

## DEPARTMENT OF EDUCATION

## 34 CFR Part 303

RIN 1820-AB53

## Early Intervention Program for Infants and Toddlers With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Early Intervention Program for Infants and Toddlers With Disabilities under Part C of the Individuals with Disabilities Education Act (IDEA). These amendments are needed to provide clarification and guidance regarding the provision of early intervention services in "natural environments;" to revise the provisions on State financing of early intervention services (including adding provisions to address the use of public and private insurance by States); and to make other changes designed to improve the understanding and implementation of the regulations under this part.

**DATES:** We must receive your comments on or before December 4, 2000.

**ADDRESSES:** Address all comments about these proposed regulations to Thomas B. Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3090, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202-2570.

If you prefer to send your comments through the Internet, use the following address: [Comments@ed.gov](mailto:Comments@ed.gov)

You must use the term "IDEA—Part C regulations" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:**

JoLeta Reynolds or Thomas B. Irvin (202) 205-5507. If you use a telecommunication device for the deaf (TDD), you may call the TDD number at (202) 205-5465.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotope, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205-8113.

**SUPPLEMENTARY INFORMATION:****Invitation to Comment**

We invite you to submit comments and recommendations regarding the specific provisions in this notice of proposed rulemaking (NPRM) to which we are proposing to make changes to the existing regulations for part 303, including proposed changes relating to:

(1) Natural environments (*i.e.*, proposed § 303.341, and changes to §§ 303.12(b), 303.18, 303.167(c); and 303.344(d), and other changes identified in the discussion of changes on natural environments later in this preamble);

(2) State financing of early intervention services and the use of insurance (*i.e.*, proposed § 303.519, and changes to §§ 303.520 and 303.521); and

(3) Other areas, including—

- The provisions on service coordination (*i.e.*, §§ 303.12(d)(11), 303.23, and a new 303.302);

- The two-day timeline provision in the child find requirements (*i.e.*, § 303.321(d)(2)(ii));

- Individualized family service plans (IFSPs), to—(1) include under proposed § 303.342(a)(2), a provision on special considerations (similar to the Part B requirement in 34 CFR 300.346(a)(2)); and (2) to further clarify (under 303.343(a)(2)) how evaluation results will be interpreted at an IFSP meeting if the person or persons conducting the evaluations and assessments is unable to be present at the meeting;

- The "pendency" provision under § 303.425, to clarify that the provision does not apply if a child is transitioning from Part C services to preschool or other services; and

- Transition to preschool or other appropriate services under §§ 303.148 and 303.344(h), to make clarifying changes regarding those provisions.

A description of each of these changes and other proposed substantive changes is included later in this preamble. In addition, "Attachment 1" to this NPRM includes a consolidated list, by subpart and section, of the proposed revisions to be made to the existing regulations, except for minor technical changes (*e.g.*, correcting typos, making simple word changes, and other similar changes).

The majority of the requirements in part 303 (nearly two-thirds of all sections in the existing regulations) are not being revised by this NPRM, and would remain unchanged at the end of this rulemaking process. However, although we are proposing to amend a relatively small number of requirements in these regulations, we are sensitive to the difficulties readers face if the NPRM shows only the amended language and not the entire regulation. Thus, to accommodate readers in understanding these proposed changes, we have elected to publish the full text of the regulations, as it would be if amended, rather than simply publishing an amendatory document that shows only the proposed changes. While this approach increases the length of this NPRM, it provides a more meaningful way for parents, public agencies, service

providers, and the general public to review the changes within the context of the existing regulations.

In providing this accommodation, however, we are asking that comments submitted on this NPRM be limited only to the provisions in the existing regulations to which we are proposing to make substantive changes, including the provisions identified earlier in this preamble.

To ensure that comments have the maximum effect in developing the final regulations, we encourage you to identify clearly the specific subpart, section, and paragraph of the proposed regulations that each comment addresses, and to arrange the comments in the same order that the proposed changes appear in the text of this NPRM.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulatory changes. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program. Again, however, please limit your comments to the changes we have proposed to the existing regulations.

During and after the comment period, you may inspect all public comments about this proposed regulation in Room 3090, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record*

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed regulation. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

*Background*

On April 14, 1998, the Secretary published in the **Federal Register** (63 FR 18290) final regulations governing "Part H" of the IDEA, the Early Intervention Program for Infants and Toddlers with Disabilities (34 CFR part 303). Those final regulations revised

part 303 to incorporate the statutory amendments to Part H that were added by the IDEA Amendments of 1997, including new provisions relating to mediation, natural environments, payor of last resort, personnel standards, and State interagency coordinating councils. These regulations became effective on July 1, 1998, and at that time the Part H program was renamed "Part C," consistent with the IDEA Amendments of 1997.

On March 12, 1999, with the publication of final regulations for Part B of IDEA (34 CFR part 300), the regulations under part 303 were further revised to make conforming amendments to the definition of "parent" in § 303.19, the State complaint procedures in §§ 303.510–303.512, and the use of proceeds from public or private insurance in § 303.520(d).

Except for those technical and conforming amendments made to part 303 in 1998 and 1999, these regulations have not been amended since 1993, when they were revised to implement the IDEA Amendments of 1991 (Pub. L. 102–119) and make certain other changes. Moreover, many provisions in part 303 have remained in effect since the initial regulations for the "Part H program" were published in 1989.

In many respects, the regulations for the Part C program have provided, over an extended period of time, an effective blueprint for States to follow in developing and maintaining a statewide system of early intervention services for infants and toddlers with disabilities and their families. However, based on the Department's experience in administering the Part C program, especially in recent years, it has become clear that changes are needed in certain key requirements in part 303, as described earlier in this preamble under the "Invitation to Comment."

The need for making the proposed changes in this NPRM has become increasingly apparent in recent years, based on (1) the kinds of questions we have received from parents and public agency staff about problems they are facing with the Part C program; (2) the policy guidance we have provided to States; and (3) the findings we have made in monitoring State implementation of the Part C program.

In addition, as a follow-up to the Department's recognized need to amend selected provisions in the existing regulations for part 303, the Secretary published (in the same April 14, 1998 issue of the **Federal Register** (63 FR 18297) described earlier in this preamble) a notice soliciting advice and recommendations from the public as to

whether additional revisions are needed to implement the requirements added by the IDEA Amendments of 1997, and on whether to develop new regulations in areas that were not affected by the statutory amendments. On August 14, 1998, the Secretary published another notice in the **Federal Register**, extending the period for submitting comments until the 30th day following publication of the final regulations for Part B of IDEA (*i.e.*, April 12, 1999).

By the end of the comment period, 328 comments were received in response to the **Federal Register** notices, including letters from parents and grandparents, several State lead agencies and interagency coordinating councils, early intervention service providers, and parent-advocate and professional associations.

The comments addressed a wide range of provisions in the current regulations, but focused mainly on natural environments; finance issues, resources, and insurance; individualized family service plans (IFSPs); personnel standards; procedural safeguards; and transition to preschool programs.

The comments submitted in response to the two **Federal Register** notices were carefully reviewed and considered in developing this NPRM. We appreciate the thoughtful attention of the commenters in responding to these notices.

Taken as a whole, the comments validated the need for the Department to publish a notice of proposed rulemaking (NPRM) on selected provisions in the Part C regulations.

The following describes the proposed changes to the regulations on natural environments, followed by a description of other proposed regulatory changes by subpart and section, including proposed changes regarding the financing of early intervention services, described under §§ 303.519–303.521 of Subpart F.

#### *Natural Environments*

We are proposing to make clarifying changes to the provisions on "natural environments" in the existing regulations, in order to more accurately reflect the Department's long-standing policy interpretation regarding these provisions, and to provide more definitive guidance on their implementation than is included in the current regulations.

The provisions on natural environments are included in four sections of the current regulations, as follows: First, in the definition of early intervention services under § 303.12(b), which states that, to the maximum extent appropriate to the needs of the

child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. Second, a definition of "natural environments" is included in § 303.18 (*i.e.*, the term "means settings that are natural or normal for the child's age peers who have no disabilities").

Third, the State application requirements on IFSPs in § 303.167 of the current regulations include, under paragraph (c) of that section, a statutory provision that requires policies and procedures on natural environments. Finally, the "Content of IFSP" requirements in § 303.344 require, under paragraph (d) of that section, that the IFSP include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family, including— "(iii) The natural environments, as described in §§ 303.12(b) and 303.18, in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment."

Based on the public comments we received about natural environments, as well as other concerns and questions raised with the Department in recent years, it is clear that there is some misunderstanding about the meaning of "natural environments," and how those provisions are to be implemented.

The changes that we are proposing to make to the natural environment provisions do not impose major new substantive requirements. Instead, in contrast to the current regulations, they focus more fully on a basic theme inherent in the Part C program—the individualization of decisions, through the IFSP process, in determining—(1) what specific early intervention services a child needs, and (2) the setting or settings in which those services will be provided. Virtually all major changes on natural environments that are proposed in this NPRM are directed at giving greater emphasis to that theme than the current regulations reflect.

The concept of individualization through the IFSP process is consistent with the Part C regulatory history on natural environments. For example, the concept was addressed in the "Analysis of Comments and Changes" in the 1993 final Part H regulations, in which commenters had requested clarification and examples of when a child must be served in a natural environment. The response to those comments is included in the following paragraph:

*Discussion:* The Secretary believes that no further guidance is appropriate at this time. Decisions on the early intervention services to a child and his or her family, including decisions on the location of service delivery, are made in the development of the individualized family service plan described in §§ 303.340–303.346. The Secretary contemplates that the range of available options will be reviewed at the IFSP meeting described in § 303.342, in which the parents are full participants. With respect to the comment on center-based services, the Secretary emphasizes that decisions on the location of service delivery must be made on an individualized basis in accordance with the needs of the child and the family. See § 303.344(d). (58 FR 40982, July 30, 1993).

