent of young children experience mental health or social and emotional issues that negatively impact their development.[94] The standards described in this section support programs in creating a culture that promotes positive mental health and social and emotional well-being, including supporting positive staff-child interactions and parental knowledge of mental health. Research also demonstrates that the use of mental health consultation services has distinct benefits, including improved child behavior, staff job satisfaction, and overall effectiveness of early childhood programs.[95,96,97] Therefore, this section also includes specific requirements for what mental health consultants must do to assist programs, staff, and parents.

In general, commenters supported strengthening mental health consultation in Head Start, but suggested ways to improve the standards to ensure a clear understanding of the importance of mental health, the qualifications of a mental health consultant, and the role that the mental health consultant plays in improving programs' ability to address mental health problems, including challenging behaviors. We address these and other comments below and describe changes we made to this section to ensure that programs have the tools to successfully promote the mental health and social and emotional well-being of all children.

Comment: Commenters suggested we refer to social-emotional well-being rather than "child mental health" to reduce the prejudice and discrimination around mental health services and improve parent and staff understanding of what mental health means for children.

Response: We agree and revised the title of this section as well as the requirements throughout to more accurately mirror how the field of early childhood discusses children's mental health and behavior by more broadly defining child mental health and social and emotional well-being.

Comment: Commenters requested clarification about who can serve as mental health consultants and the role of mental health consultants in the program. For example, commenters asked about the necessary qualifications of mental health consultants and the amount of time mental health consultants must spend in the program. Commenters also noted a shortage of mental health consultants who are licensed, particularly in rural and tribal areas, and suggested sharing best practice information about effective mental health consultation in such programs. Some commenters misinterpreted this section to remove requirements for programs to use mental health consultants and were in favor of only utilizing mental

[94]Brauner, C. B., & Stephen, B. C. (2006). Estimating the prevalence of early childhood serious emotional/behavioral disorder. *Public Health Reports, 121*, 303–310.

[95]Gilliam, W.S., & Golan, S. (2006). Preschool and child care expulsion and suspension: Rates and predictors in one state. *Infants and Young Children, 19*(3), 228-245.

[96]Perry, D. F., Dunne, M. C., McFadden, L., & Campbell, D. (2008). Reducing the risk for preschool expulsion: Mental health consultation for young children with challenging behaviors. *Journal of Child and Family Studies, 17*(1), 44-54.

[97]Brennan, E. M., Bradley, J. R., Allen, M. D., & Perry, D. F. (2008). The evidence base for mental health consultation in early childhood settings: Research synthesis addressing staff and program outcomes. *Early Education and Development, 19*(6), 982-1022.

health consultants on an as-needed basis. Other commenters suggested that additional funds would be needed to implement these standards.

Response: We agree that it is important for programs to understand the importance of mental health and the role of mental health consultants in promoting the well-being of Head Start children. We revised this section to include that programs must ensure mental health consultants assist the program, staff and parents and clarified how programs must support a culture of promoting children's mental health and social and emotional well-being. We clarified the qualifications of mental health consultants in §1302.91(e)(8)(ii). We understand that access to mental health consultants, particularly those with knowledge and experience serving young children, may not be available in all communities, and that there may be a particular struggle in tribal and rural areas, but we believe access to mental health consultants in all programs is critically important. In order to acknowledge this difficulty, we only require knowledge and experience working with young children if consultants with this knowledge and experience are available in the community.

To address the level of utilization of mental health consultants, we revised paragraph (a)(2) to reinstate the requirement from the previous regulation that a program must "secure mental health consultation services on a schedule of sufficient and consistent frequency." We also clarified that programs must ensure that mental health consultants are available to partner with staff and families in a timely and effective manner. Additionally, to improve clarity, we added a new paragraph (b)(6) to reference the use of mental health consultants as required in §1302.17. While we understand the concerns some commenters describe related to cost, Head Start has a long-standing history of using mental health consultants who are certified and licensed and we expect programs to meet these requirements within their existing budgets and may use a variety of strategies, including the use of technology, when capacity is an issue.

Comment: Some commenters recommended that the standards be revised to require parental consent for consultation.

Response: To help normalize the mental health consultation process and reduce prejudice and discrimination around use of mental health consultants, we revised paragraph (a)(3) to require programs to obtain parental consent for mental health consultation services when they enroll children in the program.

Comment: Commenters suggested we add specific strategies for addressing mental health issues and challenging behaviors, including home visits, Applied Behavior Analysis, and trauma-informed care. Some commenters suggested we require programs track and evaluate mental and behavioral health practices in programs.

Response: While we agree that these strategies can be effective in supporting children with behavioral and mental health problems, we think it is important to give programs flexibility to address individual child needs in the most appropriate way. Therefore, we do not prescribe specific practices or strategies, but have revised paragraph (b)(1) to reflect the concept in paragraph (a) that programs must implement strategies to identify and support children with mental health and social and emotional concerns and their families.

Comment: Some commenters recommended the inclusion of mental health services within the context of home visiting or family child care options so that these services will be more effectively integrated throughout various program settings.

Response: We agree that mental health consultants should support staff in all Head Start program models and revised paragraphs (b)(2) and (3) to clarify our intent.

Comment: Commenters further suggested that internalizing or withdrawn behaviors should be explicitly referenced throughout the requirements to broaden the focus of child mental health beyond behaviors that can disrupt classes. Commenters also noted these problems need to be both identified as well as supported.

Response: We also added paragraph (b)(4) to explicitly include both internalizing and externalizing problems as issues for mental health consultants to assist staff to address.

Comment: Commenters stated that this section does not reflect the important role of parents and parental mental health.

Response: We agree that parents are critical to the promotion of child mental health and did not intend for the requirements to exclude them. We have added paragraph (b)(5) to explicitly include parents.

§1302.46 Family support services for health, nutrition, and mental health.

This section includes the requirements that address health education and support services that programs must deliver to families. It consolidated requirements from the previous rule to improve clarity and transparency. This section highlights the critical importance of parental health literacy, which has been linked to the health and long-term outcomes of young children.[98,99] Commenters supported this section and our reorganization. Commenters also offered suggestions to expand, reduce, and reorganize the requirements. We discuss comments and our responses below.

Comment: We received some comments with broad suggestions for this section. For example, commenters suggested we include a specific emphasis on father involvement. Commenters expressed concerns that staff do not have time to comply with the section's requirements and that the requirements are too broad. Others recommended we move this section to follow §1302.41.

Response: We did not make revisions to address these comments. This section addresses parents, which is defined to encompass mothers and fathers. Strategies to promote father engagement are included in subpart E. In addition, we believe these requirements are critical to supporting child and family outcomes and are an essential part of Head Start's

[98] Herman, A., & Jackson, P. (2011). Empowering low-income parents with skills to reduce excess pediatric emergency room and clinic visits through a tailored low literacy training intervention. *Journal of Health Communications, 15*(8), 895-910.

[99] Dewalt, D.A., & Hink, A., (2009). Health Literacy and Child Health Outcomes: A Systematic Review of the Literature. *Pediatrics, 124*(3), 265-274.

comprehensive two-generation approach. Finally, we think the organization of subpart D clearly conveys requirements and did not revise the order of the sections.

Comment: Some commenters suggested revisions to increase the emphasis on health literacy and parent collaboration.

Response: We made slight revisions to paragraph (a), which we believe appropriately emphasizes parent collaboration, including for individuals with low health literacy.

Comment: Some commenters recommended we expand services in paragraphs (b)(1) related to nutrition, breastfeeding, tobacco, lead exposure, safe sleep and mental health. Some expressed concern that the requirements did not appropriately reflect the important role of parents and parental mental health and suggested revisions. They also recommended we revise our terminology about mental health to more clearly indicate the breadth of issues that should be addressed.

Response: We agree and revised these three paragraphs to better clarify the topics on which programs must offer to collaborate with parents to include health and developmental consequences of tobacco and lead exposure, safe sleep, healthy eating and the negative health consequences of sugar-sweetened beverages; breastfeeding support and treatment options for parental mental health or substance abuse problems; and more broadly defined child mental health and social and emotional well-being.

Comment: Some commenters recommended we include requirements to specifically assist children and families accessing health insurance for which they are eligible.

Response: We agree that programs play an important role in assisting families who need health insurance. We revised paragraph (b)(2)(i) to specify that programs provide information about public and private health insurance and designated enrollment periods.

§1302.47 Safety practices.

This section includes the requirements for strong safety practices and procedures that will ensure the health and safety of all children. Basic health and safety practices are essential to ensure high-quality care. In some instances, we moved away from prescribing extensive detail when it is unnecessary to maintain a high standard of safety. Instead, we allow programs flexibility to adjust their policies and procedures according to the most up to date information about how to keep children safe. To ensure programs are equipped with adequate instruction on how to keep children safe at all times, we encourage programs to consult a new ACF resource called Caring for Our Children Basics (Basics).[100] The section includes health and safety requirements for facilities, equipment, materials, background checks, safety training, safety practices, administrative safety procedures, and disaster preparedness plans. These recommendations were informed by research and best practice. We received many comments on this section including suggestions to expand, reduce, and clarify requirements. We address the comments we received on this section below.

[100] https://eclkc.ohs.acf.hhs.gov/hslc/tta-system/health/docs/caring-for-our-children-basics.pdf

Comment: Many commenters appreciated our focus on health and safety systems instead of extensive checklists and recommended monitoring protocols reflect this approach.

Response: We agree that the systems approach reflected in this rule is preferable to a checklist approach and have made a number of small changes to further support the systems approach, including in paragraphs (b)(1)(ix) and (b)(2)(v) adding that programs must keep facilities and materials safe through an ongoing system of preventive maintenance. This systems approach will also be reflected in monitoring in the future.

Comment: Some commenters recommended we rely on state licensing for health and safety standards and not include different health and safety standards.

Response: Many states have stringent health and safety regulations, but some do not. In addition, not all Head Start programs are state licensed. Therefore, we retained this section in the final rule; however, we have made some language changes to align the health and safety training for staff to the health and safety requirements in the CCDBG Act. This will relieve the burden of different or conflicting licensing standards.

Comment: Some commenters addressed our provision in paragraph (a) that programs should consult Caring for our Children Basics for additional information to develop and implement adequate safety policies and practices detailed further in the subpart. Some commenters appreciated the flexibility we afforded programs under this section though noted that reduced specificity may compel programs to consult other authorities. Some commenters supported our inclusion of Caring for Our Children Basics and some suggested we require the specifics recommendations from Basics and include them in the regulation. Some commenters objected to the requirement and offered alternatives. For example, some commenters recommended we require programs to either "follow" Basics or "consult" Basics so our intent is clearer. Some commenters stated the requirements in Basics were unnecessarily high and costly. Other commenters requested additional clarification or expressed concern about what would happen if there were inconsistencies between Basics and state or local standards. Some seemed confused about the difference between Caring for Our Children and Caring for Our Children Basics or pointed out differences between the two documents. Some commenters were concerned about potential inconsistencies if Basics is updated more frequently than Head Start Program Performance Standards. Some commenters were concerned we would find programs to be out of compliance if they failed to meet all the recommendations included under Basics.

Response: We believe our reference to Basics will help clarify minimum health and safety expectations across early childhood settings. Many programs already exceed what Caring for Our Children Basics recommends as best practice. Other programs may need guidance in establishing their policies, procedures and systems and Basics will be a useful resource guide for these programs. Furthermore, Basics represents a uniform set of health and safety standards and provides specific guidance to assist programs in achieving the standards identified in this regulation. We believe Basics will be an important resource for programs and useful tool for achieving consistency across programs. Therefore, we retained our requirement in paragraph (a) that encourages programs to consult Basics in developing their safety standards and training.

Comment: We received comments requesting clarification on the introductory text in paragraph (b) and paragraph (b)(1). For example, a commenter suggested we delete "at a minimum" in the introductory text in paragraph (b) to improve clarity. In addition, some commenters suggested we require family child care providers store guns and ammunition so children cannot readily access them. They also recommended we require programs to train staff on safe gun and ammunition storage procedures. Other commenters noted we omitted food preparation from paragraph (b)(1)(viii). Others suggested we require smoke-free environments and promote smoke-free environments for children to families and other caregivers.

Response: We agree the placement of "at a minimum" in the introductory text in paragraph (b) was confusing and moved it to paragraphs (b)(1), (2), (4), (5), (6), and (7) to improve clarity. We did not include revisions on gun safety because we think the requirement in paragraph (b)(1)(vii) that states facilities must be free from guns or firearms that are accessible to children is sufficient. Local programs may elect to provide training on storage safety but we did not require it. We revised paragraph (b)(1)(viii) to clarify that facilities have separate toileting and diapering areas from areas for food preparation. This reflects an important basic requirement from the previous program standards. We agree smoke-free environments are important. We did not make revisions to address this comment because paragraph (b)(1) already requires facilities be free from pollutants and we prohibit smoking in all Head Start facilities under the terms of grant awards.

Comment: We received comments about our requirement in paragraph (b)(2) that all equipment and materials meet standards set by the Consumer Product Safety Commission (CPSC) and the American Society for Testing and Materials, International (ASTM). Some commenters agreed with this requirement. Commenters were concerned about the complexity and cost of meeting CPSC and ASTM standards. Some commenters suggested we reference the full names of the CPSC and the ASTM to improve clarity.

Response: We agree with commenters that it may be difficult for programs to identify all equipment and materials that are covered by the CPSC and the ASTM. Our understanding is that most equipment and material used in early childhood programs is labeled as compliant with applicable standards. In order to reduce potential burden for programs, we struck what was paragraph (b)(2)(iii) and revised paragraph (b)(2) to specify that indoor and outdoor play equipment, feeding chairs, strollers, and cribs must meet the applicable ASTM or CPSC standards and other materials and equipment used in the care of enrolled children must also meet those standards as applicable. We also included the full names of these entities for better clarity.

Comment: Some commenters recommended we include more specificity in paragraph (b)(2)(i). Specifically, they suggested we include specific language from Caring for Our Children about ensuring all indoor and outdoor equipment and materials and play spaces are clean and safe and appropriately disinfected.

Response: We did not revise paragraph (b)(2)(i) to make it more specific. We expect programs to determine what they must do to provide safe and healthy environments and

encourage them to consult Caring for Our Children Basics or other similar resources for additional guidance.

Comment: We received comments on paragraph (b)(4) that address safety training. Commenters requested more clarification, such as what topics programs must include in the initial training and how often they must offer this training. They also asked us to clarify what positions are included under "all staff." Other comments offered recommendations for additional specificity to the required staff training topics. For example, some commenters recommended additional specificity about safe sleep practices, and some commenters suggest we add cold weather safety.

Response: We agree that we were not clear enough about which staff needed safety training and whether it was necessary for all staff to be trained on all required topics. Therefore, we revised paragraph (b)(4) to clarify what safety training was required for staff with regular child contact in paragraph (b)(4)(i) and what safety training was necessary for staff without regular child contact in a new requirement at paragraph (b)(4)(ii). We have also clarified that the areas of training provided should be appropriate based on staff roles and ages of children they work with. Further, we did not specify in paragraph (b)(4) of this section what topics programs must include in the initial training and how often must they offer this training. We expect programs to design training curricula and determine how often this training must be provided in order to ensure staff are properly trained to keep children safe. We did not make revisions to address other requests for more specificity because we did not think we did not believe that level of prescription was necessary to ensure child safety.

Comment: Commenters recommended we replace "spills of bodily fluids," with "exposure to blood and body fluids" in hygiene practices.

Response: We revised this requirement accordingly, now found at paragraph (b)(6)(iii).

Comment: We received many comments about safety requirements for addressing child food allergies, which we addressed primarily in what was paragraph (b)(8)(vi) in the NPRM and is paragraph (b)(7)(vi) in the final rule. Many commenters were concerned the requirement created privacy concerns and offered alternative suggestions. Some commenters were concerned standards were not strong enough and parents might decline to enroll their child. Specific recommendations included: implementation of a system to share allergy information with relevant staff; to have a training system to ensure staff are prepared to manage allergy related emergencies; posting a list under a sign indicating that there is confidential information; and making sure all staff are aware of all allergies and using scan cards that include allergy information.

Response: A program's most critical responsibility is to keep children safe. We did not make changes to the food allergy requirements in paragraph (b)(7)(vi). We require programs to implement administrative safety procedures, including posting child allergy information prominently where staff can view where food is served. We do not believe this requirement creates privacy concerns. We believe that with the very young children that Head Start serves, the threat posed by any staff or volunteer who is serving food not knowing about a child's allergy is a far greater threat than others knowing about a child's

food allergy. We have also made this clear in subpart C of part 1303 on Protections for the Privacy of Child Records.

Comment: We received comments about the requirement in paragraph (c) that programs must report any safety incidents in accordance with §1302.102(d)(1)(ii). For example, commenters requested clarification about the timeline or suggested the reporting requirement was unnecessary. We received many comments about §1302.102(d)(1)(ii) to which this requirement in paragraph (c) is aligned.

Response: We revised §1302.102(d)(1)(ii) to reflect the many comments we received on that requirement. We discuss those comments and our revision in subpart J. We think those revisions provide sufficient clarity for this provision.

5. Family and Community Engagement Program Services; Subpart E

This subpart includes program requirements for family and community engagement services. It requires programs integrate family engagement into all systems and program services. It also includes the strategies and approaches programs must use for family engagement and strengthens the requirements for offering parent activities that promote child learning and development. Further, it details the family partnership process, including identification of family strengths and needs and individualized family partnership services. Finally, it details program requirements for community partnerships and coordination with other programs and systems. This subpart retains many provisions from the previous program standards but consolidates, clarifies, and reorganizes them and strengthens them with a greater focus on family services outcomes instead of processes and a requirement to offer research-based parenting curriculum.

We received many comments on this subpart. Some commenters supported the improved flexibility, attention to children's learning, and integration of family engagement. However, many commenters were concerned this subpart contributed to an overarching theme of a weakened role for parents. We believe parents are foundational to Head Start's success and that Head Start's two-generation approach is integral to its impact on the children and families it serves. It was not our intent to diminish the role of parents in the NPRM. The NPRM built on the groundbreaking work of the Parent, Family and Community Engagement Framework (PFCEF) to focus on system-wide parent, family, and community supports that would create a roadmap for progress in achieving the types of outcomes that lead to positive and enduring change for children and families. However, it was clear from public comments that we needed to revise provisions to ensure the integral role of parents in Head Start is appropriately reflected in the final rule. We discuss public comments as well as our responses and revisions below.

General Comments.

Comment: Many commenters expressed concern that family partnership services were too focused on child development and learning and recommended we revise them to focus more broadly on strategies to enhance families' social and economic well-being and leadership skills. In addition to recommending revisions to separate parent and family services

from child learning and development, some commenters offered specific suggestions, such as identification of economic well-being as part of family well-being and pilot programs to support two-generation practices.

Response: Section 636 of the Head Start Act specifies the purpose of Head Start is to improve the school readiness of children and provide services to families that support children's cognitive, social, and emotional development and school readiness. Research shows that family social and economic well-being greatly impacts children's development and school readiness,[101,102,103,104,105] which is why two-generation approaches like Head Start are so important. We revised §1302.50(a) to further clarify the purpose of parent and family engagement as supporting children's learning and development. We made substantial revisions in §§1302.50 and 1302.52 to clarify that family partnership services should include the depth and breadth appropriate to support families. We also revised §§1302.50(b)(3) and 1302.52(a) to clarify that family well-being includes family safety, health, and economic stability. Thus, we believe the final rule appropriately reflects the statutory requirement that family engagement services be provided to improve children's learning and development and the importance of strong family partnership services in support of that purpose.

Comment: Many commenters broadly recommended revisions to emphasize the key role of parents in all areas of program operations.

Response: We agree that parents should be engaged in all aspects of program operations. Effective, comprehensive family engagement depends upon strategies that support family well-being and family engagement being embedded throughout systems and services. We believe the rule accomplishes this integration and note that collaboration with parents and families and parent and family engagement and services are integrated into all program services. In addition to the extensive parent and family services required in this subpart and in Program Governance, parent and family engagement services are integrated throughout program operations. For example, we integrate these services in the education subpart (e.g., § 1302.34), the health services subpart (e.g., §§1302.41 and 1302.46), the disabilities subpart (e.g., §1302.62), the transitions subpart (§§1302.70(c) and 1302.71(b)), personnel policies (e.g., §§1302.90(a) and 1302.92(c)(3)), and program management (subpart J). However, we did make some revisions to address this concern. As previously noted, we reinstated parent committees as part of the governing structure in part 1301. Also as previously noted, we revised the family engagement section title in the Education and Child Development sub-

[101] Kingston, S., Huang, K. Y., Calzada, E., Dawson-McClure, S., & Brotman, L. (2013). Parent involvement in education as a moderator of family and neighborhood socioeconomic context on school readiness among young children. *Journal of Community Psychology, 41*(3), 265-276.

[102] Soltis, K., Davidson, T. M., Moreland, A., Felton, J., & Dumas, J. E. (2015). Associations among parental stress, child competence, and school-readiness: Findings from the PACE study. *Journal of child and family studies, 24*(3), 649-657.

[103] Fantuzzo, J., McWayne, C., Perry, M. A., & Childs, S. (2004). Multiple dimensions of family involvement and their relations to behavioral and learning competencies for urban, low-income children. *School Psychology Review, 33*(4), 467-480.

[104] McWayne, C., Fantuzzo, J., Cohen, H. L., & Sekino, Y. (2004). A multivariate examination of parent involvement and the social and academic competencies of urban kindergarten children. *Psychology in the Schools, 41*(3), 363-377.

[105] Barnard, W. M. (2004). Parent involvement in elementary school and educational attainment. *Children and Youth Services Review, 26*, 39-62.

part to reflect the broader nature of parent and family engagement. In addition, to reflect that family and community program services in this subpart are not limited to partnership services, we revised the subpart title to read "Family and Community Engagement Program Services." We also revised §1302.50(b)(1) to recognize parents as children's primary "teachers and nurturers" to more specifically define the parent's role.

