



Compilation of Early Start Statutes & Regulations

Issued Under California's Early Start
Comprehensive System of Personnel
Development
by the Department of Developmental Services

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Publishing Information

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The compiled statutes and regulations are for training purposes only and may not be the most accurate source of information. Comments to the Federal statute and regulations may be found at <https://sites.ed.gov/idea/statuteregulations>. Visit the DDS website at <https://www.dds.ca.gov/services/early-start/laws-and-regulations> for the latest statutes and regulations.

Additional copies may be downloaded from <https://earlystartneighborhood.org>.

For information about California Early Start, contact DDS at 800-515-BABY (2229), visit our website at <https://www.dds.ca.gov/services/early-start> or e-mail earlystart@dds.ca.gov.

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Early Start Statute & Regulations

This document is a compilation of federal and state statutes and regulations that authorize, fund, and regulate early intervention services for infants and toddlers and their families. Eligible infants and toddlers

- (1) have a developmental delay or disability,
- (2) have an established risk condition of known etiology, with a high probability of resulting in delayed development, or
- (3) are considered at high risk of having a substantial developmental disability due to a combination of biomedical risk factors which are diagnosed by qualified personnel. In California, the early intervention system is known as Early Start.

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1: Federal Statute

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) Parts B and C govern special education and related services for children with disabilities from birth through 22 years of age.

IDEA, Part C, 20 United States Code (USC), Section 1431 et seq., Infants and Toddlers with Disabilities is the section of IDEA that addresses how states must implement and maintain their statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

Last amended 2015.

2: Federal Regulations

34 Code of Federal Regulations (CFR), Part 303, Early Intervention Program for Infants and Toddlers with Disabilities provides specific guidance on the requirements for Part C of IDEA. Comments to the federal regulations may be found at <http://idea.ed.gov/part-c/regulations/1>.

Last amended 2022.

3: State Statute

Title 14, Government Code (GC), Section 95000 et seq., California Early Intervention Services Act (CEISA) provides authorization for California to fulfill the Part C federal requirements and provides the overall structure for providing early intervention services under California Early Start.

Last amended 2022.

4: State Regulations

Title 17, California Code of Regulations (CCR), Chapter 2, Section 52000 et seq., Early Intervention Services provide the rules and specific procedures for fulfilling the requirements under the state statute (CEISA).

Last amended 2022.

5: Education Code

Title 2. Elementary and Secondary Education, Part 30. Special Education Programs, Chapter 4.4, Early Education for Individuals with Exceptional Needs governs the provision of special education and related services for young children with exceptional needs.

Last amended 2017.

Related Statutes and Regulations

The following state statutes and regulations are not included in this compendium. Early Start was built on existing systems through local educational agencies and regional centers that provide services to young children. Consequently, they are relevant to the provision of services to children eligible under Early Start. For further information, contact the appropriate state or local agency as indicated below.

Title 2. Elementary and Secondary Education, Part 30. Special Education Programs

- Chapter 1: General Provisions
- Chapter 4.45, Special Education Programs for Individuals with Exceptional Needs between the Ages of Three and Five Years, Inclusive

Contact:

California Department of Education
Special Education Division
916-445-4613 or specedinfo@share@cde.ca.gov
<https://www.cde.ca.gov/sp/se>

Local Special Education Local Plan Areas
Local County Offices of Education

Welfare and Institutions Code (WIC), Division 4.5, Chapter 5, Section 4500 et seq., Lanterman Developmental Disabilities Service Act governs the provision of services to persons with developmental disabilities.

Contact:

Department of Developmental Services
Early Start Policy and Operations Branch
800-515-BABY (800-515-2229) or earlystart@dds.ca.gov
<https://www.dds.ca.gov/services/early-start>

Local Regional Centers

FEDERAL STATUTE

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA), Parts B and C govern special education and related services for children with disabilities from birth through 22 years of age.

IDEA, Part C, 20 United States Code (USC), Section 1431 et seq., Infants and Toddlers with Disabilities is the section of IDEA that addresses how states must implement and maintain their statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

Last amended 2015

IDEA, Part C

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Public Law 108–446

Individuals with Disabilities Education Act

Part C—Infants and Toddlers with Disabilities

20 USC 1431. FINDINGS AND POLICY.

- (a) FINDINGS- Congress finds that there is an urgent and substantial need—
- (1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;
 - (2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;
 - (3) to maximize the potential for individuals with disabilities to live independently in society;
 - (4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and
 - (5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.
- (b) POLICY- It is the policy of the United States to provide financial assistance to States—
- (1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
 - (2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);
 - (1) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and
 - (3) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

20 USC 1432. DEFINITIONS.

In this part:

- (1) **AT-RISK INFANT OR TODDLER-** The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.
- (2) **COUNCIL-** The term 'council' means a State interagency coordinating council established under section 1441.
- (3) **DEVELOPMENT DELAY-** The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 1435(a)(1).
- (4) **EARLY INTERVENTION SERVICES-** The term 'early intervention services' means developmental services that—
 - (A) are provided under public supervision;
 - (B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
 - (C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:
 - (i) physical development;
 - (ii) cognitive development;
 - (iii) communication development;
 - (iv) social or emotional development; or
 - (v) adaptive development;
 - (D) meet the standards of the State in which the services are provided, including the requirements of this part;
 - (E) include—
 - (i) family training, counseling, and home visits
 - (ii) special instruction;
 - (iii) speech-language pathology and audiology services, and sign language and cued language services;
 - (iv) occupational therapy;
 - (v) physical therapy;
 - (vi) psychological services;
 - (vii) service coordination services;
 - (viii) medical services only for diagnostic or evaluation purposes;
 - (ix) early identification, screening, and assessment services;

- (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
 - (xi) social work services;
 - (xii) vision services;
 - (xiii) assistive technology devices and assistive technology services; and
 - (xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;
 - (F) are provided by qualified personnel, including—
 - (i) special educators;
 - (ii) speech-language pathologists and audiologists;
 - (iii) occupational therapists;
 - (iv) physical therapists;
 - (v) psychologists;
 - (vi) social workers;
 - (vii) nurses;
 - (viii) registered dietitians;
 - (ix) family therapists;
 - (x) vision specialists, including ophthalmologists and optometrists;
 - (xi) orientation and mobility specialists; and
 - (xii) pediatricians and other physicians;
 - (G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
 - (H) are provided in conformity with an individualized family service plan adopted in accordance with section 1436.
- (5) INFANT OR TODDLER WITH A DISABILITY- The term 'infant or toddler with a disability'—
- (A) means an individual under 3 years of age who needs early intervention services because the individual—
 - (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
 - (ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
 - (B) may also include, at a State's discretion—
 - (i) at-risk infants and toddlers; and

- (ii) children with disabilities who are eligible for services under section 1419 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—
 - (I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and
 - (II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 1419.

20 USC 1433. GENERAL AUTHORITY.

The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 1443) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

20 USC 1434. ELIGIBILITY.

In order to be eligible for a grant under section 1433, a State shall provide assurances to the Secretary that the State—

- (a) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and
- (b) has in effect a statewide system that meets the requirements of section 1435.

20 USC 1435. REQUIREMENTS FOR STATEWIDE SYSTEM.

- (a) IN GENERAL- A statewide system described in section 1433 shall include, at a minimum, the following components:

- (1) A rigorous definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part.
- (2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.
- (3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.
- (4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436, including service coordination services in accordance with such service plan.
- (5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.
- (6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under section 1419, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.
- (7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.
- (8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—
 - (A) shall include—
 - (i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

- (ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and
 - (iii) training personnel to coordinate transition services for infants and toddlers served under this part from a program providing early intervention services under this part and under part B (other than section 1419), to a preschool program receiving funds under section 1419, or another appropriate program; and
- (B) may include—
 - (i) training personnel to work in rural and inner-city areas; and
 - (ii) training personnel in the emotional and social development of young children.
- (9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.
- (10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—
 - (A) the general administration and supervision of programs and activities receiving assistance under section 1433, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 1433, to ensure that the State complies with this part
 - (B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;
 - (C) the assignment of financial responsibility in accordance with section 1437(a)(2) to the appropriate agencies;
 - (D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;
 - (E) the resolution of intra- and interagency disputes; and

- (F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.
- (11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.
- (12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 1440(a).
- (13) Procedural safeguards with respect to programs under this part, as required by section 1439.
- (14) A system for compiling data requested by the Secretary under section 1418 that relates to this part.
- (15) A State interagency coordinating council that meets the requirements of section 1441.
- (16) Policies and procedures to ensure that, consistent with section 1436(d)(5)—
 - (A) to the maximum extent appropriate, early intervention services are provided in natural environments; and
 - (B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.
- (b) **POLICY-** In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).
- (c) **FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL-**
 - (1) **IN GENERAL-** A statewide system described in section 1433 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 1419 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness

and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

- (2) REQUIREMENTS- If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—
 - (A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—
 - (i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and
 - (ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—
 - (I) types of services and the locations at which the services are provided;
 - (II) applicable procedural safeguards; and
 - (III) possible costs (including any fees to be charged to families as described in section 1432(4)(B)), if any, to parents of infants or toddlers with disabilities;
 - (B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;
 - (C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;
 - (D) all early intervention services outlined in the child's individualized family service plan under section 1436 are continued while any eligibility determination is being made for services under this subsection;
 - (E) the parents of infants or toddlers with disabilities (as defined in section 1432(5)(A)) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;
 - (F) the requirements under section 1437(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and
 - (G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10402 of title 42).

- (3) **REPORTING REQUIREMENT-** If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 1437(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 1419 but whose parents choose for such children to continue to receive early intervention services under this part.
- (4) **AVAILABLE FUNDS-** If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 1432(4)(B).
- (5) **RULES OF CONSTRUCTION-**
 - (A) **SERVICES UNDER PART B-** If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 1419 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.
 - (B) **SERVICES UNDER THIS PART-** Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

20 USC 1436. INDIVIDUALIZED FAMILY SERVICE PLAN.

- (a) **ASSESSMENT AND PROGRAM DEVELOPMENT-** A statewide system described in section 1433 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—
 - (1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;
 - (2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and
 - (3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

- (b) PERIODIC REVIEW- The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).
- (c) PROMPTNESS AFTER ASSESSMENT- The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.
- (d) CONTENT OF PLAN- The individualized family service plan shall be in writing and contain—
 - (1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
 - (2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;
 - (3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;
 - (4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
 - (5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
 - (6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;
 - (7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and
 - (8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.
- (e) PARENTAL CONSENT- The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early

intervention service, then only the early intervention services to which consent is obtained shall be provided.

20 USC 1437. STATE APPLICATION AND ASSURANCES.

- (a) APPLICATION- A State desiring to receive a grant under section 1433 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—
- (1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1433;
 - (2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 1440(b) are current as of the date of submission of the certification;
 - (3) information demonstrating eligibility of the State under section 1434, including—
 - (A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 1433; and
 - (B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;
 - (4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;
 - (5) a description of the uses for which funds will be expended in accordance with this part;
 - (6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who—
 - (A) is involved in a substantiated case of child abuse or neglect; or
 - (B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;
 - (7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;
 - (8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;
 - (9) a description of the policies and procedures to be used—
 - (A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under

section 1435(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how—

- (i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and
 - (ii) the lead agency designated or established under section 1435(a)(10) will—
 - (I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;
 - (II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and
 - (III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;
 - (B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and
 - (C) to establish a transition plan, including, as appropriate, steps to exit from the program;
 - (10) a description of State efforts to promote collaboration among Early Head Start programs under section 1445A of the Head Start Act, early education and child care programs, and services under part C; and
 - (11) such other information and assurances as the Secretary may reasonably require.
- (b) ASSURANCES- The application described in subsection (a)—
- (1) shall provide satisfactory assurance that Federal funds made available under section 1443 to the State will be expended in accordance with this part;
 - (2) shall contain an assurance that the State will comply with the requirements of section 1440;
 - (3) shall provide satisfactory assurance that the control of funds provided under section 1443, and title to property derived from those funds, will be in a public

- agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;
- (4) shall provide for—
 - (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and
 - (B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;
 - (5) provide satisfactory assurance that Federal funds made available under section 1443 to the State—
 - (A) will not be commingled with State funds; and
 - (B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;
 - (6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 1443 to the State;
 - (7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and
 - (8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.
- (c) STANDARD FOR DISAPPROVAL OF APPLICATION- The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.
 - (d) SUBSEQUENT STATE APPLICATION- If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.
 - (e) MODIFICATION OF APPLICATION- An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall

apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

- (f) **MODIFICATIONS REQUIRED BY THE SECRETARY-** The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—
- (1) an amendment is made to this title, or a Federal regulation issued under this title;
 - (2) a new interpretation of this title is made by a Federal court or the State's highest court; or
 - (3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

20 USC 1438. USES OF FUNDS.

In addition to using funds provided under section 1433 to maintain and implement the statewide system required by such section, a State may use such funds—

- (1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;
- (2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;
- (3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;
- (4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and
- (5) in any State that does not provide services for at-risk infants and toddlers under section 1437(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—
 - (A) identifying and evaluating at-risk infants and toddlers;
 - (B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

- (C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

20 USC 1439. PROCEDURAL SAFEGUARDS.

(a) MINIMUM PROCEDURES- The procedural safeguards required to be included in a statewide system under section 1435(a)(13) shall provide, at a minimum, the following:

- (1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.
- (2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.
- (3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.
- (4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.
- (5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.
- (6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of

the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

- (7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.
- (8) The right of parents to use mediation in accordance with section 1415, except that—
 - (A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 1435(a)(10);
 - (B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and
 - (C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.
- (b) SERVICES DURING PENDENCY OF PROCEEDINGS- During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

20 USC 1440. SEC. PAYOR OF LAST RESORT.

- (a) NONSUBSTITUTION- Funds provided under section 1443 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 1443 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.
- (b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES-
 - (1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES—
 - (A) IN GENERAL- The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for

interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

- (i) the provision of, and financial responsibility for, services provided under this part; and
 - (ii) such services are consistent with the requirements of section 1435 and the State's application pursuant to section 1437, including the provision of such services during the pendency of any such dispute.
 - (B) **CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B-** The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 1412(a)(12), where appropriate.
- (2) **REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY-**
- (A) **IN GENERAL-** If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.
 - (B) **REIMBURSEMENT-** Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).
- (3) **SPECIAL RULE-** The requirements of paragraph (1) maybe met through—
- (A) State statute or regulation;
 - (B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - (C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 1437.
- (c) **REDUCTION OF OTHER BENEFITS-** Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to maternal and child health) or Title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

20 USC 1441. STATE INTERAGENCY COORDINATING COUNCIL.

(a) ESTABLISHMENT-

- (1) **IN GENERAL-** A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.
- (2) **APPOINTMENT-** The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.
- (3) **CHAIRPERSON-** The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 1435(a)(10) may not serve as the chairperson of the council.

(b) COMPOSITION-

- (1) **IN GENERAL-** The council shall be composed as follows:
 - (A) **PARENTS-** Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.
 - (B) **SERVICE PROVIDERS-** Not less than 20 percent of the members shall be public or private providers of early intervention services.
 - (C) **STATE LEGISLATURE-** Not less than 1 member shall be from the State legislature.
 - (D) **PERSONNEL PREPARATION-** Not less than 1 member shall be involved in personnel preparation.
 - (E) **AGENCY FOR EARLY INTERVENTION SERVICES-** Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.
 - (F) **AGENCY FOR PRESCHOOL SERVICES-** Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.
 - (G) **STATE MEDICAID AGENCY-** Not less than 1 member shall be from the agency responsible for the State Medicaid program.
 - (H) **HEAD START AGENCY-** Not less than 1 member shall be a representative from a Head Start agency or program in the State.

- (I) CHILD CARE AGENCY- Not less than 1 member shall be a representative from a State agency responsible for child care.
- (J) AGENCY FOR HEALTH INSURANCE- Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.
- (K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH- Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.
- (L) STATE FOSTER CARE REPRESENTATIVE- Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.
- (M) MENTAL HEALTH AGENCY- Not less than 1 member shall be a representative from the State agency responsible for children's mental health.
- (2) OTHER MEMBERS- The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.
- (c) MEETINGS- The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.
- (d) MANAGEMENT AUTHORITY- Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.
- (e) FUNCTIONS OF COUNCIL-
 - (1) DUTIES- The council shall—
 - (A) advise and assist the lead agency designated or established under section 1435(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

- (B) advise and assist the lead agency in the preparation of applications and amendments thereto;
 - (C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and
 - (D) REPORTS- prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.
- (2) AUTHORIZED ACTIVITY- The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.
- (f) CONFLICT OF INTEREST- No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

20 USC 1442. FEDERAL ADMINISTRATION.

Sections 1416, 1417, and 1418 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

- (A) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 1435(a)(10);
- (B) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and
- (C) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

20 USC 1443. ALLOCATION OF FUNDS.

(a) RESERVATION OF FUNDS FOR OUTLYING AREAS-

- (1) IN GENERAL- From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to

Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

- (2) **CONSOLIDATION OF FUNDS-** The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

(b) PAYMENTS TO INDIANS-

- (1) **IN GENERAL-** The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.
- (2) **ALLOCATION-** For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.
- (3) **INFORMATION-** To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).
- (4) **USE OF FUNDS-** The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.
- (5) **REPORTS-** To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the

number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 1411(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

- (6) PROHIBITED USES OF FUNDS- None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) STATE ALLOTMENTS-

- (1) IN GENERAL- Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.
- (2) MINIMUM ALLOTMENTS- Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—
 - (A) $\frac{1}{2}$ of 1 percent of the remaining amount described in paragraph (1); or (B) \$500,000.
- (3) RATABLE REDUCTION-
 - (A) IN GENERAL- If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.
 - (B) ADDITIONAL FUNDS- If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.
- (4) DEFINITIONS- In this subsection—
 - (A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and
 - (B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

- (d) REALLOTMENT OF FUNDS- If a State elects not to receive its allotment under subsection (c), the Secretary shall realLOT, among the remaining States, amounts from such State in accordance with such subsection.

(e) RESERVATION FOR STATE INCENTIVE GRANTS-

- (1) IN GENERAL- For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 1444 exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 1435(c) in order to facilitate the implementation of such policy.
- (2) AMOUNT OF GRANT-
 - (A) IN GENERAL- Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.
 - (B) MAXIMUM AMOUNT- No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.
- (3) CARRYOVER OF AMOUNTS-
 - (A) FIRST SUCCEEDING FISCAL YEAR- Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.
 - (B) SECOND SUCCEEDING FISCAL YEAR- Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 1433 (from their allotments under this section) during such second succeeding fiscal year.

20 USC 1444. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.

FEDERAL REGULATIONS

34 Code of Federal Regulations (CFR), Part 303, Early Intervention Program for Infants and Toddlers with Disabilities provides specific guidance on the requirements for Part C of IDEA. [View comments to the federal regulations.](#)

Last amended 2022.

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34 Code of Federal Regulations

Part 303—Regulations for the Early Intervention Program for Infants and Toddlers with Disabilities

Subpart A—General Purpose and Applicable Regulations

§303.1 Purpose of the early intervention program for infants and toddlers with disabilities.

The purpose of this part is to provide financial assistance to States to—

- (a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
- (b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);
- (c) Enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families;
- (d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and
- (e) Encourage States to expand opportunities for children under three years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

Authority: 20 U.S.C. 1400(d)(2), 1431(a)(5), 1431(b).

§303.2 Eligible recipients of an award and applicability of this part.

- (a) Eligible recipients of an award. Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.
- (b) Applicability of this part.
 - (1) The provisions of this part apply to—

- (i) The State lead agency and any EIS provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act; and
 - (ii) All children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in §§303.6 and 303.21, and their families.
- (2) The provisions of this part do not apply to any child with a disability receiving a free appropriate public education or FAPE under 34 CFR Part 300.

Authority: 20 U.S.C. 1401(31), 1434, 1435(a)(10)(A).

§303.3 Applicable regulations.

- (a) The following regulations apply to this part:
 - (1) The regulations in this Part 303.
 - (2) The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.
- (b) In applying the regulations cited in paragraph (a)(2) of this section, any reference to—
 - (1) State educational agency means the lead agency under this part; and
 - (2) Education records or records means early intervention records.

Authority: 20 U.S.C. 1221(b), 1221e-3, 1431-1444.

Definitions Used in This Part

§303.4 Act.

Act means the Individuals with Disabilities Education Act, as amended.

Authority: 20 U.S.C. 1400(a).

§303.5 At-risk infant or toddler.

At-risk infant or toddler means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. At the State's discretion, at-risk infant or toddler may include an infant or toddler who is at risk of experiencing developmental delays because of biological or environmental factors that can be identified (including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly

affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure).

Authority: 20 U.S.C. 1432(1), 1432(5)(B)(i) and 1437(a)(6).

§303.6 Child.

Child means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in §303.21.

Authority: 20 U.S.C. 1432(5).

§303.7 Consent.

Consent means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, as defined in §303.25;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- (c) (c)
 - (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
 - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

Authority: 20 U.S.C. 1439.

§303.8 Council.

Council means the State Interagency Coordinating Council that meets the requirements of subpart G of this part.

Authority: 20 U.S.C. 1432(2).

§303.9 Day.

Day means calendar day, unless otherwise indicated.

Authority: 20 U.S.C. 1221e-3.

§303.10 Developmental delay.

Developmental delay, when used with respect to a child residing in a State, has the meaning given that term by the State under §303.111.

Authority: 20 U.S.C. 1432(3).

§303.11 Early intervention service program.

Early intervention service program or EIS program means an entity designated by the lead agency for reporting under §§303.700 through 303.702.

Authority: 20 U.S.C. 1416, 1431–1444.

§303.12 Early intervention service provider.

- (a) Early intervention service provider or EIS provider means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives Federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under Part C of the Act.
- (b) An EIS provider is responsible for—
 - (1) Participating in the multidisciplinary individualized family service plan (IFSP) Team’s ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant’s or toddler’s family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;
 - (2) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
 - (3) Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

Authority: 20 U.S.C. 1431-1444.

§303.13 Early intervention services.

- (a) General. Early intervention services means developmental services that—
 - (1) Are provided under public supervision;
 - (2) Are selected in collaboration with the parents;
 - (3) Are provided at no cost, except, subject to §§303.520 and 303.521, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

- (4) Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP Team, in any one or more of the following areas, including—
 - (i) Physical development;
 - (ii) Cognitive development;
 - (iii) Communication development;
 - (iv) Social or emotional development; or
 - (v) Adaptive development;
 - (5) Meet the standards of the State in which the early intervention services are provided, including the requirements of Part C of the Act;
 - (6) Include services identified under paragraph (b) of this section;
 - (7) Are provided by qualified personnel (as that term is defined in §303.31), including the types of personnel listed in paragraph (c) of this section;
 - (8) To the maximum extent appropriate, are provided in natural environments, as defined in §303.26 and consistent with §§303.126 and 303.344(d); and
 - (9) Are provided in conformity with an IFSP adopted in accordance with section 636 of the Act and §303.20.
- (b) Types of early intervention services. Subject to paragraph (d) of this section, early intervention services include the following services defined in this paragraph:
- (1) Assistive technology device and service are defined as follows:
 - (i) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.
 - (ii) Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—
 - (A) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;
 - (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;
 - (C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

- (D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and
 - (F) Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.
- (2) Audiology services include—
- (i) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;
 - (ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;
 - (iii) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;
 - (iv) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;
 - (v) Provision of services for prevention of hearing loss; and
 - (vi) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.
- (3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.
- (4) Health services has the meaning given the term in §303.16.
- (5) Medical services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.
- (6) Nursing services include—
- (i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;
 - (ii) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
 - (iii) The administration of medications, treatments, and regimens prescribed by a licensed physician.

- (7) Nutrition services include—
 - (i) Conducting individual assessments in—
 - (A) Nutritional history and dietary intake;
 - (B) Anthropometric, biochemical, and clinical variables;
 - (C) Feeding skills and feeding problems; and
 - (D) Food habits and food preferences;
 - (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and
 - (iii) Making referrals to appropriate community resources to carry out nutrition goals.
- (8) Occupational therapy includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—
 - (i) Identification, assessment, and intervention;
 - (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
 - (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- (9) Physical therapy includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—
 - (i) Screening, evaluation, and assessment of children to identify movement dysfunction;
 - (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for, movement dysfunction and related functional problems.
- (10) Psychological services include—
 - (i) Administering psychological and developmental tests and other assessment procedures;
 - (ii) Interpreting assessment results;

- (iii) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
 - (iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
- (11) Service coordination services has the meaning given the term in §303.34.
- (12) Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.
- (13) Social work services include—
- (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
 - (ii) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;
 - (iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;
 - (iv) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and
 - (v) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.
- (14) Special instruction includes—
- (i) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
 - (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;
 - (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
 - (iv) Working with the infant or toddler with a disability to enhance the child's development.
- (15) Speech-language pathology services include—

- (i) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
 - (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and
 - (iii) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.
- (16) Transportation and related costs include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.
- (17) Vision services mean—
 - (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;
 - (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
 - (iii) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.
- (c) Qualified personnel. The following are the types of qualified personnel who provide early intervention services under this part:
 - (1) Audiologists.
 - (2) Family therapists.
 - (3) Nurses.
 - (4) Occupational therapists.
 - (5) Orientation and mobility specialists.
 - (6) Pediatricians and other physicians for diagnostic and evaluation purposes.
 - (7) Physical therapists.
 - (8) Psychologists.
 - (9) Registered dietitians.
 - (10) Social workers.
 - (11) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness).
 - (12) Speech and language pathologists.
 - (13) Vision specialists, including ophthalmologists and optometrists.
- (d) Other services. The services and personnel identified and defined in paragraphs (b) and (c) of this section do not comprise exhaustive lists of the types of services that

may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in this section prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in paragraph (a) of this section or of another type of personnel that may provide early intervention services in accordance with this part, provided such personnel meet the requirements in §303.31.

Authority: 20 U.S.C. 1432(4).

§303.14 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

Authority: 20 U.S.C. 1401(6).

§303.15 Free appropriate public education.

Free appropriate public education or FAPE, as used in §§303.211, 303.501, and 303.521, means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the State educational agency (SEA), including the requirements of Part B of the Act;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

Authority: 20 U.S.C. 1401(9).

§303.16 Health services.

- (a) Health services mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this part during the time that the child is eligible to receive early intervention services.
- (b) The term includes—

- (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
 - (2) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.
- (c) The term does not include—
- (1) Services that are—
 - (i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);
 - (ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or
 - (iii) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
 - (A) Nothing in this part limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.
 - (B) Nothing in this part prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;
 - (2) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and
 - (3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

Authority: 20 U.S.C. 1432(4).

§303.17 Homeless children.

Homeless children means children who meet the definition given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

Authority: 20 U.S.C. 1401(11).

§303.18 Include; including.

Include or including means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Authority: 20 U.S.C. 1221e-3.

§303.19 Indian; Indian tribe.

- (a) Indian means an individual who is a member of an Indian tribe.
- (b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).
- (c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian Tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

Authority: 20 U.S.C. 1401(12)-(13).

§303.20 Individualized family service plan.

Individualized family service plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant's or toddler's family that—

- (a) Is based on the evaluation and assessment described in §303.321;
- (b) Includes the content specified in §303.344;
- (c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with §303.420); and
- (d) Is developed in accordance with the IFSP procedures in §§303.342, 303.343, and 303.345.

Authority: 20 U.S.C. 1401(15), 1435(a)(4), 1436).

§303.21 Infant or toddler with a disability.

- (a) Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual—
 - (1) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- (i) Cognitive development.
 - (ii) Physical development, including vision and hearing.
 - (iii) Communication development.
 - (iv) Social or emotional development.
 - (v) Adaptive development; or
- (2) Has a diagnosed physical or mental condition that--
 - (i) Has a high probability of resulting in developmental delay; and
 - (ii) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.
- (b) Infant or toddler with a disability may include, at a State's discretion, an at-risk infant or toddler (as defined in §303.5).
- (c) Infant or toddler with a disability may include, at a State's discretion, a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part until the child enters, or is eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include—
 - (1) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children ages three and older who receive Part C services pursuant to §303.211; and
 - (2) A written notification to parents of a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619 of the Act.

Authority: 20 U.S.C. 1401(16), 1432(5).

§303.22 Lead agency.

Lead agency means the agency designated by the State's Governor under section 635(a)(10) of the Act and §303.120 that receives funds under section 643 of the Act to administer the State's responsibilities under Part C of the Act.

Authority: 20 U.S.C. 1435(a)(10).

§303.23 Local educational agency.

- (a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.
- (b) Educational service agencies and other public institutions or agencies. The term includes the following:
 - (1) Educational service agency, defined as a regional public multiservice agency—
 - (i) Authorized by State law to develop, manage, and provide services or programs to LEAs; and
 - (ii) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.
 - (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.
 - (3) Entities that meet the definition of intermediate educational unit or IEU in section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition an intermediate educational unit or IEU means any public authority other than an LEA that—
 - (i) Is under the general supervision of a State educational agency;
 - (ii) Is established by State law for the purpose of providing FAPE on a regional basis; and
 - (iii) Provides special education and related services to children with disabilities within the State.
- (c) BIE-funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

Authority: 20 U.S.C. 1401(5), 1401(19).

§303.24 Multidisciplinary.

Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to—

- (a) Evaluation of the child in §§303.113 and 303.321(a)(1)(i) and assessments of the child and family in §303.321(a)(1)(ii), may include one individual who is qualified in more than one discipline or profession; and
- (b) The IFSP Team in §303.340 must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with §303.343(a)(1)(iv)).

Authority: 20 U.S.C. 1221e-3, 1435(a)(3), 1436(a)(1), 1436(a)(3).

§303.25 Native language.

- (a) Native language, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means—
 - (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section; and
 - (2) For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
- (b) Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

Authority: 20 U.S.C. 1401(20).

§303.26 Natural environments.

Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of §303.126.

Authority: 20 U.S.C. 1432, 1435, 1436.

§303.27 Parent.

- (a) Parent means—

- (1) A biological or adoptive parent of a child;
 - (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - (3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);
 - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - (5) A surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.
- (b)
- (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.
 - (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

Authority: 20 U.S.C. 1401(23), 1439(a)(5).

§303.28 Parent training and information center.

Parent training and information center means a center assisted under section 671 or 672 of the Act.

Authority: 20 U.S.C. 1401(25).

§303.29 Personally identifiable information.

Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in this part and any reference to "school" means "EIS provider" as used in this part.

Authority: 20 U.S.C. 1415, 1439.

§303.30 Public agency.

As used in this part, public agency means the lead agency and any other agency or political subdivision of the State.

Authority: 20 U.S.C. 1435(a)(10).

§303.31 Qualified personnel.

Qualified personnel means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

Authority: 20 U.S.C. 1432(4)(F).

§303.32 Reserved.

§303.33 Secretary.

Secretary means the Secretary of Education.

Authority: 20 U.S.C. 1401(28)

§303.34 Service coordination services (case management).

(a) General.

- (1) As used in this part, service coordination services mean services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under this part.
- (2) Each infant or toddler with a disability and the child's family must be provided with one service coordinator who is responsible for—
 - (i) Coordinating all services required under this part across agency lines; and
 - (ii) Serving as the single point of contact for carrying out the activities described in paragraphs (a)(3) and (b) of this section.
- (3) Service coordination is an active, ongoing process that involves--
 - (i) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this part; and

- (ii) Coordinating the other services identified in the IFSP under §303.344(e) that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.
- (b) Specific service coordination services. Service coordination services include—
 - (1) Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;
 - (2) Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;
 - (3) Coordinating evaluations and assessments;
 - (4) Facilitating and participating in the development, review, and evaluation of IFSPs;
 - (5) Conducting referral and other activities to assist families in identifying available EIS providers;
 - (6) Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner;
 - (7) Conducting follow-up activities to determine that appropriate Part C services are being provided;
 - (8) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources;
 - (9) Coordinating the funding sources for services required under this part; and
 - (10) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.
- (c) Use of the term service coordination or service coordination services. The lead agency's or an EIS provider's use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act—Medicaid), for purposes of claims in compliance with the requirements of §§303.501 through 303.521 (Payor of last resort provisions).

Authority: 20 U.S.C. 1432(4), 1435(a)(4), 1436(d)(7), 1440.

§303.35 State.

Except as provided in §303.732(d)(3) (regarding State allotments under this part), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Authority: 20 U.S.C. 1401(31).

§303.36 State educational agency.

- (a) State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.
- (b) The term includes the agency that receives funds under sections 611 and 619 of the Act to administer the State's responsibilities under Part B of the Act.

Authority: 20 U.S.C. 1401(32).

§303.37 Ward of the State.

- (a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is—
 - (1) A foster child;
 - (2) A ward of the State; or
 - (3) In the custody of a public child welfare agency.
- (b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §303.27.

Authority: 20 U.S.C. 1401(36).

Subpart B—State Eligibility for a Grant and Requirements for a Statewide System

General Authority and Eligibility

§303.100 General authority.

The Secretary, in accordance with Part C of the Act, makes grants to States (from their allotments under section 643 of the Act) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

Authority: 20 U.S.C. 1433.

§303.101 State eligibility—requirements for a grant under this part.

In order to be eligible for a grant under Part C of the Act for any fiscal year, a State must meet the following conditions:

- (a) Assurances regarding early intervention services and a statewide system. The State must provide assurances to the Secretary that—
 - (1) The State has adopted a policy that appropriate early intervention services, as defined in §303.13, are available to all infants and toddlers with disabilities in the State and their families, including—
 - (i) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State;
 - (ii) Infants and toddlers with disabilities who are homeless children and their families; and
 - (iii) Infants and toddlers with disabilities who are wards of the State; and
 - (2) The State has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in §§303.111 through 303.126.
- (b) State application and assurances. The State must provide information and assurances to the Secretary, in accordance with subpart C of this part, including—
 - (1) Information that shows that the State meets the State application requirements in §§303.200 through 303.212; and
 - (2) Assurances that the State also meets the requirements in §§303.221 through 303.227.
- (c) Approval before implementation. The State must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the State's application in §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1434, 1435, 1437.

State Conformity with Part C of the Act and Abrogation of State Sovereign Immunity

§303.102 State conformity with Part C of the Act.

Each State that receives funds under Part C of the Act must ensure that any State rules, regulations, and policies relating to this part conform to the purposes and requirements of this part.

Authority: 20 U.S.C. 1407(a)(1).

§303.103 Abrogation of State sovereign immunity.

- (a) General. A State is not immune under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of Part C of the Act.
- (b) Remedies. In a suit against a State for a violation of Part C of the Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in a suit against any public entity other than a State.
- (c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or part after October 30, 1990, the date of enactment of the Education of the Handicapped Act Amendments of 1990.

Authority: 20 U.S.C. 1403.

Equipment and Construction

§303.104 Acquisition of equipment and construction or alteration of facilities.

- (a) General. If the Secretary determines that a program authorized under Part C of the Act will be improved by permitting program funds to be used to acquire appropriate equipment or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.
- (b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of—
 - (1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities"); or

- (2) Appendix A of subpart 101 19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

Authority: 20 U.S.C. 1404.

Positive Efforts to Employ and Advance Qualified Individuals with Disabilities

§303.105 Positive efforts to employ and advance qualified individuals with disabilities.

Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part C of the Act.

Authority: 20 U.S.C. 1405.

Minimum Components of a Statewide System

§303.110 Minimum components of a statewide system.

Each statewide system (system) must include, at a minimum, the components described in §§303.111 through 303.126.

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Authority: 20 U.S.C. 1435(a).

§303.111 State definition of developmental delay.

Each system must include the State's rigorous definition of developmental delay, consistent with §§303.10 and 303.203(c), that will be used by the State in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must—

- (a) Describe, for each of the areas listed in §303.21(a)(1), the evaluation and assessment procedures, consistent with §303.321, that will be used to measure a child's development; and

- (b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1).

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(1).

§303.112 Availability of early intervention services.

Each system must include a State policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including—

- (a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and
- (b) Infants and toddlers with disabilities who are homeless children and their families.

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Authority: 20 U.S.C. 1435(a)(2).

§303.113 Evaluation, assessment, and nondiscriminatory procedures.

- (a) Subject to paragraph (b) of this section, each system must ensure the performance of—
 - (1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and
 - (2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.
- (b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of §303.321.

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Authority: 20 U.S.C. 1435(a)(3).

§303.114 Individualized family service plan (IFSP).

Each system must ensure, for each infant or toddler with a disability and his or her family in the State, that an IFSP, as defined in §303.20, is developed and

implemented that meets the requirements of §§303.340 through 303.345, and that includes service coordination services, as defined in §303.34.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(4).

§303.115 Comprehensive child find system.

Each system must include a comprehensive child find system that meets the requirements in §§303.302 and 303.303.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(5).

§303.116 Public awareness program.

Each system must include a public awareness program that—

- (a) Focuses on the early identification of infants and toddlers with disabilities; and
- (b) Provides information to parents of infants and toddlers through primary referral sources in accordance with §303.301.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(6).

§303.117 Central directory.

Each system must include a central directory that is accessible to the general public (i.e., through the lead agency's Web site and other appropriate means) and includes accurate, up-to-date information about—

- (a) Public and private early intervention services, resources, and experts available in the State;
- (b) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and
- (c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(7).

§303.118 Comprehensive system of personnel development (CSPD).

Each system must include a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State. A comprehensive system of personnel development—

(a) Must include—

- (1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;
- (2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and
- (3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

(b) May include—

- (1) Training personnel to work in rural and inner-city areas;
- (2) Training personnel in the emotional and social development of young children; and
- (3) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and
- (4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(8).

§303.119 Personnel standards.

- (a) General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel

necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

- (b) Qualification standards. The policies and procedures required in paragraph (a) of this section must provide for the establishment and maintenance of qualification standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.
- (c) Use of paraprofessionals and assistants. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.
- (d) Policy to address shortage of personnel. A State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraphs (a) and (b) of this section.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(9), 1435(b).

§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.

Each system must include a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following:

- (a)
 - (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.
 - (2) The monitoring of programs and activities used by the State to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act), to ensure that the State complies with Part C of the Act, including—

- (i) Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out Part C of the Act;
 - (ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these regulations;
 - (iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;
 - (iv) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and
 - (v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with §§303.700 through 303.707, and any other activities required by the State under those sections.
- (b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of this part.
- (c) The assignment of financial responsibility in accordance with subpart F of this part.
- (d) The development of procedures in accordance with subpart F of this part to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.
- (e) The resolution of intra- and interagency disputes in accordance with subpart F of this part.
- (f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1416, 1435(a)(10), 1442.

§303.121 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must—

- (a) Include a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part; and
- (b) Be consistent with the Education Department General Administrative Regulations in 34 CFR part 80.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(11).

§303.122 Reimbursement procedures.

Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(12), 1440(a).

§303.123 Procedural safeguards.

Each system must include procedural safeguards that meet the requirements of subpart E of this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(13), 1439.

§303.124 Data collection.

- (a) Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in paragraph (b) of this section and §§303.700 through 303.702 and 303.720 through 303.724.
- (b) The data system required in paragraph (a) of this section must include a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this part, including a description of the State's sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.

Approved by Office of Management and Budget under control number 1820 0550, 1820-0557 and 1820-0578.

Authority: 20 U.S.C. 1416, 1418(a)-(c), 1435(a)(14), 1442)

§303.125 State interagency coordinating council.

Each system must include a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(15).

§303.126 Early intervention services in natural environments.

Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided--

- (a) To the maximum extent appropriate, in natural environments; and
- (b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(a)(16).

Subpart C—State Application and Assurances General

§303.200 State application and assurances.

Each application must contain—

- (a) The specific State application requirements (including certifications, descriptions, methods, and policies and procedures) required in §§303.201 through 303.212; and
- (b) The assurances required in §§303.221 through 303.227.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437

Application Requirements

§303.201 Designation of lead agency.

Each application must include the name of the State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(a)(1).

§303.202 Certification regarding financial responsibility.

Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(a)(2)

§303.203 Statewide system and description of services.

Each application must include—

- (a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State's system;
- (b) The State's policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart F of this part and including—
 - (1) Policies or procedures adopted by the State as its system of payments that meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees); and
 - (2) Methods used by the State to implement the requirements in §303.511(b)(2) and (b)(3); and
- (c) The State's rigorous definition of developmental delay as required under §§303.10 and 303.111.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1432(3), 1432(4)(B), 1432(4)(C), 1435(a)(1), 1435(a)(10)(B), 1437(a)(3), 1440.

§303.204 Application's definition of at-risk infants and toddlers and description of services.

If the State provides services under this part to at-risk infants and toddlers through the statewide system, the application must include—

- (a) The State's definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under Part C of the Act (consistent with §§303.5 and 303.21(b)); and
- (b) A description of the early intervention services provided under this part to at-risk infants and toddlers with disabilities who meet the State's definition described in paragraph (a) of this section.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(a)(4).

§303.205 Description of use of funds.

- (a) General. Each State application must include a description of the uses for funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council and include the information required in paragraphs (b) through (e) of this section.
- (b) State administration funds including administrative positions. For lead agencies other than State educational agencies (SEAs), each application must include the total—
 - (1) Amount of funds retained by the lead agency for administration purposes, including the amount in paragraph (b)(2) of this section; and
 - (2) Number of full-time equivalent administrative positions to be used to implement Part C of the Act, and the total amount of salaries (including benefits) for those positions.
- (c) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.

- (d) Direct services. Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.
- (e) Activities by other public agencies. If other public agencies are to receive funds under this part, the application must include--
 - (1) The name of each agency expected to receive funds;
 - (2) The approximate amount of funds each agency will receive; and
 - (3) A summary of the purposes for which the funds will be used.

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Authority: 20 U.S.C. 1435(a)(10)(B), 1435(a)(10)(F), 1437(a)(3), 1437(a)(5)

§303.206 Referral policies for specific children.

Each application must include the State's policies and procedures that require the referral for early intervention services under this part of specific children under the age of three, as described in §303.303(b).

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1412(a)(3)(A), 1431, 1434(1), 1435(a)(2), 1435(a)(5), 1435(c)(2)(G), 1437(a)(6), 1437(a)(10), 1441.

§303.207 Availability of resources.

Each application must include a description of the procedure used by the State to ensure that resources are made available under this part for all geographic areas within the State.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(a)(7).

§303.208 Public participation policies and procedures.

- (a) Application. At least 60 days prior to being submitted to the Department, each application for funds under this part (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the State for at

least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

- (b) State Policies and Procedures. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations, the lead agency—
- (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);
 - (2) Provides notice of the hearings held in accordance with paragraph (b)(1) of this section at least 30 days before the hearings are conducted to enable public participation; and
 - (3) Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1231d, 1221e-3, 1437(a)(8).

§303.209 Transition to preschool and other programs.

- (a) Application requirements. Each State must include the following in its application:
- (1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to—
 - (i) Preschool or other appropriate services (for toddlers with disabilities); or
 - (ii) Exiting the program for infants and toddlers with disabilities.
 - (2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section.
 - (3)
 - (i)
 - (A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or
 - (B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act.
 - (ii) To ensure a seamless transition between services under this part and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph

(a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f), and 300.323(b).

(4) Any policy the lead agency has adopted under §303.401(d) and (e).

(b) Notification to the SEA and appropriate LEA.

(1) The State lead agency must ensure that—

- (i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;
- (ii) Subject to paragraph (b)(2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the lead agency, as soon as possible after determining the child's eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or
- (iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

(2) The State must ensure that the notification required under paragraphs (b)(1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

(c) Conference to discuss services. The State lead agency must ensure that—

- (1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days—and, at the discretion of all parties, not more than 9

months—before the toddler’s third birthday to discuss any services the toddler may receive under Part B of the Act; and.

- (2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.
- (d) Transition plan. The State lead agency must ensure that for all toddlers with disabilities—
- (1)
 - (i) It reviews the program options for the toddler with a disability for the period from the toddler’s third birthday through the remainder of the school year; and
 - (ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and §303.344(h);
 - (2) It establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the toddler’s third birthday; and
 - (3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate—
 - (i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and
 - (ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.
- (e) Transition conference and meeting to develop transition plan. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).
- (f) Applicability of transition requirements.
- (1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under §303.211.
 - (2) In a State that offers services under §303.211, for toddlers with disabilities identified in §303.209(b)(1)(i), the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section:

- (i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler's options to continue to receive early intervention services under this part or preschool services under section 619 of the Act.
- (ii) The initial annual notice referenced in §303.211(b)(1).
- (3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).

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Authority: 20 U.S.C. 1412(a)(3) and (a)(9), 1436(a)(3), 1437(a)(9).

§303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.

- (a) Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq, as amended), early education and child care programs, and services under this part.

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- (b) The State lead agency must participate, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act, on the State Advisory Council on Early Childhood Education and Care established under the Head Start Act.

Authority: 20 U.S.C. 1437(a)(10).

§303.211 State option to make services under this part available to children ages three and older.

- (a) General.
 - (1) Subject to paragraphs (a)(2) and (b) of this section, a State may elect to include in its application for a grant under this part a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under this part, may choose the continuation of early intervention services under this part for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school.
 - (2) A State that adopts the policy described in paragraph (a)(1) of this section may determine whether it applies to children with disabilities—

- (i) From age three until the beginning of the school year following the child's third birthday;
 - (ii) From age three until the beginning of the school year following the child's fourth birthday; or
 - (iii) From age three until the beginning of the school year following the child's fifth birthday.
- (3) In no case may a State provide services under this section beyond the age at which the child actually enters, or is eligible under State law to enter, kindergarten or elementary school in the State.
- (b) Requirements. If a State's application for a grant under this part includes the State policy described in paragraph (a) of this section, the system must ensure the following:
 - (1) Parents of children with disabilities who are eligible for services under section 619 of the Act and who previously received early intervention services under this part will be provided an annual notice that contains —
 - (i) A description of the rights of the parents to elect to receive services pursuant to this section or under Part B of the Act; and
 - (ii) An explanation of the differences between services provided pursuant to this section and services provided under Part B of the Act, including—
 - (A) The types of services and the locations at which the services are provided;
 - (B) The procedural safeguards that apply; and
 - (C) Possible costs (including the costs or fees to be charged to families as described in §§303.520 and 303.521), if any, to parents of children eligible under this part.
 - (2) Consistent with §303.344(d), services provided pursuant to this section will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills.
 - (3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as that term is defined at §303.15) under Part B of the Act instead of early intervention services under Part C of the Act.
 - (4) The lead agency must continue to provide all early intervention services identified in the toddler with a disability's IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR 300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under 34 CFR 300.300(a) and the parent has not provided that consent.
 - (5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this

section for that child. Consent must be obtained before the child reaches three years of age, where practicable.

- (6)
 - (i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition requirements in §303.209(b)(1)(i) and (b)(1)(ii), (c)(1), and (d) are met.
 - (ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by—
 - (A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or will no longer receive, early intervention services under this section;
 - (B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days--and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section, to discuss any services that the child may receive under Part B of the Act; and
 - (C) Establishing a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section.
- (7) In States that adopt the option to make services under this part available to children ages three and older pursuant to this section, there will be a referral to the Part C system, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.
- (c) Reporting requirement. If a State includes in its application a State policy described in paragraph (a) of this section, the State must submit to the Secretary, in the State's report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under this part.
- (d) Available funds. The State policy described in paragraph (a) of this section must describe the funds—including an identification as Federal, State, or local funds—that

will be used to ensure that the option described in paragraph (a) of this section is available to eligible children and families who provide the consent described in paragraph (b)(5) of this section, including fees, if any, to be charged to families as described in §§303.520 and 303.521.

(e) Rules of construction.

- (1) If a statewide system includes a State policy described in paragraph (a) of this section, a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under Part B of the Act for the period of time in which the child is receiving services under this part.
- (2) Nothing in this section may be construed to require a provider of services under this part to provide a child served under this part with FAPE.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1435(c), 1437(a)(11).

§303.212 Additional information and assurances.

Each application must contain—

- (a) A description of the steps the State is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by section 427(b) of GEPA; and
- (b) Other information and assurances as the Secretary may reasonably require.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1228a(b), 1437(a)(11).

Assurances

§303.220 Assurances satisfactory to the Secretary.

Each application must contain assurances satisfactory to the Secretary that the State has met the requirements in §§303.221 through 303.227.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b).

§303.221 Expenditure of funds.

The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§303.500 and 303.501.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b)(1).

§303.222 Payor of last resort.

The State must ensure that it will comply with the requirements in §§303.510 and 303.511 in subpart F of this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b)(2).

§303.223 Control of funds and property.

The State must ensure that—

- (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and
- (b) A public agency will administer the funds and property.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b)(3)

§303.224 Reports and records.

The State must ensure that it will—

- (a) Make reports in the form and containing the information that the Secretary may require; and
- (b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b)(4).

§303.225 Prohibition against supplanting; indirect costs.

- (a) Each application must provide satisfactory assurance that the Federal funds made available under section 643 of the Act to the State:
 - (1) Will not be commingled with State funds; and
 - (2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.
- (b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—
 - (1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and
 - (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.
- (c) Requirement regarding indirect costs.
 - (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant.
 - (2) If approved by the lead agency's cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either—
 - (i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or
 - (ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.
 - (3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b)(5).

§303.226 Fiscal control.

The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1437(b)(6)

§303.227 Traditionally underserved groups.

The State must ensure that policies and practices have been adopted to ensure—

- (a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of this part; and
- (b) That these families have access to culturally competent services within their local geographical areas.

Approved by Office of Management and Budget under control number 1820-0550.

Authority: 20 U.S.C. 1231d, 1437(b)(7).

Subsequent Applications and Modifications, Eligibility Determinations, and Standard of Disapproval

§303.228 Subsequent State application and modifications of application.

- (a) Subsequent State application. If a State has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the State meets an application requirement in this part, including any policy, procedure, method, or assurance filed under this part (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.
- (b) Modification of application. An application submitted by a State that meets the requirements of this part remains in effect until the State submits to the Secretary such modifications as the State determines necessary. This section applies to a modification of an application to the same extent and in the same manner as this paragraph applies to the original application.

- (c) Modifications required by the Secretary. The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if—
- (1) An amendment is made to the Act or to a Federal regulation issued under the Act;
 - (2) A new interpretation of the Act is made by a Federal court or the State's highest court; or
 - (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.

Authority: 20 U.S.C. 1437(d)–(f).

§303.229 Determination by the Secretary that a State is eligible.

If the Secretary determines that a State is eligible to receive a grant under Part C of the Act, the Secretary notifies the State of that determination.

Authority: 20 U.S.C. 1437.

§303.230 Standard for disapproval of an application.

The Secretary does not disapprove an application under this part unless the Secretary determines, after notice and opportunity for a hearing in accordance with the procedures in §§303.231 through 303.236, that the application fails to comply with the requirements of this part.

Authority: 20 U.S.C. 1437(c).

Department Procedures

§303.231 Notice and hearing before determining that a State is not eligible.

(a) General.

- (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part C of the Act until providing the State—
 - (i) Reasonable notice; and
 - (ii) An opportunity for a hearing.
- (2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the lead agency by certified mail with a return receipt requested.

- (b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary—
- (1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;
 - (2) May describe possible options for resolving the issues;
 - (3) Advises the lead agency that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and
 - (4) Provides the lead agency with information about the hearing procedures that will be followed.

Authority: 20 U.S.C. 1437(c).

§303.232 Hearing Official or Panel.

- (a) If the lead agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.
- (b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

Authority: 20 U.S.C. 1437(c).

§303.233 Hearing procedures.

- (a) As used in §§303.231 through 303.235, the term party or parties means any of the following:
- (1) A lead agency that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.
 - (2) The Department official who administers the program of financial assistance under this part.
 - (3) A person, group, or agency with an interest in, and having relevant information about, the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.
- (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.
- (c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

- (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.
- (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.
- (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.
- (4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as—
 - (i) Narrowing and clarifying issues;
 - (ii) Assisting the parties in reaching agreements and stipulations;
 - (iii) Clarifying the positions of the parties;
 - (iv) Determining whether an evidentiary hearing or oral argument should be held; and
 - (v) Setting dates for—
 - (A) The exchange of written documents;
 - (B) The receipt of comments from the parties on the need for oral argument or an evidentiary hearing;
 - (C) Further proceedings before the Hearing Official or Hearing Panel, including an evidentiary hearing or oral argument, if either is scheduled;
 - (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and an estimation of time for each presentation; and
 - (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.
- (5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call.
- (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (c)(4) of this section.
- (7) Following a prehearing or other conference, the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.
- (d) The Hearing Official or Hearing Panel may require the parties to state their positions and to provide all or part of their evidence in writing.
- (e) The Hearing Official or Hearing Panel may require the parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

- (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents, information, and lists of witnesses, and to send copies to the Hearing Official or Hearing Panel.
- (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.
- (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.
- (i) The Hearing Official or Hearing Panel may examine witnesses.
- (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.
- (k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.
- (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.
- (m)
 - (1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel must determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.
 - (2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.
- (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel—
 - (1) An opportunity to present witnesses on the party's behalf; and
 - (2) An opportunity to cross-examine witnesses either orally or with written questions.
- (o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.
- (p)
 - (1) The Hearing Official or Hearing Panel—
 - (i) Arranges for the preparation of a transcript of each hearing;
 - (ii) Retains the original transcript as part of the record of the hearing; and
 - (iii) Provides one copy of the transcript to each party.
 - (2) Additional copies of the transcript are available on request and with payment of the reproduction fee.
- (q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.

Authority: 20 U.S.C. 1437(c).

§303.234 Initial decision; final decision.

- (a) The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the lead agency under §303.231, including any amendments to or further clarification of the issues under §303.233(c).
- (b) The initial decision of a Hearing Panel is made by a majority of Hearing Panel members.
- (c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.
- (d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel's decision.
- (e) The Hearing Official or Hearing Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations.
- (f) The Hearing Official or Hearing Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.
- (g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.
- (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous.
- (i) The Secretary conducts the review based on the initial decision, the written record, the transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.
- (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings.
- (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.

Authority: 20 U.S.C. 1437(c).

§303.235 Filing requirements.

- (a) Any written submission by a party under §§303.230 through 303.236 must be filed with the Secretary by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.
- (b) The filing date under paragraph (a) of this section is the date the document is—
 - (1) Hand-delivered;
 - (2) Mailed; or
 - (3) Sent by facsimile transmission.
- (c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.
- (d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.
- (e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

Authority: 20 U.S.C. 1437(c).

§303.236 Judicial review.

If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under Part C of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the Secretary's action was based, as provided in 28 U.S.C. 2112.

Authority: 20 U.S.C. 1437(c).

Subpart D—Child Find, Evaluations and Assessments, and Individualized Family Service Plans

§303.300 General.

The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in §303.100 must include the following components:

- (a) Pre-referral policies and procedures that include—
 - (1) A public awareness program as described in §303.301; and
 - (2) A comprehensive child find system as described in §303.302.
- (b) Referral policies and procedures as described in §303.303.
- (c) Post-referral policies and procedures that ensure compliance with the timeline requirements in §303.310 and include—
 - (1) Screening, if applicable, as described in §303.320;
 - (2) Evaluations and assessments as described in §§303.321 and 303.322; and
 - (3) Development, review, and implementation of IFSPs as described in §§303.340 through 303.346.

Pre-Referral Procedures—Public Awareness Program and Child Find System

§303.301 Public awareness program—information for parents.

- (a) Preparation and dissemination. In accordance with §303.116, each system must include a public awareness program that requires the lead agency to—
 - (1)
 - (i) Prepare information on the availability of early intervention services under this part, and other services, as described in paragraph (b) of this section; and
 - (ii) Disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and
 - (2) Adopt procedures for assisting the primary referral sources described in §303.303(c) in disseminating the information described in paragraph (b) of this section to parents of infants and toddlers with disabilities.
- (b) Information to be provided. The information required to be prepared and disseminated under paragraph (a) of this section must include—

- (1) A description of the availability of early intervention services under this part;
 - (2) A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and
 - (3) A central directory, as described in §303.117.
- (c) Information specific to toddlers with disabilities. Each public awareness program also must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

Authority: 20 U.S.C. 1435(a)(6), 1437(a)(9).

§303.302 Comprehensive child find system.

- (a) General. Each system must include a comprehensive child find system that—
- (1) Is consistent with Part B of the Act (see 34 CFR 300.111);
 - (2) Includes a system for making referrals to lead agencies or EIS providers under this part that—
 - (i) Includes timelines; and
 - (ii) Provides for participation by the primary referral sources described in §303.303(c);
 - (3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this part that will reduce the need for future services; and
 - (4) Meets the requirements in paragraphs (b) and (c) of this section and §§303.303, 303.310, 303.320, and 303.321.
- (b) Scope of child find. The lead agency, as part of the child find system, must ensure that—
- (1) All infants and toddlers with disabilities in the State who are eligible for early intervention services under this part are identified, located, and evaluated, including—
 - (i) Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the State based, in part, on the information provided by them to the lead agency under §303.731(e)(1)); and
 - (ii) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and
 - (iii) Infants and toddlers with disabilities that are referenced in §303.303(b); and
 - (2) An effective method is developed and implemented to identify children who are in need of early intervention services.

(c) Coordination.

- (1) The lead agency, with the assistance of the Council, as defined in §303.8, must ensure that the child find system under this part—
 - (i) Is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including Indian tribes that receive payments under this part, and other Indian tribes, as appropriate; and
 - (ii) Is coordinated with the efforts of the—
 - (A) Program authorized under Part B of the Act;
 - (B) Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a);
 - (C) Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));
 - (D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
 - (E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);
 - (F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
 - (G) Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a);
 - (H) Child care programs in the State;
 - (I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);
 - (J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and
 - (K) Children’s Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).
- (2) The lead agency, with the advice and assistance of the Council, must take steps to ensure that—
 - (i) There will not be unnecessary duplication of effort by the programs identified in paragraph (c)(1)(ii) of this section; and

- (ii) The State will make use of the resources available through each public agency and EIS provider in the State to implement the child find system in an effective manner.

Authority: 20 U.S.C. 1412(a)(3)(A), 1431, 1434(1), 1435(a)(2), 1435(a)(5), 1435(c)(2)(G), 1437(a)(6), 1437(a)(10), 1441.

Referral Procedures

§303.303 Referral procedures.

(a) General.

- (1) The lead agency's child find system described in §303.302 must include the State's procedures for use by primary referral sources for referring a child under the age of three to the Part C program.
- (2) The procedures required in paragraph (a)(1) of this section must—
 - (i) Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and
 - (ii) Meet the requirements in paragraphs (b) and (c) of this section.

(b) Referral of specific at-risk infants and toddlers. The procedures required in paragraph (a) of this section must provide for requiring the referral of a child under the age of three who—

- (1) Is the subject of a substantiated case of child abuse or neglect; or
- (2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(c) Primary referral sources. As used in this subpart, primary referral sources include—

- (1) Hospitals, including prenatal and postnatal care facilities;
- (2) Physicians;
- (3) Parents, including parents of infants and toddlers;
- (4) Child care programs and early learning programs;
- (5) LEAs and schools;
- (6) Public health facilities;
- (7) Other public health or social service agencies;
- (8) Other clinics and health care providers;
- (9) Public agencies and staff in the child welfare system, including child protective service and foster care;
- (10) Homeless family shelters; and
- (11) Domestic violence shelters and agencies.

Authority: 20 U.S.C. 1412(a)(3)(A), 1431, 1434(1), 1435(a)(2), 1435(a)(5), 1435(a)(6), 1435(c)(2)(G), 1437(a)(6), 1437(a)(10), 1441.

§§303.304–303.309 [Reserved]

Post-Referral Procedures—Screenings, Evaluations, and Assessments

§303.310 Post-referral timeline (45 days).

- (a) Except as provided in paragraph (b) of this section, any screening under §303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under §303.321; and the initial IFSP meeting under §303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child.
- (b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when—
 - (1) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or
 - (2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent.
- (c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must—
 - (1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent;
 - (2) Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and
 - (3) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345.

- (d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the parent concurs and even if other family members are unavailable.

Authority: 20 U.S.C. 1433, 1435(a), 1436(c).

§§303.311–303.319 [Reserved]

§303.320 Screening procedures (optional).

(a) General.

- (1) The lead agency may adopt procedures, consistent with the requirements of this section, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this part. If the lead agency or EIS provider proposes to screen a child, it must—
 - (i) Provide the parent notice under §303.421 of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under §303.321 at any time during the screening process; and
 - (ii) Obtain parental consent as required in §303.420(a)(1) before conducting the screening procedures.
- (2) If the parent consents to the screening and the screening or other available information indicates that the child is—
 - (i) Suspected of having a disability, after notice is provided under §303.421 and once parental consent is obtained as required in §303.420, an evaluation and assessment of the child must be conducted under §303.321; or
 - (ii) Not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent under §303.421, and that the notice describes the parent's right to request an evaluation.
- (3) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under §303.321, even if the lead agency or EIS provider has determined under paragraph (a)(2)(ii) of this section that the child is not suspected of having a disability.

