

**281—41.18(256B,34CFR300) Highly qualified special education teachers.**

**41.18(1) Requirements for special education teachers teaching core academic subjects.** For any public elementary or secondary school special education teacher teaching core academic subjects, the term “highly qualified” has the meaning given the term in Section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for “highly qualified” also include the following:

- a. The requirements described in subrule 41.18(2); and
- b. The option for teachers to meet the requirements of Section 9101 of the ESEA by meeting the requirements of subrules 41.18(3) and 41.18(4).

**41.18(2) Requirements for special education teachers in general.**

a. When used with respect to any public elementary school or secondary school special education teacher, “highly qualified” requires that:

(1) The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that when used with respect to a teacher teaching in a public charter school, “highly qualified” means that the teacher meets the certification or licensing requirements, if any, set forth in the state’s public charter school law;

(2) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) The teacher holds at least a bachelor’s degree.

b. A teacher will be considered to meet the standard in 41.18(2)“a”(1) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in 41.18(2)“b”(1) are met.

c. Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is “highly qualified” if the teacher meets the requirements in 41.18(2)“a” or the requirements in 41.18(2)“a”(3) and 41.18(2)“b.”

**41.18(3) Requirements for special education teachers teaching to alternate achievement standards.** When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), “highly qualified” means the teacher, whether new or not new to the profession, may either:

a. Meet the applicable requirements of Section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

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

**41.18(4) Requirements for special education teachers teaching multiple subjects.** When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, “highly qualified” means that the teacher may either:

a. Meet the applicable requirements of Section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

b. In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c); or

c. In the case of a new special education teacher who teaches multiple subjects and who is “highly qualified” in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).

**41.18(5)** Reserved.

**41.18(6)** *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under Part B of the Act or this chapter, nothing in Part B of the Act or this chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be “highly qualified,” or to prevent a parent from filing a complaint under rules 41.151(256B,34CFR300) to 41.153(256B,34CFR300) about staff qualifications with the SEA as provided for under this chapter.

**41.18(7)** *Applicability of definition to ESEA; clarification of new special education teacher.*

a. A teacher who is “highly qualified” under this rule is considered “highly qualified” for purposes of the ESEA.

b. For purposes of 41.18(4)“c,” a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

**41.18(8)** *Private school teachers not covered.* The requirements in this rule do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children with disabilities under rule 41.138(256,256B,34CFR300).