The basic thrust of the natural environments provisions in the statute and regulations is that, to the maximum extent appropriate, early intervention services are provided in the home of each eligible child, or in community settings in which children without disabilities participate. The basic principle underlying this requirement is that being in integrated settings with their nondisabled peers will enhance the development of eligible children under this part. It also prepares the child and family, if the child is “Part B—eligible,” for the experience of receiving services in the least restrictive environment. For a child who is not eligible for Part B services and may automatically be integrated in school and in life with nondisabled peers, the child and family would likewise be prepared. Thus, this provision ensures that eligible children under this part will be in community settings with their nondisabled peers—including receiving early intervention services in those settings—to the extent appropriate.

However, the IDEA Amendments of 1997 added the following new provisions, which make it clear that exceptions are anticipated, and that the provision of services in settings other than natural environments may be necessary under certain conditions:

- Section 635(a)(16)(B) requires each State to have policies and procedures to ensure that—“The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment *only if early intervention cannot be achieved satisfactorily* for the infant or toddler in a natural environment;” (Emphasis added).

- Section 635(d)(5) provides that the IFSP must include a statement of “The natural environments \* \* \* in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment.” (Emphasis added)

Thus, while “natural environments” are the legally preferred settings for providing early intervention services, it would be appropriate, under Part C of the Act and these regulations, for a given child to receive one or more of the early intervention services in another setting, if the child’s IFSP team, after reviewing the relevant information about the child, makes that determination.

#### **Proposed Changes to Natural Environments Provisions**

The following are changes that we are proposing to make to the natural environments provisions in the current regulations:

We are proposing to amend the definition of “natural environments” in § 303.18, by—(1) making technical changes, including designating the current definition as § 303.18(a), and (2) incorporating, as new § 303.18(b), the substance of the provision on natural environments from § 303.12(b) of the existing regulations. This proposed change would include, in one place, the full text of the definition of “natural environments” rather than having the provisions divided among two separate sections under Subpart A of the current regulations (*i.e.*, §§ 303.12(b) and 303.18).

In addition, consistent with the Part C theme of individualized decisions by IFSP teams, we are proposing to amend the corresponding regulations on natural environments to include, under the IFSP requirements in Subpart D, all substantive provisions related to natural environments—first, by revising the definition of “IFSP” in proposed § 303.340(a), to affirmatively state that each child’s IFSP is developed by the IFSP team; second, by placing all substantive “process” requirements regarding natural environments in a new § 303.341 (“Policies and procedures on natural environments”), including the State application requirements from § 303.167(c); and third, by revising the “Content of IFSP” requirements in § 303.344, to make clarifying and technical changes on natural environments.

The revised definition of “IFSP” in § 303.340(a) makes it clear that, among its various duties and responsibilities, the IFSP team is directly responsible for—(1) determining the specific early intervention services necessary to meet the unique needs of the child and the family, consistent with § 303.344(d)(1); and (2) implementing the provisions on natural environments in § 303.344(d)(3), including determining the specific locations or settings where each service will be provided.

Section 303.167(c) (which contains the State application requirement on natural environments from section 635(a)(16) of the Act) would be amended by—(1) moving the substance of that requirement to a new § 303.341(a); and (2) revising the language in § 303.167(c) to clarify that each application must include “Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3).”

These proposed changes to the IFSP definition, together with the new provisions in proposed § 303.341, highlight the crucial role that the IFSP team (including the parents) plays in implementing the natural environments provisions, but does so without imposing any additional burden on IFSP teams. However, these changes would address a problem that the Department has found in monitoring States’ implementation of the Part C program. In some States, the decisions as to the settings for providing services either (1) have been made without the benefit of the full IFSP team’s involvement; or (2) have been dictated by external circumstances, such as funding sources or personnel, without regard to the needs of the particular child.

Proposed § 303.341(a) would incorporate the substance of § 303.167(c) (described earlier), and would be amended to clarify the role of the IFSP team. It is the IFSP team that determines whether early intervention can be achieved satisfactorily in a natural environment, based on the evaluation and assessment required in § 303.322 and the information required in § 303.344(a)–(c) (*i.e.*, the child’s present status, the family information, and the desired outcomes).

A new § 303.341(b) would be added to clarify that the policies and procedures described in paragraph (a) of this section must ensure that—(1) the IFSP team determines, for each service to be provided, whether the child’s needs can be met in a natural environment; and (2) if the team determines that a specific service for the child must be provided in a different setting (for example, in a center-based program that serves children with disabilities, or another setting appropriate to the age and needs of the child), a justification is included in the child’s IFSP.

Proposed § 303.341(b) also would not add any new burden. However, it would emphasize that the IFSP team’s decisions on settings are separate for each service to be provided. While some services for a given child may be appropriately provided in the child’s home, other services may be more

appropriate in a group setting (*e.g.*, if a service is designed to meet a socialization goal, the team may choose a child care, day care, or playgroup setting). In addition, this provision would emphasize that the order of decision-making is, first, to determine, for each service in the child's IFSP, if the needs of the child can be met in a natural environment; and, then, only if the team determines that, for a given service, the child's needs cannot be met in a natural environment would other settings be considered.

A provision requiring that the IFSP include a justification of the extent, if any, to which early intervention services will not be provided in a natural environment is set out in the "Content of IFSP" requirements in § 303.344; and the procedures that the IFSP team follows in implementing that provision are contained in § 303.341(c). These provisions are described in the following paragraphs.

The provisions on natural environments and location of services in existing § 303.344(d)(1) would be amended, first, by moving those provisions, in modified form, to a new § 303.344(d)(3), entitled "Natural environments—location of services," and deleting existing paragraphs (d)(1)(ii) and (d)(1)(iii); and, second, by revising new § 303.344(d)(3) to—(1) add a reference to the "process" requirements on natural environments in § 303.341; and (2) clarify that the decision on natural environments, and any justification needed, is made separately for each service to be provided to the child.

Proposed § 303.341(c) would provide that the justification required in § 303.341(b) (and in § 303.344(d)(3)(ii)) must—(1) include a statement describing the basis of the IFSP team's decision to provide a specific early intervention service for the child in a setting other than a natural environment; (2) be based on the identified needs of the child, and the projected outcomes, as determined by the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c); and (3) if appropriate, be based on the nature of the service required to meet the unique needs of the child.

From the comments and questions we have received, it appears that "natural environments" is being interpreted by some to mean that, without exception, early intervention services must be provided only in the child's home, or in a community setting in which children without disabilities participate. Clearly, this limitation is not intended under either the statute or these regulations.

The statutory requirement that the IFSP include a justification of the extent, if any, to which a child will not receive services in a natural environment is a safeguard to ensure that the IFSP team, including the parent, has concluded—only after carefully reviewing all relevant information about the child—that one or more of the services in the child's IFSP must be provided in a setting other than a natural environment. The justification, itself, does not have to be long or burdensome; it could include a simple statement, based on the IFSP team's discussion and conclusions, that describes why the team determined that a particular service for the child needs to be provided in a different setting.

It is important, however, that the conclusions of the IFSP team, as well as the justification, be based on the needs of the child, and not for other reasons such as administrative convenience, or the State's fiscal or personnel limitations.

The provision in proposed § 303.341(c)(3) that concerns the "nature of the service" to meet the unique needs of the child to support a justification, is meant to address the unique types of services for certain types of disabilities that must be provided in a specialized setting to be effective. For example, some auditory services for deaf children need to be provided in a quiet, controlled setting without noise distractions; and services for medically fragile children may need to be provided in a sterile environment. However, it is expected that this justification would be used only in those extraordinary circumstances in which the child's unique needs and the unique nature of the service require the service to be provided in a specialized setting. Thus, as stated in the preceding paragraph, the use of this justification would not be acceptable for any of the reasons described earlier, such as administrative convenience, funding, or personnel limitations.

Some commenters expressed concern about losing the parent-to-parent interactions in early intervention centers. Parent networking, support, and training, however, are important family needs that should be addressed by the IFSP team as part of developing a child's IFSP. The identification of parent support, training, or counseling, as a needed early intervention service, may be provided directly through Part C, or by referral to an organization that offers these services (*e.g.*, a Parent Training and Information Center, a Parent-to-Parent program, or other family support organizations). The settings in which these meetings or

training sessions will take place should be part of the overall discussion in the development of the IFSP.

Many early intervention centers that once served only children with disabilities have expanded to serve nondisabled children. Thus, many opportunities exist for parents of children with disabilities to interact; and a parent's need for time with other parents of children with disabilities may be successfully accommodated in either the natural environments where the child receives services, or in other settings.

However, the parent's need cannot be used as a justification for not providing services to the child in a natural environment. With respect to requiring a justification of the extent, if any, to which the services will not be provided in a natural environment, the focus of that requirement is on the child. Thus, any justification for the child's services to take place in a setting other than a natural environment must relate to the child's individual needs.

In fact, the settings for parent support, training, and counseling are not affected by the natural environments provisions. This matter is addressed in proposed § 303.341(d), which would provide that the provisions on natural environments in this part do not apply to services in the IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child (*e.g.*, participation of a parent in a parent-support program). However, if a specific service listed in the IFSP is intended to help the parent to enhance the development of the child (*e.g.*, to train the parent to work directly with the child in implementing an exercise recommended by a physical therapist), the service must be provided in a natural environment, to the maximum extent appropriate; and the natural environments provisions would apply.

The definition of "location" in § 303.344(d)(3) (and the separate provision on "[t]he location of the services," previously described under § 303.344(d)(1)(iii)) would be deleted. These provisions are no longer needed, based on the evolution of the natural environment provisions since the original Part H regulations were published in 1989.