(b) Definition of screening procedures. Screening procedures—

- (1) Means activities under paragraphs (a)(1) and (a)(2) of this section that are carried out by, or under the supervision of, the lead agency or EIS provider to

- identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and
- (2) Includes the administration of appropriate instruments by personnel trained to administer those instruments.
- (c) Condition for evaluation or early intervention services. For every child under the age of three who is referred to the Part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to—
- (1) Provide an evaluation of the child under §303.321 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(3) of this section; or
 - (2) Make early intervention services available under this part to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under §303.21.

Authority: 20 U.S.C. 1432(4)(E)(ix), 1434(1), 1435(a)(2), 1435(a)(5) and (a)(6), 1435(c)(2)(G), 1437(a)(6), 1439(a)(6).

§303.321 Evaluation of the child and assessment of the child and family.

(a) General.

- (1) The lead agency must ensure that, subject to obtaining parental consent in accordance with §303.420(a)(2), each child under the age of three who is referred for evaluation or early intervention services under this part and suspected of having a disability, receives—
 - (i) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with paragraph (b) of this section unless eligibility is established under paragraph (a)(3)(i) of this section; and
 - (ii) If the child is determined eligible as an infant or toddler with a disability as defined in §303.21—
 - (A) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;
 - (B) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in paragraph (c) of this section and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (b) of this section are met.
- (2) As used in this part—

- (i) Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of infant or toddler with a disability in §303.21. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under this part;
 - (ii) Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this part and includes the assessment of the child, consistent with paragraph (c)(1) of this section and the assessment of the child's family, consistent with paragraph (c)(2) of this section; and
 - (iii) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.
- (3)
 - (i) A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child's level of functioning in one or more of the developmental areas identified in §303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under §303.21. If the child's Part C eligibility is established under this paragraph, the lead agency or EIS provider must conduct assessments of the child and family in accordance with paragraph (c) of this section.
 - (ii) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this part even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under paragraph (b) of this section.
- (4) All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.
- (5) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in §303.25.
- (6) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed, in accordance with the definition of native language in §303.25.

- (b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. Procedures must include—
- (1) Administering an evaluation instrument;
 - (2) Taking the child's history (including interviewing the parent);
 - (3) Identifying the child's level of functioning in each of the developmental areas in §303.21(a)(1);
 - (4) Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and
 - (5) Reviewing medical, educational, or other records.
- (c) Procedures for assessment of the child and family.
- (1) An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following—
 - (i) A review of the results of the evaluation conducted under paragraph (b) of this section;
 - (ii) Personal observations of the child; and
 - (iii) The identification of the child's needs in each of the developmental areas in §303.21(a)(1).
 - (2) A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must--
 - (i) Be voluntary on the part of each family member participating in the assessment;
 - (ii) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
 - (iii) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

Authority: 20 U.S.C. 1435(a)(3), 1435(a)(5), 1436(a)(1)-(2).

§303.322 Determination that a child is not eligible.

If, based on the evaluation conducted under §303.321, the lead agency determines that a child is not eligible under this part, the lead agency must provide the parent with prior written notice required in §303.421, and include in the notice

information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under §303.430, such as requesting a due process hearing or mediation or filing a State complaint.

Authority: 20 U.S.C. 1439(a)(6).

Individualized Family Service Plan (IFSP)

§303.340 Individualized family service plan—general.

For each infant or toddler with a disability, the lead agency must ensure the development, review, and implementation of an individualized family service plan or IFSP developed by a multidisciplinary team, which includes the parent, that--

- (a) Is consistent with the definition of that term in §303.20; and
- (b) Meets the requirements in §§303.342 through 303.346 of this subpart.

Authority: 20 U.S.C. 1435(a)(4), 1436.

§303.341 [Reserved]

§303.342 Procedures for IFSP development, review, and evaluation.

- (a) Meeting to develop initial IFSP--timelines. For a child referred to the Part C program and determined to be eligible under this part as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in §303.310.
- (b) Periodic review.
 - (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—
 - (i) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
 - (ii) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.
 - (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.
- (c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under §303.321 must be

used in determining the early intervention services that are needed and will be provided.

(d) Accessibility and convenience of meetings.

(1) IFSP meetings must be conducted—

- (i) In settings and at times that are convenient for the family; and
- (ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(e) Parental consent. The contents of the IFSP must be fully explained to the parents and informed written consent, as described in §303.7, must be obtained, as required in §303.420(a)(3), prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in §303.344(f)(1).

Authority: 20 U.S.C. 1435(a)(4), 1436.

§303.343 IFSP Team meeting and periodic review.

(a) Initial and annual IFSP Team meeting.

(1) Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP must include the following participants:

- (i) The parent or parents of the child.
- (ii) Other family members, as requested by the parent, if feasible to do so.
- (iii) An advocate or person outside of the family, if the parent requests that the person participate.
- (iv) The service coordinator designated by the public agency to be responsible for implementing the IFSP.
- (v) A person or persons directly involved in conducting the evaluations and assessments in §303.321.
- (vi) As appropriate, persons who will be providing early intervention services under this part to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:

- (i) Participating in a telephone conference call.
- (ii) Having a knowledgeable authorized representative attend the meeting.
- (iii) Making pertinent records available at the meeting.

(b) Periodic review. Each periodic review under §303.342(b) must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If

conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

Authority: 20 U.S.C. 1435(a)(4), 1436.

§303.344 Content of an IFSP.

- (a) Information about the child's status. The IFSP must include a statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments conducted under §303.321.
- (b) Family information. With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under §303.321(c)(2).
- (c) Results or outcomes. The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine—
 - (1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
 - (2) Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.
- (d) Early intervention services.
 - (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including—
 - (i) The length, duration, frequency, intensity, and method of delivering the early intervention services;
 - (ii)
 - (A) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.
 - (B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including

any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be—

- (2) Made by the IFSP Team (which includes the parent and other team members);
 - (3) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and
 - (4) Based on the child's outcomes that are identified by the IFSP Team in paragraph (c) of this section;
 - (i) The location of the early intervention services; and
 - (ii) The payment arrangements, if any.
 - (5) As used in paragraph (d)(1)(i) of this section—
 - (i) Frequency and intensity mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;
 - (ii) Method means how a service is provided;
 - (iii) Length means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and
 - (iv) Duration means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).
 - (6) As used in paragraph (d)(1)(iii) of this section, location means the actual place or places where a service will be provided.
 - (7) For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
- (e) Other services. To the extent appropriate, the IFSP also must—
- (1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; and
 - (2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.
- (f) Dates and duration of services. The IFSP must include—
- (1) The projected date for the initiation of each early intervention service in paragraph (d)(1) of this section, which date must be as soon as possible after the parent consents to the service, as required in §§303.342(e) and 303.420(a)(3); and
 - (2) The anticipated duration of each service.
- (g) Service coordinator.

- (1) The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons.
 - (2) In meeting the requirements in paragraph (g)(1) of this section, the term "profession" includes "service coordination."
- (h) Transition from Part C services.
- (1) The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with §§303.209 and 303.211(b)(6), from Part C services to—
 - (i) Preschool services under Part B of the Act, to the extent that those services are appropriate;
 - (ii) Part C services under §303.211; or
 - (iii) Other appropriate services.
 - (2) The steps required in paragraph (h)(1) of this section must include—
 - (i) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
 - (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;
 - (iii) Confirmation that child find information about the child has been transmitted to the LEA or other relevant agency, in accordance with §303.209(b) (and any policy adopted by the State under §303.401(e)) and, with parental consent if required under §303.414, transmission of additional information needed by the LEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with §§303.340 through 303.345; and
 - (iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

Authority: 20 U.S.C. 1435(a)(10)(B), 1435(a)(16), 1436(a)(3), 1436(d), 1437(a)(9)-(10), 1440.

§303.345 Interim IFSPs—provision of services before evaluations and assessments are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in §303.321, if the following conditions are met:

- (a) Parental consent is obtained.
- (b) An interim IFSP is developed that includes—
 - (1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementing the interim IFSP and coordinating with other agencies and persons; and
 - (2) The early intervention services that have been determined to be needed immediately by the child and the child's family.
- (c) Evaluations and assessments are completed within the 45-day timeline in §303.310.

Authority: 20 U.S.C. 1436(c).

§303.346 Responsibility and accountability.

Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

Authority: 20 U.S.C. 1436.

Subpart E—Procedural Safeguards

General

§303.400 General responsibility of lead agency for procedural safeguards.

Subject to paragraph (c) of this section, each lead agency must—

- (a) Establish or adopt the procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality in §§303.401 through 303.417, parental consent and notice in §§303.420 and 303.421, surrogate parents in §303.422, and dispute resolution procedures in §303.430;
- (b) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part; and
- (c) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

Authority: 20 U.S.C. 1439(a).

Confidentiality of Personally Identifiable Information and Early Intervention Records

§303.401 Confidentiality and opportunity to examine records.

- (a) General. Each State must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.
- (b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in effect to ensure that—
 - (1) Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in §§303.401 through 303.417; and
 - (2) The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.
- (c) Applicability and timeframe of procedures. The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that—
 - (1) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and
 - (2) Applies from the point in time when the child is referred for early intervention services under this part until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.
- (d) Disclosure of information.
 - (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA where the child resides, in accordance with §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:
 - (i) A child's name.

- (ii) A child's date of birth.
 - (iii) Parent contact information (including parents' names, addresses, and telephone numbers).
 - (2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under Part B of the Act, to identify all children potentially eligible for services under §303.211 and Part B of the Act.
- (e) Option to inform a parent about intended disclosure.
- (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing.
 - (2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and §303.209(b)(1)(i) and (b)(1)(ii).

Authority: 20 U.S.C. 1412(a)(8), 1412(a)(9), 1417(c), 1435(a)(5), 1437(a)(9), 1439(a)(2), 1439(a)(4), 1439(a)(6), 1442.

§303.402 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and consistent with §§303.401 through 303.417. The regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442.

§303.403 Definitions.

The following definitions apply to §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:

- (a) Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.
- (b) Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.
- (c) Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

Authority: 20 U.S.C. 1221e-3, 1417(c), 1435(a)(5), 1439(a)(2), 1442.

§303.404 Notice to parents.

The lead agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in §303.402, including—

- (a) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- (b) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- (c) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§303.401 through 303.417; and
- (d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.

Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442.

§303.405 Access rights.

- (a) Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.
- (b) The right to inspect and review early intervention records under this section includes—
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
 - (2) The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - (3) The right to have a representative of the parent inspect and review the early intervention records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.406 Record of access.

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442.

§303.407 Records on more than one child.

If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.408 List of types and locations of information.

Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.409 Fees for records.

- (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in paragraph (c) of this section.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part.
- (c) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

Authority: 20 U.S.C. 1417(c), 1432(4)(B), 1439(a)(2), 1439(a)(4), 1442.

§303.410 Amendment of records at a parent's request.

- (a) A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.
- (b) The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
- (c) If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.411 Opportunity for a hearing.

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in §303.430(d)(1) provided that such hearing procedures meet the

requirements of the hearing procedures in §303.413 or may request a hearing directly under the State's procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.412 Result of hearing.

- (a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.
- (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (c) Any explanation placed in the early intervention records of the child under this section must—
 - (1) Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and
 - (2) If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.413 Hearing procedures.

A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.414 Consent prior to disclosure or use.

- (a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is—
 - (1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or

- (2) Used for any purpose other than meeting a requirement of this part.
- (b) A lead agency or other participating agency may not disclose personally identifiable information, as defined in §303.29, to any party except participating agencies (including the lead agency and EIS providers) that are part of the State's Part C system without parental consent unless authorized to do so under—
 - (1) Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or
 - (2) One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to—
 - (i) 34 CFR 99.30 means §303.414(a);
 - (ii) "Education records" means early intervention records under §303.403(b);
 - (iii) "Educational" means early intervention under this part;
 - (iv) "Educational agency or institution" means the participating agency under §303.404(c);
 - (v) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this part;
 - (vi) "State and local educational authorities" means the lead agency under §303.22; and
 - (vii) "Student" means child under this part.
- (c) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent's right to refuse consent under §303.420.

Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442.

§303.415 Safeguards.

- (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
- (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§303.401 through 303.417 and 34 CFR part 99.

- (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442.

§303.416 Destruction of information.

- (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.
- (b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442.

§303.417 Enforcement.

The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.

Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442.

Parental Consent and Notice

§303.420 Parental consent and ability to decline services.

- (a) The lead agency must ensure parental consent is obtained before—
 - (1) Administering screening procedures under §303.320 that are used to determine whether a child is suspected of having a disability;
 - (2) All evaluations and assessments of a child are conducted under §303.321;
 - (3) Early intervention services are provided to the child under this part;

- (4) Public benefits or insurance or private insurance is used if such consent is required under §303.520; and
- (5) Disclosure of personally identifiable information consistent with §303.414.
- (b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent—
 - (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
 - (2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.
- (c) The lead agency may not use the due process hearing procedures under this part or Part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section.
- (d) The parents of an infant or toddler with a disability—
 - (1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and
 - (2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

Authority: 20 U.S.C. 1436(e), 1439(a)(3).

§303.421 Prior written notice and procedural safeguards notice.

- (a) General. Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.
- (b) Content of notice. The notice must be in sufficient detail to inform parents about—
 - (1) The action that is being proposed or refused;
 - (2) The reasons for taking the action; and
 - (3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.
- (c) Native language.
 - (1) The notice must be—
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

- (2) If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that—
 - (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (ii) The parent understands the notice; and
 - (iii) There is written evidence that the requirements of this paragraph have been met.

Authority: 20 U.S.C. 1439(a)(6)-(7).

Surrogate Parents

§303.422 Surrogate parents.

- (a) General. Each lead agency or other public agency must ensure that the rights of a child are protected when—
 - (1) No parent (as defined in §303.27) can be identified;
 - (2) The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) Duty of lead agency and other public agencies.
 - (1) The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for—
 - (i) Determining whether a child needs a surrogate parent; and
 - (ii) Assigning a surrogate parent to the child.
 - (2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.
- (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) Criteria for selection of surrogate parents.
 - (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.
 - (2) Public agencies must ensure that a person selected as a surrogate parent—

- (i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
 - (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) Non-employee requirement; compensation. A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes under this part.
- (g) Lead agency responsibility. The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

Authority: 20 U.S.C. 1439(a)(5).

Dispute Resolution Options

§303.430 State dispute resolution options.

- (a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.
- (b) Mediation. Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in §303.431.
- (c) State complaint procedures. Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434.
- (d) Due process hearing procedures. Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting—
 - (1) The Part C due process hearing procedures under section 639 of the Act that—
 - (i) Meet the requirements in §§303.435 through 303.438; and
 - (ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or

- (2) The Part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in §303.440(c)).
- (e) Status of a child during the pendency of a due process complaint.
 - (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.
 - (2) If the due process complaint under paragraph (d) of this section involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

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Authority: 20 U.S.C. 1415(e), 1415(f)(1)(A), 1415(f)(3)(A)–(D), 1439.

Mediation

§303.431 Mediation.

- (a) General. Each lead agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.
- (b) Requirements. The procedures must meet the following requirements:
 - (1) The procedures must ensure that the mediation process—
 - (i) Is voluntary on the part of the parties;
 - (ii) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - (2)
 - (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
 - (ii) The lead agency must select mediators on a random, rotational, or other impartial basis.

- (3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.
 - (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
 - (5) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
 - (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - (ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.
 - (6) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
 - (7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.
- (c) Impartiality of mediator.
- (1) An individual who serves as a mediator under this part—
 - (i) May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
 - (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.
 - (2) A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.
- (d) Meeting to encourage mediation. A lead agency may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—
- (1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
 - (2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

Approved by Office of Management and Budget under control number 1820-NEW.

Authority: 20 U.S.C. 1415(e), 1439(a)(8)

State Complaint Procedures

§303.432 Adoption of State complaint procedures.

- (a) General. Each lead agency must adopt written procedures for—
 - (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the filing of a complaint with the lead agency; and
 - (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under §§303.432 through 303.434.
- (b) Remedies for denial of appropriate services. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under Part C of the Act, must address—
 - (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
 - (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

Approved by Office of Management and Budget under control number 1820-NEW.

Authority: 20 U.S.C. 1439(a)(1).

§303.433 Minimum State complaint procedures.

- (a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to—
 - (1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;
 - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (3) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum—
 - (i) At the discretion of the lead agency, a proposal to resolve the complaint; and

- (ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;
- (4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and
- (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the lead agency's final decision.
- (b) Time extension; final decision; implementation. The lead agency's procedures described in paragraph (a) of this section also must—
 - (1) Permit an extension of the time limit under paragraph (a) of this section only if—
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and
 - (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including—
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under §303.430(d).
 - (1) If a written complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
 - (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
 - (i) The due process hearing decision is binding on that issue; and
 - (ii) The lead agency must inform the complainant to that effect.
 - (3) A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.

Approved by Office of Management and Budget under control number 1820-NEW.

Authority: 20 U.S.C. 1439(a)(1)

§303.434 Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.
- (b) The complaint must include—
 - (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child—
 - (i) The name and address of the residence of the child;
 - (ii) The name of the EIS provider serving the child;
 - (iii) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §303.432.
- (d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.

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Authority: 20 U.S.C. 1439(a)(1)

States that Choose to Adopt the Part C Due Process Hearing Procedures under Section 639 of the Act

§303.435 Appointment of an impartial due process hearing officer.

- (a) Qualifications and duties. Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must—
 - (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

- (2) Perform the following duties:
 - (i)
 - (A) Listen to the presentation of relevant viewpoints about the due process complaint.
 - (B) Examine all information relevant to the issues.
 - (C) Seek to reach a timely resolution of the due process complaint.
 - (ii) Provide a record of the proceedings, including a written decision.
- (b) Definition of impartial.
 - (1) Impartial means that the due process hearing officer appointed to implement the due process hearing under this part—
 - (i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and
 - (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
 - (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.

Authority: 20 U.S.C. 1439(a)(1).

§303.436 Parental rights in due process hearing proceedings.

- (a) General. Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).
- (b) Rights. Any parent involved in a due process hearing has the right to—
 - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
 - (4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
 - (5) Receive a written copy of the findings of fact and decisions at no cost to the parent.

Authority: 20 U.S.C. 1439(a).

§303.437 Convenience of hearings and timelines.

- (a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents.
- (b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.
- (c) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.

Authority: 20 U.S.C. 1439(a)(1).

§303.438 Civil action.

Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

Authority: 20 U.S.C. 1439(a)(1).

States that Choose to Adopt the Part B Due Process Hearing Procedures under Section 615 of the Act

§303.440 Filing a due process complaint.

(a) General.

- (1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in §303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under Part C of the Act.
 - (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §303.443(f) apply to the timeline in this section.
- (b) Information for parents. The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—
- (1) The parent requests the information; or
 - (2) The parent or EIS provider files a due process complaint under this section.

- (c) Timeline for Resolution. The lead agency may adopt a 30- or 45-day timeline, subject to §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under §303.421, the specific timeline it has adopted.

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Authority: 20 U.S.C. 1415(b)(6), 1439.

§303.441 Due process complaint.

(a) General.

- (1) The lead agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
- (2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the EIS provider serving the child;
- (4) In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child;
- (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

- (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

- (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
- (3) A party may amend its due process complaint only if—
 - (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or
 - (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
- (4) If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.
- (e) Lead agency response to a due process complaint.
 - (1) If the lead agency has not sent a prior written notice under §303.421 to the parent regarding the subject matter contained in the parent's due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes—
 - (i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;
 - (ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; and
 - (iv) A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.
 - (2) A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent's due process complaint was insufficient, where appropriate.
- (f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2), 1439.

§303.442 Resolution process.

(a) Resolution meeting.

- (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that—
 - (i) Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and
 - (ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.
- (2) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.
- (3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if—
 - (i) The parent and lead agency agree in writing to waive the meeting; or
 - (ii) The parent and lead agency agree to use the mediation process described in §303.431.
- (4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

(b) Resolution period.

- (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.
- (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.
- (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- (4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent's due process complaint.

- (5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
- (c) Adjustments to 30-day resolution period. The 30- or 45-day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events:
 - (1) Both parties agree in writing to waive the resolution meeting.
 - (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.
 - (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.
- (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is—
 - (1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and
 - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.
- (e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement's execution.

Authority: 20 U.S.C. 1415(f)(1)(B), 1439.

§303.443 Impartial due process hearing.

- (a) General. Whenever a due process complaint is received consistent with §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.
- (b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.
- (c) Impartial hearing officer.
 - (1) At a minimum, a hearing officer—
 - (i) Must not be—

- (A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or
 - (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
- (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
- (3) Each lead agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
- (d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §303.441(b), unless the other party agrees otherwise.
- (e) Timeline for requesting a hearing. A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.
- (f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—
 - (1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or
 - (2) The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to the parent.

Approved by Office of Management and Budget under control number 1820-NEW.

Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D), 1439.

§303.444 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§303.440 through 303.445, or an appeal conducted pursuant to §303.446, has the right to—

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants or toddlers with disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- (4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

- (1) At least five business days prior to a hearing conducted pursuant to §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
- (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must—

- (1) Be given the right to open the hearing to the public; and
- (2) Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.

Authority: 20 U.S.C. 1415(f)(2), 1415(h), 1439.

§303.445 Hearing decisions.

(a) Decision of hearing officer.

- (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the Act, must be based on substantive grounds.
- (2) In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early

intervention services under Part C of the Act only if the procedural inadequacies—

- (i) Impeded the child's right to identification, evaluation, and placement or provision of early intervention services for the child and that child's family under Part C of the Act;
 - (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child's family under Part C of the Act; or
 - (iii) Caused a deprivation of educational or developmental benefit.
- (3) Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§303.400 through 303.449.
- (b) Construction clause. Nothing in §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if the lead agency level appeal is available.
- (c) Separate due process complaint. Nothing in §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
- (d) Findings and decisions to general public. The lead agency, after deleting any personally identifiable information, must make the findings and decisions available to the public.

Authority: 20 U.S.C. 1415(f)(3)(E)-(F), 1415(h)(4), 1415(o), 1439.

§303.446 Finality of decision; appeal; impartial review.

- (a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §303.448.
- (b) Appeal of decisions; impartial review.
- (1) The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency.
 - (2) If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must—
 - (i) Examine the entire hearing record;
 - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply;

- (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (v) Make an independent decision on completion of the review; and
 - (vi) Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.
- (c) Findings of fact and decision to the general public. The lead agency, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.
- (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §303.448.

Authority: 20 U.S.C. 1415(g), 1415(h)(4), 1415(i)(1)(A), 1415(i)(2), 1439.

§303.447 Timelines and convenience of hearings and reviews.

- (a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency's written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c)—
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) The lead agency must ensure that not later than 30 days after the receipt of a request for a review—
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1), 1439.

§303.448 Civil action.

- (a) General. Any party aggrieved by the findings and decision made under §§303.440 through 303.445 who does not have the right to an appeal under §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

- (b) Time limitation. The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by that State law.
- (c) Additional requirements. In any action brought under paragraph (a) of this section, the court—
 - (1) Receives the records of the administrative proceedings;
 - (2) Hears additional evidence at the request of a party; and
 - (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
- (d) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.
- (e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

Authority: 20 U.S.C. 1415(i)(2), 1415(i)(3)(A), 1415(l), 1439.

§303.449 State enforcement mechanisms.

Notwithstanding §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.

Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B), 1439.

Subpart F—Use of Funds and Payor of Last Resort General

- (a) Statewide system. Each statewide system must include written policies and procedures that meet the requirements of the—
 - (1) Use of funds provisions in §303.501; and

- (2) Payor of last resort provisions in §§303.510 through 303.521 (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the State).
- (b) System of Payments. A State may establish, consistent with §§303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-payments, premiums, or deductibles) required to be paid under Federal, State, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of §§303.520 and 303.521.

Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10)-(12), 1437(b), 1438, 1439(a), 1440.

Use of Funds

§303.501 Permissive use of funds by the lead agency.

Consistent with §§303.120 through 303.122 and §§303.220 through 303.226, a lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State's early intervention program for infants and toddlers with disabilities including funds—

- (a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§303.510 through 303.521);
- (b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;
- (c)
 - (1) To provide FAPE as that term is defined in §303.15, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year;
 - (2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and §303.211;
- (d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with Part B of the Act, to children with disabilities from their third birthday (pursuant to §303.211) until those children enter, or are eligible under State law to enter, kindergarten; and
- (e) In any State that does not provide services under §303.204 for at-risk infants and toddlers, as defined in §303.5, to strengthen the statewide system by initiating,

expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of—

- (1) Identifying and evaluating at-risk infants and toddlers;
- (2) Making referrals for the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and
- (3) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

Authority: 20 U.S.C. 1435(a)(10)–(12), 1437(b), 1438.

Payor of Last Resort—General Provisions

§303.510 Payor of last resort.

- (a) Nonsubstitution of funds. Except as provided in paragraph (b) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this part may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§303.520 and 303.521).
- (b) Interim payments—reimbursement. If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in §303.16 (but not medical services), functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.
- (c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

Authority: 20 U.S.C. 1435(a)(10)(B), 1437(a)(2), 1440(a), 1440(c).

§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.

- (a) General. Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the Officer must ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure—
 - (1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and
 - (2) Such services are consistent with the requirement in section 635 of the Act and the State's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.
- (b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following:
 - (1) State law or regulation;
 - (2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or
 - (3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.
- (c) Procedures for resolving disputes.
 - (1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention service program. Those procedures must include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.
 - (2) The method must—
 - (i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and
 - (ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

- (3) If, during the lead agency's resolution of the dispute, the Governor, Governor's designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made—
 - (i) The Governor, Governor's designee, or lead agency must reassign the financial responsibility to the appropriate agency; and
 - (ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.
- (d) Delivery of services in a timely manner. The methods adopted by the State under this section must—
 - (1) Include a mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and
 - (2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under §303.520 regarding the use of insurance to pay for Part C services.
- (e) Additional components. Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.

Authority: 20 U.S.C. 1435(a)(10), 1437(a)(2), 1440(b).

Payor of Last Resort & System of Payments Provisions—Use of Insurance, Benefits, Systems of Payments, and Fees

§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.

- (a) Use of public benefits or public insurance to pay for Part C services.
 - (1) A State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State provides written notification, consistent with §303.520(a)(3), to the child's parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section.
 - (2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State—
 - (i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

- (ii) Must obtain consent, consistent with §§303.7 and 303.420(a)(4), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would—
 - (A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;
 - (B) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;
 - (C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or
 - (D) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.
- (iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those Part C services on the IFSP to which the parent has provided consent.
- (3) Prior to using a child's or parent's public benefits or insurance to pay for Part C services, the State must provide written notification to the child's parents. The notification must include—
 - (i) A statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid);
 - (ii) A statement of the no-cost protection provisions in §303.520(a)(2) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services on the IFSP for which the parent has provided consent;
 - (iii) A statement that the parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and
 - (iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).
- (4) If a State requires a parent to pay any costs that the parent would incur as a result of the State's using a child's or parent's public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be

identified in the State's system of payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.

(b) Use of private insurance to pay for Part C services.

(1)

- (i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for Part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained—
 - (A) When the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and
 - (B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.
 - (ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State's use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State's system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent.
 - (iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).
- (2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under Part C of the Act, that expressly provides that—
- (i) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime

- health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;
- (ii) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and
 - (iii) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.
- (3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.
- (c) Inability to pay. If a parent or family of an infant or toddler with a disability is determined unable to pay under the State's definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.
- (d) Proceeds or funds from public insurance or benefits or from private insurance.
- (1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.
 - (2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under §303.225(b).
 - (3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under §303.225.
- (e) Funds received from a parent or family member under a State's system of payments. Funds received by the State from a parent or family member under the State's system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds—
- (1) Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));
 - (2) Must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

- (3) Are considered neither State nor local funds under §303.225(b).

Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10), 1439(a).

§303.521 System of payments and fees.

- (a) General. If a State elects to adopt a system of payments in §303.500(b), the State's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include—
- (1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;
 - (2) The basis and amount of payments or fees;
 - (3) The State's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the State makes its determination of the ability or inability to pay;
 - (4) An assurance that—
 - (i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);
 - (ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost.
 - (iii) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and
 - (iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;
 - (5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and
 - (6) Provisions that permit, but do not require, the lead agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.
- (b) Functions not subject to fees. The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

- (1) Implementing the child find requirements in §§303.301 through 303.303.
 - (2) Evaluation and assessment, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).
 - (3) Service coordination services, as defined in §§303.13(b)(11) and 303.33.
 - (4) Administrative and coordinative activities related to—
 - (i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and
 - (ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.
- (c) States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three. If a State has in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.
- (d) Family fees.
- (1) Fees or costs collected from a parent or the child's family to pay for early intervention services under a State's system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.
 - (2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).
- (e) Procedural Safeguards.
- (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following:
 - (i) Participate in mediation in accordance with §303.431.
 - (ii) Request a due process hearing under §303.436 or 303.441, whichever is applicable.
 - (iii) File a State complaint under §303.434.
 - (iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

- (2) A State must inform parents of these procedural safeguard options by either—
 - (i) Providing parents with a copy of the State's system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or
 - (ii) Including this information with the notice provided to parents under §303.421.

Authority: 20 U.S.C. 1432(4)(B), 1439(a), 1440.

Subpart G—State Interagency Coordinating Council

§303.600 Establishment of Council.

- (a) A State that desires to receive financial assistance under Part C of the Act must establish a State Interagency Coordinating Council (Council) as defined in §303.8.
- (b) The Council must be appointed by the Governor. The Governor must ensure that the membership of the Council reasonably represents the population of the State.
- (c) The Governor must designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under §303.201 may not serve as the chairperson of the Council.

Authority: 20 U.S.C. 1441(a).

§303.601 Composition.