Comment: Many commenters recommend we reorganize part 1302 to place subpart E – Family and Community Engagement Program Services – before subpart C – Education and Child Development Services. They stated this would help convey the centrality of parent engagement to Head Start.

Response: We agree that parent engagement is foundational to Head Start. We think this is appropriately reflected in this subpart as well as in parent-related provisions integrated into every other subpart in part 1302 – Program Operations. Therefore, we do not think reorganizing the subparts is necessary to reflect parents' essential roles in the lives of their children and as partners in the Head Start program. We did not reorder any subparts in part 1302.

Comment: Some commenters recommended we do more to integrate the Parent, Family, and Community Engagement Framework (PFCEF) into the rule. For example, some commenters recommended we include the PFCEF title and outcomes definitions into the rule. Others recommended we add more specificity related to the PFCEF and/or stronger requirements to track and measure progress in the outcomes included in the PFCEF.

Response: We agree programs have made important progress in service delivery through integration of the PFCEF in their systems and services. Therefore, this subpart included many of those key strategies and approaches, including a strong focus on family engagement outcomes. In response to comments, we revised the final rule to provide clearer identification of PFCEF outcomes in §1302.52(b), alignment of the individualized family partnership services to the PFCEF outcomes in §1302.52(c)(1), and stronger requirements for tracking outcomes in §1302.52(c)(3).

§1302.50 Family engagement.

This section included the fundamental requirements that apply broadly to all parent and family engagement activities as well as general parent and family program practices. It requires programs to integrate family engagement strategies into all systems and program services and details fundamental requirements for approaches to family engagement. To address overarching concerns about conveying the centrality of family engagement and the important role of parents, we made some structural and other revisions to requirements in this section. In addition to some of the revisions to paragraph (a) that we previously noted, we made revisions such as changing the section title from "In general" to "Family engagement" and deleting the reference to community partnerships to clearly differentiate requirements in the sections related to family engagement in §§1302.50, 1302.51, and 1302.52 from the requirements for community engagement in §1302.53. We also added the title "Family engagement approach" to paragraph (b) and changed the structure for the lead-in to para-

graph (b) so that its requirements for family engagement are clearly delineated. We discuss comments and our responses below.

Comment: Some commenters suggested revising the requirement in what was paragraph (b)(2) in the NPRM and has been moved to paragraph (b)(6) in the final rule to ensure information is provided in a family's preferred language to ensure that they access and participate in services. Another commenter recommended we explicitly require materials be accessible to families who are "low literacy" or not proficient in English.

Response: Though we agree it is important that programs make information and services available in the languages spoken by enrolled families, we also understand that programs may have a dozen or more languages represented among their enrollment at any one time and that some languages may be spoken by only a few members of a community. We believe that our requirement in what is now paragraph (b)(6) is appropriately specific. We also have confidence that programs will consider the needs of the families they enroll, including literacy, in their interactions with families.

Comment: Some commenters supported the father engagement requirement in what was paragraph (b)(3) in the NPRM. Other commenters stated that father engagement should not be mandated. Some offered additional suggestions, such as adding the term "male" to father engagement to include the men who participate in raising children who are not their biological fathers and explicitly adding services for lesbian, gay, bisexual, and transgender (LGBT) parents.

Response: The definitions of "family" and "parent" under part 1305 allow for many variations of people who may have the role of parents or guardians or as authorized caregivers. We have retained a focus on "father engagement," which is in paragraph (b)(1) in the final rule, because research demonstrates that child outcomes improve when fathers are positively involved. This does not preclude the engagement of other males who may have significant roles in children's lives so we do not think we need a broader requirement. While the regulation requires that programs implement strategies to engage fathers in their children's learning and development, this is not the same as mandating father engagement for every father. In fact, the requirement in §1302.15(f) explicitly states that parent participation is not required. Because of the inclusive definitions we provide for "parent" and "family," we did not amend the section to specifically list LGBT parents.

Comment: Some commenters recommended replacing the phrase "responsive to and reflect" with "incorporates" in paragraph (b)(2).

Response: We agree and made this revision.

Comment: Commenters believed the provisions in this section weakened family services, and requested changes to ensure that Head Start's two-generation approach to addressing family needs is not diminished. Some of these commenters requested that Head Start programs be allowed to utilize innovative two-generation approaches to deliver services to families of enrolled children.

Response: As stated previously, it was not the intent of the NPRM to diminish or weaken the critical role that Head Start programs play in supporting families of enrolled children. In

addition, Head Start programs have always been allowed to utilize two-generation approaches to deliver services to families of enrolled children, and many already do. However, we added a provision in paragraph (b)(4) to clarify that programs should implement innovative strategies to address prevalent needs of families across the program. This provision further acknowledges that in order to implement such strategies effectively, programs may need to leverage community partnerships or other funding sources.

§1302.51 Parent activities to promote child learning and development.

This section includes requirements for activities programs must provide to parents to assist them in promoting child development and learning. It included a new requirement that programs offer the opportunity for parents to participate in research-based parenting curriculum. We revised this section to include the requirement for working with parents to support regular child attendance from §1302.50(b)(1) in the NPRM. We believe it is more appropriately placed in this section. We also addressed the concern that we did not adequately reflect the important role of parents in children's learning with revisions in the introductory text in paragraph (a) and paragraph (a)(1).

Comment: As previously noted, some commenters recommended we combine the requirements of this section with the requirements of §1302.34. Others recommended a reorganization to amplify the importance of supporting children's learning as a purpose for family engagement.

Response: We did not make this revision. We believe §1302.34 appropriately integrates parent and family engagement into center-based and family child care education services that are focused on the child. The activities in this section are parent-focused. We think this organization better conveys the importance of integrated family engagement services throughout program operations and reflects which staff will primarily engage in the service delivery.

Comment: Some commenters suggested adding language to the regulation on informing parents about the importance of bilingualism.

Response: We agree that programs should provide parents with information about brain development, including bilingualism. We added paragraph (a)(3) to reflect this suggestion.

Comment: Some commenters supported the requirement in paragraph (b) for a research-based parenting curriculum, noting it would raise program quality. Some requested further clarification, such as a list of acceptable curricula or whether adaptations could be made to the curricula. Others recommended we add more strengths-based language to the requirement. Some commenters opposed this requirement for reasons such as cost and concern appropriate research-based curricula were unavailable or suggested participation be optional because it would be burdensome to working parents.

Response: We think this requirement will improve the quality of service delivery. We do not think further clarification is necessary, but agree that the requirement should be strengths-based and revised paragraph (b) to reflect that characteristic. We also clarified that significant adaptations could be made to better meet the needs of the populations served, but that

in such cases programs must work with an expert to develop these adaptations. Technical assistance is available on available research-based parenting curricula through the Early Childhood Learning and Knowledge Center. We note that parent participation is never required as criteria for a child's enrollment in Head Start.

§1302.52 Family partnership services.

This section details the family engagement service requirements programs must provide to identify family needs and goals and provide services and supports to help meet family needs and achieve their goals. It requires a family partnership services approach that is initiated as early as possible, shaped by parent interest and need, focused on outcomes instead of process, and effectively targeted program and staff resources based on need to ensure appropriate levels of service intensity. We designed this section to align with the Parent, Family, and Community Engagement Framework that has helped programs develop an ongoing process of individualized services based on family strengths and needs instead of the development of a single written plan. Many commenters strongly opposed our elimination of a specific family partnership plan. Though we intended to strengthen family engagement services with requirements that detail an ongoing outcomes-focused process, commenters believed this section diminished family engagement services and contributed to an overall weaker role for parents in Head Start. We address these and other comments below.

Comment: Many commenters strongly suggested we restore the written family partnership agreement. Commenters articulated concern that removal of the requirement for a written agreement weakened family services in Head Start. Other commenters thought that eliminating the requirement for a written agreement meant we eliminated the family goal setting process. Though some commenters agreed that the paper document can become more of a paperwork process than the means to supporting families in identifying and achieving goals, they still felt that the written agreement is an important step in formalizing the process. Some commenters expressed support for the increased local flexibility afforded by not requiring a written agreement.

Response: We intended for this subpart and this section specifically to streamline requirements, place an emphasis on outcomes over process, and allow more local flexibility to implement effective processes and strategies for meeting family service outcomes. We did not intend for this section to diminish the program's two-generation approach or the strength and breadth of family services.

We made revisions to this subpart and section to clarify our intent for the family partnership services, including that it must include a family partnership agreement. We added this provision in §1302.50(b)(3). We also added §1302.50(b)(5) in the final rule to require a program's family engagement approach to include partnership with families to identify needs, interests, strengths, goals, services and resources that support parents. As previously noted, we revised paragraph (a) in this section to clarify that family well-being includes family safety, health, and economic stability. Also as previously noted, we revised paragraph (b) to strengthen alignment between intake and family assessment procedures and identification of family strengths and needs to the outcomes of the Parent, Family, and Community, Engagement Framework. These changes help clarify that the rule does not narrow the breadth

or depth of family services that are ultimately aimed at promoting the school readiness of children.

Finally, we made significant revisions to paragraph (c) to detail the full process of family partnership services. In paragraph (c)(1), we require programs to offer individualized services that identify family interests, needs, and aspirations related to the family engagement outcomes in the PFCEF. In paragraph (c)(2), we require programs to help families achieve their identified outcomes. In paragraph (c)(3), we require programs to establish and implement a family partnership agreement process, including a family partnership agreement, to review family progress, revise goals, evaluate and track whether identified needs and goals are met, and adjust strategies on an ongoing basis. In paragraph (c)(4), we provide programs with flexibility to target resources to ensure appropriate levels of service intensity.

We believe the revisions to this section and to §1302.50 strengthen program quality through a focus on outcomes instead of process, dispel concerns about the rule diminishing family partnership services, and will ensure programs implement strong and effective family partnership services that strengthen families and improve child outcomes.

Comment: Some commenters suggested we clarify whether parent goals should focus on the parent or the parent's goals for the child. Others recommended that we be more explicit about data and performance indicators related to family services and well-being.

Response: We believe this subpart provides appropriate flexibility for parents to identify their needs, goals, and aspirations so we did not include additional specificity about the types of goals parents set. We revised this section to reframe a requirement that was in paragraph (c)(2) in the NPRM and paragraph (c)(3) in the final rule to ensure programs review, evaluate, and track family needs and goals and appropriate strategies on an ongoing basis.

§1302.53 Community partnerships and coordination with other early childhood and education programs.

This section includes program requirements for community partnerships. It largely maintains provisions from the previous performance standards about ongoing collaborative relationships and partnerships with community organizations. It requires programs take an active role in promoting coordinated systems of comprehensive early childhood services. It added a new requirement for a memorandum of understanding with the appropriate local entity responsible for managing publicly funded preschool programs to reflect requirements from the Head Start Act. It also added new requirements for coordination with state and local Quality Rating and Improvement Systems and state data systems to ensure that we are maximizing access to services, reducing duplication and fostering informed quality improvement.

We reorganized and retitled this section to improve clarity. For example, we reorganized §§1302.50 and 1302.54 so community partnership requirements were solely consolidated under §1302.53. We reorganized this section to describe program requirements for ongoing collaborative relationships and partnerships with community organizations in paragraph (a). We moved what was paragraph (a) in the NPRM to paragraph (b) in the final rule and

restructured requirements for memorandum of understanding, QRIS, and data systems to fall under paragraph (b) to better articulate the linkages between these three requirements and those in paragraph (b) that require programs take an active role in promoting coordinated systems of comprehensive early childhood services. We also revised and moved the requirement to participate in statewide longitudinal data systems from subpart J to this section.

We also moved the requirement about Health Services Advisory Committees from paragraph (c) to §1302.40(b). In addition, we renamed this entire section "Community partnerships and coordination with other programs and systems" to more clearly identify its applicability and purpose. We received many comments on this section. We discuss them and our responses below.

Comment: We received many comments on the community partnership requirements described in what is now paragraph (a) but was paragraph (b) in the NPRM. Many commenters suggested we add new partners with which programs should establish collaborative relationships and partnerships, such as programs funded through the Runaway Homeless Youth Act, financial partners, and school boards. Other commenters were concerned we removed explicit mention of nutrition and housing assistance agencies. Some commenters recommended we not add any specific community partnerships and let programs decide based on community data. Some commenters requested additional clarification, such as for greater specificity for coordinating community plans or whether we will allocate funds to comply with this section of the regulation.

Response: We agree that there are a variety of potential partners with the capacity to help meet the comprehensive needs of children and families. However, rather than continue to add to the list of potential specific partnerships, we believe programs will appropriately assess their family and community needs and identify partnerships that will support their service delivery. In addition, we note this section promotes local flexibility in the development of community partnerships and there is no requirement for a program to have community plan. Programs may request additional assistance for guidance with the development of community plans and partnerships. Finally, Congress appropriates funds for the Head Start program. We do not have the authority to provide additional funds.

Comment: We received many comments about our proposal, now found in paragraph (b)(2), that stated programs should participate in their state or local QRIS under certain conditions. Some commenters supported this requirement for reasons including: it increases a program's marketability; it improves information available to parents; it can reduce inefficiencies and inequities by aligning Head Start programs with other child care and state pre-kindergarten programs; it encourages quality improvement; it could direct more families to Head Start; and it makes progress toward common indicators of quality across programs. Some commenters asked for clarification, such as how to incentivize participation in QRIS. Other commenters suggested revisions, such as moving it to another section or adding criteria for specific subgroups such as DLLs.

Many commenters opposed this requirement and recommended its removal. Commenters expressed a number of reasons including: QRIS is not available in every state; it is duplica-

tive of monitoring, licensing, and NAEYC accreditation; it would be too costly and burdensome; and research is mixed on its benefits to programs or families.

Response: We believe it is important that Head Start programs participate in state or local quality improvement efforts and that the value of QRIS outweighs the challenges, including giving parents more informed choices about the quality of programs. While it is true that most local education agencies are exempt from licensing, Preschool Development Grants require participation in QRIS. We believe this signals recognition of the value of QRIS participation and that as participation occurs across the spectrum of programs; it will continue to strengthen both local programs and the QRIS itself. We also recognize that there may be challenges that make it difficult for all programs to participate in QRIS, including wait times, and a lack of validated systems. However, we also understand that unqualified mandated participation could lead to duplication in monitoring and rating and that the conditions as we outlined them in the NPRM may have been too stringent. Therefore, we modified this provision in the final rule. Specifically we removed the qualifier that the tiers must be validated and added a condition that the state must accept Head Start monitoring data as evidence of meeting indicators in the QRIS tiers and that participation must not impact a program's ability to meet Head Start standards. We believe the final rule sets a strong and reasonable way for Head Start programs to participate in these important state systems without duplication and burden.

Comment: Some commenters opposed the requirement for tribal programs specifically, stating that it was not appropriate in these service areas.

Response: We agree that state and local QRIS systems are not comparably structured to serve in tribal areas as they are in other service areas. Therefore, we revised paragraph (b) to clarify that tribal programs only need to consider whether participation in state or local QRIS would benefit their programs and families.

Comment: Some commenters requested we combine the two standards on Statewide Longitudinal Data System (SLDS): one in this section and another in §1302.101 on partnering with the SLDS, and requested clarification of the requirements.

Response: We agree with this comment and think that the two mostly duplicative requirements may lead to confusion. Thus, we removed the requirement from §1302.101 and combined it into §1302.53. In the process, we dropped the terms "early childhood data systems," "statewide data system," and "Statewide Longitudinal Data System" and replaced them with "state education data systems" to make it non-program specific and less confusing.

6. Additional Services for Children with Disabilities; Subpart F

This subpart includes the standards for additional services for children with disabilities and their families. These provisions align with the Act and reflect requirements that children must be identified and receive services as prescribed in IDEA, focus on effective service delivery instead of outdated or unused documentation, and incorporate best practices. In order to communicate its critical importance, we also incorporated requirements for the full inclusion and participation of children with disabilities in all program activities, including

but not limited to children eligible for services under IDEA. Commenters generally supported our overall approach to serve children with disabilities and their families. We discuss these and additional comments below.

General Comments.

Comment: Some commenters were concerned our elimination of what was part 1308 in the prior rule meant we eliminated requirements for services to children with disabilities.

Response: While there is no longer a part 1308, the final rule preserves the critical role of Early Head Start and Head Start programs in screening and referring children with suspected disabilities and as a program where children with disabilities are prioritized for services and fully integrated into every aspect of service delivery. We believe the final rule builds upon Head Start's long-standing commitment to serving children with disabilities and strengthens these services through part 1302. The final rule reflects the appropriate role of local agencies responsible for implementing IDEA, as required by IDEA, for evaluation, eligibility for services, establishment of an IFSP or IEP, and implementation of early intervention services or special education and related services, as appropriate.

Comment: Some commenters suggested we include additional services or specific approaches to service delivery in this subpart. For example, some commenters suggested audiology services or Applied Behavioral Analysis be added under this subpart.

Response: It is not our role to identify the specific type of special education and related services used with children with disabilities. We think audiology screening for all children is essential and require it under subpart D, which addresses health services. We did not make revisions.

Comment: Commenters suggested adding a requirement to ensure DLLs struggling with English acquisition are not misidentified as having a developmental delay or disability. Some commenters suggested that staff should receive training to work with DLLs who also have disabilities.

Response: We believe these topics are more appropriate for technical assistance or guidance.

§1302.60 Full participation in program services and activities.

This section includes an outline of the requirements contained in this subpart and an assurance that all children with disabilities, including but not limited to those who are eligible for services under IDEA, receive all applicable program services and are able to fully participate in all program activities.

Comment: Many commenters recommended we revise this section to include specific reference to inclusive program practices.

Response: We agree that it is essential to specify that services should be provided in the least restrictive possible setting and made revisions to reflect this clarification.

§1302.61 Additional services for children.

This section describes the additional services programs must provide to children with disabilities and children referred for but awaiting the determination of IDEA eligibility by the local agency responsible for implementing IDEA. It requires programs meet the individualized needs of children with disabilities and provide any necessary modifications and supports necessary to support the full participation of children with disabilities. It includes a new requirement for programs to provide individualized services and supports to the maximum extent possible to children awaiting determination of IDEA eligibility. Further, it includes additional services for children with an IFSP or IEP. Commenters were generally supportive of this section but raised some concerns and suggestions, which we discuss below.

Comment: Some commenters offered unqualified support for this section, but others expressed concerns about the proposal in paragraph (b) to provide services and supports while children are awaiting determination of IDEA eligibility. For example, concerns included program staff may not have the expertise to know what services should be provided, the cost of services. Some commenters stated the standard was unnecessary because programs already individualize services for children.

Response: There is sometimes a significant delay in local agencies determining eligibility for IDEA and the development of an IFSP or IEP; even though both IDEA Part C and Part B have timelines for conducting evaluations, and for developing an IFSP or IEP once the eligibility determination has been made. Therefore, we think it is important that programs review all reasonable avenues for providing services that maximally support a child's individual needs, including services and supports for which the child may be eligible through insurance pending an eligibility determination under IDEA and the development of an IFSP or IEP. However, we made revisions to paragraph (b) to clarify our expectations including that programs should work with parents to determine if services and supports are available through a child's health insurance and/or whether they should be provided pursuant to Section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. When such supports are not available through alternate means while the evaluation results are pending, though staff are not required to provide early intervention services or special education and related services, programs must individualize program services based on available information such as parent input and child observation, screening, and assessment data. We also clarify in paragraph (b) that program funds may be used for this purpose.

Comment: Some commenters stated they would like to be able to include children who receive services while IDEA eligibility is pending, as described in paragraph (b), in the calculation to meet the requirement that ten percent of total enrollment are children with disabilities.

Response: Though we understand that not all children with disabilities are eligible for services under IDEA, the Act stipulates that children must have an IFSP or IEP under IDEA to be counted as a child with a disability. Therefore, we have no authority to change how the ten percent requirement is calculated. We did not revise this provision.

Comment: Some commenters suggested we require the local educational agency to operate and coordinate with the Head Start program, similar to how Head Start is required to form agreements with the local educational agency.

Response: We appreciate that this would foster collaboration but we have no authority over local educational agencies. Programs are encouraged to develop ongoing working relationships with local agencies responsible for implementing IDEA.

Comment: Some commenters offered suggestions to further strengthen and clarify the standards for additional services for children with an IFSP or IEP.

Response: In response to these comments, we revised paragraph (c)(1)(iii) and added a new standard at paragraph (c)(1)(v). The revision to paragraph (c)(1)(iii) clarifies that many elements of an IFSP or IEP will be implemented by "other appropriate agencies, related service providers and specialists." Our addition at paragraph (c)(1)(v) clarifies that most services can be effectively delivered within the classroom setting. Providing services in the "natural environment" reduces transitions, increases inclusion, and increases the opportunity for gains to be generalized. We think it is an important stipulation that programs should work with parents and agencies responsible for implementing IDEA so that IFSPs and IEPs specify that services be delivered within children's own classes or family child care homes, if determined appropriate for the child.

§1302.62 Additional services for parents.

This section described the additional services programs must implement to support the parents of children with disabilities. These standards reorganize, clarify, and build upon previous regulations.

Comment: A commenter recommended that programs be required to provide information to their state parent and health assistance centers. Another commenter recommended we clarify some of the difference between Parts B and C of IDEA.

Response: Though we agree this can be useful information, it is not universally applicable and can be effectively provided as guidance or technical assistance so we did not make revisions. We believe our definition of "local agency responsible for implementing IDEA" is sufficiently clear and did not add further clarification.

§1302.63 Coordination and collaboration with the local agency responsible for implementing IDEA.

This section describes program requirements to coordinate and collaborate with the local agency (or agencies) responsible for implementing IDEA. This section retains many provisions from the previous regulation but streamlines and updates them to focus less on planning and more on service delivery. We believe coordination and collaboration with the local agencies responsible for implementing IDEA reflect an essential partnership in meeting the needs of children with disabilities in Head Start. Commenters generally supported this section.

Comment: Commenters expressed concern that children with disabilities sometimes are required to leave Early Head Start or Head Start or be dually enrolled to receive special education and related services at another site and offered recommendations to strengthen our standards.