#### *Other Proposed Regulatory Changes*

As previously indicated, in addition to the provisions on natural environments and the proposed changes to the provisions on "Policies and Procedures Related to Financial Matters" (see description of proposed § 303.519, and proposed changes to §§ 303.520–303.521), we are proposing

to make changes to certain other requirements in the existing regulations, including updating and clarifying those requirements, and to make other technical and organizational changes designed to improve the understanding and implementation of the regulations for the Part C program.

We also are proposing to address the disposition of some of the explanatory notes that follow selected sections of the current regulations, as follows:

First, in a few instances, we are proposing to incorporate into the text of the regulations the nonregulatory guidance contained in certain selected notes, including the substance of the notes following §§ 303.23 (Service coordination; redesignated as proposed § 303.302); 300.123 (Prohibition against commingling); 303.301 (Central directory); and 303.361 (Personnel standards).

Second, we are proposing to amend the note preceding § 303.6, to delete "location" from the list of terms defined in this part (described earlier in this preamble). We also are proposing to amend the note following § 303.12 (Early intervention services) to provide additional clarification regarding "qualified personnel" who provide early intervention services.

Third, we are proposing to delete Note 1 following § 303.420 (Due process procedures) because, with the proposed changes made to § 303.420 and other sections under subpart E of these regulations, the note would no longer be relevant. (An explanation of the proposed changes made to the notes in this NPRM is included later in this preamble under the discussion of each specific section.)

With respect to the remaining notes in the current regulations, we are planning to remove those notes from the final regulations, either by—(1) incorporating into the text of the regulations the substance of any note that should be a requirement; (2) adding, as part of the analysis of comments and changes, information from any note that provides clarifying information or useful guidance; or (3) deleting any note that is no longer relevant. Our proposed action with respect to the notes is consistent with the process followed in publishing the final Part B regulations.

We specifically invite public comment on which notes should be—(1) made regulatory; (2) included only as guidance in the preamble to the final regulations, or in the "Analysis of Comments and Changes" included in those regulations; or (3) deleted. In order to assist commenters in this effort, we have included, as "Attachment 2" to this NPRM, a list showing each section

of the current regulations that contains a note.

This NPRM includes a number of technical, structural, and organizational changes that are proposed for the purpose of improving the readability and understanding of certain requirements in the regulations under this part. These technical, structural, and organizational changes, which are described in the following paragraphs (along with the proposed substantive revisions), are not intended in any way to change the substance of the requirements.

The following includes, by subpart, section, and paragraph, a description of the proposed changes to the current Part C regulations. (See also Attachment 1 to this NPRM—the "List of Proposed Changes in IDEA—Part C Regulations," described earlier in this preamble.)

#### **Subpart A—General**

Section 303.3 (Activities that may be supported under this part) would be amended, first, by making technical changes (e.g., changing the title of the section to "Use of Part C Funds"), and restructuring the section, by redesignating the activities in § 303.3(a)–(e) of the existing regulations as paragraphs (a)(1)–(a)(5)).

Second, § 303.3 would be amended by adding a new paragraph (a)(6), to clarify that funds under this part may be used to assist families to—(1) understand the sources of financing early intervention services, including public and private insurance programs, and how to access those sources; and (2) be knowledgeable about any potential long-term costs involved in accessing those sources, and how to minimize those costs.

It is important that families know how to access funding for early intervention services and of the consequences of using public or private insurance, so that they can make informed decisions about the provision of services for their eligible children under this part. This proposed use of funds would not be mandatory for States.

One way that States may assist families with respect to understanding sources of funding under this provision would be through the service coordinator assigned to each child and the child's family. Therefore, we have proposed a corresponding change in the functions of service coordinators under new § 303.302.

Section 303.3 would be further revised by adding a new paragraph (b)(1), to clarify that "[f]unds under Part C of the Act may not be used to pay costs of a party related to an action or proceeding under section 639 of the Act and subpart E of this part." This

provision would prohibit the use of Part C funds for costs of a party in either due process hearings or any resulting court proceedings, and related matters, including costs for depositions, expert witnesses, settlements, and other related costs. For example, under this provision, the lead agency would not be able to use Part C funds to pay for its legal representation in a due process hearing or resulting court proceeding. It is important to include this prohibition, to ensure that the limited Federal resources under Part C are used to provide early intervention services for eligible children under this part and their families, and are not used to promote litigation of disputes.

A new § 303.3(b)(2) would be added to make it clear that the prohibition in paragraph (b)(1) does not preclude a lead agency from using Part C funds for conducting due process hearings under section 639 of the Act (for example, paying a hearing officer, providing a place for conducting a hearing, and paying the cost of providing the parent with a transcription of the hearing). The general rule under § 303.3(b)—that prohibits the use of Part C funds to pay expenses incurred by a party to an action or proceeding, but allows a lead agency, as administrator of the program, to use the funds to make due process hearings available—is consistent with the way it is expressed in the Part B regulations.

Section 303.5 (Applicable regulations) would be amended by updating paragraph (a)(1) of the section to include a reference to other parts of the Education Department General Administrative Regulations (EDGAR) that apply to part 303, including Part 97 (Protection of Human Subjects); Part 98 (Student Rights in Research, Experimental Programs and Testing); and Part 99 (Family Educational Rights and Privacy).

Section 303.5 would be further amended to clarify, in paragraph (a)(3), that the Part B due process hearing procedures in 34 CFR 300.506–300.512 apply to this part if a State lead agency, under § 303.420(a)(1), adopts those procedures. This change would make explicitly applicable the translations from Part B to Part C language in § 303.5(b). In addition, a technical change would be made to § 303.5(a)(3) to change the reference to applicable Part B regulations from §§ 303.580–303.303.585 to §§ 303.580–303.587.

The references in § 303.5(b)(4) would be removed because the provisions cited under that paragraph are not applicable. Paragraph (b)(5) of this section would be redesignated as (b)(4), and the citation would be corrected to read, as follows:

“§ 300.127 (Confidentiality of personally identifiable information).”

### Definitions

The note immediately preceding § 303.6 (which includes a list of the terms that are defined in specific subparts and sections of the regulations for part 303) would be amended by deleting the definition of “Location (§ 303.344(d)(3))” from the list (see discussion of natural environments earlier in this preamble).

Section 303.9 (Days) would be amended by changing the title to “Day; business day;” and by clarifying that “business day” would apply only with respect to hearing rights under 34 CFR 300.509, if a State adopts the Part B due process hearing procedures. As used in these proposed regulations and in Part B (34 CFR part 300), “business day” means Monday through Friday, except for Federal and State holidays.

With respect to States that implement the due process hearing procedures under §§ 303.421–303.425 (in lieu of adopting the Part B procedures), we invite comments on whether existing § 303.422(b)(3) (Parent rights in due process hearings) should be amended by replacing “days” with “business days” in the following provision:

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the hearing.

The use of “business days” in this context would in no way reduce a parent’s rights under this part, but, instead, would be beneficial because it would enable the parent to have more time in which to review the evidence.

Section 303.12 (Early intervention services) would be amended by—(1) changing the order of the paragraphs in the definition, including the order of specific provisions in paragraph (a), to conform more closely to the statutory definition; (2) moving the list of specific early intervention services from paragraph (d) to paragraph (b); and (3) clarifying, in proposed paragraph (a)(5), that the early intervention services listed in paragraph (b) are subject to the exclusions on health services in § 303.13(c).

Section 303.12(a) would be further amended by—(1) clarifying, in proposed paragraph (a)(6), that early intervention services are provided “in a timely manner” by the qualified personnel listed in paragraph (e) (proposed paragraph (c)); (2) specifying, in proposed paragraph (a)(8), that, to the maximum extent appropriate, the services are provided “in natural

environments, as defined in § 303.18;” and (3) making other technical changes.

Finally, § 303.12 would be further revised by (1) moving the substance of paragraph (b) (on “natural environments”) to the definition of that term in § 303.18; and (2) making other technical changes.

Section 303.12(d)(1) (proposed § 303.12(b)(1)) (Assistive technology) would be amended by restructuring the introductory paragraph into new paragraph (b)(1)(i) (Assistive technology device) and paragraph (b)(1)(ii) (Assistive technology service). The definition of “assistive technology service” would be revised to clarify that the term means a service “that directly assists an eligible child or the child’s parents in the selection, acquisition, or use of an assistive technology device *for the child.*” (Emphasis added)

Section 303.12(d)(2) (proposed § 303.12(b)(2)) (audiology) would be amended by changing the title to “audiology services,” to conform to the statutory term; and by making other changes to conform more closely to the Part B definition (e.g., replacing “auditory impairment” with “hearing loss” each time it appears; deleting the term “at risk criteria and” in paragraph (d)(2)(i); and adding a new paragraph (d)(2)(vii) on “Counseling and guidance of children, parents, and teachers regarding hearing loss”).

In response to a suggestion from commenters, § 303.12(d)(3) (proposed § 303.12(b)(3)) (Family training, counseling, and home visits) would be amended by adding “special educators” to the types of personnel who may appropriately provide these services. Although the phrase “and other qualified personnel” in the existing definition under § 303.12(d)(3) would encompass special educators as well as other types of early intervention and related services providers, special educators may not ordinarily be considered under this part as having a role in providing family training, counseling, and home visits.

Section 303.12(d)(6) (Nursing services) would be moved from the definition of early intervention services to the definition of “Health services” as a new § 303.13(b)(3), to clarify that nursing services are, in fact, an inherent part of “health services necessary to enable the infant or toddler to benefit from the other early intervention services.” (IDEA section 632(4)(E)(x)). Nursing services, like the other health services listed in § 303.13, may be provided through Part C during the time a child is receiving the other early intervention services described in § 303.12, to enable the child to benefit

from those services. Because the placement of the definition of nursing services in the existing regulations has caused confusion, this change would clarify the meaning of nursing services under Part C. With the removal of “Nursing services” from the list of early intervention services under proposed § 303.12(b), the remaining services in that list would be renumbered accordingly.