- (a) The Council must be composed as follows:
 - (1)
 - (i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.
 - (ii) At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.
 - (2) At least 20 percent of the members must be public or private providers of early intervention services.
 - (3) At least one member must be from the State legislature.
 - (4) At least one member must be involved in personnel preparation.
 - (5) At least one member must—

- (i) Be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and
 - (ii) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.
- (6) At least one member must--
 - (i) Be from the SEA responsible for preschool services to children with disabilities; and
 - (ii) Have sufficient authority to engage in policy planning and implementation on behalf of the SEA.
- (7) At least one member must be from the agency responsible for the State Medicaid and CHIP program.
- (8) At least one member must be from a Head Start or Early Head Start agency or program in the State.
- (9) At least one member must be from a State agency responsible for child care.
- (10) At least one member must be from the agency responsible for the State regulation of private health insurance.
- (11) At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
- (12) At least one member must be a representative from the State child welfare agency responsible for foster care.
- (13) At least one member must be from the State agency responsible for children's mental health.
- (b) The Governor may appoint one member to represent more than one program or agency listed in paragraphs (a)(7) through (a)(13) of this section.
- (c) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the State, from the Indian Health Service or the tribe or tribal council.
- (d) No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

Authority: 20 U.S.C. 1231d, 1441(b), 1441(f).

§303.602 Meetings.

- (a) The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.
- (b) The meetings must—

- (1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
- (2) To the extent appropriate, be open and accessible to the general public; and
- (3) As needed, provide for interpreters for persons who are deaf and other necessary services for Council members and participants. The Council may use funds under this part to pay for those services.

Authority: 20 U.S.C. 1441(c).

§303.603 Use of funds by the Council.

- (a) Subject to the approval by the Governor, the Council may use funds under this part to—
- (1) Conduct hearings and forums;
 - (2) Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);
 - (3) Pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;
 - (4) Hire staff; and
 - (5) Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.
- (b) Except as provided in paragraph (a) of this section, Council members must serve without compensation from funds available under Part C of the Act.

Authority: 20 U.S.C. 1441(d).

§303.604 Functions of the Council—required duties.

- (a) Advising and assisting the lead agency. The Council must advise and assist the lead agency in the performance of its responsibilities in section 635(a)(10) of the Act, including—
- (1) Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
 - (2) Assignment of financial responsibility to the appropriate agency;
 - (3) Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under §§303.115 and 303.302, monitoring under §303.120 and §§303.700 through 303.708, financial responsibility and provision of early intervention services under §§303.202 and 303.511, and transition under §303.209; and

- (4) Preparation of applications under this part and amendments to those applications.
- (b) Advising and assisting on transition. The Council must advise and assist the SEA and the lead agency regarding the transition of toddlers with disabilities to preschool and other appropriate services.
- (c) Annual report to the Governor and to the Secretary.
 - (1) The Council must—
 - (i) Prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the State; and
 - (ii) Submit the report to the Secretary by a date that the Secretary establishes.
 - (2) Each annual report must contain the information required by the Secretary for the year for which the report is made.

Authority: 20 U.S.C. 1441(e)(1).

§303.605 Authorized activities by the Council.

The Council may carry out the following activities:

- (a) Advise and assist the lead agency and the SEA regarding the provision of appropriate services for children with disabilities from birth through age five.
- (b) Advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.
- (c) Coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other State interagency early learning initiatives, as appropriate.

Authority: 20 U.S.C. 1435(a)(10), 1441(e)(2).

Subpart H—Federal and State Monitoring and Enforcement; Reporting; and Allocation of Funds Federal and State Monitoring and Enforcement

§303.700 State monitoring and enforcement.

- (a) The lead agency must—
 - (1) Monitor the implementation of this part;
 - (2) Make determinations annually about the performance of each EIS program using the categories identified in §303.703(b);
 - (3) Enforce this part consistent with §303.704, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §303.704(a)(1) (technical assistance) and §303.704(a)(2) (imposing conditions on the lead agency's funding of an EIS program or, if the lead agency does not provide Part C funds to the EIS program, an EIS provider), §303.704(b)(2)(i) (corrective action or improvement plan) and §303.704(b)(2)(iv) (withholding of funds, in whole or in part by the lead agency), and §303.704(c)(2) (withholding of funds, in whole or in part by the lead agency); and
 - (4) Report annually on the performance of the State and of each EIS program under this part as provided in §303.702.
- (b) The primary focus of the State's monitoring activities must be on—
 - (1) Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and
 - (2) Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.
- (c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.
- (d) The lead agency must monitor each EIS program located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
 - (1) Early intervention services in natural environments.
 - (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution sessions (if the State adopts Part B due process hearing

procedures under §303.430(d)(2)), mediation, and a system of transition services as defined in section 637(a)(9) of the Act.

- (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance.

Approved by Office of Management and Budget under control number 1820-0578.

Authority: 20 U.S.C. 1416(a), 1442)

§303.701 State performance plans and data collection.

- (a) General. Each State must have in place a performance plan that meets the requirements described in section 616 of the Act; is approved by the Secretary; and includes an evaluation of the State's efforts to implement the requirements and purposes of Part C of the Act, a description of how the State will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).
- (b) Review of State performance plan. Each State must review its State performance plan at least once every six years and submit any amendments to the Secretary.
- (c) Data collection.
 - (1) Each State must collect valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State performance plans.
 - (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects data for a particular indicator through State monitoring or sampling, the State must collect and report data on those indicators for each EIS program at least once during the six-year period of a State performance plan.
 - (3) Nothing in Part C of the Act or these regulations may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

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Authority: 20 U.S.C. 1416(b), 1442.

§303.702 State use of targets and reporting.

- (a) General. Each State must use the targets established in the State's performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of the Act.
- (b) Public reporting and privacy.
 - (1) Public report.
 - (i) Subject to paragraph (b)(1)(ii) of this section, the State must—
 - (A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and
 - (B) Make the State's performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State's annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.
 - (ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each EIS program and the date the data were collected.
 - (2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.
 - (3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

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Authority: 20 U.S.C. 1416(b)(2)(B)-(C), 1442

§303.703 Secretary's review and determination regarding State performance.

- (a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §303.702(b)(2).
- (b) Determination.

- (1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—
 - (i) Meets the requirements and purposes of Part C of the Act;
 - (ii) Needs assistance in implementing the requirements of Part C of the Act;
 - (iii) Needs intervention in implementing the requirements of Part C of the Act; or
 - (iv) Needs substantial intervention in implementing the requirements of Part C of the Act.
- (2) Notice and opportunity for a hearing.
 - (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.
 - (ii) The hearing described in paragraph (b)(2)(i) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Secretary should not make the determination described in paragraph (b)(1)(iii) or (b)(1)(iv) of this section.

Authority: 20 U.S.C. 1416(d), 1442.

§303.704 Enforcement.

- (a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §303.703(b)(1)(ii) in implementing the requirements of Part C of the Act, the Secretary takes one or more of the following actions:
 - (1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. This technical assistance may include—
 - (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;
 - (ii) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

- (iii) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and
 - (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.
 - (2) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part C of the Act.
- (b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §303.703(b)(1)(iii) in implementing the requirements of Part C of the Act, the following apply:
- (1) The Secretary may take any of the actions described in paragraph (a) of this section.
 - (2) The Secretary takes one or more of the following actions:
 - (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.
 - (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended (GEPA), 20 U.S.C. 1234f, if the Secretary has reason to believe that the State cannot correct the problem within one year.
 - (iii) Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a.
 - (iv) Withholds, in whole or in part, any further payments to the State under Part C of the Act.
 - (v) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- (c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by the lead agency or an EIS program in the State, the Secretary takes one or more of the following actions:
- (1) Recovers funds under section 452 of GEPA, 20 U.S.C. 1234a.
 - (2) Withholds, in whole or in part, any further payments to the State under Part C of the Act.
 - (3) Refers the case to the Office of Inspector General of the Department of Education.

- (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.
- (d) Report to Congress. The Secretary reports to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

Authority: 20 U.S.C. 1416(e)(1)-(3), 1416(e)(5), 1442.

§303.705 Withholding funds.

- (a) Opportunity for hearing. Prior to withholding any funds under Part C of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the lead agency involved, pursuant to the procedures in §§303.231 through 303.236.
- (b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part C of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part C of the Act should not be suspended.
- (c) Nature of withholding.
 - (1) Limitation. If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) or (e)(3) of the Act, the Secretary may determine—
 - (i) That such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under §303.703(b)(1); or
 - (ii) That the lead agency must not make further payments of funds under Part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide Part C funds to the EIS program, EIS providers that caused or were involved in the Secretary's determination under §303.703(b)(1).
 - (2) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—
 - (i) Payments to the State under Part C of the Act must be withheld in whole or in part; and
 - (ii) Payments by the lead agency under Part C of the Act must be limited to State agencies and EIS providers whose actions did not cause or were not involved in the Secretary's determination under §303.703(b)(1).

Authority: 20 U.S.C. 1416(e)(4), 1416(e)(6), 1442.

§303.706 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §303.704, the State must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act and §303.704 of the regulations to the attention of the public within the State, including by posting the notice on the Web site of the lead agency and distributing the notice to the media and to EIS programs.

Authority: 20 U.S.C. 1416(e)(7), 1442.

§303.707 Rule of construction.

Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 et seq., and its regulations in 34 CFR parts 76, 77, 80, and 81, including the imposition of special conditions under 34 CFR 80.12, to monitor and enforce the requirements of the Act.

Authority: 20 U.S.C. 1416(g), 1442.

§303.708 State enforcement.

Nothing in this subpart may be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

Authority: 20 U.S.C. 1416(a)(1)(C), 1442.

Reports—Program Information

§303.720 Data requirements—general.

- (a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.
- (b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.

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Authority: 20 U.S.C. 1418, 1435(a)(14), 1442.

§303.721 Annual report of children served--report requirement.

- (a) For the purposes of the annual report required by section 618 of the Act and §303.720, the lead agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include—
 - (1) The number and percentage of infants and toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organizations, and consortia under §303.731(e)(1));
 - (2) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and
 - (3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.
- (b) If a State adopts the option under section 635(c) of the Act and §303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.
- (c) The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

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Authority: 20 U.S.C. 1418(a)(1)(B), (C), (F), (G), and (H), 1435(a)(14), 1435(c)(3), 1442

§303.722 Data reporting.

- (a) Protection of identifiable data. The data described in section 618(a) of the Act and in §303.721 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.
- (b) Sampling. The Secretary may permit States and outlying areas to obtain data in section 618(a) of the Act through sampling.

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Authority: 20 U.S.C. 1418(b), 1435(a)(14), 1442

§303.723 Annual report of children served—certification.

The lead agency must include in its report a certification signed by an authorized official of the agency that the information provided under §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

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Authority: 20 U.S.C. 1418(a)(3), 1435(a)(14), 1442)

§303.724 Annual report of children served—other responsibilities of the lead agency.

In addition to meeting the requirements of §§303.721 through 303.723, the lead agency must conduct its own child count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must—

- (a) Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;
- (b) Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);
- (c) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;
- (d) Aggregate the data from the count obtained from each EIS provider and prepare the report required under §§303.721 through 303.723; and
- (e) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count.

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Authority: 20 U.S.C. 1418(a), 1435(a)(14), 1442.

Allocation of Funds

§303.730 Formula for State allocations.

- (a) Reservation of funds for outlying areas. From the sums appropriated to carry out Part C of the Act for any fiscal year, the Secretary may reserve not more than one percent for payments to American Samoa, the Commonwealth of the Northern

Mariana Islands, Guam, and the United States Virgin Islands in accordance with their respective needs for assistance under Part C of the Act.

- (b) Consolidation of funds. The provisions of the Omnibus Territories Act of 1977, Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to the funds provided under Part C of the Act.

Authority: 20 U.S.C. 1443(a).

§303.731 Payments to Indians.

(a) General.

- (1) The Secretary makes payments to the Secretary of the Interior under Part C of the Act, which the Secretary of the Interior must distribute to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450b), or consortia of those entities, for the coordination of assistance in the provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.
- (2) A tribe, tribal organization, or consortium of those entities is eligible to receive a payment under this section if the tribe, tribal organization, or consortium of those entities is on a reservation that is served by an elementary or secondary school operated or funded by the Secretary of the Interior.
- (3) The amount of the payment to the Secretary of the Interior under this section for any fiscal year is 1.25 percent of the aggregate amount available to all States under Part C of the Act.

- (b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.

- (c) Information. To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.

(d) Use of funds.

- (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with Part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian

Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.

- (2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(e) Reports.

- (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.
 - (2) The Secretary of the Interior must provide a summary of this information (including confirmation that each tribe, tribal organization, or consortium has provided to the Secretary of the Interior the assurance required under paragraph (e)(1) of this section) on a biennial basis to the Secretary along with such other information as required of the Secretary of the Interior under Part C of the Act. The Secretary may require additional information from the Secretary of the Interior.
 - (3) Within 90 days after the end of each fiscal year the Secretary of the Interior must provide the Secretary with a report on the payments distributed under this section. The report must include—
 - (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;
 - (ii) The amount of each payment; and
 - (iii) The date of each payment.
- (f) Prohibited uses of funds. None of the funds under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

Authority: 20 U.S.C. 1443(b).

§303.732 State allotments.

- (a) General. Except as provided in paragraphs (b) and (c) of this section, for each fiscal year, from the aggregate amount of funds available under Part C of the Act for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.
- (b) Minimum allocations. Except as provided in paragraph (c) of this section, no State may receive less than 0.5 percent of the aggregate amount available under this section or \$500,000, whichever is greater.
- (c) Ratable reduction.
 - (1) If the sums made available under Part C of the Act for any fiscal year are insufficient to pay the full amount that all States are eligible to receive under this section for that year, the Secretary ratably reduces the allotments to those States for such year.
 - (2) If additional funds become available for making payments under this section, allotments that were reduced under paragraph (c)(1) of this section will be increased on the same basis the allotments were reduced.
- (d) Definitions. For the purpose of allotting funds to the States under this section—
 - (1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under §303.731, to the outlying areas under §303.730, and any amount to be reserved for State incentive grants under §303.734;
 - (2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and
 - (3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Authority: 20 U.S.C. 1443(c).

§303.733 Reallotment of funds.

If a State (as defined in §303.35) elects not to receive its allotment, the Secretary reallots those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with §303.732(c)(2).

Authority: 20 U.S.C. 1443(d).

§303.734 Reservation for State incentive grants.

- (a) General. For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 of the Act exceeds \$460,000,000, the Secretary reserves 15 percent of the appropriated amount exceeding \$460,000,000 to provide grants to States that are carrying out the policy described in section 635(c) of the Act and in §303.211 (including a State that makes Part C services available under §303.211(a)(2)), in order to facilitate the implementation of that policy.
- (b) Amount of grant.
 - (1) General. Notwithstanding section 643(c)(2) and (c)(3) of the Act, the Secretary provides a grant to each State under this section in an amount that bears the same ratio to the amount reserved under paragraph (a) of this section as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under paragraph (a) of this section.
 - (2) Maximum amount. No State may receive a grant under paragraph (a) of this section for any fiscal year in an amount that is greater than 20 percent of the amount reserved under that paragraph for the fiscal year.
- (c) Carryover of amounts pursuant to section 643(e)(3) of the Act.
 - (1) First succeeding fiscal year. Pursuant to section 421(b) of GEPA, 20 U.S.C. 1221 et seq., amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which those amounts were appropriated must remain available for obligation and expenditure during the first succeeding fiscal year.
 - (2) Second succeeding fiscal year. Amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which those amounts were appropriated must be returned to the Secretary and used to make grants to States under section 633 of the Act (from their allotments identified in §§303.731 through 303.733) during the second succeeding fiscal year.

Authority: 20 U.S.C. 1443)

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State option to make services available to children ages three and older (Available funds)

303.211(d)

States with Free Appropriate Public Education (FAPE) mandates

303.521(c)

State's definition (Inability to pay)

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303.705

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States with Free Appropriate Public Education (FAPE) mandates or that use Part B funds for children under age three

303.521(c)

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303.12(a)

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303.102

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303.21(a)(2)(ii)

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303.600(b)

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303.22

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303.13(c)(11)

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303.443(c), 303.435

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303.435(b), 303.443(c)

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303.16(c)(1)(ii)

HISTORY OF ABUSE OR NEGLECT

At-risk infant or toddler (Definition)

303.5

HISTORICALLY UNDERREPRESENTED POPULATIONS

Purpose of Early Intervention program

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Acceptable time to meet for parents and others

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303.346

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303.114

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303.342(a)

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303.342(b)

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303.344(f)

Early Intervention services:

Definition

303.13(a)

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303.344(d)(1)(i)

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303.344(d)(4)

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303.344(d)(1)(iii), (d)(3)

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303.344(d)(1)(iv)

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Assurance that “inability to pay” will not delay or deny services if parent or family meets State’s definition.
303.521(a)(4)(ii)

Lack of consent (And inability to pay) may not delay or deny services
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303.520(c)

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303.521(a)(3)

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INDIAN CHILDREN

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See "Indian infants and toddlers"

INDIAN; INDIAN TRIBE

Definition
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INDIAN INFANTS AND TODDLERS

Assurances regarding Early Intervention services
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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

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INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

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INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Act (Definition)

303.4

INFANT(S) and/or TODDLER(S)

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303.721(a)

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Authorized activities of the Council

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INFANT OR TODDLER WITH A DISABILITY

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303.21

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303.5

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303.21(a)(2)(ii)

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Individualized family service plan (IFSP) (Informed written consent before providing services)

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State option to make services available to children ages three and older

303.211(b)(5)

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Comprehensive system of personnel development (CSPD) (Training personnel to work in rural and inner-city areas)

303.118(b)(1)

Purpose of Early Intervention program (Enhance capacity to meet needs of inner-city children)

303.1(d)

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Consent regarding:

Private insurance

303.520(b)(1), (b)(2)

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303.520(a)(3)(i)

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Composition of Council (Agency responsible for State regulation of health insurance)
303.601(a)(10)

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303.510(c)

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Enrollment in public insurance or benefits program (May not require parent to enroll).
303.520(a)(2)(i)

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Family or parent funds:

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303.520(d)(2)

Funds received under a State’s system of payments
303.520(e)

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303.520(d)(1)

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303.520(a), 303.520(b)

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Proceeds from public or private insurance:

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Reimbursements (Medicaid, etc) for Early Intervention services are not State or local funds
303.520(d)(2)

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Purpose of Early Intervention program
303.1(b)

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System of payments and fees
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Use of public insurance to pay for services
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Functions of the Council (Promotion of methods for intra-agency and interagency collaboration)
303.604(a)(3)

Lead agency role (In funding, inter-agency agreements, etc.)
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INTERIM INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

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LACK OF CONSENT (INABILITY TO PAY)

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303.5

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Definition

303.22

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303.201

Lead agency role in supervision, etc.

303.120

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303.30

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303.23

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303.5

LOW-INCOME (Children and families)

Purpose of Early Intervention program (Historically underrepresented populations)

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Traditionally underserved groups (Low- income families)
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Of surgically implanted medical devices
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Child find (Coordination)
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303.510(c)

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Annual report of children served (Number of mediations held)
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Benefits of (Meeting to explain)
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303.431(a)

Disinterested party (to encourage)
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MEDIATION (M-0)

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Impartiality of
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303.431(b)(1)(iii)

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303.431(b)(1)(iii)

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303.431(d)

Not used as evidence in hearing or civil proceeding
303.431(b)(7)

Not used to delay/deny right of hearing
303.431(b)(1)(ii)

MEDIATION (P-Z)

Parent training and information center
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Prior written notice—Content
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Requirements
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303.431(b)(4)

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State monitoring and enforcement
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Voluntary
303.431(b)(1)(i)

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MEDICAID

Council--Composition (Member from State Medicaid program)
303.601(a)(7)

Non-reduction of benefits (Payor of last resort)—Construction
303.510(c)

Proceeds from public-private insurance for Part C--Neither State nor local funds under
“nonsupplant” (§303.325(b))
303.520(d)(2)

“Service coordination”--Use of term not intended to affect seeking Medicaid
303.34(c)

MEDICAL SERVICES

In Early Intervention Services definition
303.13(b)(5)

Interim payments--reimbursement (Payor of last resort)
303.510(b)

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303.13(b)(5)

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Prescribing for any purpose--Not covered
303.16(c)(1)(ii)

METHOD (Of delivering Individual Family Service Plan (IFSP) services)

303.344(d)(1)(i)

Definition

303.344(d)(2)(ii)

METHODS OF ENSURING SERVICES

303.511

METABOLISM (Inborn errors of)

Diagnosed physical or mental condition

303.21(a)(2)(ii)

MINORITY (Children, Families, Parents)

Council--Composition (Minority parents)

303.601(a)(1)(i)

Purpose of Early Intervention Program

303.1(d)

Traditionally underserved groups

303.227(a)

MONITOR; MONITORING

Council--Functions

303.604(a)(3)

Financial responsibility and methods of ensuring services--Added components

303.511(e)

Lead agency role in monitoring

303.120(a)(2)(i) and (a)(2)(iv)

Rule of construction--Nothing restricts Secretary's authority under General Education Provisions Act (GEPA) to monitor-enforce requirements of the Act

303.707

Secretary's review & determination regarding State performance

303.703(b)

State monitoring and enforcement

303.700(a)(1), (b), and (d)(2)

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State use of targets and reporting
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Definition
303.24

Evaluation and assessment
303.321(a)(1)(i)

Evaluation, assessment, and nondiscriminatory procedures
303.113(a)(1)

Purpose of Early Intervention program
303.1(a)

State eligibility (General authority)
303.100

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Definition
303.25

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Individualized Family Service Plan (IFSP) meetings--Accessibility and convenience)
303.342(d)(1)(ii)

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303.421(c)

NATURAL ENVIRONMENTS

Definition

303.26

Determination of appropriate setting for Early Intervention services

303.344(d)(1)(ii) (A)-(B)

Early Intervention services (Definition)

303.13(a)(8)

Early Intervention services in natural environments (Component of statewide system)

303.126

Individualized Family Service Plan (IFSP) content—Early Intervention services in

303.344(d)(1)(ii)(A)-(B)

State monitoring and enforcement

303.700(d)(1)

NEGLECT or ABUSE

See “Abuse or neglect”

NERVOUS SYSTEM (“Disorders reflecting disturbance of development of”)

Diagnosed physical or mental condition (Infant or toddler with a disability)

303.21(a)(2)(ii)

NONCOMMINGLING

303.225(a)

NONDISCRIMINATORY

Evaluation, assessment and nondiscriminatory procedures

303.113 and 303.321(a)(4)

Evaluation and assessment--in a nondiscriminatory manner

303.321(a)(4)

NON-REDUCTION OF BENEFITS

303.510(c)

NONSUBSTITUTION OF FUNDS

303.510(a)

NONSUPPLANT

Requirement to supplement not supplant

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NOTICE & HEARING BEFORE DETERMINING A STATE NOT ELIGIBLE

303.231

NOTICES (State administration)

Public participation policies--Lead agency notice of hearings

303.208(b)(2)

State applications, eligibility determinations, etc:

Determination by Secretary that a State is eligible (Secretary notifies State)

303.229

Disapproval of an application—Standard for

303.230

Initial decision; final decision

303.234(a) and (c)

Judicial review

303.236

Notice and hearing before determining a State not eligible

303.231(a)(1)(i) and (a)(2)(b)

Standard for disapproval of an application

303.230

NOTICES (State monitoring & enforcement)

Public attention by State--If Secretary proposing enforcement

303.706

Secretary's review and determination regarding State performance
303.703(b)(2)(i)

Withholding funds:

Opportunity for a hearing
303.705(a)

Suspension
303.705(b)

NOTICES (To parents; family) (A-O)

Confidentiality and opportunity to examine records
303.401(a)

Due process procedures--Part B:

Filing a due process complaint (Time-line for resolution)
303.440(c)

Lead agency response to a due process complaint
303.441(e)(1)

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303.441(c)

Resolution process
303.442(a)(1) and (b)(5)

Individualized Family Service Plan (IFSP) meetings--Written notice to family, etc
303.342(d)(2)

Lead agency--General responsibility for procedural safeguards
303.400(a)

Native language
303.404(d)

Notice to parents Re-confidentiality
303.404

NOTICES (To parents; family) (P-Z)

Parental consent and ability to decline service
303.420

Prior written notice and procedural safeguards notice
303.421

Content of notice
303.421(b)

General
303.421(a)

Native language
303.421(c)(1) and (c)(2)(i)-(c)(2)(ii)

Procedural safeguards—General responsibility of lead agency for
303.400(a)

Screening procedures
303.320(a)(1)(i) and (2)

State option--Services to children three and older (Annual notice to parents)
303.211(b)(1)

NUMERACY SKILLS

Infant or toddler with a disability
303.21(c)(1)

Individualized Family Service Plan (IFSP)
303.344(d)(4)

State option--Services to children ages three and older
303.211(b)(2)

NURSES

Early Intervention services (Definition)--Qualified personnel
303.13(c)(3)

NURSING SERVICES

Definition

303.13(b)(6)

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Definition

303.13(b)(7)

NUTRITIONAL DEPRIVATION

At risk infant or toddler (Definition)

303.5

OCCUPATIONAL THERAPY

Definition

303.13(b)(8)

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303.13(c)(4)

OPTIMIZATION (Relating to Cochlear Implants, etc.).

303.13(b)(1)(i) and 303.16(c)(1)(iii)

ORIENTATION AND MOBILITY TRAINING

Early Intervention services (Definition)--In "Vision services"

303.13(b)(17)(iii)

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303.13(c)(5)

OTHER SERVICES

Early Intervention services (Definition)

303.13(d)

Individualized Family Service Plan (IFSP) content

303.344(e)

OUTCOMES

Early Intervention services provider (Definition)

303.12(b)(1)

Health services--Developmental outcomes

303.16(c)(1)(iii)(A)

Individualized Family Service Plan (IFSP)--Content:

Duration

303.344(d)(2)(iv)

Early Intervention services

303.344(d)(1)

Early Intervention services in natural environments

303.344(d)(1)(ii)(B)(3)

Results or outcomes

303.344(c)

Individualized Family Service Plan (IFSP)--Periodic review

303.342(b)(1)(i)- (b)(1)(ii)

Individualized Family Service Plan (IFSP)--Responsibility and accountability

303.346

Special instruction (Definition)

303.13(b)(14)(ii)

PARAPROFESSIONALS

Comprehensive System of Personnel Development (CSPD) (Training of)

303.118

Use of

303.119(c)

PARENT

Biological or adoptive parent of a child

303.27(a)(1), (a)(4)

Definition

303.27

Foster parent

303.27(a)(2)

Grandparent
303.27(a)(4)

Guardian
303.27(a)(3)

Dissemination of Information (Public awareness program)
303.301(a)(1)(ii)

Stepparent
303.27(a)(4)

Surrogate parent
303.27(a)(5)

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PARENTAL RIGHTS (A-C)

Confidentiality:

Access rights
303.405

Amendment of records at parent’s request
303.410

Consent prior to disclosure or use
303.414

Council—Composition
303.601(a)(1)

Destruction of information
303.416

List of types and locations of information
303.408

Notice to parents
303.404

Opportunity for a hearing on records
303.411

Opportunity to inspect-review records
303.401(b)(2)

Right to confidentiality of personally identifiable information
303.401(a)

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303.7

PARENTAL RIGHTS (D—Part B)

Due process hearings—Part B:

Construction-- parent's right to file an appeal
303.445(b)

Construction-- filing a separate due process complaint
303.445(c)

Filing a due process complaint
303.440(a)-(b)

Findings of fact and decisions
303.444(a)(5) and 303.446(b)(2)(vi)

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303.445(a)(2)(ii)

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303.444

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303.443(a), (e), (f)(2)

Lead agency response to a due process complaint
303.441(e)

Parental rights at hearings
303.444(c)

Resolution process
303.442

Separate request for a due process hearing
303.445(c)

PARENTAL RIGHTS (D-Part C to IF)

Due process hearings—Part C:

Convenience of hearings & timelines
303.437

Parental rights in due process hearings
303.436

Functions not subject to fees
303.521(b)

Individualized Family Service Plan (IFSP)—Consent provisions:

Parental consent regarding IFSP contents
303.342(e)

Services before evaluation completed (Parental consent)
303.345(a)

Individualized Family Service Plan (IFSP) Team meeting participants:

An advocate or person outside the family--If parent requests
303.343(a)(1)(iii)

Other family members, if requested by the parent
303.343(a)(1)(ii)

The parent or parents
303.343(a)(1)(i)

(See also “Family (Families) (IFSP)”)

PARENTAL RIGHTS (IN-O)

Inability of parents to pay will not delay-deny services

303.521(a)(4)(ii)

Mediation:

Binding agreement to resolve a dispute--signed by parents & agency
303.431(b)(5)(ii)

Meeting to encourage
303.431(d)

Not used to deny or delay a parent's right to a hearing
303.431(b)(1)(ii)

Native language:

Consent (definition)
303.7(a)

Definition
303.25

Prior notice--Native language
303.421(c)

PARENTAL RIGHTS (P-Z)

Parental consent and ability to decline service
303.420

Payments to Indians--Use of funds (Encouraged to involve Indian parents)
303.731(d)(1)

Pendency
303.430(e)

Prior notice
303.421

State complaint procedures:

Adoption of (and widely disseminating procedures to parents)
303.432(a)

Opportunity to engage in mediation
303.433(a)(3)(ii)

Time extension
303.433(b)(1)(ii)

States with Free Appropriate Public Education (FAPE) mandates may not charge parents for services under Part B

303.521(c)

Status of child during pendency of due process hearing

303.430(e)

State system of payments copy for parents

303.520(a)(4), 303.520(b)(1)(iii)

(See also “Due Process Procedures,” “Family (Families),” and “Procedural Safeguards”)

PARENT TRAINING

Payment to Indians--Use of funds

303.731(d)

Psychological services (Definition)

303.13(b)(10)(iv)

PARENT TRAINING & INFORMATION CENTER(S)

Definition

303.28

Mediation--Meeting to encourage

303.431(d)(1)

State complaint procedures--Widely disseminated to Parent Training and Information Centers

303.432(a)(2)

PART B (IDEA) (A-O)

Child find--Coordination with

303.302(a)(1) and (c)(1)(ii)(A)

Confidentiality

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Title 14, Government Code (GC), Section 95000 et seq., California Early Intervention Services Act (CEISA) provides authorization for California to fulfill the Part C federal requirements and provides the overall structure for providing early intervention services under California Early Start.

Last amended 2022.