Response: We fully support the requirements of IDEA that services must be provided in the least restrictive possible environment. We revised paragraph (b) to address concerns about dually enrolled children and the setting in which children receive services.

7. Transition Services; Subpart G

This subpart describes requirements for supporting transitions for children and families as they move between programs and settings. This subpart reorganizes and updates previous standards to reflect best practice for better clarity and implementation. Commenters supported many of the provisions in subpart G, such as the detailed requirements for activities to support transitions into kindergarten or other early childhood programs, the requirements for transitions of children with IEPs or IFSPs, the language focused on supporting transitions for children in migrant and seasonal Head Start programs, and the removal of the requirement to have a staff-parent meeting at the end of the year. We received other comments on this subpart and respond to them below.

General Comments.

Comment: Some commenters suggested that implementing the additional supports for transitions between Early Head Start to Head Start and from Head Start to kindergarten will impact programmatic procedures and budgets, and that additional funding will be needed. Others were concerned this subpart placed too much burden on the program from which a child is exiting and suggested revisions.

Response: We believe the transition services in this subpart are critical to support child development from birth to age five and beyond. This rule supports the transition process and continuity of services regardless of where families seek services, but we do not believe they are substantially different than current practice. However, we agree that programs cannot control the receiving school or program, but our language supporting transitions and collaborating with community partners is sufficiently flexible to allow for these realities. Therefore, we did not revise the provisions.

Comment: Some commenters recommended that we include requirements for programs to assess their transition practices to ensure they effectively minimize the number of transitions and promote smooth transitions for children and families.

Response: Although we encourage programs to assess all aspects of their programming as part of the continuous quality improvement process, we do not agree that requiring programs to specifically assess their transitions practices is necessary.

§1302.70 Transitions from Early Head Start.

This section describes what programs are required to do to support successful transitions for children leaving Early Head Start. The requirements in this section also support parents' continued involvement in their child's education.

Comment: Commenters expressed concern about the requirement in paragraph (b)(2) on the timing of moving children from Early Head Start to Head Start after their third birthday. Some commenters recommended we allow a child who turns three after the kindergarten cut-off date to remain enrolled in Early Head Start until the child transitions into Head Start or to another program at the beginning of the next program year. Also, some commenters recommended we clarify the phrase "a limited number of additional months" in paragraph (b)(2) because this timeframe is vague.

Response: The Act sets the age requirements for Early Head Start. We encourage programs to use ongoing planning processes to make informed choices based on individual needs and development for appropriate enrollment options into Head Start, pre-kindergarten, or other community based programs, to the extent available in their communities. Additionally, we used the phrase "a limited number of additional months" to provide programs with flexibility to determine the appropriate number of months to extend a child's enrollment to ensure a smooth transition. Children that turn three after the date of eligibility for kindergarten can enroll in Head Start if there is a space available during the program year. Therefore, we did not revise the provision.

Comment: Some commenters supported the requirements in paragraph (d) for Early Head Start and Head Start to work together to support continuity of services from birth to five. Some commenters recommended specific revisions, including adding a requirement to paragraph (d) for programs to serve families with the highest demographic risk.

Response: Prioritization requirements are described in subpart A, so we have not made changes to this section.

§1302.71 Transitions from Head Start to kindergarten.

In this section, we outline the services programs must implement to support successful transitions from Head Start to kindergarten. We received comments from the public and address them below.

Comment: One commenter suggested we change the phrase "transition to kindergarten" to "transition to school" throughout this section to better emphasize that broader transitions may occur between Head Start and the public school system, such as state preschool.

Response: This section focused on supports for transitions to kindergarten, while §1302.72 already addressed transitions to other early childhood education programs.

Comment: One commenter expressed concern that the language in paragraph (b)(2)(iii) on transition services to prepare parents to exercise their rights and responsibilities including options for their child to participate in language instruction educational programs, does not reflect the intent of Section 1112 of the Elementary and Secondary Education Act

(ESEA), as referenced in the Act, and that programs should tell parents about the range of educational options available to DLLs when they enter elementary school. This commenter suggested that we should not promote native language instruction over other options. Additionally, other commenters requested clarification about whether Head Start programs are required to judge the appropriateness of different instructional approaches for DLLs in public schools.

Response: As described in section 642A of the Act, Head Start programs are required to help parents of DLL children understand the information provided to them under Section 1112 of ESEA. We believe that paragraph (b)(2)(iii) is consistent with this requirement; however, for clarity, we removed the explicit mention of "native language instruction." Further, Head Start programs are not expected to judge the appropriateness of different instructional approaches for DLLs; rather, programs should help make parents aware of different options for language instruction programs in the elementary school setting. We made appropriate edits to paragraph (b)(2)(iii) to clarify this intent.

Comment: Some commenters stated that requirements in this section were too challenging and burdensome. For example, some commenters expressed concern that collaboration with school districts receiving Head Start children is challenging and highlighted collaboration to determine the availability of summer school programming for children entering kindergarten as an example.

Response: We believe that supporting successful transitions of children and families into school is critical for supporting child development and continued parental involvement in children's education. We do not agree that this section is too burdensome or challenging so we did not make changes in response to these comments.

Comment: Some commenters suggested we include additional requirements in this section to make transition services stronger. For example, commenters recommended we expand transition services to encompass after care in kindergarten and suggested we include more requirements on community collaborations in this subpart.

Response: We think we focus on the key components of transition services to support families when children transition to kindergarten. As always, we encourage programs to identify the individual needs of Head Start children and families and work to meet those needs. Additionally, we believe that community collaborations are sufficiently addressed in §1302.53(a), which requires programs take an active role in promoting a coordinated system of comprehensive early childhood services among community agencies and partners, so additional requirements about community collaboration were unnecessary.

Comment: One commenter recommended we permit programs to continue to provide comprehensive services to a subset of very at-risk families after those children transition to elementary school.

Response: Head Start is not authorized or funded to serve children and families after they leave Head Start.

§1302.72 Transitions between programs.

In this section, we included three new provisions that will support transitions for children and families who might not otherwise receive such services.

Comment: Some commenters explicitly supported the provision for programs to make significant efforts to support transitions for children experiencing homelessness or in foster care when they move out of the community. Because of their high mobility rate, one commenter suggested that programs should anticipate transitions for these children, and that the language in paragraph (a) should include support for transitions to other early childhood programs, not just Head Start, as well as connections to other types of community services that can support these children.

Response: We agree with the suggestion to support transitions to other early childhood programs if Early Head Start or Head Start services are not available. We edited paragraph (a) to reflect this.

Comment: Some commenters expressed concerns about the requirement in paragraph (b) to provide transition services to families who decide to enroll their children in other high-quality early education programs in the year prior to kindergarten. Challenges described include difficulty identifying participation in other programs by children who do not return to Head Start and lack of mandates on other public programs. Commenters asked for clearer definitions of the terms "high quality" and "practical and appropriate," as well as guidance on determining the quality of other programs. One commenter stated that this transition strategy does not promote the continuity of care emphasized in the NPRM.

Response: We agree the term "high quality" is vague and difficult to determine during a transition process; therefore, we struck the term from this provision. The intent of this provision is to support the transition process, regardless of where families seek services. To allow for program flexibility, we retained the phrase "as practical and appropriate." We will continue to provide guidance on these terms, as requested by grantees.

8. Services to Enrolled Pregnant Women; Subpart H

This subpart describes services Early Head Start programs must provide to pregnant women enrolled in their programs. Long standing research clearly demonstrates the importance of prenatal care and the effectiveness of prenatal interventions to facilitate healthy pregnan-

cies[106,107,108,109,110] and improve child outcomes that affect later school readiness[111,112,113,114,115] among at-risk women. While most of this subpart is structurally different from §1304.40 in the previous rule, it expands upon services we have always required to codify best practices and also highlights the importance of prenatal health care and education. Commenters generally supported this subpart. We discuss specific comments and our responses below.

General Comments.

Comment: Commenters supported our overall approach that creates a standalone subpart for services to pregnant women as well as individual new requirements for services to pregnant women. Some commenters opposed the additional requirements we proposed for pregnant women while other commenters suggested programs would require additional funds if they increased services to pregnant women.

Response: We understand the concerns some commenters described, especially related to cost. However, pregnant women are enrolled in Early Head Start programs, and therefore, funding is provided for these services. This subpart primarily reflects current practice that was not included in the regulation. We retained this section to codify practices related to pregnant women.

Comment: Some commenters recommended programs carefully consider when to enroll pregnant women so that their children will be able to enroll in the Early Head Start program.

Response: While we agree with this comment, we do not think there is a need for a program performance standard to require such consideration.

Comment: Some commenters suggested that the entire subpart should refer to expectant

[106]Olds, D.L., Henderson, Jr., C.R., Tatelbaum, R., & Chamberlin, R. (1986) Improving the Delivery of Prenatal Care and Outcomes of Pregnancy: A randomized Trial of Nurse Home Visitation. *Pediatrics, 77*(1), 16-28.

[107]Villar, J., Farnot, U., Barros, F., Victora, C., Langer, A., & Belizan J.M. (1992) A Randomized Trial of Psychosocial Support during High Risk Pregnancies, *The New England Journal of Medicine, 327*(18), 1266-1271.

[108]Olds, D.L., & Kitzman, H. (1993). Review of Research on Home Visiting for Pregnant Women and Parents of Young Children. *The Future of Children, 3(3)*, 53-92.

[109]McLiaghlin, F.J., Altemeier, W.A., Christensen, M.J., Sherrod, K.B., Dietrich, M.S., & Stern, D.T. (1992). Randomized Trial of Comprehensive Prenatal Care for Low-Income Women: Effect on Infant Birth Weight. *Pediatrics, 89(1)*, 128-132.

[110]Alexander, G.R., & Korenbrot, C.C. (1995). The Role of Prenatal Care in Preventing Low Birth Weight. *The Future of Children, 5(1)*, 103-120.

[111]Larson, C. P. (1980). Efficacy of Prenatal and Postpartum Home Visits on Child Health and Development. *Pediatrics, 66(2)*, 191-197.

[112]Olds, D.L., Henderson, Jr., C.R., & Kitzman, H. (1994). Does Prenatal and Infancy Nurse Home Visitation have Enduring Effects on Qualities of Parental Caregiving and Child Health at 25 to 50 Months of Life? *Pediatrics, 93(1)*, 89-98.

[113]Olds, D.L., & Kitzman, H. (1990). Can Home Visitation Improve the Health of Women and Children at Environmental Risk? *Pediatrics, 86(1)*, 108-116.

[114]Hack, M. Klein, N.K., & Taylor, H.G. (1995). Long-term Developmental Outcomes of Low Birth Weight Infants. *The Future of Children, 5(1)*, 176-196.

[115]Reichman, N. E. (2005). Low birth weight and school readiness. *The Future of Children, 15*(1), 91-116.

families rather than pregnant women, or requested clarification about the scope of services required for a pregnant mother of an enrolled child who is not herself enrolled in Early Head Start.

Response: This subpart pertains only to enrolled pregnant women, and we revised §1302.80(a) to further clarify this. While we made it clear that relevant services should include the entire expectant family, wherever possible, pregnant women are the family member who is enrolled in Early Head Start. Further, §1302.46 describes services for expectant families of enrolled children that may be relevant, but programs must only provide opportunities to learn about healthy pregnancy and post-partum care to expectant parents of enrolled children who are not themselves enrolled. We did not make revisions based on these comments.

§1302.80 Enrolled pregnant women.

This section describes the services programs must provide to enrolled pregnant women. It requires programs to assess whether or not enrolled pregnant women have access to an ongoing source of health care and health insurance, and if not, to facilitate their access to such care and insurance. It also includes a requirement for a newborn visit. We received comments on this section and discuss them below.

Comment: One commenter explicitly opposed the new requirement in paragraph (b) to assist pregnant women in accessing health insurance.

Response: Ensuring pregnant women have health insurance is critical to ensuring they receive adequate prenatal care.[116,117,118] We did not revise the provision.

Comment: Some commenters requested clarity about what we meant by "as quickly as possible" in regard to the requirement in paragraph (b) that programs support access to health care for pregnant women. Commenters suggested 30 or 45 days.

Response: While we agree that 30 or 45 days are both reasonable interpretations of "as quickly as possible," in some cases this requirement should be met more quickly, and in other cases challenges may arise that prevent programs from providing these services within those timeframes. Therefore, it is not appropriate to regulate a precise time frame. We did not revise the provision.

Comment: Some commenters recommended we require programs to refer families to emergency shelters or transitional housing in cases of domestic violence or homelessness.

Response: Paragraph (c) already requires programs to refer families to emergency shelters or transitional housing, as appropriate.

[116]Marquis, M. & Long, S. (2002). The role of public insurance and the public delivery system in improving birth outcomes for low-income pregnant women. *Medical Care (40)*, 1048–1059.

[117]Howell, E. (2001). The Impact of the Medicaid expansions for pregnant women: A synthesis of the evidence. *Medical Care Research Review,(58)* 3–30.

[118]Phillippi, J. C. (2009). Women's perceptions of access to prenatal care in the United States: A literature review. *Journal of Midwifery & Women's Health, 54(*3), 219-225.

Comment: Many commenters suggested we revise what was §1302.82(b) to require programs to offer but not necessarily provide a newborn home visit within two weeks because families should have the right to refuse. Some commenters asked that programs be allowed to consider cultural practices and length of hospital stays or illness in requiring an initial home visit at two weeks.

Response: The initial home visit is planned with the pregnant woman and her family as part of prenatal services that a program provides and the timing of the visit can reflect the beliefs and circumstances of the family. We clarified this intent by revising what is now §1302.80(d) to require that programs must schedule a home visit within two weeks.

Comment: Commenters requested clarification about the qualifications for the "health staff" mentioned in what was §1302.82 (b) who perform the two-week postpartum visit.

Response: We removed the reference to "health staff" in what is now §1302.80(d) to clarify programs have flexibility to staff the home visit in a manner that is appropriate for individual family needs. We now call this visit a newborn visit.

§1302.81 Prenatal and postpartum information, education, and services.

This section strengthens program performance standards pertaining to enrolled pregnant women by requiring programs to ensure all enrolled pregnant women have opportunities to learn about various relevant topics. It also makes clear that programs must address needs for appropriate supports for emotional well-being, nurturing and responsive caregiving, and father engagement during pregnancy and early childhood.

Comment: Some commenters suggested we revise paragraph (a) and the title of this section to clarify the expectation for the level of service delivery.

Response: For clarification, we have changed the title of this section and the phrase in paragraph (a) to "prenatal and postpartum information, education, and services."

Comment: Some commenters suggested that maternal and paternal depression should be included in the list of prenatal and postpartum services described in paragraph (a). Some commenters explicitly suggested that expectant families be screened for both prenatal and postnatal depression.

Response: We revised the language in paragraph (a) to include parental depression.

Comment: Commenters recommended we require programs to use tools and resources to assess risk factors and needs of expectant families. Further, some commenters requested inclusion of explicit requirements regarding the hours and days or number of home visits required for pregnant women.

Response: We believe we struck the right balance in allowing programs to determine the specific ways to achieve the outcomes and do not think additional prescriptive federal requirements are necessary. We did not make these changes.

Comment: Some commenters suggested additions to the required educational services

regarding oral health for both pregnant women and newborns during the newborn home visit.

Response: We do not believe that discussing later oral health is an appropriate focus of this newborn home visit. We did not revise the provision.

Comment: Some commenters requested guidance about the availability of prenatal educational materials. Other commenters suggested that we issue guidance to make programs aware of the educational materials available free of charge through the CACFP regarding nutrition, physical activity, and breastfeeding.

Response: As commenters noted, there are materials available through USDA, and other sources that could be used, free of charge to provide prenatal educational services to pregnant women and their families. We believe programs can easily access this information and do not think changes are needed to the regulation.

§1302.82 Family partnership services for enrolled pregnant women.

This section describes requirements for programs to provide family partnership services for enrolled pregnant women.

Comment: Some commenters wanted this section to include specific language for including fathers and father engagement in family partnership services for enrolled pregnant women.

Response: We agree that the language should more explicitly reflect the role of fathers and revised paragraphs (a) and (b) accordingly.

9. Human Resources Management; Subpart I

In this subpart, we combined all previous performance standards related to human resources management into one coherent section. This subpart includes requirements for personnel policies, staff qualifications, training and professional development, and staff health and wellness and volunteers. We renamed the subpart Human Resources Management to better encompass the requirements in this subpart. We received many comments on this subpart. We summarize and respond to these comments below.

§1302.90 Personnel policies.

This section requires programs to establish written personnel policies and procedures, sets forth a background check process, standards of conduct for staff, consultants, and volunteers, and staffing requirements when programs serve DLLs. We received many comments on our background check requirements. We discuss these and other comments on this section below.

Comment: Commenters supported the general requirement in paragraph (a) that programs develop written personnel policies and procedures. Many commenters asked us to provide more clarity about the policy council's role in hiring and firing staff. Some commenters asked us to require programs to make policies and procedures available to all staff. Some

commenters asked us to prescribe exactly what program policies and procedures must contain.

Response: We revised paragraph (a) to read, "A program must establish written personnel policies and procedures that are approved by the governing body and policy council or policy committee and that are available to all staff." We purposely devised this rule to be less prescriptive to afford programs flexibility and autonomy so we did not include additional specificity about personnel policies and procedures other than what is required in paragraphs (b), (c), and (d) in this section. We revised this paragraph to clarify that staff have access to the personnel policies and procedures and to reflect the Act's requirement that the governing body and policy council or policy committee must review and approve the program's personnel policies and procedures. We relied on the Act for the governance requirements on hiring and firing so we did not make any changes.

Comment: Commenters generally supported our background check requirements in paragraph (b), noting that they were in the best interests of children and align with the Head Start Act and Child Care Development Block Grant Act of 2014 (CCDBG). Commenters expressed some concern with potential costs associated with the requirements. Some commenters recommended additional alignment, such as with provisions from Section 658(H) of CCDBG that require programs to complete the background check process within 45 days. Some commenters asked us to mirror exactly what the Act states about background checks to minimize conflict. They did not interpret the Act to require fingerprints with criminal history records checks. Others requested additional amendments such as limits to fees a program may charge to process criminal history checks, mandates for confidentiality, an appeal process, and an exemption for some employees. Some commenters recommended we rename paragraph (b) to improve clarity.

Response: We believe our background check requirements align with the Act and generally align with section 658(H) of CCDBG. However, we did not change the timeframe we prescribed for programs to complete background checks. We believe 90 days is appropriate, particularly since the Act requires Head Start programs to complete one of the checks before hire. We did not address background check fees in this rule. We understand programs may bear costs associated with background checks and we encourage programs to use the resources available to them and consider ways to allocate funds differently to cover these costs. We do not think it is the best interest of Head Start children to allow exemptions from the background checks. In regard to concerns about privacy, we expect programs will address confidentiality in their written policies and procedures because paragraph (c)(1)(iv) requires programs to ensure all staff, consultants, and volunteers comply with confidentiality policies. We did not require programs to establish a background checks appeal process. If either prospective or current employees decide to challenge background check findings, we encourage programs to direct them to the state, tribal, or federal agency that conducted the check. We agree the title of paragraph (b) was not clear enough and have renamed it "Background checks and selection procedures."

Comment: Some commenters expressed concern about the legality of asking prospective employees for their dates of birth. Other commenters were concerned if we did not reference Title VII of the Civil Rights Act of 1964, programs could use background checks to

discriminate in hiring practices against protected individuals such as African Americans and Hispanics.

Response: Dates of birth are probably the most important factor needed to identify an individual and are necessary to conduct background checks. The Age Discrimination in Employment Act of 1967 does not prohibit an employer from asking for date of birth or age. In fact, the U.S. Equal Employment Opportunity Commission (EEOC) specifically ruled that an employer that asks for date of birth or age does not automatically violate that act. As a best practice, the EEOC urges employers to clearly disclose to applicants why they need birth dates.[119] Title VII of the Civil Rights Act of 1964 (Title VII) requires employers to screen individuals based on criminal history in a manner that does not significantly disadvantage protected individuals, such as Hispanics and African Americans. In §1303.3 we include Title VII of the Civil Rights Act among the other federal laws Head Start programs need to comply with.

Comment: Some commenters found our structure for paragraph (b) to be confusing and asked us to clarify whether programs must complete the background check before a person was hired or within 90 days. Commenters offered suggestions, such as adding a provision that required programs to hire individuals who otherwise cleared one of the checks before they were hired or to limit their access to children until all background checks are cleared.

Response: We agree that our structure for paragraph (b) made it difficult to clearly understand what type of background check needed to be conducted before or after an individual is hired. We did not change the background check requirements but we revised paragraphs (b)(1) and (2) to improve clarity. Paragraph (b)(1) now clearly requires programs to obtain either state or tribal criminal history records with fingerprint checks or federal criminal history records with fingerprints before an individual is hired. Paragraph (b)(2)(i) now clearly requires programs have 90 days after an individual is hired to obtain whichever criminal history check listed in paragraph (b)(1) they could not obtain before hire. It also states in paragraph (b)(2)(ii) and (iii) that programs have 90 days after an employee is hired to complete background checks with child abuse and neglect registries, if available, and sex offender registries. To ensure child safety while the all of the background checks are being completed, we added paragraph (b)(3) to require programs ensure the new employee will not have unsupervised access to children until their full background check process is complete.

Comment: Some commenters were concerned we would find programs either non-compliant or deficient if there were no child abuse and neglect registries in their state. Some commenters suggested we should specify whether programs must use state or national sex offender registry and we should require programs to conduct searches on the National Crime Information Center.

Response: We require programs to obtain checks from the national sex offender registry and state child abuse and neglect and sex offender registries, if available. We think the regulation is strong on ensuring child safety and do not think it is necessary to require programs to check the National Crime Information Center.

[119] *See* www.eeoc.gov/facts/age.html for more facts about age discrimination.

Comment: Some commenters recommended we require programs to conduct background checks on volunteers, contractors, and family child care providers.