Section 303.12(d)(8) (proposed § 303.12(b)(7)) (Occupational therapy) would be amended by adding language to clarify that the term “(i) Means services provided by a qualified occupational therapist.”

Section 303.12(d)(11) (“Service coordination services”) would be amended, first, by making technical changes (e.g., changing the title to “Service coordination,” and changing the citation to § 303.12(b)(10)); and, second, by deleting the phrase—“that are in addition to the functions and activities included under § 303.23;” and adding language to clarify that “service coordination” is actually comprised of those functions and activities. (See discussion that follows.)

In addition, because the definition of “Service coordination (case management)” in § 303.23 includes mainly long-standing substantive requirements, and is not simply a definition, we are proposing to move the substance of that definition, without change, to a new substantive section of the regulations (§ 303.302 under Subpart D), and to delete § 303.23. This proposed change, together with the proposed revision to § 303.12(d)(11), would—(1) resolve the confusion that has existed with two definitions of service coordination in the regulations (i.e., in §§ 303.12(d)(11) and 303.23), and (2) mean that the only definition of service coordination under this part would be the one in § 303.12(d)(11) (proposed § 303.12(b)(10)). As revised, proposed § 303.12(b)(10) would state that “[s]ervice coordination means assistance and services provided by a service coordinator to a child eligible under this part and the child’s family, *in accordance with § 303.302.*” (Emphasis added)

Thus, “service coordination” would remain as a listed early intervention service in proposed § 303.12(b)(10). However, as clarified in proposed § 303.302(b)(2), IFSPs are not required to include service coordination as one of the child’s early intervention services under § 303.344(d)(1), because service coordination—(1) is a basic entitlement of every eligible child under this part, and (2) is an on-going, coordinative process that is designed to facilitate and

enhance the delivery of early intervention services. On the other hand, IFSPs must include the name of the service coordinator, as currently required in § 303.344(g) (proposed § 303.344(h)).

Because of the crucial role that service coordinators play in facilitating the evaluation of an eligible child under this part, and in the development and implementation of the child's IFSP, it is appropriate that the functions and activities of the service coordinator be moved to proposed § 303.302, so that they are closely linked to the child-centered requirements in Subpart D. A technical change would be made in the introduction to proposed new § 303.302 to make it clear that "service coordination (case management)" is a substantive requirement and not a definition.

Section 303.12(d)(13) (proposed § 303.12(b)(12)) (Special instruction) would be amended by deleting, in paragraph (d)(13)(i), the phrase "in a variety of developmental areas, including cognitive processes and social interaction," and replacing it with "in the following developmental areas: cognitive; physical; communication; social or emotional; and adaptive." This proposed change more closely tracks the developmental areas described in the statute and in §§ 303.16 and 303.300.

The definition of "special instruction" would be further amended by revising paragraph (d)(13)(ii) to read as follows:

Planning that lead to achieving the outcomes in the child's IFSP, including curriculum planning, the planned interaction of personnel, and planning with respect to the appropriate use of time, space, and materials.

This change would more accurately reflect "special instruction" as an early intervention service, and would improve the readability and understanding of the definition.

Section 303.12(d)(14) (proposed § 303.12(b)(13)) (Speech-language pathology) would be amended by—(1) adding "services" to the title, to conform to the statutory term; (2) replacing "oropharyngeal" with "swallowing" each place it appears, to more accurately and clearly describe the term used by speech-language pathologists; and (3) adding a new paragraph (b)(13)(iv), related to "Counseling and guidance of parents, children, and teachers regarding speech and language impairments," to conform to the Part B definition.

The note following § 303.12 would be revised by adding language to clarify that "qualified personnel" who provide

early intervention services also may include augmentative communication specialists, and technology specialists.

Section 303.13 (Health services) would be amended by revising paragraph (b), to clarify that the covered health services under that paragraph (e.g., clean intermittent catheterization and other health services listed in paragraph (b)(1), and consultation by physicians, described in paragraph (b)(2)) are subject to the limitations included under paragraph (c) (related to surgical procedures and other medical-health services and devices that are not included under "health services"). Section 303.13(b) would be further revised by adding, as a new paragraph (b)(3), the definition of "nursing services" previously included under "early intervention services" (discussed earlier in this preamble under § 303.12(d)(6).)

In addition, § 303.13(c) would be amended by including additional examples of services and devices that are not covered under "health services," as follows: (1) services that are surgical in nature (i.e., the installation of devices such as pacemakers, cochlear implants, or prostheses); and (2) devices necessary to control or treat a medical or other condition (e.g., pacemakers, cochlear implants, prostheses, or shunts).

Section 303.14 (IFSP) would be amended by—(1) changing the title to "IFSP; IFSP team;" (2) designating the existing definition as paragraph (a); and (3) adding a new paragraph (b) to specify that the term "IFSP team means the group of participants described in § 303.343 that is responsible for developing, reviewing, and, if appropriate, revising an IFSP for an eligible child under this part." Although parents, public agencies, and service providers have traditionally used "IFSP team" when referring to the "Participants in IFSP meetings" in § 303.343, the term has never been included in the Part C regulations. We believe that using the term in the text of the regulations when describing the "IFSP team's" role in implementing specific Part C requirements improves the clarity and readability of the regulations.

Section 303.18 (definition of "natural environments") would be revised by incorporating into that definition the substance of the provision on natural environments from § 303.12(b) of the existing regulation (discussed earlier in this preamble).

Section 303.19 (Parent) would be amended by making a technical and conforming change to the definition (i.e., by adding, after "A guardian" in paragraph (a)(2), the phrase ", but not

the State if the child is a ward of the State."). This phrase, which would conform the definition of "parent" to the Part B definition, was inadvertently omitted in the March 12, 1999 final regulations for Part C of IDEA (see 64 FR 12535).

Section 303.20 (Policies) would be amended by revising paragraph (b)(3), due to the proposed changes to the sections on State finance and systems of payments, to clarify that State policies include policies concerning the State's system of payments, if any, and the State's financing of early intervention services, in accordance with §§ 303.519–303.521.

Section 303.22 (Qualified) would be amended by changing the title of the section to read "Qualified personnel," and amending the definition to conform to the definition of that term in the Part B regulations (34 CFR 300.23).

Section 303.23 (Service coordination (case management)) would be deleted, and the substance of the definition would be moved to a new § 303.302 (see earlier discussion under § 303.12(d)(13)). The remaining sections in Subpart A would be renumbered accordingly.

## Subpart B—State Application for a Grant

### General Requirements

Section 303.100 (Conditions of assistance) would be amended by (1) making technical changes designed to improve the readability of the section, including adding headings to each paragraph in the section; and (2) adding a new paragraph (a)(1)(ii)(B), to clarify that the information in a State's approved application that is on file with the Secretary must contain "Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information." This is consistent with the Part B requirements in § 300.110(b)(2) and with Part C policy.

### Statement of Assurances

Section 303.123 (Prohibition against commingling) would be amended by deleting the note following that section, and incorporating the substance of the note into the text of the regulations. This change would strengthen and give more explicit meaning to the "non-commingling" requirement.

Section 303.124 would be revised by adding a new paragraph (c). This provision would codify existing Department policy interpreting the test in § 303.124(b) regarding the supplement-not-supplant provision. Under paragraph (b), a State must



“budget,” for early intervention services, at least the same amount of State funds that it spent the previous year. This is part of an application requirement, and the Department examines, as part of its application review, whether the State plans to spend the same amount that it did the previous year, on early intervention services. Paragraph (c) would clarify that, if a State does not, in fact, spend the amount it had spent in the previous year, a violation of § 303.124 occurs, unless one of the exceptions in paragraph (b) applies.

We invite comment on whether the Department should broaden the existing exception to the nonsupplanting requirement in § 303.124(b)(2)(ii) concerning the uses of funds for which allowance may be made, in order to enable States to use funds to carry out other purposes in the Part C system beyond the construction or equipment currently covered.

#### *General Requirements for a State Application*

Section 303.140 (General) would be amended by deleting, in paragraph (a), the phrase “in this part,” and replacing it with “in § 303.160” (*i.e.*, “The statewide system of early intervention services described in § 303.160 is in effect.”). This change would more explicitly describe what a State must do to meet the application requirements in Subpart B.

Section 303.148 (Transition to preschool programs) would be amended, first, by changing the title of the section to “Transition to preschool or other appropriate services,” and making other similar changes to clarify that some children who receive early intervention services under this part may not receive preschool services under Part B of the IDEA; and second, by restructuring the section for clarity, accuracy, and completeness, including adding, in proposed § 303.148(c), provisions from § 303.344(h) that require parental consent for the transfer of records for the purpose of a child’s transition to preschool or other services.

These proposed changes to § 303.148 (as described in the following paragraphs) have consolidated in one section all process requirements regarding the transition of a child from the early intervention program under this part to preschool or other appropriate services. This restructuring of the requirements on transition should be helpful to parents and public agency staff in understanding the requirements, and should facilitate implementation of the provisions.

The introductory paragraph in the existing § 303.148 would be designated as paragraph (a) (General), and would be amended to clarify that the description of policies and procedures to be used to ensure a smooth transition must meet specified requirements in proposed paragraphs (b) through (f) of this section.

The substance of existing paragraphs (a) and (b)(1) would be incorporated, with minor clarifying changes, into a new paragraph (b), entitled “Family involvement; notification of local educational agency.” This new paragraph would require that a State’s application describe (1) how the families of children served under this part will be included in transition plans for the children; and (2) how the lead agency will notify the LEA for the area in which an eligible child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law.

A proposed new paragraph (c) (Transmittal of records; parental consent) would be added, by (1) requiring that the State’s application under this part include a description of the policies and procedures to be used for transmitting records about a child to an LEA, or any other agency, for the purposes of facilitating the child’s transition to preschool or other services, and ensuring continuity of services for the child; and (2) incorporating, with certain clarifications, the provision from the IFSP requirements in § 344(h)(2)(iii) regarding the transmission of information about a child, with parental consent, to an LEA to support the child’s transition.