Title 14, California Early Intervention Services Act

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Title 14, California Early Intervention Services Act

Chapter 1. General Provisions

§95000. This title may be cited as the California Early Intervention Services Act.

§95001.

(a) The Legislature hereby finds and declares all of the following:

- (1) There is a need to provide appropriate early intervention services individually designed for infants and toddlers from birth to two years of age, inclusive, who have disabilities or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays.
- (2) Early intervention services for infants and toddlers with disabilities or who are at risk of having disabilities represent an investment of resources, in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization. These services also maximize the ability of families to better provide for the special needs of their children. Early intervention services for infants and toddlers with disabilities maximize the potential of the individuals to be effective in the context of daily life and activities, including the potential to live independently, and exercise the full rights of citizenship. The earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities.
- (3) The family is the constant in the child's life, while the service system and personnel within those systems fluctuate. Because the primary responsibility of an infant's or toddler's well-being rests with the family, services should support and enhance the family's capability to meet the special developmental needs of their infant or toddler with disabilities.
- (4) Family-to-family support strengthens families' ability to fully participate in services planning and their capacity to care for their infants or toddlers with disabilities.
- (5) Meeting the complex needs of infants with disabilities and their families requires active state and local coordinated, collaborative, and accessible service delivery systems that are flexible, culturally competent, and responsive to family-identified needs. When health, developmental, educational, and social programs are coordinated, they are proven to be cost effective, not only for systems, but for families as well.

- (6) Family-professional collaboration contributes to changing the ways that early intervention services are provided and to enhancing their effectiveness.
 - (7) Infants and toddlers with disabilities are a part of their communities, and as citizens make valuable contributions to society as a whole.
- (b) Therefore, it is the intent of the Legislature that:
- (1) Funding provided under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) be used to improve and enhance early intervention services as defined in this title by developing innovative ways of providing family focused, coordinated services, which are built upon existing systems.
 - (2) The State Department of Developmental Services, the State Department of Education, the State Department of Health Care Services, the State Department of Social Services, and the State Department of Alcohol and Drug Programs coordinate services to infants and toddlers with disabilities and their families. These agencies need to collaborate with families and communities to provide a family-centered, comprehensive, multidisciplinary, interagency, community-based, early intervention system for infants and toddlers with disabilities.
 - (3) Families be well informed, supported, and respected as capable and collaborative decisionmakers regarding services for their child.
 - (4) Professionals be supported to enhance their training and maintain a high level of expertise in their field, as well as knowledge of what constitutes most effective early intervention practices.
 - (5) Families and professionals join in collaborative partnerships to develop early intervention services that meet the needs of infants and toddlers with disabilities, and that those partnerships be the basis for the development of services that meet the needs of the culturally and linguistically diverse population of California.
 - (6) To the maximum extent possible, infants and toddlers with disabilities and their families be provided services in the most natural environment, and include the use of natural supports and existing community resources.
 - (7) The services delivery system be responsive to the families and children it serves within the context of cooperation and coordination among the various agencies.
 - (8) Early intervention program quality be ensured and maintained through established early intervention program and personnel standards.
 - (9) The early intervention system be responsive to public input and participation in the development of implementation policies and procedures for early intervention services through the forum of an interagency coordinating council

established pursuant to federal regulations under Part C of the federal Individuals with Disabilities Education Act.

- (c) It is not the intent of the Legislature to require the State Department of Education to implement this title unless adequate reimbursement, as specified and agreed to by the department, is provided to the department from federal funds from Part C of the federal Individuals with Disabilities Education Act.

§95001.5. In order to prevent any potential conflict of interest and pursuant to Section 303.604 of Title 34 of the Code of Federal Regulations, no member of the interagency coordinating council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

§95002. The purpose of this title is to provide a statewide system of coordinated, comprehensive, family-centered, multidisciplinary, interagency programs, responsible for providing appropriate early intervention services and support to all eligible infants and toddlers and their families.

§95003.

- (a) The state's participation in Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) shall be contingent on the receipt of federal funds to cover the costs of complying with the federal statutes and regulations that impose new requirements on the state. The State Department of Developmental Services and the State Department of Education annually shall report to the Department of Finance during preparation of the Governor's Budget, and the May Revision, the budget year costs and federal funds projected to be available.
- (b) If the amount of funding provided by the federal government pursuant to Part C of the federal Individuals with Disabilities Education Act for the 1993-94 fiscal year, or any fiscal year thereafter, is not sufficient to fund the full increased costs of participation in this federal program by the local educational agencies, as required pursuant to this title, for infants and toddlers from birth to two years of age, inclusive, identified pursuant to Section 95014, and that lack of federal funding would require an increased contribution from the General Fund or a contribution from a local educational agency in order to fund those required and supplemental costs, the state shall terminate its participation in the program. Termination of the program shall occur on July 1 if local educational agencies have been notified of the termination prior to March 10 of that calendar year. If this notification is provided after March 10 of a calendar year, then termination shall not occur earlier than July 1 of the subsequent calendar year. The voluntary contribution by a state or local agency of

funding for any of the programs or services required pursuant to this title shall not constitute grounds for terminating the state's participation in that federal program. It is the intent of the Legislature that if the program terminates, the termination shall be carried out in an orderly manner with notification of parents and certificated personnel.

- (c) This title shall remain in effect only until the state terminates its participation in Part C of the federal Individuals with Disabilities Education Act for individuals from birth to two years of age, inclusive, and notifies the Secretary of the Senate of the termination, and as of that later date is repealed. As the lead agency, the State Department of Developmental Services, upon notification by the Department of Finance or the State Department of Education as to the insufficiency of federal funds and the termination of this program, shall be responsible for the payment of services pursuant to this title when no other agency or department is required to make these payments.

§95004. The early intervention services specified in this title shall be provided as follows:

- (a) Direct services for eligible infants and toddlers and their families shall be provided pursuant to the existing regional center system under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the existing local education agency system under appropriate sections of Part 30 (commencing with Section 56000) of the Education Code and regulations adopted pursuant thereto, and Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.).
- (b)
 - (1) In providing services under this title, regional centers shall comply with the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, and its implementing regulations (Division 2 (commencing with Section 50201) of Title 17 of the California Code of Regulations) including, but not limited to, those provisions relating to vendorization and ratesetting, and the Family Cost Participation Program, except where compliance with those provisions would result in any delays in, the provision of early intervention, or otherwise conflict with this title and the regulations implementing this title (Chapter 2 (commencing with Section 52000) of Division 2 of Title 17 of the California Code of Regulations), or Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.), and applicable federal regulations contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations. Notwithstanding any other law or regulation to the contrary, private

health insurance for medical services or a health care service plan identified in the individualized family service plan, other than for evaluation and assessment, shall be used in compliance with applicable federal and state law and regulation.

- (2) When compliance with this subdivision would result in any delays in the provision of early intervention services for the provision of any of these services, the department may authorize a regional center to use a special service code that allows immediate procurement of the service.
- (c) The use of private health insurance or a health care service plan to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) shall not:
 - (1) Count towards or result in a loss of benefits due to the annual or lifetime health insurance or health care service plan coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy or health care service plan contract.
 - (2) Negatively affect the availability of health coverage for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy or health care service plan contract, or result in a discontinuance of the health insurance policy or the health care service plan contract or coverage under the health insurance policy or health care service plan contract for these individuals.
 - (3) Be the basis for increasing the health insurance or health care service plan premium of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy or health care service plan contract.
- (d) Services shall be provided by family resource centers that provide, but are not limited to, parent-to-parent support, information dissemination and referral, public awareness, family professional collaboration activities, and transition assistance for families.
- (e) Existing obligations of the state to provide these services at state expense shall not be expanded.
- (f) It is the intent of the Legislature that services be provided in accordance with Sections 303.124, 303.126, and 303.527 of Title 34 of the Code of Federal Regulations.

Chapter 2. Administration

§95006. This title shall be administered under the shared direction of the Secretary of the Health and Human Services Agency and the Superintendent of Public Instruction.

The planning, development, implementation, and monitoring of the statewide system of early intervention services shall be conducted by the State Department of Developmental Services in collaboration with the State Department of Education with the advice and assistance of an interagency coordinating council established pursuant to federal regulations.

§95007. The State Department of Developmental Services shall serve as the lead agency responsible for administration and coordination of the statewide system. The specific duties and responsibilities of the State Department of Developmental Services shall include, but are not limited to, all of the following:

- (a) Establishing a single point of contact with the federal Office of Special Education Programs for the administration of Part C of the federal Individuals with Disabilities Education Act.
- (b) Administering the state early intervention system in accordance with Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.), applicable regulations, and an approved state application.
- (c) Administering mandatory and discretionary components as specified in Sections 95022 and 95024.
- (d) Administering fiscal arrangements and interagency agreements with participating agencies and community-based organizations to implement this title.
- (e)
 - (1) Establishing interagency procedures, including the designation of local coordinating structures, as are necessary to share agency information and to coordinate policymaking activities. In developing these procedures, efforts shall be made to schedule meetings with, and engage parents and legal guardians in, transition-related activities.
 - (2) Require each regional center to designate a main point of contact for coordinating and completing, with other agencies and persons, the transition of a child and family from Part C to Part B of the federal Individuals with Disabilities Education Act, including establishing practices to educate and support families during transition.
- (f) Adopting written procedures for receiving and resolving complaints regarding violations of Part C of the federal Individuals with Disabilities Education Act by public agencies covered under this title, as specified in Section 1435(a)(10) of Title 20 of the United States Code and appropriate federal regulations.
- (g) Establishing, adopting, and implementing procedural safeguards that comply with the requirements of Part C of the federal Individuals with Disabilities Education Act, as specified in Section 1439 of Title 20 of the United States Code and appropriate federal regulations.

- (h)
- (1) Monitoring of agencies, institutions, and organizations receiving assistance under this title.
 - (2) Monitoring shall be conducted by interagency teams that are sufficiently trained to ensure compliance. Interagency teams shall consist of, but not be limited to, representatives from the State Department of Developmental Services, the State Department of Education, the interagency coordinating council, or a local family resource center or network, parent, direct service provider, or any other agency responsible for providing early intervention services.
 - (3) All members of an interagency team shall have access to all information that is subject to review. Members of each interagency team shall maintain the confidentiality of the information, and each member of the interagency team shall sign a written agreement of confidentiality.
 - (4) A summary of monitoring issues and findings shall be forwarded biannually to the interagency coordinating council for review.
- (i) Establishing innovative approaches to information distribution, family support services, and interagency coordination at the local level. This shall include the posting of information for parents specific to transition requirements along with other parent training opportunities on the lead agency's internet website, the regional centers' websites, and other appropriate internet websites.
- (j) Ensuring the provision of appropriate early intervention services to all infants eligible under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) and under Section 95014, except for those infants who have solely a low incidence disability as defined in Section 56026.5 of the Education Code and who are not eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

The development and implementation of subdivisions (e) to (h), inclusive, shall be a collaborative effort between the State Department of Developmental Services and the State Department of Education. In establishing the written procedures for receiving and resolving complaints as specified in subdivision (f) and in establishing and implementing procedural safeguards as specified in subdivision (g), it is the intent of the Legislature that these procedures be identical for all infants served under this act and shall be in accordance with Sections 303.400 and 303.420(b) of Title 34 of the Code of Federal Regulations. The procedural safeguards and due process requirements established under this title shall replace and be used in lieu of due process procedures contained in Chapter 1 (commencing with Section 4500) of Division 4.5 of the Welfare and Institutions Code and Part 30 (commencing with Section 56500) of the Education Code for infants and their families eligible under this title.

§95008.

- (a) The State Department of Education shall be responsible for administering services and programs for infants with solely visual, hearing, and severe orthopedic impairments, and any combination thereof, who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in Section 3030(a), (b), (d), or (e) of, and Section 3031 of, Title 2 of the California Code of Regulations and Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) and who are not eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).
- (b) The State Department of Education shall require each local educational agency to designate a main point of contact for coordinating and completing, with other agencies and persons, the transition of a child and family from Part C to Part B of the federal Individuals with Disabilities Education Act, including establishing practices to educate and support families during transition.

§95009. The development of joint regulations for meeting the requirements of this title shall be the shared responsibility of the State Department of Developmental Services on behalf of the Secretary of the Health and Welfare Agency, and the State Department of Education on behalf of the Superintendent of Public Instruction. The joint regulations shall be agreed upon by both departments. These regulations shall be developed and approved by October 1, 1995. The Department of Finance shall review and comment upon the joint regulations prior to any public hearing on them.

Chapter 3. State Interagency Coordination

§95012.

- (a) The following departments shall cooperate and coordinate their early intervention services for eligible infants and their families under this title, and need to collaborate with families and communities, to provide a family-centered, comprehensive, multidisciplinary, interagency, community-based early intervention system:
 - (1) State Department of Developmental Services.
 - (2) State Department of Education.
 - (3) State Department of Health Care Services.
 - (4) State Department of Social Services.
- (b) Each participating department shall enter into an interagency agreement with the State Department of Developmental Services. Each interagency agreement shall specify, at a minimum, the agency's current and continuing level of financial

participation in providing services to infants and toddlers with disabilities and their families. Each interagency agreement shall also specify procedures for resolving disputes in a timely manner. Interagency agreements shall also contain provisions for ensuring effective cooperation and coordination among agencies concerning policymaking activities associated with the implementation of this title, including legislative proposals, regulation development, and fiscal planning. All interagency agreements shall be reviewed annually and revised as necessary.

- (c) In addition to the provisions specified in subdivision (b), the interagency agreement with the State Department of Education shall include provisions related to the joint development and dissemination of educational information about transitioning from Part C of the federal Individuals with Disabilities Education Act.

Chapter 4. Eligibility

§95014.

- (a) The term "eligible infant or toddler" for the purposes of this title means infants and toddlers from birth through two years of age, for whom a need for early intervention services, as specified in the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) and applicable regulations, is documented by means of assessment and evaluation as required in Sections 95016 and 95018 and who meet one of the following criteria:
 - (1) Infants and toddlers with a developmental delay in one or more of the following six areas: cognitive development; physical and motor development, including vision and hearing; expressive communication development; receptive communication development; social or emotional development; or adaptive development. Developmentally delayed infants and toddlers are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents. A significant difference is defined as a 25-percent delay in one or more developmental areas.
 - (2) Infants and toddlers with established risk conditions, who are infants and toddlers with conditions of known etiology or conditions with established harmful developmental consequences. The conditions shall be diagnosed by a qualified personnel recognized by, or part of, a multidisciplinary team, including the parents. The condition shall be certified as having a high probability of leading to developmental delay if the delay is not evident at the time of diagnosis.

- (3) Infants and toddlers who are at high risk of having substantial developmental disability due to a combination of biomedical risk factors, the presence of which are diagnosed by qualified personnel recognized by, or part of, a multidisciplinary team, including the parents.
- (b) Regional centers and local educational agencies shall be responsible for ensuring that eligible infants and toddlers are served as follows:
 - (1) The State Department of Developmental Services and regional centers shall be responsible for the provision of appropriate early intervention services that are required for California's participation in Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) for all infants eligible under Section 95014, except for those infants with solely a visual, hearing, or severe orthopedic impairment, or any combination of those impairments, who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in Section 3030(a), (b), (d), or (e) of, and Section 3031 of, Title 2 of the California Code of Regulations.
 - (2) The State Department of Education and local educational agencies shall be responsible for the provision of appropriate early intervention services in accordance with Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) for infants with solely a visual, hearing, or severe orthopedic impairment, or any combination of those impairments, who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in Section 3030(a), (b), (d), or (e) of, and Section 3031 of, Title 2 of the California Code of Regulations, and who are not eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).
 - (3) The transfer procedures and timelines, as provided under subdivision (d) of Section 4643.5 of the Welfare and Institutions Code, shall apply if the circumstances pertaining to an eligible infant or toddler are that the child (A) has an order for foster care placement, is awaiting foster care placement, or is placed in out-of-home care through voluntary placement as defined in subdivision (o) of Section 11400 of the Welfare and Institutions Code, and (B) transfers between regional centers.
- (c) For infants and toddlers and their families who are eligible to receive services from both a regional center and a local educational agency, the regional center shall be the agency responsible for providing or purchasing appropriate early intervention services that are beyond the mandated responsibilities of local educational agencies and that are required for California's participation in Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.). The local educational agency shall provide special education services up to its funded program capacity as

established annually by the State Department of Education in consultation with the State Department of Developmental Services and the Department of Finance.

- (d) An agency or multidisciplinary team, including any agency listed in Section 95012, shall not presume or determine eligibility, including eligibility for medical services, for any other agency. However, regional centers and local educational agencies shall coordinate intake, evaluation, assessment, and individualized family service plans for infants and toddlers and their families who are served by an agency.
- (e) Upon termination of the program pursuant to Section 95003, the State Department of Developmental Services shall be responsible for the payment of services pursuant to this title.
- (f) This section shall become operative on January 1, 2015.

Chapter 5. Services

§95016.

- (a) Each infant or toddler referred for evaluation for early intervention services shall have a timely, comprehensive, multidisciplinary evaluation of his or her needs and level of functioning in order to determine eligibility. In the process of determining eligibility of an infant or toddler, an assessment shall be conducted by qualified personnel, and shall include a family interview, to identify the child's unique strengths and needs and the services appropriate to meet those needs; and the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler. Evaluations and assessments shall be shared and utilized between the regional center and the local educational agency, and any other agency providing services for the eligible infant or toddler, as appropriate. Family assessments shall be family directed and voluntary on the part of the family. Families shall be afforded the opportunity to participate in all decisions regarding eligibility and services.
- (b) Regional centers and local educational agencies or their designees shall be responsible for ensuring that the requirements of this section are implemented. The procedures, requirements, and timelines for evaluation and assessment shall be consistent with the statutes and regulations under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.), applicable regulations, and this title, and shall be specified in regulations adopted pursuant to Section 95028.

§95018. Each eligible infant or toddler and their family shall be provided a service coordinator who will be responsible for facilitating the implementation of the

individualized family service plan and for coordinating with other agencies and persons providing services to the family. The qualifications, responsibilities, and functions of service coordinators shall be consistent with the statutes and regulations under Part C and this title, and shall be specified in regulations adopted pursuant to Section 95028. The State Department of Developmental Services shall ensure that service coordinators, as defined in federal law, meet federal and state regulation requirements, are trained to work with infants and their families, and meet competency requirements set forth in Section 52122 of Title 17 of the California Code of Regulations. Service coordinator caseloads shall be as specified in subdivision (c) of Section 4640.6 of the Welfare and Institutions Code. A service coordinator for each eligible infant or toddler and their family shall conduct at least quarterly reviews of the individualized family service plan. Pursuant to Section 303.521 of Title 34 of the Code of Federal Regulations, service coordination is not subject to any fees that might be established for any other federal or state program.

§95020.

- (a) An eligible infant or toddler shall have an individualized family service plan. The individualized family service plan shall be used in place of an individual program plan required pursuant to Sections 4646 and 4646.5 of the Welfare and Institutions Code, the individualized education program required pursuant to Section 56340 of the Education Code, or any other applicable service plan.
- (b) For an infant or toddler who has been evaluated for the first time, a meeting to share the results of the evaluation, to determine eligibility and, for children who are eligible, to develop the initial individualized family service plan shall be conducted within 45 calendar days of receipt of the written referral. Evaluation results and determination of eligibility may be shared in a meeting with the family prior to the individualized family service plan. Written parent consent to evaluate and assess shall be obtained within the 45-day timeline. A regional center, local educational agency, or the designee of one of those entities shall initiate and conduct this meeting. Families shall be afforded the opportunity to participate in all decisions regarding eligibility and services. During intake and assessment, but no later than the IFSP meeting, the parents, legal guardian, or conservator shall provide copies of any health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

- (c)
 - (1) Parents and legal guardians shall be fully informed of their rights, including the right to invite another person, including a family member or an advocate or peer parent, or any or all of them, to accompany them to any or all individualized family service plan meetings. Notwithstanding any other law, until June 30, 2023, and at the request of the parent or legal guardian, an individualized family service plan meeting shall be held by remote electronic communications.
 - (2) With parental consent, or consent by a legal guardian, a referral shall be made to the local family resource center or network. A request for consent shall be offered to the parents or the legal guardian at the initial individualized family service plan meeting and at any subsequent individualized family service plan meeting, if consent was not previously obtained.
- (d) The individualized family service plan shall be in writing and shall address all of the following:
 - (1) A statement of the infant's or toddler's present levels of physical development including vision, hearing, and health status, cognitive development, communication development, social and emotional development, and adaptive developments.
 - (2) With the concurrence of the family, a statement of the family's concerns, priorities, and resources related to meeting the special developmental needs of the eligible infant or toddler.
 - (3) A statement of the major outcomes expected to be achieved for the infant or toddler and family where services for the family are related to meeting the special developmental needs of the eligible infant or toddler.
 - (4) The criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions are necessary.
- (5)
 - (A) A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler as identified in paragraph (3), including, but not limited to, the frequency, intensity, location, duration, and method of delivering the services, including by remote electronic communications, and ways of providing services in natural generic environments, including group training for parents and legal guardians on behavioral intervention techniques in lieu of some or all of the in-home parent and legal guardian training component of the behavior intervention services, and purchase of neighborhood preschool services and needed qualified personnel in lieu of infant development programs.

- (B) Effective July 1, 2009, at the time of development, review, or modification of an infant's or toddler's individualized family service plan, the regional center shall consider both of the following:
 - (i) The use of group training for parents on behavior intervention techniques, in lieu of some or all of the in-home parent training component of the behavior intervention services.
 - (ii) The purchase of neighborhood preschool services and needed qualified personnel, in lieu of infant development programs.
- (6) A statement of the agency responsible for providing the identified services.
- (7) The name of the service coordinator who shall be responsible for facilitating implementation of the plan and coordinating with other agencies and persons.
- (8) The steps to be taken to ensure transition of the infant or toddler upon reaching three years of age to other appropriate services. These may include, as appropriate, special education or other services offered in natural environments.
- (9) The projected dates for the initiation of services in paragraph (5) and the anticipated duration of those services.
- (e) Each service identified on the individualized family service plan shall be designated as one of three types:
 - (1) An early intervention service, as defined in subsection (4) of Section 1432 of Title 20 of the United States Code, and applicable regulations, that is provided or purchased through the regional center, local educational agency, or other participating agency. The State Department of Health Care Services and the State Department of Social Services shall provide services in accordance with state and federal law and applicable regulations, and up to the level of funding as appropriated by the Legislature. Early intervention services identified in an individualized family service plan that exceed the funding, statutory, and regulatory requirements of these departments shall be provided or purchased by regional centers or local educational agencies under subdivisions (b) and (c) of Section 95014. The State Department of Health Care Services and the State Department of Social Services shall not be required to provide early intervention services over their existing funding, statutory, and regulatory requirements.
 - (2) Another service, other than those specified in paragraph (1), which the eligible infant or toddler or his or her family may receive from other state programs, subject to the eligibility standards of those programs.
 - (3) A referral to a nonrequired service that may be provided to an eligible infant or toddler or his or her family. Nonrequired services are those services that are not defined as early intervention services or do not relate to meeting the special developmental needs of an eligible infant or toddler related to the disability, but

that may be helpful to the family. The granting or denial of nonrequired services by a public or private agency is not subject to appeal under this title.

Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, with the exception of durable medical equipment, regional centers shall not purchase nonrequired services, but may refer a family to a nonrequired service that may be available to an eligible infant or toddler or his or her family.

- (f) An annual review, and other periodic reviews, of the individualized family service plan for an infant or toddler and the infant's or toddler's family shall be conducted to determine the degree of progress that is being made in achieving the outcomes specified in the plan and whether modification or revision of the outcomes or services is necessary. The frequency, participants, purpose, and required processes for annual and periodic reviews shall be consistent with the statutes and regulations under Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431 et seq.) and this title, and shall be specified in regulations adopted pursuant to Section 95028. At the time of the review, the parents, legal guardian, or conservator shall provide copies of any health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the parents, legal guardian, or conservator have no such benefit cards, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center.
 - (1) A regional center shall communicate and provide written materials in the family's native language during the assessment, evaluation, and planning process for the individualized family service plan, as required by Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and implementing regulations, and as required by Sections 11135 to 11139, inclusive, and implementing regulations, including providing alternative communication services pursuant to Sections 11161 and 11162 of Title 2 of the California Code of Regulations.
 - (2) The family's native language shall be documented in the individualized family service plan.

§95020.5.

- (a) Effective July 1, 2011, regional centers shall begin transitioning providers of early intervention services purchased through a regional center to electronic billing. All providers of early intervention services provided or purchased through a regional center shall submit all billings electronically for services provided on or after July 1, 2012, with the exception of the following:

- (1) A provider whose services are paid for by vouchers, as that term is defined in subdivision (i) of Section 4512 of the Welfare and Institutions Code.
 - (2) A provider who demonstrates that submitting billings electronically for services presents a substantial financial hardship.
- (b) For purposes of this section, "electronic billing" is defined as the Regional Center e-Billing System web application provided by the State Department of Developmental Services.

§95021.

- (a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services or intensive behavioral intervention services, or both, as defined in subdivision (d), shall:
- (1) Conduct a behavioral assessment of each infant or toddler to whom the vendor provides these services.
 - (2) Design an intervention plan that shall include the service type, number of hours, and parent participation needed to achieve the goals and objectives of the infant or toddler, as set forth in his or her individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the progress of the infant or toddler shall be evaluated and reported.
 - (3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.
- (b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:
- (1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.
 - (2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of an infant or toddler receiving services participate in the intervention plan for the infant or toddler, given the critical nature of parent participation to the success of the intervention plan.
 - (3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.
 - (4) Discontinue purchasing ABA or intensive behavioral intervention services for an infant or toddler when his or her treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if

those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

- (5) For each infant or toddler, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.
- (6) Not reimburse a parent for participating in a behavioral services treatment program.
- (c) For infants and toddlers receiving ABA or behavioral intervention services on July 1, 2009, as part of their IFSP, subdivision (b) shall apply on August 1, 2009.
- (d) For purposes of this section the following definitions shall apply:
 - (1) "Applied behavioral analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.
 - (2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.
 - (3) "Evidence-based practice" means a decisionmaking process which integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to infant or toddler circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.
 - (4) "Parent" has the same meaning as defined in paragraph (15) of subdivision (b) of Section 52000 of Title 17 of the California Code of Regulations.
 - (5) "Parent participation" shall include, but shall not be limited to, the following meanings:
 - (A) Completion of group instruction on the basics of behavior intervention.
 - (B) Implementation of intervention strategies according to the intervention plan.
 - (C) If needed, collection of data on behavioral strategies and submission of that data to the provider for incorporation into progress reports.
 - (D) Participation in any needed clinical meetings.

- (E) Purchase of suggested behavior modification materials or community involvement if a reward system is used.

§95022. The statewide system of early intervention shall be administered by the State Department of Developmental Services in collaboration with the State Department of Education and with the advice and assistance of an interagency coordinating council established pursuant to federal regulations and shall include all of the following mandatory components:

- (a) A central directory that includes information about early intervention services, resources, and experts available in the state, professionals and other groups providing services to eligible infants and toddlers, and research and demonstration projects being conducted in the state. The central directory shall specify the nature and scope of the services available and the telephone number and address for each of the sources listed in the directory.
- (b) A public awareness program focusing on early identification of eligible infants and toddlers and the dissemination of information about the purpose and scope of the system of early intervention services and how to access evaluation and other early intervention services.
- (c) Personnel standards that ensure that personnel are appropriately and adequately prepared and trained.
- (d) A comprehensive system of personnel development that provides training for personnel including, but not limited to, public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators. The training shall specifically address at least all of the following:
 - (1) Understanding the early intervention services system, including the family service plan process.
 - (2) Meeting the interrelated social, emotional, and health needs of eligible infants and toddlers.
 - (3) Assisting families in meeting the special developmental needs of the infant or toddler, assisting professionals to utilize best practices in family focused early intervention services and promoting family professional collaboration.
 - (4) Reflecting the unique needs of local communities and promoting culturally competent service delivery.
- (e) A comprehensive child-find system, including policies and procedures that ensure that all infants and toddlers who may be eligible for services under this title are identified, located, and evaluated, that services are coordinated between participating agencies, and that infants and toddlers are referred to the appropriate agency.

- (f) A surrogate parent program established pursuant to Section 303.406 of Title 34 of the Code of Federal Regulations to be used by regional centers and local education agencies.

Chapter 6. Funding

§95024.

- (a) Any increased cost to local educational agencies due to the implementation of this title shall be funded from the Part C federal funds provided for the purposes of this title.
- (b) Any increased costs to regional centers due to the implementation of this title shall be funded from the Part C federal funds provided for the purposes of this title.
- (c) The annual Budget Act shall specify the amount of federal Part C funds allocated for local assistance and for state operations individually, for the State Department of Developmental Services, and for the State Department of Education.
- (d) If federal funds are available after mandatory components and increased costs in subdivisions (a) and (b), if any, are funded, the lead agency, in consultation with the State Department of Education, may do the following:
 - (1) Designate local interagency coordination areas throughout the state and allocate available Part C federal funds to fund interagency coordination activities, including, but not limited to, outreach and public awareness, and interagency approaches to service planning and delivery. If the lead agency chooses to designate and fund local interagency coordination areas, the lead agency shall first offer to enter into a contract with the regional center or a local educational agency. If the regional center or any of the local educational agencies do not accept the offer, the lead agency, in consultation with the State Department of Education and the approval of the regional center and local educational agencies in the area, directly may enter into a contract with a private, nonprofit organization. Nothing in this section shall preclude a regional center or local educational agency that enters into a contract with the lead agency from subcontracting with a private, nonprofit organization.
 - (2) Allocate funds to support family resource services, including, but not limited to, parent-to-parent support, information dissemination and referral, public awareness, family-professional collaboration activities, and transition assistance for families. In providing these services, resources shall be made available to families with information on the following areas:
 - (A) The difference between Part B and Part C services.
 - (B) Information about local Part B programs and other services in a family's community.
 - (C) Options for services for families after their child reaches three years of age.
 - (D) An overview of the process and timelines for a child's transition at three years of age.

- (e) If an expenditure plan is developed under subdivision (d), the lead agency, in consultation with the State Department of Education, shall give high priority to funding family resource services.
- (f) Nothing in this section shall be construed to limit the lead agency's authority, in consultation with the State Department of Education, to allocate discretionary Part C federal funds for any legitimate purpose consistent with the statutes and regulations under Part C (20 U.S.C. Secs. 1431 to 1444, inclusive) and this title.