Response: We agree contractor and family child care providers are required to have background checks. To clarify our intent we added the phrase "directly or through contract" to paragraph (b)(1) and clarify that transportation staff and contractors are also subject to these requirements, consistent with the policy proposed in the NPRM. We also clarify that all staff, consultants, and contractors are subject to this requirement. We do not require background checks for volunteers because there is some evidence this stifles parent volunteering and engagement, which is fundamental to Head Start's two-generation approach. Additionally, as described in paragraph (c)(1)(v) and §1302.94(b), programs must ensure children are never left alone with volunteers.

Comment: Many commenters were concerned about language in the preamble about programs providing justification for hiring individuals with arrests or convictions in relation to what was paragraph (b)(3) in the NPRM and is now paragraph (b)(4). Commenters noted this caused unnecessary bureaucracy and a few thought it contradicted the Act.

Response: Paragraph (b)(4) in this rule requires programs to review each employment application to assess relevancy. It does not conflict with the Act and does not require written justifications.

Comment: We received some comments about disqualification factors. Some commenters suggested we revise what is now paragraph (b)(4) to clarify that school-based grantees can use whichever state-imposed disqualification factors apply to them. Some commenters suggested we allow tribes to use tribal disqualification factors. Some commenters asked us to list specific pre-employment or disqualification factors.

Response: We revised paragraph (b)(4), which was paragraph (b)(3) in the NPRM, to clarify programs must use "applicable state or tribal Child Care Development Fund (CCDF) disqualification factors in any employment decisions." However, because pre-employment and disqualification factors vary by state and tribe, we did not list those factors here.

Comment: Most commenters supported the requirement in what was paragraph (b)(4) in the NPRM but is now paragraph (b)(5) to conduct complete background checks every five years. They believed what we proposed aligns with background checks across multiple early childhood programs and with typical hiring practices. Some commenters opposed this requirement because it would impose undue costs for programs. Many commenters suggested exemptions for programs that have a more stringent system in place. Some commenters offered other alternatives to the five-year requirement, like use of consumer reporting agencies because they are fast and more comprehensive, and background checks more frequently than every five years.

Response: We agree that our five-year requirement that now appears in paragraph (b)(5) in the NPRM aligns with other program requirements and with typical hiring practices. We understand there may be costs associated with background checks. However, we believe child safety is paramount. Therefore, we expect programs to use resources available to them and to allocate funds differently, if necessary, to cover these costs. We revised

paragraph (b)(5) to exempt a program from the five-year requirement if the program can demonstrate it has a more stringent system in place that will ensure child safety.

Comment: Some commenters asked us to clarify the requirement in what was paragraph (b)(5) and is now paragraph (b)(6) about consideration of current and former program parents for employment vacancies. They requested we clarify that programs are not required to consider otherwise qualified parents for positions if they do not apply.

Response: We revised paragraph (b)(6) to clarify that parents should be considered only for jobs for which they apply.

Comment: Some commenters asked us to define: "background check," "before and individual is hired," "clearance by registries," employment application," and the term "hire" as distinct from the phrase "an offer of employment."

Response: We did not define these terms or phrases. Programs should consider their ordinary and customary meanings.

Comment: Commenters generally supported the standards of conduct described in paragraph (c). Some noted their support of the requirements in what is now paragraph (c)(1)(ii) that prohibit staff from using food or physical activity or outdoor time as a reward or punishment. Some commenters requested we add more specificity to the requirements in paragraph (c)(1)(ii). For example, some requested we expressly ban physical, mechanical, and chemical restraint, as well as seclusion. Some commenters stated that the terms "isolation," "sarcastic," "derogatory," and "humiliation" were subjective and asked us to define them. Some commenters recommended we delete the list of what staff must not do and include a standard by which staff should aspire to conduct themselves instead.

Response: We do not think our standards of conduct in paragraph (c)(1)(ii) require more specificity. We made small changes to this paragraph to improve clarity that did not change meaning. For example, the prohibition on public or private humiliation, that was found in paragraph (c)(1)(ii)(I) in the NPRM, was moved to paragraph (c)(1)(ii)(F). We agree it was appropriate to add a requirement to the standards of conduct that expressed the positive and supportive behavior all staff, consultants, and volunteers must exhibit. This standard can be found at paragraph (c)(1)(i) and standards describing prohibitions that were in paragraph (c)(1)(i) in the NPRM are now found at paragraph (c)(1)(ii).

We did not define "isolation," "sarcastic," "derogatory," and "humiliation" because we expect programs to consider these terms' ordinary and customary meanings. Furthermore, we did not amend paragraph (c) to use the terms physical, mechanical, and chemical restraint or seclusion. We believe our standards of conduct clearly convey prohibition on restraint. Furthermore, the requirement now found in paragraph (c)(1)(ii)(B) that expressly prohibits isolation as a form of discipline and the requirement in paragraph (c)(1)(v) that prohibits staff from leaving children alone or unsupervised at any time more clearly convey our prohibition on seclusion.

Comment: Some commenters suggested we reference staff, contractors, and volunteers in paragraph (c)(1)(iii) so programs understand who must adhere to standards of conduct.

Response: We agree that we must clarify standards of conduct described in paragraph (c)(1) apply to staff, consultants, contractors, and volunteers. We revised paragraph (c) accordingly.

Comment: Some commenters requested we reaffirm Head Start's policy that does not exclude same sex couples and add "sexual orientation" to what is now paragraph (c)(1)(iii)

Response: We agree, and we revised paragraph (c)(1)(iii) accordingly.

Comment: Commenters generally supported that personnel policies include appropriate penalties for staff that violate standards of conduct. Commenters asked us to clarify paragraph (c)(2), which requires personnel policies and procedures to include appropriate penalties for staff who violate the standards of conduct. Commenters requested to know who determines appropriate penalties.

Response: We expect programs to designate staff that will determine appropriate penalties. We think local programs are best suited to determine who that staff should be so we did revise the provision. We also clarified in paragraph (c)(2) that personnel policies and procedures must include appropriate penalties for consultants and volunteers, as well as staff, who violate the standards of conduct.

Comment: Some commenters raised concerns with the requirement in paragraph (d)(1) about communication that is effective with DLLs and their families. Some commenters were concerned about the rarity of certain languages and corresponding lack of interpreters or qualified teachers. Commenters pointed out that, in some instances, staff who speak the second language are sometimes not proficient in English and it is costly for programs to train them.

Response: The prior performance standards required that programs be able to communicate effectively with families, either directly or through an interpreter. This has been a long-standing requirement and expectation in Head Start. If program staff, interpreters, or translators do not speak all languages of the families in the program, then other support services should be utilized, such as interpretation services available via phone and other methods. We revised paragraph (d)(1) to take into account those extremely limited circumstances where interpretation services are not available by phone and other methods and to clarify the requirement by including "to the extent feasible."

Comment: Some commenters raised concerns with the standard in paragraph (d)(2) that requires programs to have at least one staff member who speaks the home language of DLLs in classes where the majority of children speak the same non-English language. Commenters were concerned about the lack of qualified bilingual staff, particularly for infant groups. Some commenters asked whether a waiver will be available for this requirement, and how to find interpreters.

Response: The prior performance standards required that at least one staff member or home visitor speak the language of the majority of children in the class or home-based program. This has been a long-standing requirement and expectation in Head Start. When the majority of children speak the same language, we believe it is imperative that staff be

able to provide the children with high-quality language experiences. There is not a waiver available for this requirement.

§1302.91 Staff qualification and competency requirements.

This section includes requirements for staff qualifications and competencies. We raised many staff qualifications over those in the previous performance standards, as required by the Act. In response to comments, we included some new staff qualification requirements for child and family services management staff, family services staff, and mental health consultants. We also restructured the section to improve clarity. We discuss comments and our responses below.

Comment: Some commenters offered general comments that addressed the entire section. Some requested guidance on how to measure sufficient knowledge, training, and experience, as it relates to requirements throughout this section. Other commenters suggested we require all staff in all program options to have the knowledge and ability to work with children with disabilities. Some commenters noted the need to fund and implement strategies with higher education to ensure degree and credential programs include appropriate coursework content specific to the infant, toddler, and preschool workforce. Other commenters suggested that the credential or degree requirements for bilingual staff be more flexible, as it is very difficult to find bilingual staff who are also qualified in early childhood education. Further, some commenters recommended we require programs to review state early childhood workforce requirements on a regular basis to ensure that Head Start's requirements support and enhance state-based career ladders.

Response: We revised paragraph (a) to integrate professional development to support program service staff so they have the knowledge, training, experience, and competencies to fulfill their roles and responsibilities. We think programs should be continuously supporting staff in fulfilling their roles and responsibilities. We also revised paragraphs in this section to expand competencies for teachers, assistant teachers, family child care providers, and home visitors to include working with children with disabilities and DLLs to support effective service delivery. While we recognize recruitment of bilingual staff who are qualified in early childhood education may be challenging, we believe children who are dual language learners need highly-qualified teachers in order to achieve meaningful child outcomes. Additionally, while we agree access to appropriate coursework and financing is critical for a well-trained workforce, many of these challenges are beyond the scope of this final rule.

Comment: Commenters generally supported our proposal, in paragraph (i) of the NPRM and now found in paragraph (b), to require Early Head Start and Head Start program directors hired after the effective date of this final rule to have at least a baccalaureate degree. Some commenters were concerned this requirement would make it too difficult for programs to hire and retain directors. Some commenters suggested we allow programs to implement an alternate approach, such as allowing time for directors to acquire appropriate degrees or restricting the requirement to new hires. Other commenters supported a stronger requirement for directors and suggested we require directors to have a master's degree. Some commenters suggested additional requirements regarding experience or competencies.

Response: We retained our standard to require at least baccalaureate degrees for program directors as proposed in the NPRM. We revised the minimum background experience requirement to include administration in addition to supervision of staff and fiscal management. However, we retained local flexibility to define other necessary experience and competencies including experience in early childhood.

Comment: Some commenters supported our standard in what was paragraph (h)(3) in the NPRM that allowed flexibility for programs to establish qualifications for their fiscal officer based on an assessment of their needs and secure regularly scheduled or ongoing services of a fiscal officer. Other commenters suggested that fiscal functions should be led by a qualified accounting professional with expertise in understanding the operational risks, the potential for misalignment of funding, and the financial reporting associated with federal funding.

Response: We revised the standard for fiscal officer qualifications, now found in paragraph (c), to clarify that programs must consider the fiscal complexity of their organization to ensure fiscal officers have sufficient knowledge and experience to fulfill their role. We also require newly hired fiscal officers to be certified public accountants or have a baccalaureate degree in a related field.

Comment: The NPRM did not specifically address qualifications for staff who manage family services, health services, and disabilities services other than to require in paragraph (a) that all staff and consultants have sufficient knowledge, training, and experience to fulfill their roles and responsibilities. The NPRM did not retain language from the previous program performance standards about disabilities and health managers because we thought it was vague and not helpful for programs. Some commenters opposed our approach and interpreted it to mean we were removing services area management. Commenters suggested we require all supervisors have a baccalaureate degree. Other commenters suggested we require all supervisory staff to have knowledge of and training on reflective supervision. Further, some commenters provided explicit suggestions for qualifications that the health services manager should be required to have, such as a minimum of an associate's or bachelor's degree in health, public health, nursing, or a related field, or an early childhood education degree with health-related certification or licensure. In addition, some commenters suggested qualifications for disabilities managers, including a bachelor's degree with a certification in early childhood special education or related field. Finally, some of these commenters also suggested adding competencies for disabilities managers, such as experience working in an early childhood education setting.

Response: We did not intend for the NPRM to signal the removal of service area management. Our goal in omitting references to service area management was to increase local flexibility to better meet the variety of needs in programs of differing size. However, we revised the rule to require degree qualifications for newly hired family services, health, and disabilities managers. Specifically, as stated in paragraph (d)(1), staff responsible for the management and oversight of family services, health services, and services to children with disabilities hired after the effective date of this rule, must have at a minimum, a baccalaureate degree, preferably related to one or more of the disciplines they oversee. Programs should not interpret this requirement to mean they must have different people for disabil-

ities management, family services management, and health services management. Due to the varying sizes and complexities of program structures, we think programs must have the flexibility to decide on their own appropriate staffing patterns to meet these oversight and management responsibilities.

Comment: In what was paragraph (e) in the NPRM, we proposed minimum requirements for education coordinators, as required by the Act. Some commenters recommended phasing in a requirement for education coordinators to have a master's degree. Some commenters requested additional flexibility in the requirement, such as allowing the degree to be in elementary education or family studies or allowing relevant coursework combined with a degree in an unrelated field. Additionally, some respondents suggested that education coordinators should have experience working explicitly with the age group of the classes they oversee.

Response: We believe the requirement as written is sufficient to ensure high-quality services and retained this requirement as proposed, now found in paragraph (d)(2). We did not include additional flexibility since minimum requirements for education coordinators are set by the Act. We made small technical revisions.

Comment: We specifically solicited comments on the appropriate qualifications for Early Head Start teachers, which was described in paragraph (b)(1) and now is located at paragraph (e)(1). We received a variety of different recommendations. For example, some commenters suggested we retain requirements from the Act that Early Head Start teachers have at least CDA. Some commenters suggested the CDA is adequate only if staff work closely with a coach, and some commenters recommended we require an associate's degree in early education. Others recommended we require a baccalaureate, and some supported phasing in baccalaureate requirements. Some commenters supported allowing one teacher in an Early Head Start class to meet a higher qualification and for the second teacher to have the current CDA qualification. Some commenters requested clarification of the term "equivalent course work," and offered suggestions. Some commenters expressed concern that increasing qualifications would impact programs' ability to hire parents and other community members who accurately reflect and can address the culturally and linguistically diverse needs and experiences of children and families, particularly in programs serving rural, migrant, and tribal populations.

Response: We maintained the staff qualification requirements for Early Head Start as proposed. Lowering these requirements is beyond the scope of this rule because they are set by the Act. We did not raise the requirement to a baccalaureate degree, although we agree with recommendations from the National Academy of Sciences (NAS) report[120] that a lead teacher in every class with a bachelor's degree and demonstrated competencies is optimal. Grantees are encouraged to implement effective career and professional development models and might find it particularly effective to have at least one lead teacher with higher credentials and another teacher who meets the minimum qualifications. We do not define "equivalent course work" because different colleges and universities describe majors

[120] Institute of Medicine (IOM) and National Research Council (NRC). 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press.

and classes in a variety of ways; programs must evaluate the content and relevancy of the individual courses their teachers have taken.

Comment: We specifically solicited comments on the appropriate qualifications for Head Start teachers. In general, commenters supported requiring bachelor's degrees for all Head Start teachers. Some commenters suggested that all staff working directly with children and families should have a bachelor's degree. Other commenters expressed concern about compliance with higher standards, given the difficulties they already face in finding appropriately credentialed staff. These commenters were especially concerned with adding new credential requirements without designated funding to achieve the higher standards. Some commenters requested we allow degrees to be in a related field such as elementary education or family studies. Some commenters suggested the teacher qualification requirements should mirror language of other federal programs that supports alternative pathways and demonstrated competencies in lieu of credentials. Others recommended partnering with the Department of Education on an early education TEACH campaign in order to recruit highly qualified teachers. Other commenters suggested allowing programs to use proxy indicators of competence such as years of experience, completed training, or CLASS scores as a way to maintain employment of individuals who do not meet degree requirements. Some commenters were concerned that the broad language of "equivalent coursework" may create unnecessary confusion in the field as to whether Teach for America candidates may be hired; and suggested that clarifying language be included in the final rule.

Finally, commenters described challenges in recruiting and retaining qualified staff members who speak the community's language and understand its nuances. These commenters expressed concern that increasing qualifications would impact programs' ability to hire parents and other community members who accurately reflect and can address the culturally and linguistically diverse needs and experiences of children and families, particularly in programs serving rural, migrant, and tribal populations.

Response: In paragraphs (e)(2) and (3), we maintained the staff qualification requirements for Head Start teachers as proposed and as required by the Act. Lowering these requirements is beyond the scope of this rule because minimums are set by the Act. The Act also does not grant us authority to allow exemptions or proxy indicators of currently employed teachers who do not meet qualification requirements. As noted earlier, we are in agreement with the NAS report that having teachers with a baccalaureate degree in every class is optimal.[121] We have updated the statutory reference in paragraph (e)(2)(ii) to include all of the alternative credentials, including Teach for America.

Comment: We received some comments on our requirement in what is now paragraph (e)(3) for qualifications for assistant teachers. Some commenters requested clarification on whether or not assistant teachers with a CDA credential must also be enrolled in a program leading to an associate or baccalaureate degree, or if assistant teachers without a CDA credential must be enrolled in either a degree program or CDA credential program. Some commenters suggested we should encourage assistant teachers to attain associate's degree as a career ladder towards becoming a teacher. Other commenters expressed concern that two

[121] Ibid.

years is not long enough for an assistant teacher to attain a credential or degree. Some commenters expressed confusion about the difference between teacher assistants and teacher aides.

Response: As required by the Act, the provision in paragraph (e)(3) requires Head Start assistant teachers have at least a minimum of a CDA credential or be enrolled in a CDA credential program to be completed within two years of the time of hire. We revised this provision to clarify that the minimum requirement also permits a state-awarded certificate that meets or exceeds the requirements for a CDA credential. While assistant teachers with a CDA credential or state-awarded equivalent are not required to be enrolled in a program that will lead to an associate or baccalaureate degree, assistant teachers that are enrolled in a program that will lead to such a degree meet the qualification requirements. We consider assistant teachers to be a second educational staff person working within a preschool setting who supports the teacher in implementing planned curricular activities with the children. A teacher aide is a third person who may or may not provide direct curriculum support.

Comment: We specifically solicited comments on the appropriate qualifications family child care providers, which was addressed in paragraph (g) in the NPRM and now is found in paragraph (e)(4)(i). Some commenters objected to our proposal in what is now paragraph (e)(4)(i) to shorten the timeline for family child care providers to attain credentials from two years to eighteen months. Conversely, some commenters suggested we require family child care providers meet the same qualifications as center-based teachers.

Response: We retained the requirements for family child care providers as proposed. We believe our requirement in paragraph (e)(4)(i) appropriately balances the need to strengthen requirements and acknowledge funding realities and the ability of higher education to support degrees in early childhood. We did not substantively revise the provision.

Comment: Some commenters suggested the requirement in what is now paragraph (e)(4)(ii) that a child development specialist have at a minimum, an associate degree in child development or early childhood education is too low, given their responsibilities. Some commenters requested we define "child development specialist" as it relates to family child care.

Response: We agree the work that child development specialists do with family child care providers to support high-quality service delivery in family child care settings, as described in §1302.23(e) requires a higher level of expertise. Therefore we amended what is now paragraph (e)(4)(ii) to more clearly link the duties of the child development specialist as described in §1302.23(e) and require child development specialists have a baccalaureate degree in child development, early childhood education or a related field.

Comment: Some commenters supported our focus on both staff qualifications and the staff competencies for teaching staff we described in what were paragraphs (b)(2) and (c)(2) and are now found in paragraph (e)(5). Some commenters suggested additional competencies for teaching staff including understanding the birth to five developmental continuum; partnering with and engaging parents in their child's education; effective team teaching; culturally and linguistically responsive practices; second language acquisition; administering assessments; and the capacity and desire to expand skills, knowledge and abilities.

Response: Programs have the flexibility to determine the appropriate competencies to ensure high-quality staff and program effectiveness within their own communities. However, we revised paragraph (e)(5) to add use of assessment and promoting the progress of children with disabilities and dual language learners.

Comment: Many commenters expressed concern with or opposed our proposal to require home visitors have at least a CDA in what was paragraph (f) in the NPRM. Concerns with our proposal included: it was more important to focus on home visitor skills; home visitors are already trained and certified in other home visiting curriculum and that a CDA would be an inefficient use of funds; time should be provided to allow home visitors to obtain a CDA; and our proposal would disqualify home visitors with sociology, psychology, or other possibly relevant degrees.

Some commenters supported our proposal for home visitors to have a minimum of a CDA, although some of these commenters suggested their support was conditional on additional funds to raise home visitor salaries accordingly. Some commenters suggested additional flexibility for staff to meet this requirement such as an alternative or equivalent credential. Many commenters recommended we revise the standard to allow the home visitor to have a CDA or equivalent coursework or be enrolled in coursework to earn a CDA. Some commenters suggested that the minimum requirement of a CDA was too low and recommended we require at least an associate's degree in early childhood, child development or a related field with equivalent coursework that could be attained within a realistic timeframe. Some commenters suggested we set a national percentage goal for home visitors with bachelor's degrees.

Response: We believe our minimum requirement of a CDA for home visitors, now found in paragraph (e)(6)(i) is reasonable and in fact, given the complex nature of their work, that it is preferable for such staff to have an associate's or baccalaureate degree in a relevant field. We revised this requirement to clarify the credentials necessary for this position. In order to allow adequate time for staff to obtain a CDA, we are delaying the requirement to comply with this provision for two years. We also revised competency requirements in paragraph (e)(6)(ii) to include supporting children with disabilities and DLLs, and building respectful, culturally responsive, and trusting relationships with families.

Comment: The NPRM required all staff, including family services, health, and disabilities staff, to have sufficient knowledge, training, and experience to fulfill their roles and responsibilities. It did not retain vague language from the prior program performance standards about family services, health, and disabilities staff. We specifically requested comments on specific degree requirements for these staff. We received comments in support and opposition of our approach. Some commenters praised our removal of these provisions, and stated it would increase local flexibility for programs to set their own qualifications and better address their professional needs. Other commenters disagreed, and instead suggested we at least restore the previous requirements and suggested we include new degree competencies and qualifications, such as a minimum of a baccalaureate. Some commenters provided specific recommendations for strengthening qualifications for family service workers, such as a requirement that they, at a minimum, have an associate's degree in social work or a related field.

Response: We agree with the concerns commenters raised about child and family services staff and made revisions accordingly. We added a new requirement in paragraph (e)(7) to require newly hired staff who work on family partnership services have at least a credential or certification in social work, human services, family services, counseling or a related field within eighteen months of hire. We believe it is optimal for these staff to have an associate's or baccalaureate degree in a related field. We restored health professional qualification requirements in paragraph (e)(8)(i), and we expanded requirements for competencies to include assistant teachers and family child care providers in paragraph (e)(5).