A new § 303.182(c)(2) would be added to clarify that such consent is not required before submitting to an LEA directory information about a child (*e.g.*, the child’s name, address, telephone number, and age), if the information is provided for the specific purpose of assisting the LEA to implement the Part B child find requirements under 34 CFR 300.125. This reflects existing Department policy—that consent is not required if the transmittal is for child find purposes.

The requirement in § 303.148(a) and (c) for “a description” of the policies and procedures on transition to preschool or other programs would be satisfied by submitting the actual policies and procedures. (In any event, submission of the actual documents is required under proposed § 303.100(a)(1)(ii)(B).)

Proposed § 303.148(c)(1) and (c)(2)(i) use the term “records” in this requirement. However, proposed

paragraph (c)(2)(ii) clarifies that the “records” required in this section include any personally identifiable information about the child, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340–303.346. It is important for this requirement to be as comprehensive as possible with respect to the transfer of information about a child from the lead agency to the LEA or other affected agencies, so that there is no misinterpretation of what must be transmitted, and where consent would be required.

The substance of existing paragraphs (b)(2)(i) and (ii) would be incorporated, essentially unchanged, under a new § 303.148(d), entitled “Conference to discuss services.”

Proposed paragraph (d)(1) would describe the procedures for the lead agency to follow to convene a conference for the purpose of planning for preschool services for a child eligible under this part, and paragraph (d)(2) would describe the steps to be followed for a child who may not be eligible for preschool services under Part B of the Act.

Existing § 303.148(b)(3) and (4) would be incorporated, essentially unchanged, under proposed paragraph (e), entitled “Program options; transition plan.”

Existing § 303.148(c) would be redesignated as new § 303.148(f) (“Interagency agreement”), and the substance of the provision would be incorporated, with clarifying changes, into the new paragraph. As in the existing regulations, this provision makes it clear that if the State educational agency (SEA) and the lead agency under this part are not the same, the policies and procedures required under § 303.148(a) must provide for the establishment of an interagency agreement between the lead agency and the SEA, to ensure appropriate coordination on transition matters.

Section 303.167 (Individualized family service plans) would be amended by—(1) moving the substance of paragraph (c) (on natural environments) to a new § 303.341(a), and (2) revising the language to clarify that each application must include “Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3).” (See discussion on natural environments included earlier in this preamble.)

Section 303.173 (Policies and procedures related to financial matters) would be amended by clarifying, in paragraph (b), the kinds of information about funding resources required in



§ 303.522 that must be included in each application (*i.e.*, (1) the name of each State agency that provides early intervention services, or funding, for children eligible under Part C, even if the agency does not receive Part C funds; (2) the specific funds used by the agency for early intervention services, such as State Medicaid or State special education funds; and (3) the intended use of those funds). These proposed changes are intended to strengthen the regulatory requirements on interagency cooperation (see discussion under § 303.523 in this preamble).

#### **Subpart D—Program and Service Components of a Statewide System of Early Intervention Services**

Section 303.300 (State eligibility criteria and procedures) would be amended, as follows: first, by making technical changes, *e.g.*, (1) changing the title of the section to “Child eligibility—criteria and procedures;” (2) making other technical changes to improve the readability of the section, including adding paragraph headings (*e.g.*, “General,” “State definition of developmental delay,” “Diagnosed condition,” and “Children who are at risk”); and (3) clarifying, in a new paragraph (a)(1)(ii), that the State’s eligibility criteria must meet the requirements in paragraphs (b)–(d) of § 303.300.

Second, § 303.300 would be further revised by adding a new paragraph (a)(2) to clarify that the State’s criteria and procedures related to child eligibility must be on file in the State, and be available for public review.

Section 303.301 (Central directory) would be amended by (1) adding, as a parenthetical statement in paragraph (a)(3), the substance of the note following the section (regarding examples of professional and other groups), and (2) deleting the note.

A new § 303.302, entitled “Service coordination” would be added that would incorporate the substance of the definition of “Service coordination (case management)” from § 303.23 (described earlier in this preamble under § 303.12(d)(11)). Although the title of current § 303.23 includes the parenthetical term “(case management),” we are proposing to omit that term from the title of proposed § 303.302 because it is no longer relevant under this part. The term “case management” was used in the original “Part H” statute and regulations. However, the term was replaced with “service coordination” by the IDEA Amendments of 1991 (Pub. L. 102–119). When the regulations implementing Pub. L. 102–119 were published in

1993, we included the parenthetical term “case management” as a transitional term, and to ensure that the change to “service coordination” would not affect services provided under Medicaid. However, at this point in implementing Part C, it is no longer necessary to make any reference to “case management.” The Senate Report on Pub. L. 102–119 stated that the term “service coordination” had been adopted in lieu of “case management,” and added—

The committee decided to change the references in other sections in the legislation because it agrees with parents that they are not cases and do not need to be managed. The intent of this provision is not to change the policy set out in the current definition of “case management” in the regulations and not to affect in any way the authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to “case management” services. (S. Rep. No. 102–84, p. 19 (1991))

Proposed § 303.302 also would include, as a new § 303.302(a)(2), the substance of the note following § 303.23, to clarify that—(1) if a State has an existing service coordination system, the State may use or adapt that system, so long as it is consistent with the requirements of this part; and (2) a public agency’s use of the term service coordination is not intended to affect the agency’s authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to case management services. (The note following § 303.23 would be deleted.)

Proposed § 303.302(d)(8) would include a new function for service coordinators that involves assisting families in—(1) understanding the sources of financing early intervention services and how to access those sources, and (2) being knowledgeable about any potential long-term costs to families in accessing those sources. This provision, which is similar to the proposed provision under § 303.3(a)(6), is important because, as previously stated, families need to know how to access funding for early intervention services, and of the consequences of using public or private insurance, so that they can make informed decisions about the provision of services for their eligible children under this part. (Similar language is also included in current Note 3 following § 303.344.)

We have included language in proposed § 303.302(d)(8) to clarify that States have the discretion of deciding if this new service coordination function is one that must be carried out. We invite comments on whether this

proposed function should be required or left to the discretion of each State.

#### **Identification and Evaluation**

Section 303.320 (Public awareness) would be amended by making technical changes to improve the clarity and readability of the section, and to more closely track the statutory language.

Section 303.321 (Comprehensive child find system) would be amended by revising paragraph (b), first, to rename the paragraph “Policies and procedures;” and, second, to clarify in paragraph (b)(1), that the requirement to ensure that all infants and toddlers who are eligible for services under this part are identified, located, and evaluated includes “(i) traditionally underserved groups, including minority, low-income, inner-city, and rural families; and (ii) highly mobile groups (such as migrant and homeless families).”

Section 303.321 would be further amended by deleting the “two-day” timeline in paragraph (d)(2)(ii), and revising the provision to read as follows: “Ensure that referrals are made as soon as reasonably possible after a child has been identified.” In administering the Part C program over an extended period of time, the Department has found that it is unreasonable and impractical for referral sources to be expected to make referrals in this short of a time. The timeline needs to be sufficiently flexible to allow for some variation, on a case-by-case basis, for making referrals.

The introduction of such a tight timeline in the 1989 regulations was included to convey the sense of urgency in which referral sources should act when they identify a child who is suspected of having a disability. The analysis of the comments to those regulations states that—

Because of the rapidly changing needs of infants and toddlers, the Secretary believes that it is important to establish very short timelines for referring a child for evaluation or services. (54 FR 26337, June 22, 1989).

Although the two-day timeline proved to be impracticable, the sense of urgency conveyed in the initial Part H regulations is still critical. Establishing any timeline (*e.g.*, 5 days) may not provide a reasonable standard for a referral source to follow in making a timely referral; in some cases an earlier referral may be reasonable, and in other cases, a later one. Therefore, the concept of “as soon as reasonably possible” retains the necessary sense of urgency without imposing unrealistic and unreasonable timelines.

In monitoring implementation of this provision, the Department would look at a general pattern of referrals in the State.

Referrals made within a range of two to five days or even somewhat longer would be acceptable. However, a referral pattern that is significantly longer would not meet the spirit of this requirement, nor would it be in the best interests of the children served.

We specifically invite comments on whether the proposed change to the referral timeline in this NPRM (*i.e.*, “Ensure that referrals are made as soon as reasonably possible after a child has been identified”) is appropriate, or on what would be a reasonable timeline.

Section 303.322 (Evaluation and assessment) would be amended by revising paragraph (a)(1)(ii) to clarify that the family-directed identification of the needs of each child’s family meets the “Family assessment” requirements in paragraph (d). In implementing § 303.322, it is important that lead agencies recognize that there is a direct link between the requirements in proposed paragraphs (a)(1)(ii) and (d).

#### *Individualized Family Services Plans (IFSPs)*

Section 303.340 (General) would be amended by changing the title of the section to “Definition of IFSP; lead agency responsibility,” and making other changes, as follows: First, the existing definition of IFSP in § 303.340(b) would be redesignated as proposed § 303.340(a) (“Definition of IFSP”), and would be revised to affirmatively state that each child’s IFSP team is responsible for developing the child’s IFSP, as well as determining the information that is included in the IFSP. Second, the provision on lead agency responsibility in current § 303.340(c) would be redesignated as proposed § 303.340(b), and would be revised by adding an introductory clause (“The lead agency in each State must ensure that—”). Finally, current § 303.340(a) (regarding policies and procedures on IFSPs) would be redesignated as proposed § 303.340(b)(1), and would be revised by replacing “includes” with “has in effect.”

A new § 303.341 (Policies and procedures on natural environments) would be added. (A description of that proposed provision, and the changes made to the definition of IFSP that affect the natural environment provisions, is included earlier in this preamble.)