Chapter 7. Data Collection

§95026.

- (a) The lead agency shall maintain a system for compiling data required by the federal Office of Special Education Programs, through Part C of the federal Individuals with Disabilities Education Act, including the number of eligible infants and toddlers and their families in need of appropriate early intervention services, the number of eligible infants and toddlers and their families served, the types of services provided, and other information required by the federal Office of Special Education Programs. All participating agencies listed in Section 95012 shall assist in the development of the system and shall cooperate with the lead agency in meeting federal data requirements. The feasibility of using existing systems and including social security numbers shall be explored to facilitate data collection.
- (b) Data collected pursuant to this section shall be used to improve service delivery and the quality of transition from Part C to Part B of the federal Individuals with Disabilities Education Act for children and families to the extent it is possible to do so.

Chapter 8. Regulations

§95028.

- (a) On or before October 1, 1995, the State Department of Developmental Services, on behalf of the Secretary of the Health and Human Services Agency, and the State Department of Education, on behalf of the Superintendent of Public Instruction, jointly shall develop, approve, and implement regulations, as necessary, to comply with the requirements of this title and Part C, as specified in federal statutes and regulations.
- (b) The regulations developed pursuant to this section shall include, but are not limited to, the following requirements:

- (1) The administrative structure for planning and implementation of the requirements of this title and Part C.
 - (2) Eligibility for Part C services.
 - (3) Evaluation and assessment.
 - (4) Individualized family service plans.
 - (5) Service coordination.
 - (6) The program and service components of the statewide system for early intervention services.
 - (7) The duties and responsibilities of the lead agency as specified in Section 95006, including procedural safeguards and the process for resolving complaints against a public agency for violation of the requirements of Part C.
- (c) The State Department of Developmental Services shall adopt regulations to implement this title in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Initial regulations to implement this title shall be adopted as emergency regulations. The adoption of these initial emergency regulations shall be considered by the Office of Administrative Law to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The initial emergency regulations shall remain in effect for no more than 180 days. These regulations shall be jointly developed by the State Department of Developmental Services and the State Department of Education by July 1, 1994. The Department of Finance shall review and comment upon the emergency regulations prior to their adoption.
- (d) On or before October 1, 2024, the regulations developed pursuant to this section shall be updated to include a process for Part C programs to incorporate family feedback to help update and improve the transition process from Part C, training, and family satisfaction.

Chapter 9. Evaluations

§95029.

The State Department of Developmental Services and the State Department of Education shall ensure that an independent evaluation of the program and its structure is completed by October 1, 1996. The evaluation shall address the following issues:

- (a) The efficiency and cost-effectiveness of the state administrative structure, the local interagency coordinating structure, and the mandatory program components.
- (b) The degree to which programs and services provided through regional centers and local educational agencies fulfill the purpose of Part C of the federal Individuals with Disabilities Education Act.

- (c) The extent to which implementation of the program has resulted in improved services for infants and their families, and greater satisfaction with service delivery by families.
- (d) The outcomes and effectiveness of family resource centers.
- (e) The adequacy of the Part C funding models. The evaluation shall be funded with federal funds.

§95029.5.

- (a) The State Department of Education shall conduct a study of the current methods of providing special instruction and other services to infants and toddlers who are deaf or hard of hearing. The study shall be funded, upon appropriation by the Legislature, by any available federal funds administered by the State Department of Education and shall include, but not be limited to, all of the following:
 - (1) The personnel utilized.
 - (2) The varying approaches utilized in providing services to individuals with single disabilities, as compared to the approaches used in providing services to individuals with multiple disabilities, including hearing impairments.
 - (3) The adequacy of the resources and personnel standards.
 - (4) The costs associated with ensuring that infants and toddlers who are deaf or hard of hearing received special instruction from credentialed teachers of the deaf.
- (b) The department shall report to the Legislature by January 1, 2006, recommendations regarding how to best provide and fund appropriate quality services for these children.

STATE REGULATIONS

Title 17, California Code of Regulations (CCR), Chapter 2, Section 52000 et seq., Early Intervention Services provide the rules and specific procedures for fulfilling the requirements under the state statute (CEISA).

Last amended 2022.

Title 17, Early Intervention Services

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Title 17. Public Health

Division 2. Health and Welfare Agency

Department of Developmental Services Regulations

Chapter 2. Early Intervention Services

Subchapter 1. General Provisions

Article 1. Definitions

§52000. Meaning of Words.

- (a) Words shall have their usual meaning unless the context of a definition clearly indicates a different meaning. Words used in their present tense include the future tense; words in the singular form include the plural form. Use of the word “shall” denotes mandatory conduct; “may” denotes permissive conduct.
- (b) The following definitions shall apply to the words used in this subchapter:
 - (1) Acidemia means an excessive acidity of the blood wherein the acid-base balance of the body is disturbed.
 - (2) Adaptive development means the acquisition of skills that are required to meet environmental demands. Adaptive development includes, but is not limited to, activities of self-care, such as dressing, eating, toileting, self-direction, environmental problem-solving and attention/arousal.
 - (3) Asphyxia neonatorum means a condition caused by insufficient oxygen at or near the time of birth.
 - (4) Assessment means the ongoing procedures used by qualified personnel throughout the period of an infant's or toddler's eligibility for early intervention services to identify the infant's or toddler's unique strengths and needs and the services appropriate to meet those needs. Assessment also includes the identification of the family's resources, priorities, and concerns regarding the development of the infant or toddler and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible infant or toddler. Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first individualized family service plan (IFSP) meeting.
 - (5) Assistive technology device means any item, piece, of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device

- that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.
- (6) Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
- (A) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the infant's or toddler's customary environment;
 - (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
 - (C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 - (D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that infant's or toddler's family; and
 - (F) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.
- (7) Authorized representative means the parent or guardian of a minor, or person who is legally entitled to act on behalf of the infant, toddler or family.
- (8) Biomedical insult is a general term referring to those biological or medical conditions such as infection or brain injury which may result in developmental delay or disability.
- (9) Cognitive development means the acquisition of learning through ongoing interactions with the environment. Cognitive development involves perceiving, thinking, problem solving and remembering information.
- (10) Communication development means the acquisition of expressive and/or receptive language skills which include understanding and/or using any of the following: gestures, facial expressions, speech reading, sign language, body postures and vocal and visual contacts with another person.
- (11) Complainant means any individual or organization filing a written complaint pursuant to the provisions of Subchapter 5, Article 3.
- (12) Concerns means areas that family members identify as needs, issues or problems they want to address as part of the individualized family service plan (IFSP) or the evaluation and assessment process which are related to meeting the developmental needs of the infant or toddler.
- (13) Consent means:

- (A) The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language;
 - (B) The parent understands and agrees in writing to carry out the activity for which the parent's consent is sought, and the consent describes that activity and lists the early intervention records, if any, that will be released and to whom they will be released; and
 - (C) The parent understands that the granting of consent is voluntary and may revoke it at any time. If a parent revokes consent, that revocation is not retroactive.
- (14) Day means calendar day unless otherwise stated.
- (15) Early intervention records means information that is directly related to an infant or toddler. These may include, but are not limited to, records relating to identification, evaluation and services.
- (16) Early intervention services means those services provided under public supervision, designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant's or toddler's development. The services include but are not limited to assistive technology device and service; audiology; family training; counseling and home visits; health services; medical services only for diagnostic or evaluation purposes; nursing services; nutrition services, occupational therapy; physical therapy; psychological services; service coordination; sign language and cued language services; social work services; special instruction; speech-language pathology services; transportation and related costs; and vision services. Early intervention services may include such services as respite and other family support services. The services are designed to meet the development needs of an infant or a toddler with a disability as defined in Government Code, Chapter 4, Eligibility § 95014(a)(1) and in § 52082(b)(3) for these regulations.
- (17) Evaluation means procedures used by qualified personnel to determine an infant's or toddler's initial and continuing eligibility. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for early intervention services. The evaluation applies to infants and toddlers with a disability as specified in § 52020 and § 52022 of these regulations.
- (18) Exceptional family circumstances means events beyond the control of the regional center or local educational agency (LEA). These include but are not limited to the infant's or toddler's or parent's illness, the infant's or toddler's and parent's absence from the geographical area, inability to locate the parent, or a natural disaster. Delays caused by the failure to obtain copies of existing records or other administrative events do not constitute exceptional circumstances.

- (19) Family means the primary caregivers and others who assume major long-term roles in an infant's or toddler's daily life.
- (20) Fine motor means the use of muscles that control small and detailed movements of the body, as an example, in the hand related to manual dexterity and coordination.
- (21) Funded Capacity means the number of eligible infants, between 12 and 16 students per instructional unit, that the California Department of Education requires LEAs to serve to maintain funding for their classes/programs/services in a given year pursuant to Education Code section 56728.8 as it read on November 1, 1993.
- (22) Gross motor means the use of large muscle groups of the body, arms, or legs, as in sitting up, walking, or balancing.
- (23) Health services mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services in Section 52000(b)(16) during the time that the child is eligible to receive early intervention services. Such services include clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services. Such services also include consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing early intervention services. This term does not include:
 - (A) Services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus), purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose), or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
 - (1) Nothing in this section limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.
 - (2) Nothing in this section prevents the early intervention service provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;
 - (B) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

- (C) Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.
- (24) Health status means a description of the physical and mental condition of an infant or toddler. Health status may include current diagnoses, medications, required regular medical procedures, current medical supplies and technological devices, primary and specially care providers, and immunization status, nutrition and oral health.
- (25) Hearing impairment means a condition, whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects an infant's or toddler's development. Processing linguistic information includes speech and language reception and speech and language discrimination.
- (26) Hyperbilirubinemia means a condition in which an excessive amount of bilirubin, a bile pigment released from the breakdown of red blood cells, is in the blood.
- (27) Hypertonia means a condition of excessive tone or tension in the skeletal muscles.
- (28) Hypotonia means a condition of diminished tone of the skeletal muscles.
- (29) Hypoglycemia means a condition in which the blood sugar is abnormally low.
- (30) Immediate need means a situation in which an infant or toddler requires early intervention services without delay pursuant to a physician's order or written determination by the multidisciplinary team specifying consequences of a delay in the provision of services.
- (31) Individual program plan (IPP) means a plan developed for persons with developmental disabilities to describe the provisions of services and supports to meet the written goals and objectives pursuant to Welfare and Institutions Code sections 4646-4648.
- (32) Individualized education program (IEP) means a written statement that is developed and implemented pursuant to Title 20 United States Code Section 1401(b)(20).
- (33) Individualized family service plan (IFSP) means a written plan for providing early intervention services to infants or toddlers and their families who have been determined eligible for early intervention services. The plan must: (A) Be developed in accordance with Sections 52100 through 52110; and, (B) Be based on the evaluation and assessment processes described in Sections 52082 through 52086 of these regulations.
- (34) Informed clinical opinion means the judgment of a qualified professional who is a member of the multidisciplinary team. Informed clinical opinion is based on but is not limited to opinions derived from: a review of records, parental and professional observation of the infant or toddler, and professional knowledge.

- (35) Language of the parent's choice means a primary written or oral language or mode of communication that the family chooses as a means of communication. Language of the parent's choice may be the native language. If the parent is deaf or blind or has no written language, the mode of communication shall be that normally used by the parent such as sign language, braille, or oral communication.
- (36) Local education agency (LEA) means the school district in which the infant or toddler resides or the county office of education or the special education local plan area (SELPA) that is responsible for providing early intervention services to infants and toddlers with disabilities.
- (37) Low incidence disability means a severe disabling condition with an expected incidence rate of less than one percent of the total statewide enrollment in kindergarten through grade 12. For purposes of this definition, severe disabling conditions are hearing impairments, vision impairments, and severe orthopedic impairments, or any combination thereof.
- (38) Mediation means a voluntary resolution process in which an impartial third party may assist the disagreeing parties to resolve issues prior to a due process hearing.
- (39) Medical services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.
- (40) Multidisciplinary team means two or more individuals from separate disciplines or professions, and the parent, who participate in the provision of integrated and coordinated services, including evaluation, assessment, and IFSP development. The multidisciplinary team may include one individual who is qualified in more than one discipline or profession.
- (41) Natural environments means settings that are natural or typical for the infant or toddler's age peers who have no disability including the home and community settings in which children without disabilities participate.
- (42) Occupational therapy means services as defined in Business and Professions Code, Division 2, Chapter 5.6. Occupational Therapy, § 2570.2(l).
- (43) Physical therapy means services as defined in Business and Professions Code, Division 2, Chapter 5.7. Physical Therapy, § 2620(a).
- (44) Parent means:
 - (A) A natural or adoptive parent of a child;
 - (B) A guardian;
 - (C) A person acting in place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);

- (D) A surrogate parent who has been assigned in accordance with 34 CFR 303.406 and 17 CCR 52175 of these regulations; or
- (E) A foster parent, when:
 - (1) The foster parent has no interest that would conflict with the interests of the child,
 - (2) The natural parents' authority to make the decisions required of parents has been limited or relinquished under State law, and
 - (3) The foster parent is willing to make the decisions required of parents.
- (45) Payor of last resort means the regional center or LEA that is required to pay for early intervention services listed on the IFSP when third party payers or other agencies do not have an obligation to pay as required by 34 CFR 303.510.
- (46) Personally identifiable means information that includes:
 - (A) The full name of the infant or toddler, infant's or toddler's parent, or other family member;
 - (B) The address of the infant or toddler;
 - (C) A personal identifier, such as the infant's, toddler's or parent's social security number; or
 - (D) A list of personal characteristics or other information that would make it possible to identify the infant or toddler with reasonable certainty.
- (47) Physical development means the acquisition of fine and gross motor skills involved in functional movement. Physical development includes vision, hearing and health status.
- (48) Priorities means a family's choice for the focus of early intervention services as well as for the ways in which early intervention services will be incorporated into the family's day-to-day organization, routine and planning.
- (49) Qualified means that a person meets state certification, licensing, credentialing, registration, or other comparable requirements for the area in which he or she is providing early intervention services, or, in the absence of such approved or recognized requirements, meets the Department of Developmental Services or California Department of Education requirements. Qualified personnel who provide early intervention services specifically include but are not limited to those listed in Subchapter 2. Vendorization, Article 3, § 54342 of these regulations, and ophthalmologists; optometrists; orientation specialists; pediatricians; psychologists; special educators; and speech and language pathologists.
- (50) Record means the documentation in the infant's or toddler's regional center client file and/or the LEA's cumulative file.
- (51) Regional center means a diagnostic, counseling and service coordination center for persons with developmental disabilities and their families which is established and operated pursuant to Chapter 5 of Division 4.5 of the Welfare

and Institutions Code, Sections 4620 through 4669, by a private nonprofit community agency/corporation acting as a contractor for the Department of Developmental Services.

- (52) Referral means the receipt of oral or written information that causes a record to be opened for an infant or toddler who may be eligible for early intervention services.
- (53) Resources means the strengths, abilities, formal and informal supports of the family available to meet the developmental needs of the infant or toddler.
- (54) Severe orthopedic impairment means a condition which adversely affects an infant's or toddler's development. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease and impairments from other causes which may affect functional movement and/or growth.
- (55) Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.
- (56) Speech-language pathology services include identification of children with communication or language disorders and delays in development of communication skills as defined in CCR, Title 16, Division 13.4, Article 1, § 1399.150.2(b), referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills. The requirements for classification of vendors providing such services are as defined in § 54342(a)(31), (38), and (75).
- (57) Social or emotional development means the acquisition of capacities for human relationships, emotional expression, communication and learning. Social or emotional development is based on the motivation to engage in positive interaction and to sustain personal relationships and precedes the development of effective coping skills, self esteem and the ability to take advantage of opportunities for learning. Differences in temperament, self regulation, range and intensity of affect and modulating one's response to the environment are additional factors influencing social or emotional development.
- (58) Solely low incidence disability means one or a combination of low incidence disabilities which are vision impairment, severe orthopedic impairment, and hearing impairment which is the primary disability and has a significant impact on learning and development of the infant or toddler as determined by the IFSP

team of the LEA. The infant or toddler who has a solely low incidence disability shall not be eligible for services from a regional center.

- (59) Teratogen means an agent or factor that causes the production of physical defects in the developing embryo.
- (60) Transportation and related costs include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.
- (61) Vision impairment means a visual condition which, even with correction, adversely affects the infant's or toddler's development.
- (62) Vision services mean evaluation and assessment of visual functioning, referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

Authority cited: Sections 95001, 95009 and 95028, Government Code.

Reference: Sections 95014 and 95028, Government Code; Sections 3001 and 3030, Title 2 California Code of Regulations; Sections 1432, 1436 and 1440, Title 20 United States Code; and Sections 303.9, 303.13, 303.16, 303.20, 303.24, 303.25, 303.26, 303.27, 303.29, 303.31, 303.302, 303.321, 303.340, 303.342, 303.343, 303.344, 303.345, 303.401, 303.420, 303.422, 303.430, 303.432 and 303.510, Title 34 Code of Federal Regulations.

Article 2. Eligibility for California Early Start Program

§52020. General.

An infant or toddler shall be eligible for early intervention services if he or she is between birth up to thirty-six months of age and meets one of the criteria specified in Section 52022 as determined by means of evaluation pursuant to Section 52082 of these regulations and needs early intervention services.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1432(5), Title 20 United States Code; Sections 95014(a) and 95016, Government Code; and Section 303.16, Title 34 Code of Federal Regulations.

§52022. Eligibility Criteria.

(a) Developmental Delay

A developmental delay exists if there is a significant difference pursuant to 52082

between the infant's or toddler's current level of functioning and the expected level of development for his or her age in one or more of the following developmental areas:

- (1) Cognitive;
- (2) Physical: including fine and gross motor, vision, and hearing;
- (3) Communication;
- (4) Social or emotional;
- (5) Adaptive.

(b) Established Risk

- (1) An established risk condition exists when an infant or toddler has a condition of known etiology which has a high probability of resulting in developmental delay; or
- (2) An established risk condition exists when an infant or toddler has a solely low incidence disability.

(c) High Risk for Developmental Disability

- (1) High risk for a developmental disability exists when a multidisciplinary team determines that an infant or toddler has a combination of two or more of the following factors that requires early intervention services based on evaluation and assessment pursuant to section 52082 and section 52084:
 - (A) Prematurity of less than 32 weeks gestation and/or low birth weight of less than 1500 grams.
 - (B) Assisted ventilation for 48 hours or longer during the first 28 days of life.
 - (C) Small for gestational age: below the third percentile on the National Center for Health Statistics growth charts.
 - (D) Asphyxia neonatorum associated with a five minute Apgar score of 0 to 5.
 - (E) Severe and persistent metabolic abnormality, including but not limited to hypoglycemia, acidemia, and hyperbilirubinemia in excess of the usual exchange transfusion level.
 - (F) Neonatal seizures or nonfebrile seizures during the first three years of life.
 - (G) Central nervous system lesion or abnormality.
 - (H) Central nervous system infection.
 - (I) Biomedical insult including, but not limited to, injury, accident or illness which may seriously or permanently affect developmental outcome.
 - (J) Multiple congenital anomalies or genetic disorders which may affect developmental outcome.
 - (K) Prenatal exposure to known teratogens.
 - (L) Prenatal substance exposure, positive infant neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal.
 - (M) Clinically significant failure to thrive, including, but not limited to, weight persistently below the third percentile for age on standard growth charts or less than 85% of the ideal weight for age and/or acute weight loss or

failure to gain weight with the loss of two or more major percentiles on the growth curve.

- (N) Persistent hypotonia or hypertonia, beyond that otherwise associated with a known diagnostic condition.
- (2) High risk for a developmental disability also exists when a multidisciplinary team determines that the parent of the infant or toddler is a person with a developmental disability and the infant or toddler requires early intervention services based on evaluation and assessment as specified in section 52082 and section 52084.
- (d) A developmental delay shall not be determined based on:
 - (1) Temporary physical disability;
 - (2) Cultural or economic factors;
 - (3) The normal process of second language acquisition; or
 - (4) Manifestation of dialect and sociolinguistic variance.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1432(5), 1432(3) and 1435(a)(1), Title 20 United States Code; Sections 303.10, 303.16 and 303.300, Title 34 Code of Federal Regulations; Sections 95014 and 95028(b)(2), Government Code; and Section 4642, Welfare and Institutions Code.

Subchapter 2. Program and Service Components

Article 1. Child Find & Referral

§52040. Child Find.

- (a) Regional centers and LEAs shall conduct child find activities to locate all infants and toddlers who may be eligible for early intervention services.
- (b) Child find activities may include:
 - (1) Assigning liaisons to local hospitals and hospitals with neonatal intensive care units;
 - (2) Contacting local parent organizations and support groups;
 - (3) Distributing early intervention materials to agencies and individuals providing medical, social and educational services in the community;
 - (4) Community-wide health and developmental screening;
 - (5) Producing and distributing public service announcements;
 - (6) Producing pamphlets, brochures and other written communication; and,

- (7) Making presentations to local professional groups, philanthropic organizations and other organizations established to inform and/or to serve culturally diverse populations.
- (c) Regional centers and LEAs shall coordinate local child find activities with each other and other public agencies.
- (d) Primary referral sources include but are not limited to hospitals, including prenatal and postnatal care facilities, physicians, parents, child care programs, LEAs, public health facilities, other social services agencies and other health care providers.
- (e) Regional centers and LEAs shall inform primary referral sources of the:
 - (1) Eligibility criteria for early intervention services;
 - (2) Types of early intervention services available through the Early Start Program;
 - (3) Contact persons and telephone numbers for regional centers and LEAs; and,
 - (4) Federal requirement that a referral shall be made to the regional center or LEA within two (2) working days of identification of an infant or toddler who is in need of early intervention services.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1435(a)(5), Title 20, United States Code; Section 303.321, Title 34 Code of Federal Regulations; and Section 95022(b) and (e), Government Code.

§52060. Referral.

The regional center or LEA that receives an oral or written referral for early intervention services shall ensure that:

- (a) The date of the referral is documented in the infant's or toddler's record;
- (b) A service coordinator is assigned pursuant to Section 52120 of these regulations; and,
- (c) Written notice is provided and consent is requested pursuant to Section 52161 and 52162 of these regulations.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 303.321(d), Title 34 Code of Federal Regulations.

Article 2. Evaluation and Assessment

§52082. Procedures for Evaluation to Determine Eligibility.

- (a) The determination of eligibility for an infant or toddler shall be made by qualified personnel of the regional center or LEA. The determination shall be made with the participation of the multidisciplinary team including the parent.

- (b) Evaluation to determine eligibility shall be based on informed clinical opinion, which may be used as an independent basis to establish an infant's or toddler's eligibility, and include the following procedures:
 - (1) A review of pertinent records related to the infant or toddler's health status and medical history provided by qualified health professionals who have evaluated or assessed the infant or toddler;
 - (2) A review of educational or other early intervention records;
 - (3) Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators as necessary to understand the full scope of the infant's or toddler's unique strengths and needs;
 - (4) Information obtained from parental observation and report; and,
 - (5) Evaluation by qualified personnel of the infant's or toddler's level of functioning in each of the following areas:
 - (A) Cognitive development;
 - (B) Physical and motor development, including vision and hearing;
 - (C) Communication development;
 - (D) Social or emotional development; and,
 - (E) Adaptive development.
- (c) No single procedure shall be used as the sole criterion for determining an infant's or toddler's eligibility.
- (d) In no event may informed clinical opinion by itself be used to negate the results of the evaluation instruments used to establish eligibility set forth in paragraph (b) of this section.
- (e) Standardized tests or instruments may be used as part of the evaluation specified in 52082(b) above, and, if used, they shall:
 - (1) Be selected to ensure that, when administered to an infant or toddler with impaired sensory, motor or speaking skills, the tests produce results that accurately reflect the infant's or toddler's aptitude, developmental level, or any other factors the test purports to measure and not the infant's or toddler's impaired sensory, motor or speaking skills unless those skills are the factors the test purports to measure;
 - (2) Be validated for the specific purpose for which they are used.
- (f) If standardized, normed or criterion referenced instruments are used as part of the evaluation specified in 52082(b) above, a significant difference between an infant's or toddler's current level of functioning and the expected level of development for his or her age shall be established when an infant's or toddler's age equivalent score falls one third below age expectation.

- (g) Procedures and materials for evaluation and assessment of infants and toddlers shall be selected and administered so as not to be racially or culturally discriminatory.
- (h) Infants or toddlers with solely low incidence disabilities shall be evaluated and assessed by qualified personnel of the LEA whose professional preparation, license or credential authorization are specific to the suspected disability.
- (i) Regional centers, LEAs and multidisciplinary teams shall not presume or determine eligibility, including eligibility for medical services provided through the Department of Health Care Services, for any other state or local government program or service when conducting evaluations or assessments of an infant or toddler or their family.
- (j) Evaluations for eligibility shall be conducted in natural environments whenever possible.

Authority cited: Sections 95001, 95009 and 95028, Government Code.

Reference: Sections 303.300(b) and (c), 303.113, 303.321, 303.322 and 303.344, Title 34 Code of Federal Regulations; and Sections 95014(a)(1) and 95016, Government Code.

§52084. Assessment for Service Planning.

- (a) Assessment for service planning for eligible infants or toddlers shall identify all of the following:
 - (1) The infant or toddler's unique strengths and needs in each of the five areas specified in Section 52082(b)(3);
 - (2) Early intervention and other services appropriate to meet the needs identified in (a)(1) of this subsection; and
 - (3) If the family consents to a family assessment, the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of an infant or toddler with a disability.
- (b) For purposes of service planning, regional centers and LEAs may use existing evaluation materials if the multidisciplinary team agrees that the existing materials adequately describe the levels of development and service needs for the infant or toddler.
- (c) Assessment for service planning shall be based on age appropriate methods and procedures which may include any of the following:
 - (1) A review of information related to the infant's or toddler's health status and medical history provided by qualified health professionals who have evaluated or assessed the infant or toddler;
 - (2) Developmental observations by qualified personnel and the parent;

- (3) Other procedures used by qualified personnel to determine the presence of a developmental delay, established risk condition, or high risk for a developmental disability; and
- (4) Standardized tests or instruments.
- (d) Assessments of family resources, priorities and concerns related to enhancing the development of the infant or toddler shall be voluntary on the part of the family. The family assessment shall:
 - (1) Be conducted by qualified personnel trained to utilize appropriate methods and procedures;
 - (2) Be based on information provided by the family through a personal interview;
 - (3) Incorporate the family's description of its resources, priorities and concerns related to enhancing the development of the infant or toddler; and,
 - (4) Be conducted in the language of the family's choice or other mode of communication unless it is not feasible to do so.
- (e) Assessments for service planning shall be conducted in natural environments whenever possible.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(a)(3) and 1436(a)(1), Title 20 United States Code; Section 303.322, Title 34 Code of Federal Regulations; and Sections 95014 and 95016, Government Code.

§52086. Time Lines for Completion of Evaluation and Assessment.

- (a) Except as provided in subsection (b), the initial evaluation and assessment for eligibility for each infant or toddler shall be completed within 45 days of the date that the regional center or LEA received the referral.
- (b) In the event of exceptional circumstances which make it impossible to complete the initial evaluation and assessment for eligibility within 45 days of receiving a referral, the service coordinator shall:
 - (1) Document the exceptional circumstances in the infant's or toddler's record;
 - (2) Completing the evaluation and assessment as soon as possible after the documented exceptional family circumstances no longer exist or parental consent is obtained.
- (c) If an infant or toddler has been determined eligible but the assessment required in Section 52082 has not been completed within 45 days of receiving a referral because of exceptional family circumstances, the service coordinator shall:
 - (1) Document the exceptional family circumstances in the infant's or toddler's record;
 - (2) Develop an interim IFSP pursuant to Section 52107 of these regulations; and,

- (3) Provide the services agreed upon in the interim IFSP.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1435(a)(3), Title 20 United States Code; Sections 303.322(d), 303.322(e) and 303.345(b), Title 34 Code of Federal Regulations; and Sections 95016(b) and 95020(b), Government Code.

Subchapter 3. Individualized Family Service Plan

Article 1. General

§52100. Individualized Family Service Plan (IFSP).

Regional centers and/or LEAs shall ensure that a written IFSP is developed for providing early intervention services. The IFSP shall address the infant's or toddler's developmental needs and the needs of the family related to meeting the developmental needs of the infant or toddler. An IFSP shall be developed and implemented for each infant or toddler who has been evaluated, assessed and determined to be eligible for early intervention services.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(a)(4) and 1436(a)(2), Title 20 United States Code; Sections 303.14, 303.340 and 303.342, Title 34 Code of Federal Regulations; and Section 95020, Government Code.

Article 2. Content and Procedures for the IFSP

§52102. Procedures for IFSP Development, Review and Evaluation.

- (a) An initial IFSP shall be developed by the regional center and/or LEA for each eligible infant or toddler, who has been evaluated and assessed, within 45 days of the receipt, by either the regional center or LEA, of the oral or written referral except as provided for in Section 52107 of these regulations.
- (b) A periodic review of the IFSP for an infant or toddler and the infant's or toddler's family shall be conducted every six months, or more frequently if service needs change, or if the parent requests such a review.
- (c) Documentation of each periodic review of the IFSP by the service coordinator shall include:
 - (1) The degree to which progress toward achieving the outcomes is being made; and
 - (2) All modifications or revisions of the outcomes or services as necessary.

- (d) The periodic review of the IFSP may be carried out by a meeting or by another means that is acceptable to the parent and other participants.
- (e) An annual meeting to review the IFSP shall be conducted to document the infant's or toddler's progress and revise its provisions and shall include team members as specified in Section 52104 of these regulations.
- (f) Information obtained from ongoing assessment shall be used in reviewing and revising outcomes and determining the appropriate services that will be provided or continued.
- (g) All IFSP meetings shall be conducted:
 - (1) In settings and at times or by means that are reasonably convenient to the parent; and
 - (2) In the language of parent's choice unless it is clearly not feasible to do so.
- (h) Meeting arrangements shall be made with, and written notice provided to, the parent and other members of the multidisciplinary team in a timely manner to ensure attendance at the IFSP meeting pursuant to the general notice requirements contained in Section 52161 of these regulations.
- (i) The contents of the initial and annual IFSP and changes to the IFSP resulting from the periodic review shall be fully explained and a legible copy of the document given to the parent. Written consent from the parent shall be obtained prior to the provision of early intervention services described in the IFSP as required in Section 52162(a) of these regulations.
- (j) If the parent does not provide consent with respect to a particular early intervention service listed in the IFSP or withdraws consent after first providing it, that service shall not be provided. The early intervention services to which parental consent is obtained shall be provided.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(a)(4) and 1436, Title 20 United States Code; Sections 303.340, 303.342, 303.343, 303.344 and 303.403, Title 34 Code of Federal Regulations; and Section 95020(b), Government Code.

