

**TITLE 17, Division 2, Chapter 2
DEPARTMENT OF DEVELOPMENTAL SERVICES**

NOTICE OF PROPOSED RULEMAKING

Early Start Procedural Safeguards

The Department of Developmental Services (DDS) proposes to amend Title 17, California Code of Regulations (CCR), Division 2, Chapter 2, Sub Chapter 5: Procedural Safeguards, by amending sections 52170, 52172 and 52173.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written comment period closes at 5:00 p.m. on June 14, 2010. Please submit any written comments to the DDS contact person designated below. In addition, DDS will receive both oral and written comments at the public hearing. All related documents are found at the website below:

http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm

Public Hearing

One public hearing to receive oral and written comments is scheduled as follows:

1. [June 17, 2010] at [9:00 AM at 1600 Ninth Street, Sacramento, California, 95814, Bateson Building, Room 360.

At this time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The hearing will be adjourned immediately following the completion of oral testimony presentations. Testimony submitted in writing or presented orally, will be identified by the subject number and title for the item listed above. Copies of any written statements are appreciated. Persons presenting oral statements are requested to also submit written copies of those statements. The hearing location is wheelchair accessible.

Authority and Reference

Authority: Sections 95007 (f) and 95028, Government Code

Reference: Section 95007 (f) and (g), Government Code; 20 United States Code, Sections 1439 (a) (1) a (8) and 1415 (e) and (f); and 34 Code of Federal Regulations, Sections 303.419, 303.420, 303.421, and 303.510 through 303.512.

Informative Digest/Policy Statement Overview

California's Early Start program was established in response to federal legislation, Individuals with Disabilities Education Act (IDEA) Part C administered by the Office of Special Education Programs (OSEP). IDEA, Part C ensures early intervention services for infants and toddlers with disabilities and their families are coordinated and family-centered. Federal regulations require State's to implement procedural safeguard processes as part of their application to receive Part C grant funding. Current state regulations do not specify that eligibility for services issues may be addressed in the complaint process. State regulations currently also do not provide for mediation to be available during complaint procedures. For these reasons, OSEP made findings of non-compliance regarding State procedural safeguards after reviewing California's Annual Performance Report for FFY 2007. The proposed amendments to the Early Start Regulations will bring California into compliance with applicable federal regulations. OSEP indicated in correspondence to DDS that financial sanctions jeopardizing California's IDEA Part C grant would be imposed if regulations were not amended to conform with federal regulations.

Title 17, California Code of Regulations (CCR), Division 2, Chapter 2, Subchapter 5: Procedural Safeguards.

Section 52170 (a) and (f). Amendments to subsection (a) and (f) are proposed to clarify that a complaint may be filed for any violation of IDEA Part C including services and the determination of eligibility. The existing subsection (g) is added to the existing subsection (f).

Section 52170 (g) A new subsection (g) is proposed to provide for mediation to be available at any time to resolve disagreements involving any matter related to IDEA Part C.

Section 52172 (b). A new subsection (b) is proposed to provide a procedure whereby a parent may at any time request a mediation conference regarding any alleged violation of federal or state statute or regulation governing the provision of early intervention services. Existing subsections (b) through (g) are re-lettered accordingly.

Section 52172 (e) as re-lettered. Subsection (e) is proposed to be amended to specify that the timeframe for either a mediation conference or a due process is not to exceed a total of thirty days for each process. Thirty days was chosen as the timeframe to align with existing due process hearings timeframes for consistence.

Section 52173 (b). Existing language in subsection (b) is proposed to be deleted and replaced to specify that mediation is available at any time to resolve disagreements involving any matter related to IDEA Part C.

Initial Local Mandate and Fiscal Impact Determinations

The DDS has made the following initial determinations regarding the proposed regulatory actions:

- 1) Mandate on local agencies or school districts: None.
- 2) Significant costs or savings to any state agency: None.
- 3) Cost to any local agency or school district that must be reimbursed in accordance with Sections 17500 through 17630 of the Government Code: None.
- 4) Other nondiscretionary costs or savings imposed on local agencies: None.
- 5) Cost or savings in federal funding to the state: None.

Economic Impact and Business Assessment

The DDS has made the initial assessment and determination that the adoption of these regulations would not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states, or a significant effect on housing costs. In addition, the adoption of these regulations would not affect:

- 1) The creation or elimination of jobs in California;
- 2) The creation of new businesses or the elimination of existing businesses within California; or
- 3) The expansion of businesses currently doing business within California.

Cost Impacts on Representative Private Persons or Businesses

The DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business

The DDS has determined that the proposed regulations would not affect small businesses as defined by Sections 11342.610 of the Government Code because small businesses are not required to comply with or enforce the regulations, nor would any benefit or detriment be derived from enforcement.

Alternatives Considered

In accordance with Section 11346.5(a)(13) of the Government Code, DDS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DDS would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. These amendments are required by OSEP to correct findings of non-compliance regarding procedural safeguards.

The DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearings.

Contact Persons

Comments and inquiries concerning the proposed action or substance of the proposed action may be directed to:

Department of Developmental Services
Children and Family Services Branch
1600 Ninth Street, Room 340, MS 3-8
Sacramento, California 95814
Attention: Michael Miguelgorry
Phone: (916) 653-4017 Facsimile: (916) 654-3255
Email Address: michael.miguelgorry@dds.ca.gov

If Mr. Miguelgorry is unavailable, you may also contact Patric Widmann at 916-654-3722.

Availability of Rulemaking Documents

The DDS has prepared and has copies ready for public review of the exact text of the proposed regulations, and Initial Statement of Reasons for the proposed regulations, and all of the information upon which the proposed regulations are based. Copies of the Initial Statement of Reasons and text of the proposed regulations, along with all other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact person at the above address. In addition, the proposed regulations text, Initial Statement of Reasons and other materials for this rulemaking may be viewed over the internet at http://www.dds.ca.gov/EarlyStart/Statutes_Reqs.cfm.

Regulation text which is being added or amended is indicated by underline or italics, and deletions are indicated by strikethrough, as required by Section 11346.2(a)(3) of the Government Code.

Availability of Changed or Modified Text

After the close of the comment period, DDS may adopt the proposed regulations as described in this notice. If DDS makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before DDS adopts the regulations as revised. If the text is modified, the text may be viewed over the internet at http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm. Please send requests for copies of any modified regulations to the contact persons named above.

Final Statement of Reasons

When the Final Statement of Reasons is available, it may be viewed over the internet at http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm. Additionally, requests for the Final Statement of Reasons may be made to the contact persons named above.