Comment: Some commenters offered suggestions for the requirement for mental health consultants in what is now paragraph (e)(8)(ii). Some requested clarification about what it meant to "support" mental health services. Some commenters suggested mental health consultants be licensed or certified, demonstrate specific competencies, or have a degree in social work, professional counseling, or marriage and family therapy. Other commenters opposed the requirement that a mental health consultant be licensed or certified, citing inadequate funding.

Response: We think it is important that mental health consultants are licensed or certified mental health professionals so they have the training needed to provide the appropriate scope of services to young children and families. To strengthen the standard, we revised what is now paragraph (e)(8)(ii) to require that mental health consultants have, to the extent possible, knowledge of and experience in serving young children and their families. We also removed the language that referenced staff who "support" mental health services to improve clarity. We did not address other suggested requirements, because we believe that local programs need flexibility to determine the best approach to ensure mental health consultants are able to meet child and family needs.

Comment: Some commenters requested clarification for our use of the term "nutritionist" in what is now paragraph (e)(8)(iii). Commenters were concerned it could be interpreted to include a person who lacks formal education or training in the area of nutrition. Some commenters suggested we require registered dieticians and licensed nutritionists oversee all nutrition services.

Response: We believe the requirement that nutrition services be provided by registered dieticians and nutritionists is sufficient to ensure high-quality services.

Comment: Some commenters suggested we modify staff qualification requirements for migrant and seasonal and American Indian and Alaskan Native programs because these programs often find it difficult to hire staff with either credentials or degrees. For example, some commenters recommended we broaden the requirement for using child development specialists with associate's degrees in family child care to apply to migrant and seasonal programs because of challenges to find bilingual qualified staff in rural communities. Commenters recommended we allow migrant or seasonal Head Start programs to have lower staff qualifications than other Head Start programs and help them obtain degrees.

Response: Although we understand the challenges migrant and seasonal and American Indian and Alaskan Native programs face, we require these programs to hire qualified staff to

work with children. However, we encourage programs to implement individualized professional development plans for all staff.

Comment: Some commenters suggested we add specific qualifications for coaches, such as a minimum of a bachelor's degree in in early childhood education or child development. Some commenters suggested we require coaches to demonstrate specific areas of knowledge, skills, and experience.

Response: We agree that in order for coaches to effectively support education staff they should have a minimum of a baccalaureate degree in early childhood education or a related field. Therefore, we have added a requirement in paragraph (f).

Comment: Some commenters requested clarification about teachers and providers working within community child care partnership sites need to meet the staff qualification requirements. They stated that increased requirements for Early Head Start programs could harm partnerships with community child care programs.

Response: Teachers and family child care providers must meet staff qualification requirements. Grantees funded with EHS-CC Partnership funds are allowed 18 months following receipt of the award to help staff attain the required credentials or degrees.

§1302.92 Training and professional development.

In this section, we describe requirements for staff training and professional development. We require a coordinated system of professional development, including individualized coaching for all educators, including family child care providers. Commenters generally supported our integrated systems approach, and noted support for our more individualized professional development. Others cited research in support of our coaching requirements. We made revisions to strengthen professional development and training for all staff and to improve clarity of coaching requirements. We discuss these and other comments below.

Comment: Some commenters opposed our decision to omit a previous standard for staff performance appraisals because they stated these appraisals are an important way to identify professional development needs and to provide data to develop a training and technical assistance plan.

Response: We do not believe we need specific requirements for the process by which programs assess staff. Instead, we focused this section on requiring programs to implement a system to ensure all staff members receive the supportive training and development they need to provide high-quality services. Programs that value staff performance appraisals may continue to use this method as part of their system. We did not revise this provision.

Comment: Some commenters expressed concerned about the burden of "all day" orientations for program consultants.

Response: Paragraph (a) requires programs to provide an orientation to all new staff, consultants, and volunteers. We did not include any reference to "all day" or any prescribed length of orientations. We feel the intent of the provision is clear as written. Therefore, we did not revise this provision.

Comment: Many commenters expressed concern about the requirement in what was paragraph (b) about training and professional development having academic credit, as appropriate. Commenters recommended we revise the requirement to include continuing education units (CEUs). Some commenters misunderstood the intent of the requirement, pointing out that training on CPR, Sudden Infant Death Syndrome (SIDS), etc. could not bear academic credit.

Response: Paragraph (b) requires programs establish and implement a systematic approach to staff training and development. We did not intend to require that all staff training within the required system provide academic credit. Rather, academic credit should be sought, when appropriate, for such training and staff development in order to support staff progress toward degrees and other goals. We did not revise this provision.

Comment: Some commenters requested clarification about whether coaching hours would count toward the requirement for 15 clock hours of professional development. Some commenters expressed concerns that coaching hours will not be eligible for state registry professional development trainings.

Response: We consider coaching hours applicable toward meeting the 15 clock hours of professional development per year, assuming the coaching hours are designed to assist staff in increasing knowledge and acquiring new skills to help them provide high-quality services within the scope of their job responsibilities. Whether coaching hours are eligible for state registries is beyond the purview of this rule.

Comment: Some commenters request that parent engagement strategies be included in training and professional development.

Response: We revised what was paragraph (b)(2) and is now paragraph (b)(3) to require training for all staff on best practices for family engagement strategies. In addition, to appropriately address professional development for child and family services staff who are not education staff, we included a new requirement in paragraph (b)(4) to require training for family services, health, and disabilities staff to build on their knowledge, experience, and competencies to improve child and family outcomes. We also amended paragraph (b)(5) to include partnering with families as an area of the professional development for education staff.

Comment: Some commenters suggested there were disparities in training opportunities between lead teachers and teacher assistants.

Response: We believe it is important for the entire teaching team to receive appropriate training and professional development. Paragraphs (b)(5) and (c) require research-based approaches to professional development for all education staff, which includes assistant teachers.

Comment: Some commenters requested the training and professional development system explicitly include additional subjects, such as physical activity, outdoor play, positive behavior supports, and children with disabilities.

Response: We revised what is now paragraph (b)(5) to include partnership with families,

supporting children with disabilities and their families, and use of data to individualize learning experiences. We did not include other revisions to broaden the focus of the requirement. This paragraph appropriately emphasizes professional development for education staff on the central aspects of effective teaching. We think it is important this section focus on these key skills for education staff. Programs can choose to provide professional development on other topics if they determine it best meets the needs of the children and families they serve.

Comment: Many commenters were concerned about our requirement in what is now paragraph (b)(5) to require research-based approaches to professional development for education staff. Commenters expressed a variety of concerns, such as cost, and requested further clarification about the term "research-based approaches." Other commenters supported our emphasis on research-based professional development and noted this was important to improving Head Start quality.

Response: We believe effective professional development is central to the delivery of high-quality education services that foster strong child outcomes. We think the requirement in paragraph (b)(5) is important to ensure program quality. There is existing guidance at the Early Childhood Learning and Knowledge Center (ECLKC)[122] about research-based approaches professional development and professional development. We believe this a reasonable minimum threshold that will ensure programs are able to demonstrate outcomes for teacher development. Therefore, we did not revise this provision.

Comment: We received many comments on our proposal to require coaching be a part of the research-based approaches to professional development. Many commenters opposed it because of concerns such as cost. Some commenters strongly supported it, and pointed to research that demonstrated its importance in high-quality implementation and strong child outcomes. Some commenters stated the requirement was too prescriptive and placed too much burden on programs, especially rural programs, and staff. Other commenters requested we include more specificity and requirements for the proposed coaching systems, such as additional qualifications or expanding the requirement beyond education staff. Commenters also requested additional clarification, such as a definition of "intensive" coaching or which staff members are covered by the coaching requirement. Some commenters requested clarification about whether coaching could include online, remote and video supported coaching or if the requirement could be phased in, in order to build the capacity of coaching over time.

Response: We revised the structure of the coaching requirements to improve clarity. Coaching requirements are now found in paragraph (c) instead of paragraphs (b)(4) and (5) in the NPRM. We restructured these requirements to improve clarity, made revisions to the structure of this section and specifically to paragraph (c) to clarify the coaching requirements apply to education staff, and revised paragraph (c)(1) to incorporate a strengths-based approach. In paragraph (c)(1), we require programs to implement a research-based coordinated coaching strategy that assesses all education staff to identify their strengths and areas of needed support and to identify which staff would benefit most from intensive

[122] http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/pd/pds/Mentoring/edudev_art_00050_081105.html

coaching. In paragraph (c)(2), we require programs to provide intensive coaching to, at a minimum the education staff identified as most benefiting from intensive coaching. In paragraph (c)(3), we require programs to provide other forms of research-based professional development to education staff who do not receive intensive coaching. In paragraphs (c)(4) and (5), we require specific elements of the coaching system.

The intent of these requirements is to ensure all programs utilize research-based coaching strategies, whether the strategies are employed via online or video supported methods is up to the grantee to determine. We acknowledge there are costs associated with implementing coaching strategies, but think is important for high-quality service delivery. We believe we appropriately balance local flexibility with requirements to include basic features that research indicates will support progress. The requirement allows programs flexibility to define much of the structural and goal setting aspects of their coaching strategy, including staffing patterns. Moreover, the effective date of the coaching requirement is delayed for approximately one year after this rule is published so programs have sufficient time for effective implementation. Additionally, we revised what is now paragraph (d) to add more flexibility to address concerns that the coaching provisions were too prescriptive.

Comment: Commenters requested we include language in coordinated coaching strategies in what is now paragraph (c) about a range of embedded professional development approaches.

Response: Paragraph (c)(2) requires intensive coaching for a subset of staff members. Paragraph (c)(3) requires programs provide other forms of research-based professional development to education staff who do not receive intensive coaching.

§1302.93 Staff health and wellness.

This section includes requirements for staff health and wellness, including staff health checks to ensure child safety and standards to support staff wellness. We discuss comments and our responses below.

Comment: We received many comments on the standards in paragraph (a) that address initial health examinations and periodic reexaminations for staff members. Some commenters requested clarification about the tuberculosis screening requirement in paragraph (a) for the initial health examination, including why it is the only mandatory screening. Other commenters recommended we revise paragraph (a) to describe the purpose and aspects of the initial health exam and others offered suggestions about the periodic re-examination. Some commenters recommend we include a reference to the Health Services Advisory Committee (HSAC) in this section. Many commenters stated that paragraph (a) conflicted with state requirements and would therefore make some collaborations difficult.

Response: We revised paragraph (a) to be consistent with state, tribal, and local laws, which will support collaborations. We also struck the specific requirement for screening for tuberculosis and instead reference that health examinations include screenings or tests for communicable diseases, as appropriate. This provides local flexibility to respond to local health needs and meet applicable requirements. We think it is too prescriptive to define how often a health re-examination should occur and did not prescribe the required timeframe. We also

do not think it is necessary to prescribe requirements related to occupational health exams. Programs may want to use recommendations for doctors, jurisdiction, or the HSAC. We did think it was necessary to reference the HSAC in this section.

Comment: Some commenters recommend the standard in paragraph (b) should be strengthened to include activities beyond making mental health and wellness information available. For example, commenters suggested we broaden the focus of health and wellness or add a new standard for a daily staff health check. Some commenters recommend we note that an Employee Assistance Program could be used to implement these standards. Some commenters noted staff compensation contributed to stress and mental health problems and should be addressed.

Response: We agree we should strengthen paragraph (b), but that most of the specific suggestions were too prescriptive. We also believe it is important for programs to have flexibility to develop their own approach to ensure staff wellness. We revised paragraph (b) to specify that programs must provide regularly scheduled opportunities to learn about health topics. Staff compensation is outside the purview of this regulation. We agree that the Employee Assistance Program could be helpful but do not think it is appropriate to prescribe that level of specificity.

§1302.94 Volunteers.

This section includes requirements related to the utilization of volunteers. We address comments below.

Comment: Some commenters recommended that we provide a definition for a regular volunteer and some commenters suggested we require volunteers receive an orientation on program and class procedures.

Response: We revised the requirement in paragraph (a) about screening for communicable diseases to be consistent with staff requirements in §1302.93. What constitutes a regular volunteer can vary by program so we did not define this term. Section 1302.92(a) already requires volunteers to receive an orientation on the goals and underlying philosophy of the program and on the ways they are implemented. We think this is sufficient.

10. Program Management and Quality Improvement; Subpart J

This subpart establishes the roles and responsibilities for a program's management system and sets requirements for a data-driven management system for continuous improvement toward high-quality service delivery. It also sets forth requirements for the implementation of this rule. We received many comments on this subpart, most of which address the timeline for implementation of the final rule. Other commenters offered positive feedback on the management requirements or requested technical changes for clarity. We discuss the comments and our rationale for any changes to the regulatory text in this section.

General Comments.

Comment: Some commenters supported our requirement that programs implement a coordinated approach to serving DLLs and offered further suggestions to increase the focus on DLLs throughout program management. Specifically, these commenters suggested requirements for programs to identify DLLs as a focal point of the process of ongoing monitoring and self-improvement for achieving program goals in §1302.100. Commenters also requested a revision to §1302.101(b)(2) to indicate how their coordinated approach should be evaluated. Finally, commenters suggested revising §1302.102 to require programs set goals related to first and second language development for DLLs.

Response: The requirements in this subpart apply to all children, including special populations. This subpart also ensures the intentional implementation of a coordinated management approach for the full and effective participation of children who are DLLs and their families. We do not believe it is necessary to further emphasize particular populations within individual requirements throughout program management.

§1302.100 Purpose.

This section provides a general requirement for programs to implement management systems and a process of ongoing monitoring and continuous improvement for achieving program goals. Aside from the overarching comment related to DLLs discussed above, we did not receive comments on this section.

§1302.101 Management system.

This section describes the implementation of a program's management system by requiring regular and ongoing staff supervision to support continuous program improvement. This section also outlines requirements for programs to establish coordinated approaches to ensure professional development, services for dual language learners, services for children with disabilities, and data management. We received many comments on this section, including suggestions for strengthening management system requirements and requests for clarification.

Comment: We heard from commenters about the proposal to remove the requirement to have written plans for management systems. Some commenters opposed the removal of written plans, suggesting they are critical to building effective management systems. Other commenters praised the elimination of the written plans, noting that the removal of this requirement would reduce unnecessary bureaucracy. Still other commenters requested guidance or clarification regarding the removal of this requirement.

Response: We agree programs may find written plans to be valuable. We expect these programs will continue to use written planning to coordinate their management systems and ensure that all staff are able to fully implement them. However, the intention of removing written plans as a requirement is, as some commenters noted, to shift the focus from compliance with prescribed plans to monitory progress toward goals. We did not restore this requirement.

Comment: Some commenters suggested that, for clarity, we eliminate the phrase "adequate record keeping" in paragraph (a) and create a new standard to address record keeping so that all of the requirements in paragraph (a) were not explicitly linked to record keeping.

Response: We agree and untethered adequate record keeping from the other provisions in paragraph (a) and instead added a new paragraph (a)(4) to reflect this requirement.

Comment: Some commenters suggested revisions to the reference to promoting continuity of care in paragraph (a)(3). Some commenters thought it should be deleted because it is already covered by the full range of services described in subparts C through H. Other commenters suggested this requirement be linked directly to services for infants and toddlers.

Response: We believe continuity of care is critically important, and therefore we emphasize it in this section, despite its representation throughout the broader set of standards. Further, while we agree that continuity of care is of particular importance to infants and toddlers, we believe it is also important for preschoolers. Therefore, we did not revise this requirement.

Comment: Some commenters suggested we specifically include reflective supervision, particularly for Early Head Start staff, as part of the regular and ongoing supervision required in paragraph (a)(2).

Response: We require programs to implement research-based professional development in subpart I and regular and ongoing supervision under this subpart. Reflective supervision could be a component of both of these strategies. Therefore, Early Head Start programs may use reflective supervision if it helps them to ensure continuous quality improvement. However, we believe local flexibility for individual programs to determine the best approach to ensuring their management system provides regular and ongoing supervision, as long as the approach is research-based and effectively supports achieving program goals. Therefore, we did not revise this requirement.

Comment: Some commenters supported and others opposed the requirement that programs integrate Head Start data with other early childhood data systems and work with the state's K-12 Statewide Longitudinal Data System (SLDS) to share relevant data. Most of these commenters expressed concerns about the burden for programs to participate in their state's SLDS and recommended that it should be encouraged to the extent practical but not required. Commenters also expressed concerns with the varied capacity of states to partner effectively with Head Start providers to share, use, and interpret data which leads to barriers for programs to participate such as poor data infrastructure in the state's SLDS, statutory roadblocks, or lack of an SLDS in the state. Commenters stated that programs should not be held fully responsible with SLDS integration since it is beyond the abilities of most individual Head Start programs. Commenters also requested we advocate for the SLDS to send reports and information to programs that participate with their SLDS. One commenter recommended that tribes be explicitly exempt from any requirement to participate in their state's SLDS.

Response: We revised and reorganized the standards previously provided in §1302.101(b)(4)(iii) to §1302.53(b)(3). There, we clarified that a program should participate in their

state education data system to the extent practicable and only if the program can receive the same support and benefits as other participating early childhood programs. Since state education data systems can vary greatly from state to state and the practicality of a program to participate in these systems can also vary, we provided programs flexibility as steps are taken to share data with their state within their capacity and existing supports provided. Regarding an exemption for tribes, we agree and added that AIAN programs are exempt from any requirement to participate in their state education data systems, unless an AIAN would choose to participate in the statewide data system to the extent practicable. Further, in paragraph (b)(4), we clarified that AIAN programs can determine whether or not they will participate in such data systems.

Comment: Commenters expressed concern with the requirement proposed in §1302.101(b)(4) of the NPRM to align data collections and definitions to the Common Education Data Standards (CEDS) due to the burden on programs (e.g., time, additional staff, and expense), and some commenters indicated that the responsibility to align with CEDS should not be on any individual program. Some commenters stated that the definitions in CEDS are not appropriate for all Head Start programs. Some commenters requested guidance on how to fulfill this requirement.

Response: We agree it is premature to promulgate standards encouraging programs to engage with CEDS since the early childhood data standards are not as far into development as the K-12 standards and there is insufficient information on the benefits and utilization of CEDS at the individual school level or early childhood setting. Additionally, CEDS is meant to be voluntary. As a result, we removed this standard.

Comment: Some commenters requested that programs be allowed to disclose PII from child records to the SLDS administrator to facilitate data sharing with the SLDS.

Response: According to §1303.22(c)(2), a program is allowed to disclose PII from child records without parental consent to federal or state officials, in connection with an audit or evaluation of education or child development programs, as long as the program maintains oversight of child records through a written agreement or other means. Therefore, officials representing a state entity that manages a state education data system, such as an SLDS, would fall under this description and a program would be allowed to disclose the necessary PII to such an official.

Comment: Some commenters opposed the requirement of a data governance body or council described in paragraph (b)(4) and stated that it is an excessive and costly requirement. Some commenters were in favor of the requirement. Commenters also requested clarity on the definition of this group, including its purpose, role, and function; how it differs from other governing groups, specifically the board of directors, policy council, and governing board; and whether it applies to Early Head Start programs.

Response: We believe programs have established systems that focus on the security of data, an important goal, but this has overshadowed effective data sharing with other relevant entities. We shifted the focus to encompass a balance between the security, availability, usability, and integrity of data through these provisions. However, commenters misinterpreted our intent, primarily due to the terminology used. Therefore, we changed the term "data gover-

nance" to "data management" in this paragraph and we removed the reference to a "body or council" to focus less on the process and more on the desired outcome of establishing procedures to ensure data quality and effective data use and sharing, while protecting the privacy of child records. For this same reason, we also removed the requirement to consult with experts and advisors on early childhood data systems in their state. Programs are still encouraged to do this but including it as a standard distracts from the overall focus on outcomes instead of process. To clarify that this requirement also applies to Early Head Start, we changed "Head Start data" to "data."

Comment: A commenter requested we require programs to align their data systems with one another.

Response: We disagree with this suggestion. Programs use multiple data systems and not every data system used can or should be aligned. For example, a data system used for salaries, wages, and fringe benefits would not align with a data system for the administration of children immunizations. Thus, requiring programs to align their data systems is too broad of a requirement and could create more complications than benefits.

§1302.102 Achieving program goals.

This section describes the program goal setting process with respect to quality improvement. It is reorganized from the previous rule to better convey the importance of establishing goals for effective health and safety practices, all elements of high-quality service provision, and continuous quality improvement for all programs, not just those with identified quality issues or deficiencies. It includes requirements for each aspect of the cycle of continuous quality improvement including planning; goal setting; and monitoring short- and long-term progress towards achieving goals. This section also describes reporting requirements as they relate to ongoing monitoring and self-assessment. Commenters made a number of recommendations for strengthening this section, and we made small changes to the language for clarification throughout the section. We discuss specific comments and responses below.

Comment: Some commenters recommended we require a system that sets benchmarks for child and family outcomes, based on nationally normed assessment measures, and outlines strategies for tracking progress in order to support program improvement efforts, professional development, and evaluation. These commenters suggest that such a system would better ensure children enter school performing on par with their more advantaged peers.

Response: We believe that it is important for programs to have local flexibility to set their own goals and measure children and families' progress towards those goals. We do not think it is appropriate for us to set a single standard all programs must use to assess the continuous improvement of their program.

Comment: Commenters requested we require programs to set goals for the outcomes of educational and other services, rather than for the provision of these services. Some commenters also suggested that programs should be required to set goals for the recruitment, retention, and development of qualified staff. Other commenters suggested we reduce the

types of program goals that are required. These commenters stated that too many goals would prevent programs from being able to focus and achieve desired outcomes.

Response: We believe we have achieved an appropriate balance for the goal-setting requirements. We encourage programs to set additional goals if it helps them effectively meet the needs of their community and ensure continuous quality improvement. The intent of this requirement is to set a minimum.

Comment: Many commenters requested programs be allowed to align revisions to their goals, as described in paragraph (a), with their five-year grant cycle.