§52104. Participants in Initial and Annual IFSP Meetings and Periodic Reviews.

- (a) Each initial IFSP meeting and each annual IFSP meeting shall include the following participants:
 - (1) The parent of the infant or toddler;
 - (2) The service coordinator who has been working with the family since the initial referral of the infant or toddler for evaluation and assessment or who has been designated by the regional center or LEA to be responsible for implementation of the IFSP; and,

- (3) The person(s) who conducted the evaluations or assessments.
- (b) If requested by the parent, each initial IFSP meeting and each annual IFSP meeting shall include the following participants:
 - (1) Other family members; and
 - (2) An advocate or person outside of the family.
- (c) Each IFSP meeting shall include persons who will be providing services to the infant or toddler and family, as appropriate.
- (d) Each periodic review of the IFSP shall include:
 - (1) The parent;
 - (2) The service coordinator;
 - (3) Service providers as appropriate; and,
 - (4) Other family members, an advocate or person outside of the family upon parent request.
- (e) If either the evaluators or assessors are unable to attend an initial, or annual IFSP meeting, arrangements shall be made for the person's involvement through other means, including:
 - (1) Participating in a telephone conference call;
 - (2) Having a knowledgeable representative attend an IFSP meeting; and
 - (3) Making pertinent records available at the IFSP meeting.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(b)(4) and 1436(b), Title 20 United States Code; Section 95020(e), Government Code; and Section 303.343, Title 34 Code of Federal Regulations.

§52106. Content of IFSP.

- (a) For purposes of this Section:
 - (1) Duration means the period between the initiation date of services and the ending date of services in the IFSP.
 - (2) Frequency means the number of days or sessions that a service will be provided during a specified period of time, such as, two times each week or four times each month.
 - (3) Initiation means the beginning date of the service.
 - (4) Intensity means the length of time the service is provided during each session, and whether the service is provided in a group or individual setting.
 - (5) Location means the environment where early intervention services are provided.
 - (6) Method means how a service is provided by qualified persons to accomplish a specified outcome.

(b) The IFSP shall include the following:

- (1) With the agreement of the parent, a statement of the family's resources, priorities, and concerns related to enhancing the development of the infant or toddler;
- (2) A statement, based on evaluation and assessment information, of the infant's or toddler's present levels of:
 - (A) Physical development including fine and gross motor development, vision, hearing, and health status;
 - (B) Cognitive development;
 - (C) Communication development;
 - (D) Social or emotional development; and,
 - (E) Adaptive development;
- (3) The statement of present levels of development required in subsection (b)(2) of this section shall be based on evidence that can be measured or observed by a qualified professional;
- (4) A statement of the developmental outcomes expected for the infant or toddler and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving outcomes is being made. Such outcomes shall be based on the identified needs of the infant or toddler and family pursuant to assessment;
- (5) A statement about the outcomes for the family when services for the family are related to meeting the special developmental needs of the infant or toddler;
- (6) Statements of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family to achieve the outcomes including:
 - (A) The frequency, intensity, and method of delivering the services;
 - (B) The location where the services will be delivered;
 - (1) The statements of location shall specify the natural environments such as home, child care, school program, or private program where early intervention services shall be provided; and
 - (2) The statement shall include a justification of the extent, if any, to which the services will not be provided in a natural environment.
 - (C) The projected date for initiation of each service;
 - (D) The anticipated duration of the services;
 - (E) The scheduled days when services/programs will not be available when the service provider operates a program which has a fixed schedule which includes breaks in service for periods such as holidays or vacations; and
 - (F) The name of the regional center, LEA or service provider providing each early intervention service;

- (7) The funding source for other or non-required services provided by any entity other than regional centers or LEAs including the procedures that will be followed to obtain such funding;
- (8) The name of the service coordinator; and,
- (9) A statement of the transition steps, which are initiated when the toddler is two years nine months, or at the discretion of all parties, up to six months before the toddler turns three years old, that are necessary to ensure the transition of the toddler to:
 - (A) Preschool services under Part B of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1400-1420, if the toddler with a disability is eligible; or
 - (B) Other public and private services that may be needed by the toddler pursuant to Section 52112 of these regulations.
- (c) Regional centers and LEAs shall not place an infant or toddler on a waiting list for early intervention services required by the IFSP.
- (d) Regional centers and LEAs shall arrange, provide or purchase early intervention services required by the IFSP as soon as possible.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1400-1420 and 1436(d), Title 20 United States Code; Sections 303.12 and 303.344, Title 34 Code of Federal Regulations; and Section 95020, Government Code.

§52107. Interim IFSP.

- (a) An interim IFSP may be developed for an infant or toddler, who has been determined eligible for early intervention services. The early intervention services may begin before the completion of the assessment if there is an immediate need to provide services and the infant's or toddler's parent has given written consent.
- (b) The interim IFSP shall include:
 - (1) Time lines for completing assessments;
 - (2) The name of the service coordinator responsible for completion of evaluation and assessment within the 45-day timeline and implementation of the interim IFSP;
 - (3) The services agreed upon at the interim IFSP meeting as necessary for the infant or toddler.
- (c) An interim IFSP meeting shall provide for the participation of the parent and the service coordinator and the persons responsible for the assessment at a minimum pursuant to Section 52104(a) of these regulations. Provisions shall be made for the

participation of other family members, an advocate or person outside of the family at the parent's request.

- (d) The immediate need, the early intervention services needed and the name of the service coordinator must be documented in the infant's or toddler's interim IFSP.
- (e) The existence of an interim IFSP does not absolve the regional center or LEA from complying with the 45 day time period to complete the initial assessment in all five areas of development.
- (f) An interim IFSP developed to meet an immediate need shall be followed by an IFSP meeting within the 45-day period that commenced with the referral except as provided for in Section 52086(d) of these regulations.
- (g) An interim IFSP may be developed for an infant or toddler who has been determined eligible when exceptional circumstances prevent the completion of assessment within 45 days.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 303.322(e)(2)(ii) and 303.345, Title 34 Code of Federal Regulations.

§52108. Designation of Services on the IFSP.

- (a) Each service on the IFSP shall be designated as one of the following:
 - (1) A required early intervention service. These services shall be provided, purchased or arranged by a regional center or LEA; or
 - (2) Other public programs providing services that may benefit the infant, toddler and/or family which the eligible infant or toddler or his or her family may be eligible to receive, subject to the statutory, regulatory and other program criteria of those programs or agencies. These services may include but not be limited to: residential care; family reunification services, Head Start, Supplemental Security Income; Supplemental Security Programs; Temporary Assistance to Needy Families and food stamps; Medi-Cal; or
 - (3) A referral to a community service that may be provided to an eligible infant or toddler or his or her family but is not required under the California Early Intervention Services Act, Government Code Sections 95000-95030.
 - (A) A non required service includes but is not limited to: employment; child care; housing; medical services such as surgery, or medication, hospitalization, medical devices necessary to control or treat a medical condition, or immunizations, well-baby care, income support, family or marital counseling unrelated to the infant or toddler's development, and substance abuse counseling.

- (B) The IFSP shall, to the extent appropriate, include the steps and time lines for the service coordinator to assist the parent to secure those services through public or private sources.
- (b) The receipt of required early intervention services listed on the IFSP, pursuant to Section 52108(a)(1) of these regulations, from other state or federal agencies such as California Children Services, is dependent on the infant or toddler and the infant's or toddler's parent meeting the statutory, regulatory, and other program criteria of the agency and/or program that provides those services. These criteria may include financial eligibility and medical condition eligibility as diagnosed by program certified personnel, and on the availability of funding for the program.
 - (1) In the event that the infant or toddler or infant's or toddler's parent is not eligible to receive those agency services, or funding for the program is unavailable, the required early intervention services shall be provided by the regional center or the LEA.
 - (2) The parent shall be informed in writing of this provision during the initial 45-day evaluation and assessment period and/or during the IFSP meeting.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1435(a)(4), Title 20 United States Code; Sections 303.12, 303.522 and 303.527(c), Title 34 Code of Federal Regulations; and Section 95020(d), Government Code.

§52109. Basis for the Provision of and Payment for Services Through Regional Centers.

- (a) Regional centers shall provide, arrange, or purchase early intervention services, as required by the infant's or toddler's IFSP, and be payor of last resort for infants and toddlers determined eligible for early intervention services as:
 - (1) Developmentally delayed pursuant to 52022(a);
 - (2) Established risk pursuant to 52022(b)(1); or
 - (3) High risk for developmental disability pursuant to 52022(c).
- (b) Early Intervention services specified on the IFSP shall begin as soon as possible, but no later than 45 days from obtaining consent of the parent for those services. Although the payor of last resort, regional centers shall use funds for early intervention services when pursuing payment for services from a public or private source. During this period, regional centers shall continue to pursue payment from all available public and private sources, including but not limited to available insurance.

Authority cited: Sections 95001, 95009 and 95028, Government Code.

Reference: Sections 1435(a)(10) and (c) and 1440, Title 20 United States Code; Sections 303.12, 303.510 and 303.520, Title 34 Code of Federal Regulations; and Sections 95004 and 95014(b), Government Code.

§52110. Basis for the Provision of Services Through LEAs.

- (a) LEAs shall provide, arrange, or purchase early intervention services, as required by the infant's or toddler's IFSP, and be payor of last resort for infants and toddlers with solely low incidence disabilities determined eligible for early intervention services under the category of established risk as specified in Section 52022(b)(2) of these regulations and who are not eligible for regional center services.
- (b) LEAs, pursuant to Education Code Section 56425, shall provide services for infants and toddlers who are also eligible for regional center services when the infant or toddler is identified as an individual with exceptional needs pursuant to Education Code Section 56026 and Title 2 California Code of Regulations Section 3030 and who requires intensive special education services and:
 - (1) The infant or toddler is functioning at or below 50% of his or her chronological age level in any one of the following skill areas:
 - (A) Gross or fine motor development;
 - (B) Receptive or expressive language development;
 - (C) Social or emotional development;
 - (D) Cognitive development;
 - (E) Visual development; or,
 - (2) The infant or toddler is functioning between 51% and 75% of his or her age level in any two of the skill areas identified in (b)(1)(A) through (b)(1)(E) of this section; or,
 - (3) Has a condition of known etiology which has a high probability of resulting in developmental delay as specified in section 52022(b)(1); and,
 - (4) The LEA is operating below the funded capacity as required by Government Code section 95014(c).

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1440, Title 20 United States Code; Sections 303.520 and 303.527, Title 34 Code of Federal Regulations; and Sections 95014(b) and (c), Government Code.

Article 3. Transfer and Transition Procedures

§52111. Transfer.

- (a) Regional centers and LEAs shall use existing information whenever possible to determine continued eligibility and to minimize delay in the provision of appropriate early intervention services when an eligible infant's or toddler's residence changes to another regional center or LEA.
- (b) The procedures contained in Welfare and Institutions Code section 4643.5, pertaining to transfers between regional centers, shall apply for an infant or toddler with an existing IFSP who moves from an area where he or she received early intervention services from a regional center into another regional center area.
- (c) The procedures contained in Education Code section 56325, pertaining to an IEP, shall apply instead for an infant or toddler with an existing IFSP who moves from an area where he or she received early intervention services from an LEA into another LEA that provides early intervention services and the LEA is operating below the funded capacity, or for an infant or toddler with a solely low incidence disability.
- (d) For an infant or toddler, with an existing IFSP, who is receiving early intervention services from an LEA:
 - (1) Who has not been determined eligible for regional center services; and,
 - (2) Who moves from an area where an LEA provides early intervention services to an area where there are no services available for the infant or toddler through the LEA.
 - (A) With parent consent, the sending LEA, if informed about the move by the family, shall notify the receiving regional center as soon as possible of a move to the new area and transmit the infant or toddler's record to expedite service delivery in the new area; or
 - (B) With parent consent, the LEA shall transmit the infant or toddler's record upon request of the receiving regional center if the LEA was not previously informed of the move by the family.
 - (C) The receiving regional center shall:
 - (1) Assign a service coordinator as specified in section 52060; and,
 - (2) Arrange, purchase or provide early intervention services to the extent possible within existing resources as specified on the infant's or toddler's current IFSP as soon as possible; and,
 - (3) Within 30 days of receipt of evaluation and assessment materials from the LEA determine eligibility and conduct a periodic review of the IFSP.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 4643.5, Welfare and Institutions Code; and Section 56325, Education Code.

§52112. Transition from Early Intervention Services.

- (a) LEAs shall provide special education and related services to eligible children at age three. Pursuant to the requirements contained in Title 34 Code of Federal Regulations, Section 303.344, each LEA shall participate in the transition planning for toddlers served under the Early Intervention Services Act, Government Code Sections 95000-95030, who may be eligible for preschool programs under Part B of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1400-1420, before the toddler is two years nine months, or at the discretion of all parties up to six months before the child turns three to ensure that an IEP has been developed and is implemented by the toddler's third birthday.
- (b) The service coordinator, six months before the third birthday of the toddler receiving early intervention services, shall:
 - (1) Notify the parent of a toddler who may be eligible for special education and related services under Part B of the Individuals with Disabilities Education Act that transition planning will occur within the next three to six months;
 - (2) Notify the LEA where the toddler resides that there will be an IFSP meeting requiring the attendance of an LEA representative pursuant to 34 CFR 300.132, before the toddler is two years nine months, or at the discretion of all parties, up to six months before the toddler turns three years old to specify the transition steps necessary for movement into services under Part B of the Individuals with Disabilities Education Act; and,
 - (3) Within thirty days following notification of the parent and the LEA, the family, service coordinator, and LEA shall agree on the date for the IFSP to specify the transition steps necessary for movement into services under Part B.
- (c) For all toddlers with an IFSP, the transition steps contained in the IFSP at two years nine months or earlier shall include all of the following:
 - (1) Discussions with and providing information to parents regarding:
 - (A) The toddler's transition to special education for a toddler with a disability who may be eligible for special education and related services under Part B of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1400-1420; and,
 - (B) Steps to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to, and function in, a new setting;
 - (2) Provide information about community resources such as Head Start, Child Development Preschools, private or public preschool, for a toddler who will not be eligible for special education services after thirty six months of age; and,

- (3) A projected date for conducting a final review of the IFSP to review the early intervention services and the transition outcomes by age three.
- (d) For toddlers who may be eligible for preschool services from the LEA under Part B of The Individuals with Disabilities Education Act, Title 20 United States Code Section 1400-1420, the transition steps necessary for movement into services under Part B or other appropriate program, written at the IFSP meeting before the toddler is two years nine months, or, at the discretion of all parties, up to six months before the toddler's third birthday, shall include all of the following:
 - (1) With parental consent, the transmission of information about the toddler to the LEA including evaluation and assessment information and copies of IFSPs that have been developed and implemented;
 - (2) Identifying needed assessments to determine regional center and special education eligibility and determining the regional center or LEA responsible and time lines for completing the needed assessments;
 - (3) Statements of the steps necessary to ensure that the referral to an LEA is received by the LEA in a timely manner to ensure that assessments required under the provisions of Part B of the Individuals with Disabilities Education Act are completed and an IEP is implemented by the toddler's third birthday;
 - (4) A referral for evaluation and assessment for services under Part B of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1400-1420, no later than the time that the toddler is two years nine months of age or before the LEA's break in school services if the toddler will become three years of age during a break in school services. The transition IFSP shall contain steps necessary to satisfy the referral and IEP development requirements contained in Education Code Sections 56321 and 56344;
 - (5) Identification of the people responsible for convening an IEP and final IFSP meeting, and the person responsible for convening an IPP meeting, if necessary, for a toddler by age three to:
 - (A) Review the progress toward meeting the early intervention services outcomes identified in the IFSP;
 - (B) Determine the eligibility for special education and develop the IEP; and,
 - (C) Develop an IPP if the toddler is also eligible for services under the Lanterman Developmental Disabilities Services Act as required in Welfare and Institutions Code Section 4646.
- (e) If a toddler is older than two years and six months on the date of the initial IFSP, the IFSP shall include steps to ensure transition to Special Education Services under Part B of the Individuals with Disabilities Education Act or other services that may be appropriate.
- (f) Regional centers may continue providing or purchasing services for a preschooler who has been determined eligible for regional center services:

- (1) Until the beginning of the next school term after the toddler's third birthday during a period when the LEA special education preschool program is not in session; and,
- (2) When the multidisciplinary team determines that services are necessary until the LEA special education program resumes.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1436(d)(8), Title 20 United States Code; Sections 303.148, 303.322, 303.340, 303.342, 303.343, 303.344(h) and 303.346, Title 34 Code of Federal Regulations; and Sections 56321, 56343 and 56344, Education Code.

Subchapter 4. Service Coordination and Interagency Agreements

Article 1. Service Coordination

§52120. General.

- (a) Regional centers or LEAs shall assign a service coordinator under the following circumstances:
 - (1) At the time that infants or toddlers are referred for evaluation and assessment; and,
 - (2) When infants or toddlers are determined eligible for early intervention services from regional centers and/or LEAs.
- (b) A parent may perform service coordination activities for his or her own infant or toddler in collaboration with the service coordinator assigned by the regional center or LEA.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 303.22 and 303.344(g), Title 34 Code of Federal Regulations; and Section 95018, Government Code.

§52121. Service Coordination Responsibilities.

- (a) The service coordinator shall:
 - (1) Provide the initial notice to the parent pursuant to Section 52160 of these regulations;
 - (2) Obtain consent pursuant to Section 52162 of these regulations and provide written notice pursuant to Section 52161;

- (3) Serve as the primary point of contact for coordinating services and assistance for the infant's or toddler's parent, service providers and regional center and/or public agencies;
 - (4) Inform the parent of the availability of additional non-required services as specified in Section 52108(a)(3)(A) of these regulations which may provide assistance to the family;
 - (5) Facilitate the delivery of services on the initiation date identified in the IFSP;
 - (6) Continuously seek the appropriate services and service providers necessary to enhance the development of each infant or toddler being served for the duration of the infant's or toddler's eligibility;
 - (7) Coordinate the performance of initial and subsequent evaluations and assessments;
 - (8) Participate in the development and review of the IFSP;
 - (9) Monitor the delivery of services and the degree to which progress toward achieving outcomes is being made through the periodic review of the IFSP;
 - (10) Inform the parent of advocacy services and procedural safeguards contained in these regulations;
 - (11) Facilitate the exchange of information between service providers including health providers, medical case managers, regional centers and LEAs; and
 - (12) Facilitate the development of transition steps in the IFSP.
- (b) Service Coordination may include medical case management services provided by another agency such as High Risk Infant Follow-up Program, California Children Services or Medi-Cal Managed Care.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1436(d)(8), Title 20 United States Code; Sections 303.22 and 303.344(g), Title 34 Code of Federal Regulations; and Section 95018, Government Code.

§52122. Service Coordinator Qualifications.

Service coordinators shall have demonstrated knowledge about:

- (a) Infants and toddlers who are referred for evaluation and assessment or who are eligible for early intervention services;
- (b) Working with families and community resources; and
- (c) Federal and State requirements related to California's Early Start Program including:
 - (1) Parent rights and responsibilities;
 - (2) Due process;
 - (3) Confidentiality;

- (4) Required components of the IFSP;
- (5) Time lines specified within these regulations beginning with section 52000 et seq.; in Sections 52086(a), 52112(b), 52164(b), 52168(c), 52171(a) and 52174(c) of these regulations;
- (6) Transition processes from the early intervention service system specified in section 52112 of these regulations; and,
- (7) The system of payments for services identified in the IFSP.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1436(d)(8), Title 20 United States Code; Sections 303.22(d) and 303.344(g), Title 34 Code of Federal Regulations; and Section 95018, Government Code.

Article 2. Interagency Agreements

§52140. Local Interagency Agreements.

- (a) Regional centers and LEAs shall develop and maintain local interagency agreements.
- (b) Local interagency agreements shall include, but not be limited to, the following:
 - (1) The responsibilities of each LEA and regional center for meeting the terms of the agreement;
 - (2) Procedures for coordination of child find activities with local public agencies and regional centers to identify infants and toddlers who may be eligible for early intervention services;
 - (3) Specific procedures for coordination of referrals for evaluation and assessment;
 - (4) Procedures for the assignment of a service coordinator;
 - (5) Interagency procedures for identifying the responsibilities of the regional center and LEA for completing the evaluation and assessment and determining eligibility within the time requirements contained in Section 52086 of these regulations, when an infant or toddler may receive services from both the regional center and LEA;
 - (6) Procedures for the timely exchange of information between regional centers and LEAs;
 - (7) Mechanisms for ensuring the availability of contacts at regional centers and LEAs at all times during the year;
 - (8) Procedures for interagency IFSP development when infants and toddlers may be eligible for early intervention services from the regional center and the LEA or other state or local programs or services;
 - (9) Procedures to ensure the provision of services during periods of school vacations when services are required on the IFSP;

- (10) Transition planning procedures which begin at least six months prior to a toddler's third birthday pursuant to Section 52112 of these regulations;
 - (11) Procedures for resolving disputes between regional centers and LEAs;
 - (12) Procedures for the training and assignment of surrogate parents; and
 - (13) Procedures for accepting transfers of infants or toddlers with existing IFSPs.
- (c) Local interagency agreements shall be dated and signed by representatives of the regional center and LEA.
- (d) Interagency agreements shall be reviewed by both parties annually, revised as necessary, dated, and signed by both parties.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1435(a)(10, Title 20 United States Code; Sections 303.1, 303.174, 303.523 and 303.524, Title 34 Code of Federal Regulations.

Subchapter 5. Procedural Safeguards

Article 1. Notice and Consent

§52160. Initial and Annual Notice.

Prior to the initial evaluation and assessment to determine eligibility required in Section 52082 of these regulations and annually thereafter, service coordinators shall give written notice to the parent, which shall include:

- (a) The personally identifiable information maintained by the regional center or LEA;
- (b) The types of information used in the evaluation, assessment and IFSP development; and,
- (c) The methods that regional centers and LEAs use to protect the confidentiality of personally identifiable information including:
 - (1) The sources from whom personally identifiable information is gathered;
 - (2) The uses to be made of the personally identifiable information;
 - (3) The policies and procedures which regional centers and LEAs follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information as required in Title 34 Code of Federal Regulations, Sections 300.572 through 300.573; and,
 - (4) The rights of parents and infants and toddlers regarding access to information, including the rights accorded to families in these regulations and the rights under the Family Education Rights and Privacy Act of 1974, Title 20, United States Code, Section 1232(g) and implementing regulations in Title 34 Code of Federal Regulations, Section 99.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 99.7, 300.561(a)(4) and 303.460, Title 34 Code of Federal Regulations; and Sections 1232(g), 1476(b)(12) and 1480(2) and (3), Title 20 United States Code; and Section 95007(g), Government Code.

§52161. General Notice Requirements.

- (a) Written notice shall be given to the parent of an infant or toddler, eligible or suspected to be eligible to receive early intervention services, a reasonable time before a regional center or LEA proposes, or refuses, to initiate or change:
 - (1) The identification, evaluation, assessment or placement of the infant or toddler; or
 - (2) Early intervention services to the infant or toddler and the infant's or toddler's family.
- (b) The notice shall be in sufficient detail to inform the parent about:
 - (1) The action that is being proposed or refused;
 - (2) The reasons for taking the action; and
 - (3) All procedural safeguards that are available under Title 34 Code of Federal Regulations, Sections 303.400 through 303.460.
- (c) The notice shall be:
 - (1) Written using words that are understandable to the general public; and
 - (2) Provided in the language of the parent's choice, unless it is clearly not feasible to do so. The regional center or LEA shall take steps to ensure that:
 - (A) The notice is translated;
 - (B) The parent understands the notice; and
 - (C) There is written evidence that the requirements of this subsection have been met.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 95007(g), Government Code; Sections 1435(a)(13) and 1439(6)-(7), Title 20 United States Code; and Sections 303.403(a), 303.403(b) and 303.403(c)(1)-(2), Title 34 Code of Federal Regulations.

§52162. Consent.

- (a) The service coordinator shall obtain written parental consent before:
 - (1) The initial evaluation and assessment of an infant or toddler is conducted; and
 - (2) Early intervention services are initiated.
- (b) The infant's or toddler's record shall contain written evidence that the parent has been informed:

- (1) Of information relevant to the evaluation, assessment, early intervention service, or exchange of records for which consent is sought, in the language of the parent's choice, and agrees to the completion of the evaluation or assessment and the provision of early intervention services;
 - (2) That consent is voluntary and may be revoked at any time;
 - (3) That he/she may accept or decline any early intervention service and may decline such service after first accepting it, and continue to receive other early intervention services; and,
 - (4) About who will receive the records and a listing of the records to be exchanged.
- (c) If consent is not given or is withdrawn, the regional center or LEA service coordinator shall ensure:
- (1) That the parent has been informed of the nature of the evaluation and assessment or the early intervention services that would have been provided;
 - (2) That the parent has been informed that the infant or toddler will not receive the evaluation and assessment or early intervention services unless consent is given; and,
 - (3) That the infant's or toddler's record contains documentation of the attempts to obtain consent.
- (d) Regarding the use of an infant's or toddler's or parent's public benefits or public insurance to pay for early intervention services, regional centers:
- (1) May not require a parent to enroll in public benefits or public insurance programs as a condition of receiving early intervention services and must obtain consent prior to using the public benefits or public insurance of an infant or toddler or parent if that infant or toddler or parent is not already enrolled in such a program;
 - (2) Must obtain consent to use an infant's or toddler's or parent's public benefits or public insurance to pay for early intervention services if that use would:
 - (A) Decrease available lifetime insurance coverage or any other public benefit for the infant or toddler or parent under that program;
 - (B) Result in the infant or toddler or parent paying for services that would otherwise be covered by the public benefits or public insurance program;
 - (C) Result in any increase in premiums or discontinuation of public benefits or public insurance for the infant or toddler or parent; or
 - (D) Risk loss of eligibility for the infant or toddler or parent for home and community-based waivers based on aggregate health-related expenditures.
 - (3) Must still make available those early intervention services on the IFSP to which the parent has provided consent, when the parent has not provided consent to the use of the infant's or toddler's or parent's public benefits or public insurance.

- (e) Prior to using an infant's or toddler's or parent's public benefits or public insurance to pay for early intervention services, regional centers must provide written notification to the infant's or toddler's parents. The notification must include:
 - (1) A statement that parental consent must be obtained before the Department of Developmental Services or an early intervention provider discloses, for billing purposes, an infant's or toddler's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or public insurance program;
 - (2) A statement of the no-cost protection provisions in paragraph (d) of this section and that if the parent does not provide the consent under paragraph (d) of this section, the Department of Developmental Services must still make available those early intervention services on the IFSP for which the parent has provided consent;
 - (3) A statement that the parents have the right to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or public insurance program at any time.
- (f) Regarding the use of private insurance or benefits of an infant or toddler or parent to pay for early intervention services, regional centers:
 - (1) May use the infant's or toddler's or parent's private insurance to pay for evaluation, assessment, and required early intervention services to meet the infant's or toddler's needs, as specified on the infant's or toddler's IFSP.
 - (2) Are not required to obtain parental consent prior to using the infant's or toddler's or parent's private insurance. The use of the infant's or toddler's or parent's private insurance shall comply with Government Code section 95004(c).
 - (3) Must not delay the provision of early intervention services specified in the IFSP, on account of utilizing the infant's or toddler's or parent's private insurance. Early intervention services specified on the IFSP must begin as soon as possible.

Authority cited: Sections 95001, 95009 and 95028, Government Code.

Reference: Section 1439, Title 20 United States Code; Sections 303.401(a)(1)-(3), 303.404(a), 303.404(b), 303.405 and 303.520, Title 34 Code of Federal Regulations; and Sections 95003 and 95004, Government Code.

Article 2. Access Rights

§52164. Access Rights.

- (a) A regional center and/or LEA shall permit the parent or authorized representative to inspect and review any record relating to their infant or toddler.
- (b) The regional center and/or LEA shall comply with a request for access to records before any meeting regarding an IFSP or any hearing relating to the identification, evaluation, assessment, placement, or the provision of early intervention services to the infant or toddler and in no case more than 5 working days after the request has been made.
- (c) A regional center and/or LEA shall respond to requests for explanations and interpretations of the content of a record from parents with the requested explanation or interpretation.
- (d) A regional center and/or LEA may presume that the parent has authority to inspect and review records relating to their infant or toddler unless there is a court order, state statute, or legally binding document relating to such matters as divorce, separation or custody that specifically revokes those rights.
- (e) Each service coordinator shall provide parents, on request, a list of the types and locations of records collected or used by the regional center or LEA.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(a)(13) and 1439(4), Title 20 United States Code; Sections 300.562, 300.565, 300.576, 303.402 and 303.460, Title 34 Code of Federal Regulations; and Section 95007(g), Government Code.

§52165. Documentation of Access.

- (a) The regional center and/or LEA providing early intervention services to the infant or toddler shall maintain documentation specifying to whom the record was disclosed other than parents and authorized employees specified by the regional center or LEA. The parent may inspect the documentation.
- (b) Documentation of access shall include:
 - (1) The name of the person to whom the record was disclosed;
 - (2) The date the record was disclosed; and
 - (3) The purpose for which the record was disclosed.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(a)(13) and 1439(4), Title 20 United States Code; Sections 300.402 and 303.460, Title 34 Code of Federal Regulations; and Section 95007(g), Government Code.

§52166. Records on More Than One Infant or Toddler.

If a record includes information on more than one infant or toddler, the regional center or LEA shall provide, for the parent's inspection or review, only the information relating to their infant or toddler or inform the parent of that specific information.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1439(2) and (3), Title 20 United States Code; and Sections 300.564 and 303.460, Title 34 Code of Federal Regulations.

§52167. Fees for Copies of Records.