Section 303.342 (Procedures for IFSP development, review, and evaluation) would be amended, first, by making technical changes (*e.g.*, changing the title to “Development, review, and revision of IFSPs”, and adding titles to paragraphs (a), (a)(1), and (b)). We are proposing to replace the term “evaluation” with “revision” in the title

of the section to more accurately reflect what may happen in both the periodic review meetings and the annual evaluations of the IFSP. For example, § 303.342(c) of the current regulation, which is unchanged in this NPRM, states that “A meeting must be conducted on at least an annual basis to evaluate the IFSP \* \* \*. *and, as appropriate, to revise its provisions.*” (Emphasis added)

Second, § 303.342 would be further amended by adding a new substantive provision in paragraph (a)(2) (Consideration of special factors), as adapted from the Part B statute and regulations. Several commenters recommended that the special considerations provision from Part B (34 CFR 300.346(a)(2)), as adapted, be included in the regulations under this part. In developing each child’s IFSP, it is important that the IFSP team consider all factors relating to the child’s development and to the services that are required to meet the identified needs of the child. Although many IFSP teams may routinely make these considerations in developing a child’s IFSP, this provision helps to ensure that these basic factors will be addressed, as appropriate, in all cases.

Because the special considerations provision under Part B is targeted on preschool and school-aged children, some of the items under that provision may not seem to be directly relevant to infants and toddlers with disabilities. However, each provision has been adapted, to the extent necessary, to apply to children eligible under Part C. For example, although Braille, as such, would not be taught to infants or toddlers who are blind or visually impaired, there are appropriate pre-literacy or readiness activities related to the use of Braille (*e.g.*, the use of tactile stimulation and “raised” picture books) that could enhance the child’s ability to learn, and to use, Braille at the appropriate time in his or her school years.

In all of the factors included under § 303.342(a)(2), the IFSP team, which includes the parents, would make individualized determinations, as appropriate, about the implications of any one, or more than one, of the factors with respect to the specific early intervention services that the child is to receive.

Section 303.343 (Participants in IFSP meetings and periodic reviews) would be amended, first, by changing the title to “IFSP team—meetings and periodic reviews.” (See earlier discussion under § 303.14 regarding the proposed use of “IFSP team” in these regulations.) Second, § 303.343 would be further

amended by revising the provisions in paragraph (a)(2) on how the evaluation results would be appropriately addressed if the person or persons directly involved in conducting the evaluations and assessments is unable to attend the IFSP meeting. The existing regulations provide three options to ensure such a person’s involvement: (1) Participation in a telephone conference call; (2) having a knowledgeable authorized representative attend the meeting; or (3) making pertinent records available at the meeting.

Although options 1 and 2 provide an effective means of addressing the contingency described in the preceding paragraph, the Department, in its monitoring of this provision, has found that option 3 does not, by itself, serve as an effective substitute, because there is no assurance that the members present at the IFSP meeting are sufficiently knowledgeable about the evaluation results to appropriately interpret those records at the meeting.

Thus, § 303.343(a)(2) would be amended by restructuring and revising the provision to distinguish between ensuring either—(1) the person’s involvement through other means (*e.g.*, through participating in a telephone conference call); or (2) that the results of the evaluations and assessments are appropriately interpreted at the meeting, by making pertinent records available at the meeting, and having a person attend the meeting who is qualified to interpret the evaluation results and their service implications. This provision is further revised to make it clear that the person who is qualified to interpret the results may be one of the participants described in § 303.343(a)(1)(i)–(a)(1)(vi).

These proposed changes would help to ensure that the evaluation records are appropriately interpreted, and, in most cases, without added burden. The proposed change in paragraph (a)(2)(ii) would permit, as in the Part B regulations (34 CFR 300.344(a)(5)), the person qualified to interpret the evaluation results to be someone who is already a member of the IFSP team. The operative term in the proposed requirement is a person who is “qualified to interpret” the evaluation results. Thus, it is possible that any of the members of the IFSP team, including the parents, could have the necessary training and experience to be able to perform this function.

In the event that none of the other members of the team is qualified to effectively interpret the evaluation results, it would be necessary to arrange for an appropriately qualified person to be present, at least for a portion of the meeting, or provide other ways to

ensure that the team is appropriately informed of the results of the evaluations and their service implications, in order to enable the team to develop a meaningful IFSP.

Section 303.344 (Content of IFSP) would be amended by—(1) adding a new paragraph (b)(2) to specify that the statement on family information must be based on the family assessment required under § 303.322(d); and (2) revising paragraph (c) to clarify that the outcomes must be based on the evaluations and assessments conducted under § 303.322(c) and (d).

Although IFSPs for children eligible under this part are required to be based on the evaluations and assessments in § 303.322(c) and (d), experience has shown that this does not always occur. Thus, it would be appropriate to make this proposed change in the existing regulations, so that parents and public agencies will be aware of this requirement. It is important, however, to recognize that this new provision does not add an additional burden.

Section 303.344(d) (Content of IFSP—Early intervention services) would be amended, first, by restructuring the paragraph for clarity and to improve its readability, including adding headings to each redesignated paragraph within that provision (*i.e.*, “Statement of services;” “Frequency, intensity, and method;” “Natural environments—location of services;” and “Payment arrangements”). Second, § 303.344(d) would be further revised by—(1) clarifying that the IFSP must specify, for each service, the frequency, intensity, and method of delivering the service; (2) replacing the substance of the provision on natural environments with more definitive clarifying language; (3) deleting the provision regarding the location of services in paragraph (d)(1)(iii), and the definition of “location” in paragraph (a)(3); and (4) making other technical changes. (A description of the changes on natural environments and location of services is included earlier in this preamble in the discussion on “natural environments.”)

With respect to including a statement of early intervention services in a child’s IFSP, it is appropriate to describe any specific training to be provided to the parents to assist them in working with their child (§ 303.344(d)(1)). However, the training may not take the place of providing direct service to the child, if the IFSP team determines that direct services are needed. For example, a State could not have a practice of having an occupational therapist train the parents to work with their child as an alternative to providing direct services

to the child, if direct services had been determined necessary by the IFSP team.

A new § 303.344(e) would be added to clarify that, except as provided in § 303.345, evaluations and assessments required under § 303.322 (including the functions relating to evaluations and assessments described in the individual early intervention services definitions under § 303.12(d) of the current regulations) must be completed prior to, and in preparation for, conducting an IFSP meeting for each eligible child under this part. In monitoring implementation of the IFSP requirements, the Department has identified instances, as a common practice, in which IFSP meetings were conducted before a child had been evaluated, and the IFSP would list the basic evaluations and assessments to be conducted as IFSP services.

Section 303.344(e), therefore, provides that evaluations and assessments must be conducted prior to the IFSP meeting, to assist the IFSP team in determining the outcomes and services for the child. There, of course, may be situations following the initial evaluation and assessment of a child in which the IFSP team determines that further evaluations or assessments will be necessary during the period in which the child’s IFSP is in effect, in order for the team to make an informed decision about possible modifications in the services the child is receiving. In such situations, a statement to that effect would be included in the child’s IFSP, and the additional evaluations or assessments would be documented by the IFSP team. In addition, proposed § 303.344(e) includes a reference to existing § 303.345, which permits early intervention services to be provided before the evaluations and assessments are completed, but sets very specific conditions for implementing that provision.

Section 303.344(h) (Transition from Part C services), would be redesignated as paragraph (i), and would be amended by moving the substance of § 303.344(h)(2)(iii) (regarding the transmission of information about the child to an LEA or other relevant agency to § 303.148 (described earlier in this preamble), but making a reference to that step and the conference step. Proposed § 303.344(i) would be further revised by adding a new paragraph (i)(2)(iv), to provide that the IFSP include “Other activities that the IFSP team determines are necessary to support the transition of the child.”

The changes that are proposed to the transition provisions in § 303.344(i) help to clarify that the steps required in the IFSP are activities for a child and

the child’s parents that are necessary to support the transition of the child, whereas the provisions in § 303.148 include the administrative functions and processes that a lead agency must carry out to ensure effective implementation of the transition requirements.

### Personnel Training and Standards

Section 303.360 (Comprehensive system of personnel development (CSPD)) would be amended by making technical changes for improved clarity and readability, including restructuring the section and adding paragraph headings.

No other changes would be made to the CSPD requirements at this time. However, we specifically invite comments on the extent to which the CSPD requirements under this part should be the same as the CSPD requirements under Part B, especially with respect to ensuring an adequate supply of qualified personnel. There is a defined statutory link between the CSPD requirements in the Part B and Part C programs. However, the specific requirements under each part are different in both the statute and the implementing regulations.

Section 635(a)(8) of the IDEA provides that each statewide system of early intervention services must include a comprehensive system of personnel development that meets certain specified requirements and “that is consistent with the comprehensive system of personnel development [under Part B of the Act] described in section 612(a)(14) \* \* \*”. A corresponding requirement on CSPD is included under the Part B requirements in section 612(a)(14) of the Act, which provides that—

The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

Thus, in submitting comments regarding whether changes are needed in the CSPD requirements under this part, some of the questions to be addressed would be:

- Is there a need to amend the CSPD requirements under these Part C regulations?
- Is there a shortage of qualified early intervention personnel that needs to be addressed through the CSPD requirements in this part?

- Should the Part C CSPD be amended to more specifically address the issue of ensuring an adequate supply of qualified early intervention services personnel? And, if yes, should the provisions in the Part B regulations (34 CFR 300.381) be adapted, or should separate provisions be added?

- Should other areas be addressed, similar to the improvement strategies in 34 CFR 300.382?

Attachment 3 to this NPRM includes the CSPD requirements under the Part B regulations, to assist commenters in responding to the questions listed in the preceding paragraphs.