Response: While we understand that programs may wish to revisit their goals, especially their long-term strategic goals described in paragraph (a)(1) with their five-year grant cycle, we feel continuous quality improvement requires programs to thoughtfully re-evaluate their goals on an ongoing basis. Additionally, the replacement of the Head Start Child Development and Early Learning Framework for three to five-year-olds with the Head Start Early Learning Outcomes Framework: Ages Birth to Five should result in a re-evaluation of programs' school readiness goals to ensure they are promoting the school readiness of all children in all domains. We did not revise this provision.

Comment: Many commenters praised the clear link of the Head Start Early Learning Outcomes Framework: Ages Birth to Five (HSELOF) to school readiness goals in paragraph (a)(3). Other commenters requested we allow programs to align with both HSELOF and their state early learning standards. Further, some commenters expressed confusion about the relationship between performance goals and school readiness goals.

Response: The requirement in paragraph (a)(3) is for all programs to align with both HSELOF and their state early learning standards, where state standards are applicable. We previously issued guidance describing the relationship between school readiness goals and program goals. This guidance clarifies that school readiness goals are a subset of program goals. However, we agree that the terminology "program performance goals" is confusing. Therefore, we revised the term throughout subpart J to "program goals." We also re-ordered the list of goals that programs must establish in this section to reflect a hierarchy of goals, starting with broad, strategic long-term goals.

Comment: Many commenters noted that the monitoring system will need to be aligned with the outcomes-focused approach to continuous quality improvement described in the section, and the requirements in paragraph (b).

Response: The monitoring process will be revised to align with these program performance standards.

Comment: Commenters offered suggestions for strengthening data use for continuous quality improvement in paragraph (c). Some commenters recommended we include requirements for best practices in using data to improve instruction, including how often data must be reviewed and used to inform services. Others suggested strengthening requirements for continuous improvement by referencing feedback loops, which they thought would allow programs to be proactive rather than reactive. These commenters also suggested that programs should be required to develop and implement policies and procedures that guide

staff collaboration on the review, interpretation, and use of data to advance policy and practice improvements and professional learning goals.

Response: We do not agree that we should set such specific requirements for the process by which individual programs ensure continuous quality improvement. Rather, we focus on requiring programs to implement a system to ensure continuous quality improvement but leave the details of how each program will achieve this up to local communities to determine.

Comment: Some commenters suggested we require additional areas of data collection, aggregation and analysis to ensure continuous program improvement in all areas of program services. Suggestions included adding family engagement, home visits, group socializations, and staff development. Some commenters suggested that the requirement included too many areas for data collection, aggregation, and analysis, stating that grantees need to be able to focus their efforts on a limited set of specific goals for program improvement.

Response: We believe we have achieved an appropriate balance for data requirements. Programs are encouraged to collect additional data, as necessary, in order to inform their own goals and ensure continuous quality improvement. The intent of this requirement is to set a minimum for service areas grantees must collect data on.

Comment: Some commenters stated that it is inappropriate to aggregate data for infants and toddlers, especially in small programs with very few children in similar developmental age ranges, or that it is inappropriate to directly assess infants and toddlers three times per year.

Response: The requirement to aggregate and analyze child-level assessment data three times per year in paragraph (c)(2)(ii) is not new. Guidance already exists on the topic of assessment and data aggregation for infants and toddlers and can be found at http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/ehsnrc/school-readiness/SchoolReadiness.htm. This guidance clarifies that aggregation and analysis of data is possible for infants and toddlers and does not have to done by child age. Further, we revised paragraph (c)(2)(ii) to refer programs to the definition of child-level assessment data in part 1305, which includes observation-based as well as direct assessments. We believe this change addresses concerns about frequent direct assessment of infants and toddlers.

Comment: Some commenters noted that we should add an exception for programs less than 90 days to the requirement to aggregate and analyze data three times per year.

Response: We agree and revised paragraphs (c)(2)(ii) and (iii) and a requirement in paragraph (c)(2)(iii) to clarify that programs operating for fewer than 90 days only have to aggregate and analyze their data twice per year.

Comment: Some commenters asked us to define "lessons" in paragraph (c)(iv), formerly paragraph (c)(2)(iii) in the NPRM.

Response: We revised the requirement to read "information," rather than "lessons" to clarify our intent.

Comment: Some commenters requested we provide justification for requiring reports.

Response: The Secretary has broad statutory authority under section 641A(a)(1) of the Act to establish standards to ensure the health and safety of children and appropriate program operation.

Comment: Many commenters suggested that the requirements in paragraph (d)(1)(ii), formerly paragraph (d)(1)(iii) in the NPRM, were too vague. Specifically, many commenters requested clarity about what risks should be reported under paragraph (d)(1)(iii)(C) in the NPRM. As proposed, commenters suggested the requirement would include everything from chicken pox to a bite from a classmate to an outbreak of influenza at a nearby nursing home. Commenters also requested clarity on which reasons for program closure under paragraph (d)(1)(iii)(B) in the NPRM need to be reported. For example, commenters asked whether programs needed to report when they close due to inclement weather. Finally, commenters stated the requirement in paragraph (d)(1)(iii)(D) in the NPRM was too vague and requested clarity on what legal proceedings, involving which related parties, would need to be reported.

Response: We agree with commenters that the proposed requirements in paragraphs (d)(1)(ii) and (iii) in the NPRM were unclear and we made revisions to clarify our intent. We revised and restructured these standards into paragraph (d)(1)(ii) and struck paragraph (d)(1)(iii) to clarify that programs must report significant incidents, rather than "risks," related to health and safety or financial and administrative circumstances, to the responsible HHS official. Therefore, inclement weather closings, for example, would not apply to the requirement in what is now paragraph (d)(1)(ii)(B) and risks such as a nearby outbreak of influenza or minor incidents such as child biting a classmate are clearly not included. Finally, we revised what is now (d)(1)(ii)(C) to better clarify that we only require programs to report legal proceedings that are directly related to program operations.

Comment: Some commenters noted that the community assessment is too long to include in the annual self-assessment. These commenters suggested amending the requirement to include only a synopsis or summary of the most recent community assessment. Additionally, some commenters suggested that inclusion of the community assessment in the self-assessment should be aligned with each grantee's five-year grant cycle, such that grantees would only be required to include it when their grant cycle is being renewed.

Response: We revised paragraph (d)(2) to allow for a summary of the most recent community assessment to be included in the annual self-assessment. We also clarified that programs must be publish and disseminate the report.

§1302.103 Implementation of program performance standards.

This section includes requirements to ensure programs implement the program performance standards effectively and to provide flexibility to programs in meeting the requirements of subpart B, if any currently enrolled Head Start children could be displaced.

Comment: Many commenters requested consistent guidance, communication, and training

and technical assistance to grantees related to the implementation of the final performance standards, and explicitly the move to full day programs.

Response: The final rule includes a compliance table that outlines that dates by which programs have to be in compliance with the new standards. It shows that many of the provisions go into effect 60 days after publication but that others, such as some of the provisions related to curriculum, assessment, and coaching, do not require compliance until August 2017 and that the requirement for a longer day and year are further delayed. We think this staggered phase-in timeline will give programs adequate time to implement these changes in a thoughtful way with support from OHS and our training and technical assistance system.

c. Financial And Administrative Requirements; Part 1303

This part lays out financial and administrative requirements for agencies.

§1303.1 Overview.

This part specifies the financial and administrative requirements for programs consistent with various sections in the Act. Subpart A outlines the financial requirements; subpart B focuses on administrative requirements; subpart C implements statutory provisions related to personally identifiable data, information, and records; subpart D outlines the requirements for the operation of delegate agencies; subpart E implements statutory provisions related to facilities; and subpart F describes transportation requirements. We received comments on each of these subparts. We summarize comments and provide our response below.

1. Financial Requirements; Subpart A

This subpart reorganizes, revises, and streamlines the financial requirements in subparts A, B, C, and D of part 1301 in the previous performance standards. This purpose of these changes is to organize the requirements in a more logical order, conform to recent changes in regulations that govern all federal grants, and reduce the administrative burden on agencies.

§1303.2 Purpose.

This section specifies that the purpose of this subpart is to establish requirements for program administration and grants management that apply to all grants under the Act. A summary of comments and our responses is below.

Comment: Some commenters were pleased we removed the accounting system certification we required in the previous performance standards at §1303.11. They stated that it resulted in added cost for programs with limited or no gain.

Response: We agree the certification was an unnecessary burden to grantees and their financial professionals.

Comment: Some commenters suggested that we should not have removed the annual

audit requirement in §1301.12 of the previous performance standards. Many commenters recommended we clarify that an annual audit is still an allowable expense for programs of all sizes.

Response: The Office of Management and Budget establishes audit requirements and specified their requirement related to all federally required audits in the Uniform Guidance. Audits are a permissible expense regardless of program size. No changes to this section are necessary.

§1303.3 Other requirements.

This section displays in a chart an updated list of HHS regulations that apply to all grants made under the Act. We received many comments on this chart.

Comment: Commenters suggested we clarify what is required for issuance of a Dun and Bradstreet Data Universal Number System (DUNS) number and annual or reoccurring reporting requirements.

Response: We did not make changes in response to this comment. We believe that the cross-reference to 2 CFR 25.10 CCR (Central Contractor Registration)/DUNS provides grantees with sufficient DUNS information to support initial and ongoing compliance and reporting requirements.

§1303.4 Federal financial assistance, non-federal match, and waiver requirements.

This section consolidates into one section the financial assistance, non-federal match, and waiver requirements that were in §§1301.20 and 1301.21 of the previous performance standards. We did not receive comments on this section but made two technical changes to the regulatory text in the final rule. First, we used the term "non-federal match" throughout, instead of "non-federal share match" or "non-federal share matching" to be consistent and to more closely align with the Uniform Guidance. Second, we modified the language to state that a waiver of all or a portion of non-federal match could be approved "for" the budget period instead of "during" the budget period. Since waivers after the close of the budget period are possible, we wanted to ensure the language reflects that allowable activity.

§1303.5 Limitations on development and administrative costs.

This section affirms the requirement in section 644(b) of the Act that agencies not exceed the 15 percent cap on development and administration. It also implements the requirement in section 644(b) of the Act that the Secretary establish criteria for determining the costs of developing and administering a program and the total costs of such a program. In contrast to §1301.32(b) through (f) of the previous performance standards, this section represents a simplified and streamlined approach that requires grantees to categorize, identify, and allocate costs in order to determine whether they meet the 15 percent administrative cap. This section also specifies the requirements related to waivers of the cap on development and administration.

We received comments on this section and made one technical change to the regulatory text in the final rule. We removed the language requiring that a waiver not exceed 12 months to provide for the possibility of longer budget periods like those used for the Early Head Start-Child Care partnerships.

Comment: Some commenters believed it would be helpful if we train grantees on how to appropriately identify development and administrative costs. Other commenters suggested we increase the limit on administrative and development costs we proposed in paragraph (a)(1) of this section.

Response: We did not increase the limit on administrative and development costs specified in paragraph (a)(1) because it is established in the Act. Training is available on how to identify administrative and development costs.

2. Administrative Requirements; Subpart B

This subpart outlines the requirements for agency conduct, the limitations and prohibitions to which agencies must adhere, and the requirements for insurance and bonding.

§1303.10 Purpose.

This section specifies that grantees must observe standards of organization, management, and administration and conduct activities in a manner consistent with the Act. We received comments related to these general requirements.

Comment: Some commenters supported the requirement that grantees observe stated standards of organization, management and administration but urged us to include a new standard that requires employers to pay living wages, or provide compensation levels at parity with elementary school teaching staff or the average compensation level for comparable work in the area.

Response: We did not change this requirement. We continue to require grantees to establish wages that are comparable to those paid in their community based on the wage comparability provision in the Act.

Comment: Some commenters expressed concern that we eliminated previous language that required each agency to provide reasonable access to information and records.

Response: We believe the issue of access to information and records is already adequately addressed by other applicable federal and state law and a Head Start specific provision is not necessary.

Comment: Some commenters asked that we consider equipment to be any item with a value of $25,000 or more.

Response: The fiscal regulations at 45 CFR part 75 govern the definition of equipment and we cannot adopt contrary requirements in these regulations.

Comment: Some commenters requested we allow agencies with Head Start and Early Head Start awards to prepare a single budget.

Response: Head Start and Early Head Start awards use separate Central Accounting Numbers (CANs) and fiscal regulations require separate accounting for those funds.

§1303.11 Limitations and prohibitions.

This section consolidates into one place the sections in the Act that place limitations or prohibitions on agencies. These sections pertain to union organizing, the Davis Bacon Act, limitations on compensation, nondiscrimination, unlawful activities, political activities and obtaining parental consent. We received comments on this section.

Comment: Some commenters recommended removal of the requirement that programs comply with the Davis-Bacon Act or requested that we limit the application of the Davis-Bacon Act to new major projects only.

Response: The Act requires compliance with the Davis-Bacon Act, including the definition of covered projects. We cannot eliminate this requirement through the regulatory process.

Comment: Some commenters suggested that Head Start program employees should not be allowed to engage in union organizing.

Response: Section 644(e) of the Act states that Head Start funds may not be used to assist, promote, or deter union organizing. We retained this prohibition in this section by referencing the Act.

§1303.12 Insurance and bonding.

This section requires that grantees maintain a documented process to identify risks and provide proof of appropriate coverage in their grant application. Our approach to require grantees to assess their own risks and determine appropriate cost-effective coverage is a less prescriptive approach that section §1301.11 of the previous performance standards. We received comments on this section.

Comment: Some commenters said removing specific requirements for insurance provides too much leeway, creates risk of liability and that appropriate coverage should be defined, with a minimum threshold or reference to state child care licensing requirements and suggested we remove the requirement that the process of identifying risks consider the risk of losses resulting from fraudulent acts by individuals authorized to disburse Head Start funds.

Response: We did not change this requirement in response to comments. We believe that implementation of an intentional risk assessment process is an important aspect of grantee fiscal viability and may dictate varying amounts of insurance coverage depending on the grantee's unique circumstances. We believe assurance that Head Start funds are not lost to fraudulent acts is an important part of identifying risks.

3. Protections for the Privacy of Child Records; Subpart C

This subpart outlines the requirements for programs to ensure the protection of child records, including requirements for parental consent and instances where disclosure of children's personally identifiable information (PII) without parental consent is allowable. We added standards that ensure the protection of the confidentiality of PII contained in child records. These standards align with the policies, protections, and rights found in the Family Educational Rights and Privacy Act (FERPA), as appropriate for Head Start and Early Head Start programs. We received comments on all sections of this subpart. Overall, commenters were supportive and positive about these standards, especially the alignment to FERPA and the emphasis placed on parent rights in respect to their child's record.

§1303.20 Establishing procedures.

This section outlines required procedures that support the sections that follow on confidentiality of PII in child records. We respond to the comments we received below.

Comment: Commenters requested clarification on whether programs are required to have procedures for parents to inspect a child's record or challenge the sharing of the child's PII, and suggested we reference this subpart in subpart D Health Program Services to ensure programs consider the privacy of child records in health program services.

Response: According to §1303.20, a program must establish procedures to protect the confidentiality of any PII in child records. As part of these procedures, programs must ensure parents have the right to inspect, ask to amend, and obtain copies of their child's records, request hearings, and inspect written agreements. This subpart is not specified in subpart D since the protections of the privacy of child records should be considered throughout the entire final rule. We also added breaches of PII to the issues that programs must report in §1302.102(d)(1)(ii).

Comment: Commenters requested federal support and training opportunities on this subpart to ensure proper implementation, especially for programs without a deep understanding of privacy rules and while programs link data to their state and federal data systems. Some commenters recommended we require capacity building for data privacy as part of staff training.

Response: We are committed to providing support for programs to understand, build capacity, and comply with the new privacy regulations. Programs must ensure staff, consultants, and volunteers comply with program confidentiality policies in accordance with §1302.90(c)(1)(iv).

§1303.21 Program procedures – applicable confidentiality provisions.

In this section, we describe in paragraph (a) that when FERPA's confidentiality requirements apply (i.e., for educational agencies and institutions that maintain education records), the confidentiality requirements in this subpart do not apply because those educational agencies and institutions must comply with FERPA. Similarly, we describe in paragraph (b) that the Head Start confidentiality requirements in this subpart also do not apply when IDEA's

confidentiality provisions apply (i.e. a program collects, uses, or maintains early intervention records of infants and toddlers with disabilities referred to or eligible under Part C of the IDEA or education records of children with disabilities referred to or eligible under Part B of the IDEA). Therefore, the Head Start confidentiality requirements in this subpart do not apply to the records of those children covered by IDEA or programs covered by FERPA. Commenters raised specific concerns and requested clarity, and our responses are discussed below.

Comment: Commenters requested we provide guidance and clarity on how other privacy laws apply including state laws and the Children's Online Privacy Protection Act (COPPA).

Response: A program must comply with other applicable federal, state, or local privacy laws such as COPPA, which applies to all programs, the Children's Internet Protection Act (CIPA) which applies to programs in the E-Rate program, and the Protection of Pupil Rights Amendment (PPRA), which applies to programs administered by the U.S. Department of Education (ED) receiving federal funds.

Comment: Some commenters expressed concern that it will be burdensome and confusing for some programs to comply with FERPA and this subpart, and that we make this subpart consistent with FERPA or provide guidance on how to comply with both.

Response: We agree that we are not duplicating under Head Start the confidentiality protections that already apply under FERPA and IDEA. The provisions we are promulgating are very similar to FERPA. However, we want to reiterate that when programs comply with FERPA or IDEA for the records of those children and programs covered under FERPA and/or IDEA, then this subpart does not apply. Thus, we are eliminating any perceived burden and duplication. We changed and restructured the language in this section to implement these provisions.

§1303.22 Disclosures with, and without, parental consent.

In this section, we describe provisions programs must follow to protect the privacy of child records and to share data. Most commenters in this section made recommendations or requested clarifications related to specific needs of Head Start programs, which are discussed below.

Comment: Commenters recommended several changes to this section to reflect FERPA, such as: add an exception to parental consent for disclosing PII classified as "directory information"; include the entire criteria in FERPA on a written agreement; remove the term "disaster" from §1303.22(c)(4); add other FERPA requirements on the disclosure of PII without parental consent for a lawfully issued subpoena or judicial order; require the class of recipients be specified within the consent form; and permit disclosure without parental consent to a school the child intends to enroll or is already enrolled.

Response: We intended to align this section with FERPA while meeting the needs of Head Start and Early Head Start programs, and therefore a direct replication of FERPA would not be appropriate. In regards to directory information, we believe that a list of names, addresses, photographs, and other information that may fall under directory information can

be harmful if disclosed without parental consent for the vulnerable population we serve, and therefore no change was made. In regards to the written agreement, our intent is for the program to determine the reasonable method to maintain control appropriate for the disclosure including a written agreement, direct supervision, and/or other methods. We updated §1303.22(c)(1) through (3) to focus on our intent which provides programs flexibility without being overly prescriptive. In regards to "disaster," the term refers to an emergency such as a natural or manmade disaster. We agreed with the recommendations to include the class of recipients in the consent form and to permit disclosure in compliance with a subpoena without consent, similar to what FERPA permits, and these changes have been made. Lastly, the disclosure without parental consent related to a child's enrollment or transfer is already addressed in §1303.22(b), and parental consent is not required.

Comment: Commenters recommended we add clarify, replace, or define terms in this section including, "dependency matters" as this could refer to any case involving a dependent child and an adult caregiver, "case plan," and "foster care." Commenters expressed concern that these terms could differ from state to state.

Response: We disagree on defining dependency matters. However, it is not our intent that any case involving a dependent child and an adult caregiver inherently involves dependency matters, so we clarified that the court proceedings must directly involve dependency matters. Foster care is defined in part 1305. The definition for "case plan" was added to part 1305.

Comment: Commenters expressed concern that posting child allergy information prominently as described in §1302.47(b)(7)(vi) violates the privacy of children.

Response: We believe it is critical that food allergies are prominently displayed in areas wherever food is served to mitigate a serious health and safety risk for infants, toddlers, and preschool aged children. We also believe programs should be able to address other serious health and safety risks without parental consent to disclose PII. As a result, we added a "serious health and safety risk such as a serious food allergy" to §1303.22(c)(4) of this section.

Comment: Some commenters recommended that violators of the privacy rule be given the opportunity to self-correct before any sanctions are applied.

Response: Any violations of the privacy rule will be handled through existing monitoring and Head Start enforcement mechanisms.

Comment: Commenters requested an exception to release PII without consent in the case of reporting child abuse or neglect if they are required to do so by law.

Response: States receiving funds under the Child Abuse Prevention and Treatment Act (CAPTA) from HHS are required to enact laws mandating the reporting of known and suspected instances of child abuse and neglect. States must also ensure that the disclosure is made only to persons or entities determined by the State to have a need for the information. To ensure this section of the regulation does not conflict with federal, state, local, or tribal laws that require reporting of child abuse or neglect, we added §1303.22(c)(8) which allows the disclosure of PII without parental consent to an appropriate party to address suspected or known child maltreatment to comply with applicable federal, state, local, or

tribal laws on reporting child abuse and neglect. We do not specify the persons who may access the records and under what circumstances since these vary by state.

Comment: Commenters expressed concern that a program would apply the five-year rule that used to appear in §1303.22(d) automatically after a single violation of a written agreement which could lead to conflicts with state and local mandatory reporting requirements; that barring third parties from accessing child records for any violation of the written agreement is too broad; and the annual review of the written agreement seems arbitrary.

Response: We agree with the concerns on the five-year rule, and we modified the provision to allow a program greater flexibility in handling third party violations. A program must review the written agreement annually, but only update it if necessary.

Comment: Commenters expressed concern that programs will not be allowed to share data with partners critical to Head Start programs such as community partners, health partners, contractors, consultants, subrecipients, and volunteers. Commenters requested that we clarify data sharing with community partners; the term "educational interest"; and the term "official."