- (a) A regional center or LEA may charge a reasonable fee for copies of records in an amount not to exceed the actual cost of reproducing records.
- (b) The amount of the fee shall not prevent the parents from exercising their right to inspect and review those records.
- (c) A regional center or LEA may not charge a fee to search for or retrieve records requested by parents or an authorized representative.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1439(3), Title 20 United States Code; Sections 300.566 and 303.460, Title 34 Code of Federal Regulations; and Section 49065, Education Code.

§52168. Amendment of Records at Parental Request.

- (a) A parent, who believes that information in a regional center's or LEA's records is inaccurate or misleading or violates the privacy or other rights of an infant or toddler or family, may request that the director of the regional center or the Superintendent of the LEA amend or remove the information over which the regional center or LEA has authority.
- (b) The service coordinator, upon request, shall assist a parent in communicating with those persons who created information contained in the record, when the regional center or LEA did not originate the information which the parent believes is inaccurate, misleading, or violates the privacy or other rights of an infant or toddler or family.
- (c) No later than 14 days after receipt of the request for amendment or removal of information from a record, the regional center or LEA shall notify the parent if the request has been denied and advise the parent of the right to a meeting with the Director of the regional center or the Superintendent of the LEA pursuant to Title 34 Code of Federal Regulations, Section 99.20(c).

- (d) If the result of the meeting is that the record will not be amended, the regional center or LEA shall inform the parent of the right to place, in the record maintained on the infant or toddler, a statement commenting on the information contained in the record or setting forth any reasons for disagreeing with the contents of any document in the child's records, regardless of whether the document was created by the regional center or LEA or by any other agency or individual.
- (e) Any statement placed in the record of the infant or toddler pursuant to subsection (d) above shall:
 - (1) Be kept by the regional center or LEA as part of the record of the infant or toddler as long as the contested portion of the record is maintained by the regional center or LEA; and,
 - (2) Accompany the record of the infant or toddler if the contested portion is disclosed by the regional center or LEA.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 300.566, 300.567, 300.569 and 303.460, Title 34 Code of Federal Regulations.

§52169. Consent for Release of Information.

Written parental consent shall be obtained before personally identifiable information is disclosed in writing or orally to anyone other than authorized employees specified by the regional center or LEA.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 1435(a)(13) and 1439(2), Title 20 United States Code; and Sections 300.571 and 303.460, Title 34 Code of Federal Regulations.

Article 3. Complaint Process

§52170. Complaint Procedures.

- (a) A complaint shall be a written and signed statement alleging that a regional center, LEA or any private service provider receiving funds under Part C of the Individuals with Disabilities Education Act, Title 20 United States Code, Sections 1431-1445, has violated any federal or state law or regulation governing the provision of early intervention services including the process of determining eligibility provided through Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, for infants or toddlers and their families.
- (b) Any individual or organization may file a complaint.
- (c) The alleged violation must have occurred:

- (1) Not more than one year before the date that the complaint is received by the Department of Developmental Services unless a longer period is reasonable because the alleged violation continues for that child or other children; or
 - (2) Not more than three years before the date on which the complaint is received by the Department of Developmental Services, if the complainant is requesting reimbursement or corrective action as remediation of the complaint.
- (d) The procedures under Chapter 1, commencing with Section 4500 of Division 4.5 of the Welfare and Institutions Code or Part 30, commencing with Section 56500 of the Education Code, or Title 2 California Code of Regulations Section 4600 et seq., shall not be used for resolving complaints regarding California's Early Start Program.
- (e) Each regional center and LEA shall inform the parent and other interested individuals or organizations of the right to file a complaint directly with the Department of Developmental Services at the following address:
- DEPARTMENT OF DEVELOPMENTAL SERVICES
OFFICE OF HUMAN RIGHTS
ATTENTION: EARLY START COMPLAINT UNIT
1215 O STREET M.S. 10-50
SACRAMENTO, CA 95814
- (f) If the complainant is unable to provide the complaint in writing, the service coordinator shall directly assist the complainant or provide assistance to identify resources which can aid the complainant in completing the written complaint.
- (g) The complaint shall include the following:
- (1) The name, address and phone number of the complainant;
 - (2) A statement that a regional center, LEA or any private service provider receiving funds under Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, has violated any federal or state law or regulation of a Part C requirement governing the provision of early intervention services for infants or toddlers and their families in California;
 - (3) A statement of facts upon which the alleged violation is based;
 - (4) The party allegedly responsible; and
 - (5) A description of the voluntary steps taken at the local level to resolve the complaint, if any.
- (h) Mediation is available at any time to resolve disagreements involving any matter related to IDEA Part C.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Sections 303.22 and 303.510-303.512, Title 34 Code of Federal Regulations; and Section 95007(f), Government Code.

§52171. Complaint Investigation.

- (a) Within 60 days of receipt of the complaint the Department of Developmental Services shall:
- (1) Assign the investigation of the complaint to a state interagency team or to the appropriate state agency that is responsible for the administration of the regional center, LEA or any private service provider receiving funds under Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, named in the complaint, which shall:
 - (A) Conduct an investigation, on-site if necessary; and
 - (B) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (2) Review all relevant information and make a determination as to whether there has been a violation of a statutory or regulatory requirement contained in:
 - (A) Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445;
 - (B) The Federal regulations pertaining to Part C of the Individuals with Disabilities Education Act;
 - (C) The California Early Intervention Services Act, Government Code Sections 95000-95030;
 - (D) Regulations contained in this chapter;
 - (E) Welfare and Institutions Code, Division 4.5, Chapter 5, beginning with Section 4500; or,
 - (F) Education Code beginning with Sections 56425 through 56431.
 - (3) Provide a written decision to all parties which addresses each allegation and includes:
 - (A) Findings and conclusions;
 - (B) The reasons for the final decision;
 - (C) The required corrective actions;
 - (D) Time lines for completion of the corrective actions; and,
 - (E) Provisions for technical assistance.
 - (4) If the decision of the Department of Developmental Services includes remedies for denial of appropriate services, the remedies may include:
 - (A) Actions to remediate denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family, and
 - (B) Actions to assure that services are provided appropriately in the future for infants and toddlers with disabilities and their families
- (b) An extension of the time limit under paragraph (a) of this Section shall be made by the Department of Developmental Services when events beyond the control of the Department of Developmental Services occur including but not limited to the

complainant's illness, the complainant's absence from the geographical area, inability to locate the complainant, or a natural disaster.

- (c) If a written complaint is received that is also the subject of a due process hearing pursuant to 34 CFR 303.420 and 17 CCR 52172 and 52174, or contains multiple issues, of which one or more are part of that hearing, the Department of Developmental Services shall set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint that is not part of the due process action will be resolved by the Department of Developmental Services within the 60 calendar-day time line using the complaint procedures described in this section.
- (d) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding, and the Department of Developmental Services shall inform the complainant to that effect.
- (e) The Department of Developmental Services shall resolve any complaint alleging the failure of a public agency or private service provider to implement a due process decision.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 303.510-303.512, Title 34 Code of Federal Regulations; and Section 52007(g), Government Code.

Article 4. Mediation and Due Process Procedures

§52172. Procedures That Apply to Both Mediation and Due Process.

- (a) A parent may request a mediation conference and/or a due process hearing under any of the following circumstances:
 - (1) A regional center or LEA proposes to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services;
 - (2) A regional center or LEA refuses to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services; or,
- (b) A parent may also request a mediation conference at any time to resolve disagreements involving any matter related to IDEA, Part C.
- (c) A regional center or LEA may request a mediation conference or a due process hearing when the parent refuses to consent to all or any part of an evaluation and assessment of the infant or toddler.
- (d) All requests for a mediation conference and/or due process hearing shall be in writing and filed with the contractor that the Department of Developmental Services

uses for mediation and due process hearings. If a parent is unable to make a request for mediation or a due process hearing in writing, the service coordinator shall assist the parent in filing the request.

- (e) The duration for either a mediation conference or a due process hearing shall not exceed a total thirty days for each process from the receipt of the mediation or due process request to the mailing of the mediation agreement or hearing decision. If a mediation conference is requested at or during the time of a due process hearing the mediation conference resolution shall occur prior to the due process hearing.
- (f) The location of the mediation and/or due process hearing shall be at a time and place reasonably convenient to the parent.
- (g) During the pendency of mediation and/or due process hearing procedures, the infant or toddler shall continue to receive the early intervention services listed on the IFSP they are currently receiving. If mediation and/or due process hearing involves the initiation of a service(s) the infant or toddler shall receive those services that are not in dispute.
- (h) Mediation and due process hearings shall be conducted in English and interpreted in the language of the family's choice or other mode of communication.

Authority cited: Sections 95009 and 95028, Government Code; and Section 4712(k), Welfare and Institutions Code.

Reference: Sections 1435(a)(13) and 1439(l), Title 20 United States Code; Sections 303.420 and accompanying notes, 303.421, 303.423 and 303.425, Title 34 Code of Federal Regulations; and Section 95007(g), Government Code.

§52173. Mediation Procedures.

- (a) Mediation shall be voluntary.
- (b) Mediation is available at any time to resolve disagreements involving any matter related to IDEA Part C.
- (c) The mediation conference shall be conducted by a mediator who is an impartial, third party with no personal or professional interest that would conflict with his or her objectivity in mediating a disagreement.
- (d) The due process hearing officer shall be a different person than the mediator when mediation does not resolve the disagreement.
- (e) The mediator shall be trained in communication, mediation and problem solving and shall be knowledgeable about early intervention programs and the federal and state laws and regulations applicable to Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, and the California Early Intervention Services Act, Government Code Sections 95000-95030.

- (f) The mediator shall be under contract with the Department of Developmental Services.
- (g) A person who otherwise qualifies under Subsection (c) and (d) of this Section as a mediator is not an employee of the Department of Developmental Services solely because the person is paid by the Department of Developmental Services to conduct the mediation process.
- (h) A parent may be accompanied by any representative at the mediation.
- (i) The mediator shall ensure that written agreements from the mediation conference are signed and provided to all participants at the conclusion of the mediation conference.
- (j) Discussions during mediation must be confidential and may not be used as evidence in any subsequent due process or civil proceedings.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1439(1), Title 20 United States Code; Sections 303.420(a)-(b) and accompanying notes, 303.421(a)-(b) and 303.422, Title 34 Code of Federal Regulations.

§52174. Due Process Hearing Procedures.

- (a) The hearing shall be conducted by a due process hearing officer who is an impartial, third party with no personal or professional interest that would conflict with his or her objectivity in conducting the hearing.
- (b) The due process hearing officer shall be knowledgeable about the federal and state laws and regulations applicable to Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445, and the California Early Intervention Services Act, Government Code Sections 95000-95030, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 et seq.; and Part 30 of the California Education Code, commencing with Section 56500 et seq.
- (c) The hearing officer shall:
 - (1) Listen to the presentation of relevant viewpoints about the issue of disagreement;
 - (2) Examine the evidence presented during the hearing;
 - (3) Issue a decision that is in compliance with federal and state law;
 - (4) Provide documentation of the proceedings, including findings of fact and a written decision; and
 - (5) Ensure that the decision is mailed to each party after completion of the hearing and within 30 days of receipt of the due process hearing request.
- (d) A parent involved in a due process hearing shall have the right to:

- (1) Be accompanied and advised by counsel and/or by an individual with special knowledge and training with respect to early intervention services;
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent or the other party at least five days before the proceeding;
 - (4) Obtain a written or electronic, verbatim transcription of the proceeding;
 - (5) Obtain written findings of fact and decision.
- (e) The hearing officer shall be under contract with the Department of Developmental Services. A person who otherwise qualifies under Subsection (a) or (b) of this Section is not an employee of a regional center or LEA solely because the person is paid by the agency to conduct the due process hearing.
- (f) Disputes which occur related to an IEP meeting which may occur prior to the child's third birthday and which pertain to proposed Part B preschool placements or services shall be filed with and processed by the agent or division of the Department of Education which is responsible for administering due process mediations and hearings pursuant to Part B of the Individuals with Disabilities Education Act and Part 30 of the California Education Code, commencing with section 56500 et seq.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1439(1), Title 20 United States Code; Sections 303.421(a)-(b), 303.422(b) and 303.423(b), Title 34 Code of Federal Regulations; and Section 95007(g), Government Code.

Article 5. Surrogate Parents

§52175. Surrogate Parents.

- (a) Regional centers or LEAs shall assign an individual to act as a surrogate parent if:
- (1) No parent can be identified;
 - (2) The infant or toddler is a dependent of the juvenile court and the parental rights of the parent have been limited by the court or relinquished; or
 - (3) The parent cannot be located, after reasonable efforts by the regional center or LEA.
- (b) Interagency agreements as required in Section 52140(b)(12) shall include procedures for:
- (1) Determining whether an infant or toddler needs a surrogate parent;
 - (2) Assigning a surrogate parent to the infant or toddler consistent with the provisions of this Article and Government Code section 7579.5;

- (3) Ensuring that surrogates have no interest that conflicts with the interests of the infant or toddler he or she represents;
 - (4) Ensuring that surrogates have knowledge and skills that ensure adequate representation of the infant or toddler;
 - (5) Ensuring that the surrogate parent is not an employee of any state agency, regional center, LEA or service provider involved in the provision of early intervention services to the infant or toddler. A person who otherwise qualifies as a surrogate parent is not an employee solely because he or she is paid by a state agency, regional center or LEA to serve as a surrogate parent.
- (c) A surrogate parent may represent an infant or toddler in all matters related to:
- (1) The evaluation and assessment of the infant or toddler;
 - (2) Development and implementation of the infant's or toddler's IFSP including annual evaluations, assessments and periodic reviews;
 - (3) The ongoing provision of early intervention services to the infant or toddler;
 - (4) Requesting mediation or due process hearings; and,
 - (5) Any other early intervention service established under Part C of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1431-1445.
- (d) A surrogate parent may not provide consent for medical services for which consent by a parent or legal guardian is required.

Authority cited: Sections 95009 and 95028, Government Code.

Reference: Section 1439(5), Title 20 United States Code; Sections 303.18 and 303.406(a-e), Title 34 Code of Federal Regulations; and Section 95022(f), Government Code.

EDUCATION CODE

Title 2. Elementary and Secondary Education Part 30. Special Education Programs
Chapter 4.4, Early Education for Individuals with Exceptional Needs governs the provision of special education and related services for young children with exceptional needs.

Last amended 2017.

Title 2, Part 30

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Title 2. Elementary and Secondary Education Part 30. Special Education Programs

Chapter 4.4 Early Education for Individuals with Exceptional Needs

30 EC 56425 - Early Education Programs; Eligibility for Funding

As a condition of receiving state aid pursuant to this part, each district, special education local plan area, or county office that operated early education programs for individuals with exceptional needs younger than three years of age, as defined in Section 56026, and that received state or federal aid for special education for those programs in the 1980-81 fiscal year, shall continue to operate early education programs in the 1981-82 fiscal year and each fiscal year thereafter. If a district or county office offered those programs in the 1980-81 fiscal year but in a subsequent year transfers the programs to another district or county office in the special education local plan area, the district or county office shall be exempt from the provisions of this section in any year when the programs are offered by the district or county office to which they were transferred. A district, special education local plan area, or county office that is required to offer a program pursuant to this section shall be eligible for funding pursuant to Section 56432.

This section shall become operative on July 1, 1998.

30 EC 56425.5 - Early Education Programs for Infants; Legislative Findings, Declarations and Intent

The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs that provide educational services with active parent involvement, can significantly reduce the potential impact of many disabling conditions, and positively influence later development when the child reaches school age.

Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the Legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in

family involvement activities pursuant to Sections 56426.1 and 56426.4. It is the intent of the Legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services. It is further the intent of the Legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

This section shall become operative on July 1, 1998.

30 EC 56426 - Early Education for Infants; Program Inclusions

An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities.

Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall include, as program options, home-based services pursuant to Section 56426.1 and home-based and group services pursuant to Section 56426.2, and shall be provided in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Secs. 1431 to 1445, incl.), and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

30 EC 56426.1 - Home-Based Early Education Services

(a) Home-Based Early Education Services funded pursuant to Sections 56427, 56428, and 56432 shall include, but not be limited to, all of the following:

- (1) Observing the infant's behavior and development in his or her natural environment.
- (2) Presenting activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.
- (3) Modeling and demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent.

- (4) Interacting with the family members and other caregivers, as designated by the parent, to enhance and reinforce their development of skills necessary to promote the infant's development.
- (5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs.
- (6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.
- (b) The frequency of home-based services shall be once or twice a week, depending on the needs of the infant and the family.
- (c) This section shall become operative on July 1, 1998.

30 EC 56426.2 - Early Education Services; Home-Based and Group Services

- (a) Early education services funded pursuant to Sections 56427, 56428, and 56432 shall be provided through both home visits and group settings with other infants, with or without the parent. Home-Based and Group Services shall include, but not be limited to, all of the following:
 - (1) All services identified in subdivision (a) of Section 56426.1.
 - (2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.
 - (3) Opportunities for infants to socialize and participate in play and exploration activities.
 - (4) Transdisciplinary services by therapists, psychologists, and other specialists as appropriate.
 - (5) Access to various developmentally appropriate equipment and specialized materials.
 - (6) Opportunities for family involvement activities, including parent education and parent support groups.
- (b) Services provided in a center under this chapter shall not include child care or respite care.
- (c) The frequency of group services shall not exceed three hours a day for up to, and including, three days a week, and shall be determined on the basis of the needs of the infant and the family.
- (d) The frequency of home visits provided in conjunction with group services shall range from one to eight visits per month, depending on the needs of the infant and the family.
- (e) Group services shall be provided on a ratio of no more than four infants to one adult.

- (f) Parent participation in group services shall be encouraged.
- (g) This section shall become operative on July 1, 1998.

30 EC 56426.25 - Early Education Programs; Maximum Service Levels

The maximum service levels set forth in Sections 56426.1 and 56426.2 apply only for purposes of the allocation of funds for early education programs pursuant to Sections 56427, 56428, and 56432, and may be exceeded by a district, special education local plan area, or county office, in accordance with the infants' individualized family service plan, provided that no change in the level of entitlement to state funding under this part thereby results.

This section shall become operative on July 1, 1998.

30 EC 56426.3 - Related Early Education Services

In addition to home-based or home-based and group early education services, related services as defined in Section 300.13 of Title 34 of the Code of Federal Regulations, as that section read on April 1, 1986, shall be available to infants and their families. Related services may be provided in the home or at the center according to needs of the infant and the family.

30 EC 56426.4 - Early Education Programs; Family Involvement Activities

- (a) Family involvement activities funded pursuant to Sections 56427, 56428, and 56432 shall support family members in meeting the practical and emotional issues and needs of raising their infant. These activities may include, but are not limited to, the following:
 - (1) Educational programs that present information or demonstrate techniques to assist the family to promote their infant's development.
 - (2) Parent education and training to assist families in understanding, planning for, and meeting the unique needs of their infant.
 - (3) Parent support groups to share similar experiences and possible solutions.
 - (4) Instruction in making toys and other materials appropriate to their infant's exceptional needs and development.
- (b) The frequency of family involvement activities shall be at least once a month.
- (c) Participation by families in family involvement activities shall be voluntary.
- (d) This section shall become operative on July 1, 1998.

30 EC 56426.5 - Choice of Services

If the transdisciplinary team determines home-based and group early education services to be appropriate, but the parent chooses not to receive home-based services,

group services shall be made available to the infant. Similarly, the choice not to participate in family involvement activities shall not limit the availability to the infant and his or her family of home-based services or Home-Based and Group Services as determined appropriate by the individualized education program team.

30 EC 56426.6 - Transdisciplinary Teams; Qualifications

- (a) Early education services shall be provided by a local educational agency through a transdisciplinary team consisting of a group of professionals from various disciplines, agencies, and parents who shall share their expertise and services to provide appropriate services for infants and their families. Each team member shall be responsible for providing and coordinating early education services for one or more infants and their families, and shall serve as a consultant to other team members and as a provider of appropriate related services to other infants in the program.
- (b) Credentialed personnel with expertise in vision or hearing impairments shall be made available by the local educational agency to early education programs serving infants identified in accordance with paragraph (2), (5), or (13) of subdivision (b) of Section 3030 of Title 2 of the California Code of Regulations, and shall be the primary providers of services under those programs whenever possible.
- (c) Transdisciplinary teams may include, but need not be limited to, qualified persons from the following disciplines:
 - (1) Early childhood special education.
 - (2) Speech and language therapy.
 - (3) Nursing, with a skill level not less than that of a registered nurse.
 - (4) Social work, psychology, or mental health.
 - (5) Occupational therapy.
 - (6) Physical therapy.
 - (7) Audiology.
 - (8) Parent to parent support.
- (d) A person who is authorized by the local educational agency to provide early education or related services to infants shall have appropriate experience in normal and atypical infant development and an understanding of the unique needs of families of infants with exceptional needs, or, absent that experience and understanding, shall undergo a comprehensive training plan for that purpose, which plan shall be developed and implemented as part of the staff development component of the local plan for early education services.

30 EC 56426.7 - Occupational and Physical Therapy

Medically necessary occupational therapy and physical therapy shall be provided to the infant when warranted by medical diagnosis and contained in the individualized family

service plan, as specified under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

30 EC 56426.8 - Determination of Needs of Infant and Family; Parental Consent; Physician Consultation

- (a) Early education and related services shall be based on the needs of the infant and the family as determined by the individualized family service plan team, and shall be specified in the individualized family service plan, including the frequency and duration of each type of service. Any early education or related service may be provided only upon written parental consent.
- (b) The individualized family service plan for any infant shall be developed in consultation with the infant's physician in order to ensure that the services specified in the plan do not conflict with the infant's medical needs.

30 EC 56426.9 - Preschoolers; Continuation in Program

- (a) Pursuant to Section 1437(a)(8) of Title 20 of the United States Code, a local educational agency shall ensure that each child participating in early childhood special education services pursuant to this chapter, and who will participate in preschool programs pursuant to Chapter 4.45 (commencing with Section 56440), experiences a smooth and effective transition to those preschool programs.
- (b) Pursuant to subsection (c) of Section 300.121 of Title 34 of the Code of Federal Regulations, each district, special education local plan area, or county office shall, by the third birthday of a child described in subdivision (a) of this section, ensure that an individualized education program or an individualized family service plan has been developed and is being implemented for the child consistent with a free appropriate public education for children beginning at three years of age.
- (c) In accordance with paragraph (8) of subsection (a) of Section 1437 of Title 20 of the United States Code, each district, special education local plan area, or county office shall participate in transition planning conferences arranged by the designated lead agency.
- (d) Any child who becomes three years of age while participating in early childhood special education services under this chapter may continue until June 30 of the current program year, if the individualized education program team determines that the preschooler is eligible pursuant to Section 56441.11, develops an individualized education program, and determines that the early childhood special education services remain appropriate. No later than June 30 of that year, the individualized education program team shall meet to review the preschooler's progress and revise the individualized education program accordingly. The individualized education program team meeting shall be conducted by the local education agency

responsible for the provision of preschool special education services.

Representatives of the early childhood special education program shall be invited to that meeting. If a child's third birthday occurs during the summer, the child's individualized education program team shall determine the date when services under the individualized education program will begin, pursuant to paragraph (2) of subsection (c) of Section 300.121 of Title 34 of the Code of Federal Regulations.

30 EC 56427 - Early Education Programs; Minimum Expenditure of Federal Funds

- (a) Not less than two million three hundred twenty-four thousand dollars (\$2,324,000) of the federal discretionary funds appropriated to the State Department of Education under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) in any fiscal year shall be expended for early education programs for infants with exceptional needs and their families, until the department determines, and the Legislature concurs, that the funds are no longer needed for that purpose.
- (b) Programs ineligible to receive funding pursuant to Section 56425 or 56432 may receive funding pursuant to subdivision (a).
- (c) This section shall become operative on July 1, 1998.

30 EC 56428 - Instructional Personnel Services Unit Providing Services to Children Younger Than 3 Years of Age

- (a) For the 1985-86 fiscal year, and each fiscal year thereafter, any instructional personnel service unit that was used in the prior fiscal year to provide services to children younger than three years of age shall continue to be used for that purpose. If a special education local plan area becomes ineligible for all or any portion of those instructional personnel service units operated and fundable in the prior fiscal year, the Superintendent of Public Instruction shall allocate those units to another local plan area for the purpose of providing services to children younger than three years of age.
- (b) In the 1998-99 fiscal year, the instructional personnel service unit rates used to compute state funding under this chapter shall be adjusted to represent the actual, historic inflation adjustment amount funded for each provider of early education services under this chapter. To make this adjustment, the superintendent shall make the following calculation:
 - (1) Divide the amount of funding received by the special education local plan area in the 1997-98 fiscal year from property taxes and state aid, after applying the deficit, for early education for individuals with exceptional needs by the amount the special education local plan area was entitled to receive for the 1997-98 fiscal year for that program.

- (2) Multiply the amount determined in paragraph by the instructional personnel service unit rates for the 1997-98 fiscal year used to compute state funding for early education for individuals with exceptional needs prior to the application of the inflation adjustment for the 1998-99 fiscal year.
- (c) For the 1998-99 fiscal year, the department shall transfer an amount from schedule (a) to schedule (b) of Item 6110-161-0001 of Section 2.00 of the Budget Act of 1998, equal to the amount determined by the department, with the approval of the Department of Finance, to be the amount of funding received by the special education local plan area from property taxes in the 1997-98 fiscal year for early education programs for individuals with exceptional needs, multiplied by the inflation factor computed pursuant to Section 42238.1 for the 1998-99 fiscal year and adjusted for the estimated growth in average daily attendance for kindergarten and grades 1 to 12, inclusive, pursuant to the May Revision of the Governor's Budget for the 1998-99 fiscal year.

30 EC 56429 - Early Education Services; Funding Eligibility; Plan Approval

In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56432 is conditioned upon the approval by the superintendent of a local plan for early education services, which approval shall apply for not less than one, nor more than four, years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services in accordance with the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

30 EC 56430 - Early Education Services; Service Providers; Contracts with Other Agencies; Funding

- (a) Early education services may be provided by any of the following methods:
 - (1) Directly by a local educational agency.
 - (2) Through an interagency agreement between a local educational agency and another public agency.
 - (3) Through a contract with another public agency pursuant to Section 56369.
 - (4) Through a contract with a certified nonpublic, nonsectarian school, or nonpublic, nonsectarian agency pursuant to Section 56366.
 - (5) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

- (b) Contracts or agreements with agencies identified in subdivision (a) for early education services are strongly encouraged when early education services are currently provided by another agency, and when found to be a cost-effective means of providing the services. The placement of individual infants under the contract shall not require specific approval by the governing board of the district or the county office.
- (c) Early education services provided under this chapter shall be funded pursuant to Sections 56427, 56428, and 56432.
- (d) This section shall become operative on July 1, 1998.

30 EC 56431 - Contracts with Private Nonprofit Preschools or Child Development Centers; Criteria

The superintendent shall develop procedures and criteria to enable a district, special education local plan area, or county office to contract with private nonprofit preschools or child development centers to provide special education and related services to infant and preschool age individuals with exceptional needs. The criteria shall include minimum standards that the private, nonprofit preschool or center shall be required to meet.

30 EC 56432 - Funding of Local Plans or Instructional Personnel Units

- (a) For the 1998–99 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to individuals with exceptional needs younger than three years of age at the second principal apportionment of the prior fiscal year, as long as the pupil count of these pupils divided by the number of instructional personnel service units is not less than the following:
 - (1) For special classes and centers—12, based on the unduplicated pupil count.
 - (2) For resource specialist programs—24, based on the unduplicated pupil count.
 - (3) For designated instruction and services—12, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.
- (b) A special education local plan area shall be eligible for state funding of instructional personnel service units for services to individuals with exceptional needs younger than three years of age in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the superintendent.
- (c) The superintendent shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional personnel service units, upon criteria that shall include, but not be limited to, the following:

- (1) Changes in the total number of pupils younger than three years of age enrolled in special education programs.
- (2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.
- (d) Infant programs in special classes and centers funded pursuant to this item shall be supported by two aides, unless otherwise required by the superintendent.
- (e) Infant services in resource specialist programs funded pursuant to this item shall be supported by one aide.
- (f) When units are allocated pursuant to this subdivision, the superintendent shall allocate only the least expensive unit appropriate.
- (g) Notwithstanding Sections 56211 and 56212, a special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall give priority to the following factors:
 - (1) Applications from special education local plan areas for waivers for a period not to exceed three years to specifically maintain or increase the level of special education services necessary to address the special education service requirements of individuals with exceptional needs residing in sparsely populated districts or attending isolated schools designated in the application.
 - (A) Sparsely populated districts are school districts that meet one of the following conditions:
 - (i) A school district or combination of contiguous school districts in which the total enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive, and in which one or more of the school facilities is an isolated school.
 - (ii) A school district or combination of contiguous school districts in which the total pupil density ratio is less than 15 pupils, kindergarten and grades 1 to 12, inclusive, per square mile and in which one or more of the school facilities is an isolated school.
 - (B) Isolated schools are schools with enrollments of less than 600 pupils, kindergarten and grades 1 to 12, inclusive, that meet one or more of the following conditions:
 - (i) The school is located more than 45 minutes average driving time over commonly used and well-traveled roads from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.
 - (ii) The school is separated, by roads that are impassable for extended periods of time due to inclement weather, from the nearest school,

including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iii) The school is of a size and location that, when its enrollment is combined with the enrollments of the two largest schools within an average driving time of not more than 30 minutes over commonly used and well-traveled roads, including schools in adjacent special education local plan areas, the combined enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iv) The school is the one of normal attendance for a severely disabled individual, as defined in Section 56030.5, or an individual with a low-incidence disability, as defined in Section 56026.5, who otherwise would be required to be transported more than 75 minutes, average one-way driving time over commonly used and well-traveled roads, to the nearest appropriate program.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, or similar facilities that serve children younger than three years of age and are within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

(h) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If that growth appropriation is made, units authorized by the superintendent pursuant to this section are subject to the restrictions that the units shall be funded only by that growth appropriation and no other funds may be apportioned for the units.

(i) The superintendent shall monitor the use of instructional personnel service units retained or authorized by the granting of waivers pursuant to subdivision (h) to ensure that the instructional personnel service units are used in a manner wholly consistent with the basis for the waiver request.

(j) This section shall become operative on July 1, 1998.

(Added by Stats. 1997, Ch. 854, Sec. 58. Effective January 1, 1998. Section operative July 1, 1998, by its own provisions.)