Section 303.361 (Personnel standards) would be amended by making changes necessary to ensure that the personnel standards requirements under this part fully conform to those requirements in the Part B regulations (34 CFR 300.136). Several commenters in responding to the 1998 notices recommended that these changes be made, and the Department believes that it is appropriate for these requirements to be the same under both parts. Therefore, the following changes would be made:

- Paragraph headings would be added to parallel the paragraph titles under Part B, and for improved readability.
- The substance of the note following § 303.361 would be added to the text of the regulations as policies and procedures under a new paragraph (b)(2) and (b)(3). Proposed paragraph (b)(2) would provide that each State may determine the specific occupational categories required for early intervention services, and revise or expand those categories as needed.
- Proposed paragraph (b)(3) would state—"Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for personnel who provide early intervention services under Part C of the Act."

- A provision from the policies and procedures in the Part B regulations (34 CFR 300.136(b)(4)) would be incorporated, without change, as a new paragraph (b)(4) under the policies and procedures for this part. That provision clarifies that—

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard, as necessary, to ensure the provision of early intervention services without violating the requirements of this section.

Section 303.361(g) (Policy to address shortage of personnel) would be amended by adding, as a new paragraph (g)(2), provisions from Part B regulations (34 CFR 300.136(g)(2) and (3)).

Because of the interest in having a seamless system of services from birth through the early childhood years, and the close link between the types of personnel under both the Part B and Part C programs, having the same personnel standards requirements under both programs would increase the likelihood of having a more effective and efficient mechanism to help ensure that personnel necessary to carry out the purposes of each part are appropriately and adequately prepared and trained.

#### Subpart E—Procedural Safeguards

Section 303.401(a) (Definition of consent) would be amended by adding a new paragraph (a)(3)(ii) to provide that if a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

This provision was adopted from the definition of consent in the Part B final regulations (34 CFR 300.500). If parental consent is required for a service or activity, it would be impractical to allow a parent to retroactively revoke that consent. Thus, once the parents of a child consent to a decision (*e.g.*, for an evaluation or provision of services), any revocation of their consent once the action to which they consented has been carried out will not affect the validity of the action. The analysis of comments to the final Part B regulations state that "Since the non-retroactivity of a parent's revocation is based on the Department's interpretation of the statute, and is important to make clear to all parties, it should be set forth in the regulation itself." (64 FR 12606, March 12, 1999).

Section 303.420 (Due process procedures) would be amended, first, by redesignating existing paragraph (a) (adopting the Part B due process procedures) and paragraph (b) (developing specific Part C due process procedures for this part) as paragraphs (a)(1) and (2); and, second, by adding a new paragraph (b) (on mediation), which provides that if a parent initiates a hearing under paragraph (a)(1) or (a)(2), the lead agency must inform the parent of the availability of mediation.

This proposed provision on mediation would be added to conform to a corresponding provision on mediation in § 300.507(a)(2) of the Part B regulations. The preamble to the 1997 Part B NPRM stated that "the Secretary would interpret the requirement of section 615(e)(1) that mediation be available whenever a hearing is requested, as requiring that parents be notified of the availability of mediation whenever a due process hearing is

initiated." (62 FR 55045, October 22, 1997). Consistent with section 639(a)(8) of the Act (which provides that the procedural safeguards under Part C must include "the right of parents to use mediation in accordance with section 615(e) \* \* \*"), the Part B provision in § 300.507(a)(2) should be added to the Part C regulations.

This proposed provision on mediation simply expands on the language in § 303.419(a)(1), which provides that mediation "at a minimum, must be available whenever a hearing is requested under § 303.420." Therefore, proposed § 303.420(b) does not add an additional burden, but simply makes clear, within the context of the required "due process procedures" in § 303.420, that the lead agency has a responsibility to inform parents about the availability of mediation at the time the parents request a hearing.

Section 303.420 would be further amended by replacing the term "complaint" (or "individual child complaints") with "due process hearing or hearings" throughout this section. Similar changes would be made in § 303.402, and in §§ 303.421–303.425, as reflected in the descriptions included later in this preamble.

It is important to make this change because the use of the single word "complaint" to refer to two different types of administrative proceedings under this part has often created confusion for both parents and public agencies. We believe that it would be helpful in resolving this confusion if the term "complaint" would be used only with respect to the State complaint procedures required under §§ 303.510–303.512, and that the term "due process hearing" would be used for parents who are requesting a hearing under §§ 303.420–303.425.

The prior notice provisions under § 303.403(b) require that when a public agency gives written notice to the parents of any action it is proposing or refusing to take, the agency must inform the parents about both—(1) the due process hearing procedures in §§ 303.420–303.425, and (2) the State complaint procedures under §§ 303.510–303.512. The parents would then be able to determine which method or methods of redress they might pursue if there is a dispute about any of the matters in § 303.403(a) (regarding the identification, evaluation, or placement of an eligible child, or the provision of appropriate early intervention services to the child and the child's family).

The note following § 303.420, which describes the differences between two types of administrative complaints,

would be removed because it would no longer be relevant.

Section 303.421 (Appointment of an impartial person) would be amended by—(1) changing the title to “Impartial hearing officer;” (2) replacing “complaint” with “dispute” in paragraph (a)(2); and (3) replacing, in paragraph (b)(1), “the person appointed to implement the complaint resolution process” with “a person who serves as a hearing officer in accordance with this section.”

Section 303.422 (Parent rights in administrative proceedings) would be amended by changing the title to “Parent rights in due process hearings;” and by replacing “administrative proceedings” with “due process hearings” in the text.

Section 303.423 (Convenience of proceedings; timelines) would be amended by replacing “proceedings” with “hearings” in the title; and replacing “complaint or “complaint resolution process” with “due process hearing.”

Section 303.424 (Civil action) would be amended to make it clear that the section only applies if a party is aggrieved by the findings and decision in a due process hearing.

Section 303.425 (Status of child during proceedings) would be amended by—(1) replacing, in paragraph (a), “complaint under this subpart” with “administrative or judicial proceeding involving a request for a due process hearing under 303.420;” (2) replacing “complaint” with “proceeding” in paragraph (b); and (3) adding a new paragraph (c) to provide, consistent with existing Department policy, that the pendency provisions of this section do not apply if a child is transitioning from early intervention services under Part C to preschool services under Part B.

#### **Subpart F—State Administration**

##### *General*

Section 303.501 (Supervision and monitoring of programs) would be amended by changing the title of paragraph (b) from “Methods of administering programs” to “Methods of ensuring compliance,” and by making a similar change in the text.

##### *Policies and Procedures Related to Financial Matters*

These regulations would add a new § 303.519, containing much of previous § 303.520 (Policies related to payment for services). Proposed § 303.520 would address States that have a system of payments, and proposed § 303.521 would address the use of public or private insurance in financing early intervention services.

In proposed § 303.519, the introduction from current § 303.520(a) is incorporated as new § 303.519(a); new paragraphs (a)(1)(i) and (a)(1)(ii) would reference the applicable provisions for States’ policies on payment for services, depending on whether or not the State has a system of payments. Section 303.519(a)(1)(ii) would also require that a State without a system of payments have a policy stating that all services are at no cost to parents. Proposed paragraph (a)(1) contains the provision regarding interagency agreements from current § 303.520(a)(2).

IDEA section 632(4)(B) provides that services must be “provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees.” Thus, if there is a payment system under either State law or Federal law, services need not be “at no cost.” Under proposed §§ 303.519 and 303.520, the State must affirmatively designate in its policies whether it is including, in its “system of payments,” various existing payment systems that families may be subject to. This will provide more clarity for families, policy-makers, and Federal monitors, as to which fees, if any, families must pay under the State’s early intervention system.

Under this proposed regulation, current paragraphs (c) and (d) of § 303.520 become paragraphs (b) and (c) of § 303.519. The only change to current paragraph (c) is a technical one, deleting the reference to a State’s fifth year of participation. New § 303.519(c)(2) provides that, although income generated from fees under a system of payments, such as fees from a sliding fee scale, do constitute program income under 34 CFR 80.25, States are authorized to add such income to their grant, rather than being required to deduct such program income from the allowable costs of the grant. States are encouraged to use the fee income to augment their Part C grant.

Current § 303.520(d)(2) would be revised, in proposed § 303.519(c)(3), to clarify that, in addition to reimbursements from Federal funds, if a State receives and spends payments from private insurance plans, those funds are not considered “State and local funds” for purposes of the nonsupplanting requirements in § 303.124. Although not reflected in the parallel Part B regulation (§ 300.142(h)(2)), this policy applies equally to insurance payments received by a State under both Parts B and C.

If a State, however, uses State funds from a State public insurance source, such as the State share of Medicaid costs, for early intervention services,

those State funds are treated the same as all other State funding sources for purposes of the supplanting test, *i.e.*, they must be counted as part of total State and local spending for early intervention. Income from family fees, on the other hand, would not be part of State and local spending for purposes of § 303.124.

Finally, this proposed regulation adds § 303.519(d), governing the use of Part B funds for infants and toddlers. This proposed paragraph would require a State policy in order to use Part B funds to serve infants and toddlers. Currently several States do use Part B funds, in addition to their Part C funds, to serve infants and toddlers. Without a policy, however, as to which children will be served with Part B funds, it is impossible for the Department to monitor (or for the State to monitor at the local level) whether infants and toddlers for whom Part B section 611 funds are spent in fact are receiving everything they are entitled to under both Part B (including a free appropriate public education) and Part C, as required.

In proposed § 303.519(d), the State policy would need to—(1) assure that infants and toddlers receiving services paid for with Part B funds receive a free appropriate public education in accordance with all Part B requirements; and (2) specify what category, age group, or other segment of all eligible infants and toddlers will be served with Part B funds and therefore receive FAPE. Under this second requirement (in proposed § 303.519(d)(2)), it would not be acceptable, for example, for a State to submit a number indicating how many children would be served, based on the amount of Part B section 611 funds available; States must designate a specific identifiable subgroup of eligible children (*e.g.*, all two-year-olds, or all two-year-olds with deaf-blindness). In the case of section 619 funds, the State would identify whether all two-year-olds who turn three during the school year will be served, or which group will be served if it is to be fewer than all.