Response: A program may disclose PII from a child record without consent to a partner if the partner meets one of the conditions in §1303.22(c). A partner will most likely qualify as an "official acting for the program" if they are directly or indirectly providing program services for which the agency would otherwise use an employee. If a community partner does not qualify under any condition in §1303.22(c), we recommend programs build written consent into the enrollment process for these partners. We removed "educational interests" and replaced it with plain language for clarity. We added language to §1303.22(c)(1) through (3) to clarify the term official.

§1303.23 Parental rights.

In this section, we focus on parents' rights. We recognize that parents should be at the forefront when it comes to the collection, use, and sharing of the PII in respect to their child's record. Most commenters in this section supported the rights provided to parents. Other commenters raised concerns, which are discussed below.

Comment: Some commenters requested we provide an additional requirement for programs to annually inform the parent on what data are being collected, how and why the data are used, and how the data are being safeguarded.

Response: The parental consent form coupled with the annual notice already provides this information to the parent. We believe that requiring details on each data element collected, how each is used and for what exact purpose, and the specific security measures taken to protect the data would be excessive and burdensome.

Comment: Commenters both agreed and disagreed with informing parents of their rights annually due to the conflicting perceived level of effort required by the program. Another commenter noted a conflicting requirement that allowed a parent the right to obtain a copy

of the child record even when court ordered the contents related to disclosure not be disclosed or when it involves a child abuse or neglect case.

Response: We believe that it is important that the program annually notify parents of their rights. However, this notification does not necessarily need to be individualized for every parent. For instance, the program could include a standard handout as part of the material the parent will already receive during the program year. This flexibility reduces burden on programs. In regards to the conflicting information, we added language in §1303.23(d) to ensure the parents' right to a copy of a record does not conflict with a court order.

Comment: Some commenters expressed concern with programs making decisions on how to effectively share data and what specific data to share.

Response: We agree that it can be challenging for programs to make decisions about how to share data and what data to share. Programs may request guidance through the training and technical assistance system. Additionally, we did not intend for programs to share all PII during a disclosure, therefore we added §1303.22(f) to limit the program to only disclose the PII that is necessary for the purpose of the disclosure.

§1303.24 Maintaining records.

In this section, we describe recordkeeping requirements related to the protection of child privacy. Programs must maintain, with each child's record, a list of all individuals, agencies, or organizations that obtained access to PII from child records. The list must indicate the expressed interests that each person, agency, or organization had to obtain this information. Recordkeeping of disclosures to program officials or parents are not required since it would be too burdensome for programs. Programs must ensure that only parents, officials, and appropriate staff have access to records. We received some comments on this section, discussed below.

Comment: Some commenters requested we provide the amount of time a child record must be maintained and how IDEA relates to record maintenance.

Response: Depending on the type of data involved and the context in which the data are being used, there may be requirements for destruction of data with which programs must comply. We do not address information about other applicable program requirements, including those that may apply under IDEA, as that is beyond the scope of this regulation, but note that programs may be subject to record retention requirements for children they are serving based on applicable Federal and State statutes of limitations. However, when no other requirement exists, a program must destroy child records within a reasonable timeframe after the child has been served – this was added to §1303.24(a). We also added a restriction to data destruction in §1303.23(a)(4) to protect the parental right to inspect a record.

Comment: Some commenters pointed out an inconsistency between the NPRM preamble and proposed regulatory text. Specifically, for §1303.24(b), the NPRM preamble required a program maintain information of all requested access to PII from child records, but the

proposed regulation stated that information on these parties is only maintained when a disclosure of PII is actually made. The commenters preferred the proposed regulatory text.

Response: We agree that programs must only maintain this information when a disclosure is actually made. It is not necessary to maintain records on each request for PII from child records if the program does not make a disclosure of PII in response to the request.

4. Delegation of Program Operations; Subpart D

This subpart consolidates previous performance standards on delegation of program operations into one section and revises requirements to conform with the Act. Section 641A(d) of the Act requires agencies to establish procedures that relate to its delegate agencies and that provide further specifics related to evaluation, corrective actions, and terminations. We discuss and analyze the comments on this section below.

§1303.30 Grantee responsibility and accountability.

In this section, we clarify that a grantee is accountable for its delegate agencies. That means the grantee retains legal authority and financial accountability for the program when services are provided by delegate agencies. Consequently, the grantee must support and oversee delegate agencies and ensure they provide high-quality services to children and families and meet all applicable regulations. We also clarify a grantee may not terminate a delegate agency without showing cause and must establish a process for delegate agencies to appeal adverse decisions. We discuss the few comments we received on this section below.

Comment: One commenter stated the phrase "bears financial accountability" in the fourth sentence in this paragraph, implied the grantee was responsible for any financial debt a delegate incurred. The commenter recommended we clarify the grantee bears responsibility for those allowable transactions it authorizes that are directly related to the Head Start program provided by delegate agencies.

Response: When the phrase "bears financial accountability" is taken in context of the entire section, it implies the grantee is responsible for the use of Head Start funds by the delegate. Therefore, we did not make any changes to this section.

Comment: One commenter asked us to allow programs to terminate delegate agencies "at will" with provisions that cause the least amount of undue stress and harm as possible to children and families served.

Response: We did not allow grantees to terminate delegate agencies "at will." Grantees can only terminate delegate agencies, if the grantee shows cause why termination is necessary and the grantee's decision to terminate cannot be arbitrary or capricious.

§1303.31 Determining and establishing delegate agencies.

Under this section in the NPRM, we proposed to require an agency that enters into an agreement with another entity to serve children to determine if the agreement meets the definition of "delegate agency" in section 637(3) of the Act. We proposed this perfor-

mance standard to clarify that if an entity meets the definition of delegate in the Act, it is a delegate, regardless of what a grantee calls the entity to which it has delegated all or part of the responsibility for operating the program.

Comment: The NPRM proposed a requirement for HHS to approve the delegate agency before the grantee may delegate program operations. One commenter suggested that a delegate agreement be considered as approved if HHS had not approved or denied it 60 days before the program year starts.

Response: We believe HHS approval of delegates is important. We did not change the requirement.

Comment: One commenter asked whether or not programs could grandfather in existing delegate relationships or must they still have written agreements.

Response: All grantee/delegate relationships must have written agreements approved by the responsible HHS official. This is not a new provision.

Comment: Some commenters asked us to differentiate between "delegate agency" and "contractors." Another commenter asked if partners and family child care homes were considered delegates and if so does the grantee provide appeal procedures of the agreement is terminated. If family child care homes are considered delegates, the commenter recommended for us to add the following language to paragraph (a) to clarify that a grantee, partner, or family child care home can mutually agree to decline a delegate/grantee relationship: "…unless the grantee and the entity negotiate to form a contractual rather than a delegate relationship." This will provide flexibility to the entity regarding the requirement to form a policy committee or other delegate responsibility.

Response: A "delegate agency" is a public, private nonprofit (including a community based organization, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), or for profit organization or agency to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program. Generally, a "contractor" either performs work or provides goods at a certain price or within a certain time.

We did not make any changes to paragraph (a) in this section. Family child care providers do not meet our definition for "delegate agency" because they do not meet the first part of that definition. They are our partners under the Early Head Start Child Care Partnership (EHS-CCP). Under EHS-CCP, new or existing Early Head Start grantees partner with regulated center-based or family child care providers who agree to meet Head Start program performance standards.

§1303.32 Evaluations and corrective actions for delegate agencies.

This section includes requirements from section 641A(d) of the Act with respect to the evaluation of delegate agencies and corrective actions in the event of a deficiency.

Comment: Some commenters asked us to include the actual language of section 641A(d) of the Act rather than cite to it and to clarify that the Act's requirement for each Head Start

agency to establish procedures to evaluate and defund delegate agencies and for delegate agencies to appeal defunding decisions may be satisfied with provisions on those topics in its delegate agency agreement(s).

Response: We refer to the Act when possible to streamline and to make the regulation read better. We did not make any changes to this section.

§1303.33 Termination of delegate agencies.

In this section, we clarify that a grantee cannot terminate a delegate agency without showing cause and the grantee's decision to terminate cannot be arbitrary or capricious. To align with section 641A(d)(1)(C) of the Act, we require grantees to establish procedures to defund a delegate agency. We also require grantees to establish procedures that are fair and timely for a delegate agency to appeal a defunding decision.

Furthermore, we removed the appeal procedures for delegate agencies that were under part 1303 subpart C in the previous rule. The reason being, grantees are accountable for the services their delegate agencies provide to children and families. We believe they must have the necessary tools at their disposal to remove delegate agencies. We believe the previous system inappropriately tied the hands of grantees and had become overly burdensome.

We address the comments we received on this section below.

Comment: Some commenters supported our proposal to eliminate complex delegate agency appeals procedures. They believed this provided helpful flexibility to Head Start agencies that, for reasons of cost or inadequate delegate agency performance, may find it necessary to terminate a delegate agency relationship.

Response: We agree that grantees are ultimately accountable for their delegates. Consequently, grantees must be able to remove delegates when necessary, without having to go through an overly burdensome process. Furthermore, we believe grantees are in the best position to provide appeal processes for delegate agencies. We have not changed this provision.

5. Facilities; Subpart E

This subpart implements the statutory requirements related to facilities in section 644(c), (f), and (g) of the Act. It clarifies and reorganizes requirements for grantees when they apply to use Head Start funds to purchase, construct or make major renovations to facilities.

This subpart logically organizes all relevant information and requirements for protecting the federal interest under a broad variety of circumstances. It also removes requirements that are not Head Start-specific but rather are overarching requirements for managing federal grants and aligns all remaining provisions with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. We address comments we received on each section within this subpart below.

§1303.40 Purpose.

This section clarifies that the whole of subpart E applies to major renovations. It explains these provisions apply only to minor renovations and repairs when they are included in a purchase and are part of the purchase costs. We address the one comment we received on this section below.

Comment: One commenter noted that it may be necessary to us to clarify that information contained in a Program Instruction and its application be made clear in this section.

Response: We integrated the information from Program Instructions into this section and into our definition for "purchase" in part 1305. We did not make any changes here.

§1303.41 Approval of previously purchased facilities.

Our previous regulation did not address refinancing. But as interest rates have fallen, grantees have asked us for permission to apply for more advantageous loan terms. In this section, we allow grantees that have purchased facilities beginning in 1987 and that continue to pay purchase costs or seek to refinance indebtedness to apply for funds to meet costs associated with refinancing. We also revised the language to clarify that a purchase includes both principal and interest payments on approved loans in accordance with section 644(g)(2) of the Act. We received comments on this section and address them below.

Comment: One commenter asked why we included "1987" in this section.

Response: The "1987" date is consistent with the Act. The date notes it is allowable to use funds to purchase or continue the purchase of facilities after December 31, 1986. We revised the language to more closely mirror the Act.

Comment: One commenter asked us to remove language that requires grantees to obtain HHS permission to refinance an existing mortgage.

Response: We did not remove language that requires grantees to get HHS permission to refinance an existing mortgage. Refinancing of existing indebtedness may result in cross-collateral or cross-default provisions that put facilities subject to a federal interest at risk of foreclosure for debt not associated with the Head Start program.

§1303.42 Eligibility to purchase, construct, and renovate facilities.

This section prescribes what grantees must show to be eligible to construct or renovate a facility. It also clarifies grantees that apply for funds to purchase, construct or renovate a facility must establish that the facility will be available to Indian tribes, rural, or other low-income communities. We received multiple comments on this section. We address those comments below.

Comment: Commenters suggested we clarify in paragraph (a) how a grantee can establish that preliminary eligibility requirements are satisfied.

Response: We did not revise language in this section to prescribe how a grantee can es-

tablish preliminary eligibility to purchase, construct, or renovate a facility. We believe that a grantee may demonstrate preliminary eligibility in a variety of ways and that a prescriptive process might create compliance challenges for some grantees.

Comment: Some commenters felt we created an unnecessary cost burden because we require a certified appraiser to address availability of suitable facilities in paragraph (b) of this section. These commenters believed a real estate professional's opinion was sufficient.

Response: We agree availability of suitable facilities can be adequately established, at lower cost, by an independent real estate professional familiar with the local commercial real property market. Therefore, we revised paragraph (b) to clarify a real estate professional's opinion is sufficient.

§1303.43 Use of grant funds to pay fees.

This section clarifies the type and extent of pre-project costs, such as project feasibility studies and professional fees, we may approve before a grantee applies for funding to purchase, construct, and renovate facilities.

Comment: One commenter asked us to revise this section to allow grantees to use funds from their then-current Head Start grant for facilities projects or apply for and receive funds under the noted section.

Response: We did not revise this section to allow grantees to use existing grant funds for fees and costs associated with a facilities project. We believe that can be addressed through existing facilities regulations at 45 CFR part 75.

§1303.44 Applications to purchase, construct, and renovate facilities.

This section focuses on the process grantees must use to apply for funds to purchase, construct, and renovate facilities. We address comments we received on this section below.

Comment: One commenter queried whether the facilities application process is applicable to all uses of funds for facilities activities or only when additional funds are requested.

Another suggested we should add a performance standard that requires the responsible HHS official to promptly review and make final decisions regarding completed applications under this subpart.

Response: General language in §1303.40 refers to facilities purchased, constructed or renovated with grant funds and applies to all defined activities regardless of how funding is awarded. Therefore, we did not make changes here.

We also did not require the responsible HHS official to promptly review and make final decisions. The primary reason being facilities applications require substantial information and some applications are incomplete when submitted. The length of time the responsible HHS official may need to help a grantee submit a complete application and determine availability of funding varies.

Comment: One commenter noted in paragraph (a)(2) of this section a deed or proof of legal ownership should not be the sole requirement for renovations on leased facilities. Grantees should be able to present a proposed lease agreement.

Response: We currently require grantees to submit a proposed lease in paragraph (b)(1) in this section currently requires submission of a proposed lease agreement and landlord consent. A slight amendment was made to remove the requirement that the submitted copy by an "official" copy since leases are not subject to official certification.

Comment: One commenter contended value appraisals for major renovations to leased properties were an unnecessary expense. The commenter also suggested we should allow grantees to submit bids and/or procurement documents in lieu of appraisals.

Response: Since a grantee does not obtain title to leased property subject to major renovations, we agree that an appraisal is not needed in that limited circumstance. We revised paragraph (a)(7) accordingly. However, we did not revise paragraph (a)(7) to allow grantees to submit bids and/or procurement documents in lieu of appraisals . We believe a licensed appraisal to establish value ensures consistency and accuracy.

Comment: One commenter suggested we should eliminate the required Phase I environmental assessment of proposed facilities sites in paragraph (a)(12) because remediation would increase project costs and prove to be an impediment to facilities projects on leased property. Another commenter suggested we should not require environmental assessments for major renovations.

Response: We did not remove this performance standard. We rely on environmental assessments to ensure we only fund those activities that result in safe and healthy care environments for children, families and staff whether the facility is owned or leased.

Comment: One commenter asked us to reduce the lease term requirement for modular units on property not owned by the grantee from 15 years to 10 years.

Response: Modular units often represent a substantial expenditure. We believe that a lease term of 15 years will assure grantees have a location for the modular unit for a period of occupancy long enough to use the full value of the federal investment in the modular unit.

§1303.45 Cost comparison to purchase, construct, and renovate facilities.

We require grantees to compare costs to renovate, to lease an existing facility, or to construct a new facility to determine which activity would be most cost effective to meet program needs. Grantees must be able to demonstrate that they have compared costs and weighed options so we know our investment in a particular facility activity is cost-effective and service-relevant. This section allows grantees greater flexibility to describe projects and to compare costs to other alternatives within their service areas.

We address the one comment we received on this section below.

Comment: One commenter asked us to revise the last sentence in paragraph (a)(1) in this section so that it refers to a "comparable alternative facility."

Response: We did not revise paragraph (a)(1). We believe the term "alternative," allows for the possibility of a non-comparable facility, such as one that might be made usable through major renovations.

§1303.46 Recording and posting notices of federal interest.

This section focuses on federal interest and clarifies when grantees must file notices of federal interest and what the notices must contain. We address comments we received on this section below.

Comment: Some commenters contended grantees would not be able to file federal interest notices until the purchase, construction, or major renovation was either complete or at least when these activities have begun or when a grantee obtains ownership or begins occupancy.

Response: To protect federal interest in acquired facilities or in facilities undergoing major renovations with federal funds, we believe the notice of federal interest must be filed as early as possible to avoid the superior placement of liens for materials and services that would compromise priority of the federal interest. Therefore, we did not revise paragraphs (b)(1)-(3).

Comment: Some commenters felt the performance standard in paragraph (b)(4) that requires grantees to post the notice of federal interest on the exterior and the interior of modular units, could be cost prohibitive.

Response: We did not revise paragraph (b)(4). Posting the notice of federal interest on the exterior of the property informs all third parties that there is federal interest in the property. The exterior notice of federal interest for a modular unit can be as simple as a single-page laminated weatherproof copy of the interior notice firmly attached to the exterior of the modular unit, which would involve minimal cost.

Comment: Commenters liked our streamlined definition for "major renovations," but asked us to either define or clarify what we mean by "federal interest."

Response: We agree our former definition for "major renovations" was difficult for grantees to apply.

We did not change our definition for "federal interest," because we believe it fully advises grantees of when a federal interest is created and how property that is being used to meet non-federal match is treated. We believe what we mean by "federal interest" is more detailed and complete in this final rule.

§1303.47 Contents of notices of federal interest.

This section comprehensively explains what notices of federal interest must contain when a grantee owns a facility, when a grantee leases a facility, and when a grantee occupies a modular unit. We received some comments on this section, which we address below.

Comment: One commenter asked us to strike the term "or minor" from paragraph (a)(4).

Response: We revised paragraph (a)(4) to remove the phrase "or minor" because minor renovations or repairs are not subject to this subpart unless they are part of a purchase.

Comment: One commenter recommended we remove the performance standard in paragraph (a)(8) that requires the governing body to formally approve the notice of federal interest because it was unnecessarily prescriptive.

Response: We believe as the entity fiscally and legally responsible for the grantee, the governing body should be made aware of any notices of federal interest the grantee files. However, given the governing body must approve all facilities applications, we agree they do not also need to approve the notice of federal interest. We revised paragraph (a)(8) accordingly.

Comment: Commenters asked us to clarify whether a recorded lease could serve as a notice of federal interest. Other commenters noted the reference in paragraph (b)(1)(vi) of this section to notices of federal interest on leased property should have referred to §1303.50(b)(1) through (4). Another commenter stated landlords may be unwilling to lease to Head Start grantees if a notice of federal interest for major renovations to leased property is required.

Response: We revised paragraph (b)(1)(vi), so it is clear a recorded lease that includes requisite provisions can serve as a notice of federal interest for leased property subject to major renovations. We also revised paragraph (b)(1)(vi) so that it references paragraph (b)(1)(i) through (v).

Finally, we did not revise this performance standard to accommodate situations where landlords may be unwilling to lease to Head Start grantees if a notice of federal interest for major renovations to leased property is required. We believe requiring recognition of the federal interest resulting from major renovations in lease agreements filed in the public record protects the ongoing use of improved properties for Head Start purposes during the useful life of the improvements financed with Head Start funds.

Comment: Commenters asked us to clarify what the word "proof" in paragraph (c)(3) meant.

Response: We replaced the word "proof" with the phrase "[A] statement that."

§1303.49 Protection of federal interest in mortgage agreements.

Funding for facilities often includes both federal funds and mortgage proceeds. As funding for facilities has become more complex, it is common to find federal funds and mortgages on the same property. In order to protect federal interest, we require grantees to ensure that any mortgage agreements they have include specific provisions that would mitigate our risk of loss and ensure the property remains for Head Start purposes.

This section prescribes what mortgage agreements must contain. We address comments we received on this section below.

Comment: Commenter indicated the term "a real property… agreement" made paragraph

(b) in the section unclear. The commenter asked us to reference any default under "an agreement described in §1303.49(a) instead.

Response: We revised paragraph (b) accordingly.

§1303.50 Third party leases and occupancy arrangements.

Grantees may use federal funds to renovate leased property, often at substantial cost. This section requires grantees to have leases in place for 30 years for construction of a facility and at least 15 years for a renovation or placement of a modular unit to protect federal interests in these unusual cases where the government is putting major costs into facilities on land that they do not own. We address comments we received on this section below.

Comment: Some commenters asked us to not apply paragraph (a) in this section to existing leases that did not meet term requirements.

Other commenters suggested there should be a flexible approach to lease term lengths that depended on the cost of the facilities project, individual circumstances of the grantee, community and nature of the facilities project or, that we adopt a fixed period of 10 years. Some commenters also noted that five-year grant cycles did not align with 15 or 30 year leases.

Response: We revised paragraph (a) to clarify that its terms did not apply to existing leases prior to the effective date of the regulations. We did not take a flexible approach to lease term lengths. Given that facilities activities involve substantial Head Start funds and are intended to be available for Head Start use as needed during the useful life of the facility, we made lease term lengths consistent. We also set term lengths to ensure grantees are subject to comparable lease term length requirements, regardless of location. Finally, we believe long term occupancy agreements for the full useful life of major renovations and purchases are needed to protect the Head Start funds used for major renovations and purchase of facilities located on leased property.

It is understood that migrant and seasonal Head Start programs may not utilize leased premises for entire program years. However, given the high dollar cost of major renovations and purchase of facilities, we believe that long term occupancy agreements, even if for limited portions of the program year, are needed. If a facility is no longer needed for program purposes, grantees can request disposition of the leasehold interest in the property.

§1303.51 Subordination of the federal interest.

This section emphasizes that only the responsible HHS official can subordinate federal interest to a lender or other third party. Grantees cannot subordinate federal interest on their own. The HHS official must agree to subordination in writing. In addition to a written agreement, the mortgage agreement or security agreement for which subordination is requested must comply with §1303.49, and the amount of federal funds already contributed to the facility must not exceed the amount provided by the lender seeking subordination. We address comments we received on this section below.

Comment: Commenters indicated that limiting subordination of the federal interest to circumstances where the amount requested exceeds the amount of federal funding in the property would result in reluctant lenders.

Response: We revised this performance standard to integrate the possibility of subordination to a lesser debt if certain conditions are met.

§1303.52 Insurance, bonding, and maintenance.

Our experience has demonstrated that grantees have not maintained sufficient insurance for replacement of facilities that are substantially damaged or destroyed, particularly through floods and other natural disasters. After Hurricane Sandy, we realized we had to be more vigilant to protect grantees against loss.

In this section, we require grantees to obtain flood insurance if their facilities are located in areas the National Flood Insurance Program defines as high risk. We also clarify for grantees that physical damage or destruction insurance must cover full replacement value.

We address comments we received on this section below.

Comment: One commenter noted that the cost of flood insurance should be included in the Cost and Savings Analysis so as not to create an unfunded mandate upon the grantee.

Response: We did not make any changes here because flood insurance is an allowable cost to the Head Start award and can be included in the grantee's application for funding.

Comment: One commenter asked us to revise paragraph (b)(3) to read, "A grantee must submit to the responsible HHS official, within 10 days after coverage begins, copies of applicable certificates of insurance."

Response: We revised paragraph (b)(3) to clarify what insurance coverage must be proven but leaves it to the grantee to choose what documents to present to prove coverage.

§1303.53 Copies of documents.

This section adds notices of federal interest to the list of required documents grantees must provide to the responsible HHS official. It also requires grantees to give copies of notices of federal interest to the responsible HHS official after they have filed the notices in their jurisdiction's property records. This is particularly important because notices of federal interest do not fully protect the federal share until the notices are filed in the appropriate property records. We address comments we received on this section below.

Comment: One commenter was concerned that if we include leases in this section, we might create a situation wherein large numbers of leases would have to be reviewed annually.

Response: We do not require grantees to submit documents listed in this section annually. Furthermore, these documents are only necessary when related to purchase, construction or major renovation, so we believe the volume of submissions will be manageable. We revised

this section to clarify these documents must be submitted when Head Start funds are used for the noted facilities activities.

§1303.54 Record retention.

This section clarifies what documents grantees must retain as records. This section does not change the basic retention period, which is aligned with general requirements in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. We did not receive any comments on this section.

§1303.55 Procurement procedures.

This section summarizes general procurement procedures as context for grantees. We did not receive any comments on this section.

§1303.56 Inspection of work.

This section aligns the elements of the final inspection report with those required in the engineer or architect's certification that accompanies the initial facilities project application. We address comments we received on this section below.

Comment: One commenter recommended that we do not require project architects to certify compliance with regulations beyond his control such as licensing and Section 504 of the Rehabilitation Act.

Response: We did not make any changes here. We believe the project architect is a qualified professional familiar with the project, who can express an opinion as to whether a facility subject to purchase, construction or major renovation with Head Start funds meets all applicable federal, state, and local requirements

6. Transportation; Subpart F

This subpart describes the requirements for programs related to transportation services. We received comments on this subpart. Some commenters supported the requirements in this section and stated that without transportation provided by the program, many high need families would be unable to access the program as they do not have private vehicles or access to public transportation. Other commenters expressed concerns or asked for clarifications. These comments are discussed in further detail below along with our responses.

General Comments.

Comment: Some commenters asked about the applicability of the regulation including for field trips or transporting children and parents to medical appointments. Some commenters expressed concern about the cost of transportation services or specific elements, such as requiring bus monitors. One commenter asked about the relative cost, quality, and compliance of contractual versus directly provided transportation.

Response: Incidental transportation as described under the definition of "transportation services" in part 1305 is exempt from the requirements of this subpart. This includes taking a sick child home or taking a child and parent on a medical visit. Field trips are not incidental transportation and therefore are subject to the requirements of this subpart. Additionally, we recognize that providing transportation is expensive, but that many high need children would not be able to participate in Head Start without transportation services. No program is required to transport all or any children, but if high need families require transportation services to access the program, such services should be part of the program design. Programs should also regularly assess the cost and quality of their transportation service and make informed decisions about the safest and most cost efficient options. We did not make any changes to the regulation in response to these comments.

§1303.70 Purpose.

This section describes transportation services and waiver options for programs. We received some comments on this section, which are discussed below.

Comment: Some commenters objected to the requirement in paragraph (b) that programs not offering transportation services make reasonable efforts to assist families who might otherwise have difficulty ensuring their child's participation. Some commenters indicated this provision could be especially difficult in rural areas and should therefore be removed. Some commenters requested more clarity about what constitutes "reasonable assistance."

Response: This provision is intended to ensure that programs that do not provide transportation ensure that lack of such service does not pose a barrier to participation in the program for the highest need children and families. Many rural Head Start programs, for example, provide transportation because not doing so would greatly limit the number of the highest need children who could participate. We expect that when a program has determined transportation is not a needed service, there are available alternatives. Therefore we retained this requirement, but added an example of reasonable assistance to paragraph (b).

Comment: One commenter suggested that programs must ensure compliance with the requirements of this subpart when obtaining Head Start transportation services by coordinating with another human service agency.

Response: We agree with this comment but do not think it requires a revision to the regulation. As defined in part 1305, Head Start transportation services include "the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act." Therefore services provided through a coordinating agency would have to meet the requirements of this subpart. Each program is responsible for ensuring that the transportation services it provides, whether directly, through a coordinated effort with an LEA or community partner, or through a contractual arrangement, meet these requirements.

Comment: Some commenters asked for additional information about the circumstances under which a waiver can be issued and how decisions regarding waiver approval are made.

Response: Per the regulation, we will only consider waivers in circumstances where adher-

ence to this subpart would create a safety hazard or, for preschool children, a major program disruption in relation to the requirements for child restraint systems or bus monitors, such that a waiver is in the best interest of enrolled children. We did not make any changes to these provisions. Typically, programs receiving transportation services through a partnership with a local education agency are the only ones approved for waivers. Programs can find information about applying for a transportation waiver through the Head Start Enterprise System (HSES) or by contacting their program official.

§1303.71 Vehicles.

This section describes the requirements for vehicles used to transport children. We received some comments on this section, which are discussed below.

Comment: One commenter requested additional information about allowable alternate vehicles.

Response: The definition of "allowable alternate vehicle" is provided in part 1305 and refers to a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131. It is a vehicle that may not look like a traditional school bus, but has the required safety features such as compartmentalized seating, rollover protection, joint impact strength, and fuel system integrity. We did not make any changes to this provision.

Comment: One commenter objected to the removal of the former requirement that safety equipment be strategically placed and marked.

Response: While we expect each program to store such equipment where it is safe from children but accessible in an emergency, we agree that such equipment should be clearly labeled. We amended paragraph (b) to specify this.

§1303.72 Vehicle operation.

This section describes safety requirements during vehicle operation, driver qualification and application review requirements, and requirements for driver and bus monitor training. We received some comments on this section, discussed below.

Comment: One commenter suggested that we allow reasonable accommodation related to the requirements of the commercial driver's license (CDL) and that drivers should follow applicable Department of Transportation (DOT) regulations, including for drug and alcohol testing.

Response: In addition to possessing an appropriate CDL, drivers providing Head Start transportation services must meet applicable DOT, tribal, state, and local requirements for their jurisdiction. There are requirements for drug and alcohol testing associated with a CDL. Therefore, we did not make any revisions to this provision.

Comment: Some commenters expressed concern that the requirement to review a driver

candidate's record through the National Driver Register could delay the hiring of needed drivers.

Response: While we understand the concerns about the expediency of various background checks, we believe it is very important to use available sources that may provide information about the safety record of driver candidates. Therefore, we retained this requirement to check the National Driver Register where available.

Comment: One commenter expressed concern that standards articulated the requirement for child safety restraint systems, but did not actually require that children be seated while using them.

Response: We agree that safety restraint systems only afford protection if they are properly used. We amended §1303.72(a)(1) to specify that each child should be seated in a child restraint system appropriate to the child's age, height and weight.

Comment: Some commenters referred to the requirement in paragraph (d) that drivers receive training in first aid. One suggested that Cardio Pulmonary Resuscitation (CPR) also be required. Another suggested it is not necessary to require first aid training for drivers.

Response: We agree that drivers should have both first aid and CPR training. This is required in §1302.47, and is therefore deleted from the list of training requirements in this section.

§1303.73 Trip routing.

This section establishes requirements for the safe and efficient planning of transportation routes.

Comment: Some commenters had concerns about the length of bus routes, including that some bus routes exceed an hour due to the geography of the service area and that complying with the trip routing safety requirements results in longer trips.

Response: Programs must keep trips under one hour, to the extent possible. We recognize that in some areas, such as rural areas, routes may be longer than an hour. We encourage programs to train bus monitors to provide meaningful interactions, discussion, songs, etc. with children during the time on the bus. We also understand that such things as requiring no U turns and curbside pick-up and drop off may extend routes. However, as the majority of school bus related child fatalities occur before boarding or after exiting the bus, we believe these safety provisions are necessary. We did not make any changes to these provisions.

§1303.74 Safety procedures.

This section describes the safety procedures programs must adhere to as part of transportation. We did not receive any comments on this section and therefore did not make any changes to these provisions.

§1303.75 Children with disabilities.

This section describes requirements for transporting children with disabilities. Below we discuss the comments we received on this section and our corresponding responses.

Comment: Some commenters supported the provision in paragraph (a) of this section that children with disabilities must be transported in the same vehicles used to transport other children whenever possible. Other commenters raised questions or concerns including a request to retain a previous provision to ensure special transportation requirements in a child's IEP or IFSP are followed, and a question about whether a program must ensure that drivers from other agencies are trained.

Response: In paragraph (b), we retained the provision that ensures special transportation requirements in a child's IEP or IFSP are followed; this provision was also retained in the NPRM. All Head Start transportation services, including those for children with disabilities, must meet the requirements of this regulation, whether they are provided directly, contractually, or through agreement with a local educational agency or other partner.

d. Federal Administrative Procedures; Part 1304

1. Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and their Appeals; Subpart A

This subpart focuses on monitoring, areas of noncompliance, deficiencies, and quality improvement plans. It outlines what happens when a grantee is suspended, when a grantee is terminated, when a grantee's financial assistance or application for refunding is denied, and when a grantee's assistance is reduced. It also clarifies the appeals process for certain adverse actions. We analyze the comments received on this subpart below.

§1304.1 Purpose.

This section lays out the Secretary's authority to monitor whether grantees meet program performance standards and to prescribe notice and appeal procedures. We did not receive any comments on this section.

§1304.2 Monitoring.

This section clarifies our authority to monitor grantees to ensure they comply with the Act, all program performance standards, and other federal regulations. We also clarify for programs that a deficiency can develop from an uncorrected area of noncompliance and from monitoring findings that show either a grantee's systemic or substantial material failure to comply with standards. We received comments from the public on this section and we discuss those comments below.

Comment: Some commenters urged us to take the lead to streamline Early Head Start, Head Start, and Child Care and Development Fund monitoring requirements and practices so that programs can focus more on performance and outcomes and less on monitoring

compliance with detailed regulation. These commenters suggest for ACF to work more collaboratively with other federal partners to coordinate approaches to monitoring, and evaluating and supporting continuous quality improvement of early learning programs and their impacts. One commenter urged us to take the lead to build better integration between Early/Head Start data and state/local data systems.

Response: We will continue to work to better align Early Head Start, Head Start, and Child Care and Development Fund monitoring requirements and practices where possible. We will also continue to work with other federal partners to coordinate approaches to monitoring. We will continue to work with partners to facilitate better integration between Early/Head Start data and state/local data systems.

Comment: Some commenters asked us to define "immediate deficiencies," to prescribe how these deficiencies can be resolved, set time frames to correct areas of noncompliance and deficiencies, and, establish a deficiency review board that is independent of the regional office.

Response: We defer to the Act's definition for "deficiency," at section 637. Deficiencies are not determined at the regional level, though they were many years ago. Now, the Director of the Office of Head Start determines all deficiencies independently.

Comment: One commenter asked us to consider whether CLASS scores that fall below national norms, should be a non-compliance issue rather than a deficiency. The commenter believes data, including CLASS results, should be used as flashlight to illuminate paths to professional development and the central tenet of Head Start, continuous improvement.

Response: We did not propose any changes to the designation renewal system at former part 1307 in the NPRM. As we did not invite comments on the designation renewal system in the NPRM, we cannot respond to this comment here.

§1304.3 Suspension with notice.

This section includes the program performance standards for suspensions with notice. Although we retained, without change, most performance standards in this section, we proposed a few changes in the NPRM. We received comments on what we proposed in the NPRM and we address them below.

Comment: Some commenters complained paragraph (g) in this section gives the HHS official unilateral authority to impose additional suspensions indefinitely without having to verify in writing that deficiencies still exist. They argue that this practice conflicts with section 646(a)(5)(A) of the Act which requires the Secretary to prescribe procedures to assure that the Secretary may suspend financial assistance, "for not more than 30 days…" To comply with the Act, they asked us to remove the sentence: "Nothing in this section precludes the HHS official from imposing suspension again for an additional 30 days if the cause of the suspension has been corrected."

Response: Paragraph (g) in this section does not violate section 646(a)(5)(A) of the Act. If

a grantee has not satisfactorily corrected what led to the suspension in 30 days, HHS has the ability to impose another suspension for 30 days.

§1304.4 Emergency suspension without advance notice.

In this section, we discuss the circumstances that warrant emergency suspension without notice. We proposed a few small changes in the NPRM, specifically we added the term "emergency situation" to the reasons we can suspend without notice, to be more closely aligned with the Act. And we proposed to no longer allow grantees to use contributions during the suspended period to count toward in-kind match. We received comments on this section and discuss those comments below.

Comment: Some commenters believed paragraph (b) was worded awkwardly. To make the paragraph read better, the commenter asked us to make the following changes: delete the phrase "by any means" in paragraph (b)(2); reword paragraph (b)(3); and clarify what the "informal meeting" is in paragraph (b)(4). The commenter also pointed out something was missing in paragraph (c).

Response: We revised the language in paragraphs (b)(1)(iv), (b)(2) and (3), and (c) for clarification.

Comment: Some commenters noted if we allow the responsible HHS official to impose additional 30 days suspensions, then in effect we have terminated the program. If a Head Start program loses funding for 60, 90, or more days, the program is likely to be so financially handicapped that the result could be the same as a termination of funding.

Response: We disagree that suspension is tantamount to termination. We only use suspension when such measure is allowed under the Act and usually in extraordinary circumstances. From 2013 to 2015, we issued 5 summary suspensions. Of the 5 summary suspensions, 4 resulted in termination.

Comment: Some commenters recommended we describe how programs should appeal findings to the HHS official.

Response: We did not prescribe how programs should appeal findings to the HHS official. There is no formal process for how programs must appeal findings to the HHS official. However, regardless of how evidence is presented to the HHS official, we will consider it.

§1304.5 Termination and denial of refunding.

In this section describe the circumstances under which HHS can terminate, and, deny refunding or reduce funding. We also discuss appeal procedures for terminations and denials of refunding. We address the one comment we received on this section below.

Comment: Some commenters asked us to define "financial viability" again because our proposed definition was too broad and too subjective. A commenter proposed the following definition: "Financial viability means that an organization is able to meet its financial obligations as they become due."

Response: We did not revise our definition for "financial viability." However, we will clarify here what we mean by the phrase "balance funding and expenses." The phrase "balance funding and expenses" refers to the status of a grantee's funds and obligations by the end of the funding period. We understand throughout a funding period, funding and expenses will not always remain balanced. However, they should balance by the end of the funding period.

§1304.6 Appeal for prospective delegate agencies.

Section 646(a)(1) of the Act requires appeal procedures for certain conflicts between delegates and grantees. The Act requires a timely and expeditious appeal to the Secretary for an entity who wants to serve as a delegate and whose application has been rejected or not acted upon.

The previous regulation included an additional step that allowed prospective delegate agencies to appeal application decisions to the grantee first. This extra step added nothing to the application appeal process beyond extending it. Therefore, in the NPRM, we proposed to eliminate this extra step. We also proposed to eliminate the reconsideration process. We address the one comment we received on this section below.

Comment: According to one commenter, because we eliminated the appeal between prospective delegate agencies and grantees and require only the appeal to ACF, there may be occasions where a grantee wishes to reconsider its decision about a prospective delegate agency.

Response: Granted, there may be occasions where a grantee wishes to reconsider its decision about a delegate agency. We did not prohibit a grantee that chooses to reconsider its decision about a prospective delegate agency, but we did not require the grantee to do so either.

§1304.7 Legal fees.

This section focuses on grantees' right to attorneys and attorney fees. In the NPRM, we proposed to revise this section to align with section 646(a)(4)(C) of the Act, which requires the Secretary to prescribe procedures that prohibit a Head Start agency from using program grant funds to pay attorney fees and costs incurred during an appeal. This section also addresses when an agency may apply for reimbursement of fees and the procedures for doing so.

Comment: Some commenters asked us to clarify whether delegate agencies can seek reimbursement for legal fees.

Response: No. Delegate agencies cannot seek reimbursement for legal fees. The Act only speaks to the reimbursement of legal fees for the grantee appealing an HHS decision.

2. Designation Renewal; Subpart B

We did not make changes to the content of this subpart and therefore did not invite comments in the NPRM. We made technical changes to reorder what was part 1307, where this subpart was located in the previous rule, in a logical order for this rule. Although we did not invite comments, some commenters raised concerns about the Designation Renewal System and offered suggestions for alternate approaches. As prescribed by the Administrative Procedures Act, because we did not give notice of any potential changes we cannot make any changes in the final rule.

3. Selection of Grantees through Competition; Subpart C

Section 641(d)(2) of the Act outlines the specific criteria the Secretary must use to select grantees and allow consideration of "other factors" and we refer to this citation in our regulatory text. This subpart revises previous program performance standards to reflect a more transparent and streamlined process for Head Start grant competitions and outline the other factors that are considered. We received comments on this section and discuss them below.

Comment: Commenters were concerned about removing the previous criteria for grantee selection regarding opportunities for employment and for the direct participation of parents in planning, conducting, and administering the program.

Response: In the Act, Congress included an extensive list of criteria that must be considered when selecting from among qualified applicants. This list includes family and community involvement, and thus by referencing section 641(d)(2) of the Act, these important concepts are covered by this section of the regulation. This list includes the important participation of families and communities.

4. Replacement of American Indian and Alaska Native Grantees; Subpart D

This subpart outlines the requirements for replacing American Indian and Alaska Native Head Start programs. We did not receive any comments on this section and did not make any changes.

5. Head Start Fellows Program, Subpart E

This subpart outlines the requirements for administration of the Head Start Fellows Program. We did not receive any comments on this section and did not make any changes.

e. Definitions; Part 1305

In this part, we include definitions from all sections of the previous rule for ease of grantee and prospective grantee understanding and transparency. In the previous rule, definitions were attached to each section. We consolidated definitions that were repeated in multiple sections in the previous rule. In addition, we removed many definitions that were either not meaningful or did not add to the widely understood meaning. We also removed definitions when it was clearer to incorporate their meaning into the provisions themselves or when the terms were not included in the final rule. We restored definitions from the previous rule that were not included in the NPRM when we used these terms in the final rule. We added some new definitions to this part in order to support other revisions throughout the rule or to provide technical clarity including their statutory basis in the Act, and reference the definitions in other relevant pieces of legislation where appropriate. Finally, we made a technical change to add a section on the purpose of this part, and renamed and redesignated the proposed section §1305.1 to §1305.2 in this final rule.

We received many comments on this part. Many commenters requested that we add additional definitions. Others asked that additional details be included in previous or proposed definitions. Others pointed out inconsistencies between definitions and asked for clarification. Finally, commenters asked that definitions from the Act and other statutes be spelled out in the rule. We discuss and respond to each of these categories of comments below.

Comment: Many commenters requested a definition for "planned operation."

Response: In light of the changes to the service duration requirements for center-based programs in §1302.21(c) that remove the term "planned operation," we have deleted the definitions for "hours of operation" because they are no longer necessary. We added a definition for "hours of planned class operations."

Comment: Many commenters requested definitions that were not in the previous rule or the NPRM including: authorized caregiver, directory information, entry, high-quality pre-K, noncompliance, inclusion, LEA, frequently absent, unexcused absence, material, standardized and structured assessments, seclusion/restraint, and research-based.

Response: We did not include definitions for directory information, entry and seclusion/restraint because they are not used in the performance standards and so need no definition. We did not define frequently absent or unexcused absence to allow programs reasonable flexibility to define those terms to best meet the needs of the families they serve. We did not define authorized caregiver, LEA, noncompliance, material or inclusion because we are using their widely understood meaning. We did not define high-quality pre-K but changed the language in §1302.14(a)(3) to include that pre-kindergarten must be comprehensive and available for a full school day. Similarly we did not define standardized and structured assessments but added in §1302.33(b)(1) that they may observation-based or direct. We did not include a definition for deficiency because if it defined by the Act and we rely entirely on that statutory definition.

Comment: Many commenters asked that definitions from statutes, including the Head Start Act, IDEA, and McKinney-Vento, be restated as definitions in this rule.

Response: We did not define terms when we are relying on the definition from other statues.

Comment: Many commenters requested clarification of definitions that were in the previous rule or the NPRM, such as enrolled, family, and federal interest.

Response: We have modified the definition of enrolled to clarify that a child is not considered enrolled until they attend the program for center-based and family child care or received a home visit for home-based. We do not believe the definitions of family or federal interest needed changes.

Comment: Commenters pointed out that the definition of Migrant or Seasonal Head Start Program did not limit agricultural work to "the production and harvesting of tree and field crops," while the definition of migrant family did limit it in this way.

Response: We removed this phrase to make the definitions consistent.

Comment: Some commenters suggested adding language to the regulation stating that DLLs should be defined and identified in a consistent manner. Some also suggested including a definition for DLLs in the regulation.

Response: We do not agree that we should require programs to identify DLLs in a consistent manner in regulation, as this would unnecessarily limit program flexibility to develop their own processes for identifying DLLs. However, we do agree that it is important to incorporate a definition for "dual language learner" into regulation. We added a definition to part 1305 that is consistent with definitions used by experts in the field. This definition is inclusive of children who have a home language other than English, as well children who have home languages of both English and another non-English language.