Proposed § 303.519(d)(1)(ii) and (iii) reflect statutory requirements and longstanding Department policy. First, whenever funds received under IDEA section 611 are used for infants and toddlers, requirements of both Parts B and C apply with respect to serving those children. While Part B applies because of the use of Part B funds, Part C applies for all States that apply for and receive Part C funds, because all eligible infants and toddlers are covered by Part C, regardless of the funding sources used for a particular child,

except if IDEA section 619 funds are used. Second, if funds under section 619 are used, which is permissible under the statute for two-year-olds who will turn three during the school year, the statute requires that only Part B applies, and not Part C (IDEA section 619(h)).

A related provision regarding the use of Part B funds is added in proposed § 303.520(c)(3). (See discussion later in this preamble).

Proposed § 303.519(e) adopts the “construction” phrase from the Part B regulations, 34 CFR 300.142(i).

#### *System of Payments Provisions*

Proposed § 303.520 describes a system of family payments used by a State to finance early intervention services, and the requirements of the corresponding State policy. A system of payments is a written State policy that—(1) meets the requirements of proposed § 303.520, and (2) describes the fees or costs that will be borne by families who receive services under the State’s early intervention system.

A system of payments may not include payments by an insurance plan, whether public or private, as opposed to payments by a family to access the benefits of the plan. Parties in some States have argued that a State can include, as part of a system of payments, actual benefits paid by an insurance plan (and require families to assign benefits to the State). The statute, however, specifies a “system of payments *by families*,” which does not include an insurance plan payment to a State.

Thus, in a State with a system of payments, *e.g.*, a sliding fee scale, while parents can meet their State fee obligation in any way they choose, including using their insurance to pay the fee, a State could not, under this proposed regulation, require parents to access their insurance plan (*i.e.*, require parents to assign benefits to the State or provider) as part of its “system of payments.” Although insurance benefits paid by a plan can not be considered part of a system of payments, they are an important source of funding for early intervention services, as recognized by this proposed regulation.

Proposed § 303.520(a)(2) states that it is the lead agency’s duty to ensure compliance with the State system of payments. Under Part C, unlike Part B, the lead agency is the grantee as well as the program administrator; there are no subgrants. Although the lead agency may enter into contracts or make other arrangements for providing services, it retains all of its responsibilities as grantee (see §§ 303.500 and 303.501).

Thus the responsibility for oversight of fees, whether local or State-imposed, rests with the lead agency.

Under proposed § 303.520(b), a system of payments may contain one or both of the two types of applicable fees—(1) fees established under State law specifically for early intervention services, such as sliding fee scales; and (2) cost participation fees (*e.g.*, co-pay or deductible amounts) required under existing State or Federal law to access State or Federal insurance programs in which the family is enrolled.

The first type of fee is one established for the early intervention system, as opposed to fees that are broader in scope, such as Medicaid fees. This first type of fee includes the sliding fee scales based on family income that are currently in use in many States. Although a sliding fee is more equitable than a flat fee (which penalizes lower-income families more heavily), States have discretion, under this proposed regulation, as to the type of fee they implement.

The statute, however, specifically states that a system of payments is to be established under “Federal or State law \* \* \*.” To be established under “State law,” the system must be codified in State statute or otherwise have the force of law; a policy that is included with a State’s Part C application but not codified does not qualify. The actual dollar amounts need not be codified, as that can change, but the basic payment system must be authorized or enacted by State law. Thus, a State may already have in existence a sliding fee scale for early intervention services; if part of State law, that fee scale would fall under the description in § 303.520(b)(1), and be part of a State’s system of payments. The State would need to ensure, however, that its written policies include the information required in proposed § 303.520(c) and (d).

Under “Federal law,” some public insurance programs such as Medicaid, CHIP, and TRICARE, may include various forms of family cost participation, such as co-payments or deductible amounts. Under § 303.520(b)(2), if a State wants to access the benefits of public insurance programs for covered families needing early intervention services under Part C, and wants families to pay the applicable co-pay or deductible amounts, the State could designate, as part of its system of payments, those required fees as part of its system of payments.

As proposed § 303.520(c)(2) makes clear, however, such fees, even though included by a State in its system of payments, can not be applied to a family

that is unable to pay the fee (current § 303.521(b)(3)(ii), proposed § 303.520(c)(2)), or for a service that must be at no cost, such as service coordination (current § 303.520(b), proposed § 303.520(c)(1)).

In addition, under this proposed regulation, it is entirely optional for a State to include public insurance access fees in its system of payments; under proposed § 303.521(e), States may choose to use Part C funds to pay such co-pay or deductible amounts for families, as an incentive for families to agree to access their insurance for early intervention purposes. Such use of Part C funds does not violate the “payor of last resort” requirement under Part C of IDEA.

Proposed § 303.520(b)(2) applies not only to Federal public insurance programs (such as Medicaid), but to State-funded, non-Federal insurance plans as well, as long as the payments are required by State law. Again, while there is no requirement that the exact dollar amount be specified in a State or Federal statute, proposed § 303.520(b)(2) covers programs for which State or Federal law authorizes or requires family payments.

Proposed § 303.520(c) requires (through § 303.520(d)(1) and § 303.173) a State with a system of payments to submit an assurance that no fees will be charged in three different situations. This paragraph contains provisions taken from current §§ 303.520, 303.521(b), and 303.521(c), collecting in one place the circumstances under which States may not charge any fees for services. It would also clarify that those situations overrule the existence of a system of payments. For example, in a State with a system of payments, if a family is unable to pay the fee, or if a service must be at no cost to parents, such as service coordination, the State may not apply its fees in that situation.

Proposed § 303.520(c)(1) contains the exact language as current § 303.521(b), with the title “Functions not subject to fees” changed to “Functions at public expense.” This provision lists the State functions that, under longstanding Part C regulations, must always be at no cost to the family: Child find, evaluation and assessment, service coordination, IFSP development, and implementation of the statewide system, including procedural safeguards.

Proposed § 303.520(c)(2) contains the rule from current § 303.520(b)(3)(ii) concerning a family’s inability to pay. Proposed § 303.520(c)(3) is derived from current 303.521(c), and clarifies it. Under this provision, “birth-mandate States” may not charge fees, unless the fees are for services that are not part of

FAPE. For example, if a State has a law guaranteeing FAPE from birth, and a particular child's IFSP contains additional, non-FAPE services such as respite care, the family could be charged under a sliding fee scale only for those non-FAPE early intervention services.

The use of Part B funds is also addressed in proposed § 303.520(c)(3), in response to many commenters' requests to address the use of Part B funds for early intervention services. These commenters requested that States be permitted to establish sliding fee scales, even though the State uses Part B funds to pay for some early intervention services. Proposed § 303.520(c)(3) therefore applies to a State that uses Part B section 611 funds for infants and toddlers in accordance with proposed § 303.519(d) (State policy regarding use of Part B funds). A State may still establish a State system of payments, even if it uses Part B section 611 funds to pay for some services for infants and toddlers. However, the State may not charge fees for any service that is part of a child's free appropriate public education, which is required whenever Part B funds are used. All of the requirements of Part B, including "at no cost," apply whenever Part B funds are used. A State, therefore, would need to distinguish between those services that are part of a child's FAPE, to which the fee scale would not apply, and other services. If a State uses funds under section 619 for two-year-olds who will turn three during the school year, no fees are permitted because only Part B, and not Part C applies.

Proposed § 303.520(d) contains the requirements for State policies in States that have a system of payments. States have always been required to submit, with their applications, policies regarding funding of services, including any fee system (§§ 303.173 and 303.520). Proposed § 303.520(d), however, would add clarity and detail to those required policies, for those States that do not include this detail currently, to ensure that the public is fully aware of and understands the State's system of payments by families.

Several of the requirements in proposed paragraph (d) are in existing § 303.520. Proposed paragraph (d)(4) adds a requirement that the State include in its policies its criteria for judging "inability to pay." Although the basis for that determination is left to the States, this provision would require that the State take into consideration applicable family expenses, using the best available data. We expect that "applicable" expenses would include, at a minimum, the family's documented and unreimbursed expenses related to

the eligible child's disability. In other words, family income would be discounted by the family's expenses for the child, that are due to the disability.

States are free, however, to use criteria that deduct more expenses from income. For example, for reasons of convenience, a State may choose to use families' Federal income tax returns and judge all families by "taxable income," from which medical expenses have already been deducted. States may also use other methods of judging income, such as using families' existing documentation from other aid programs. As a general rule, the same standard should be used for all families throughout the State, although a State may choose to take into consideration extraordinary circumstances (for example, a family whose house just burned down may not have the "ability to pay" that appears on paper).

After analyzing the family's finances, the State may apply a threshold amount, for example, 150% of the poverty level, below which families are deemed "unable to pay." We invite comments on how States would implement this proposed regulatory requirement in a practicable way, and how it compares to current practice in States with fee scales. We also invite comment on whether the scope of this provision is appropriate, or whether it should be more limited in the scope of family expenses that are taken into account (for example, whether expenses should be limited to those that result from the eligible child's disability).

Proposed § 303.520(d)(5) applies to States that have a fee scale specifically for early intervention services (as described in proposed § 303.520(b)(1)). Proposed § 303.520(d)(5)(ii)(A) states that a fee scale established by a State for early intervention services can not take into account whether or not a family has insurance. Apparently some States with sliding fee scales have been placing families on the top of the fee scale if they have private insurance, without regard to family income. This practice penalizes the family for having insurance, while the family may not in fact have the resources to pay such a high fee, or may not wish to use their insurance because of the associated long-term costs. To enable the family to have an actual choice between a State fee and using their insurance (see proposed § 303.521(b)), States must set their fees without regard to what a family's insurance might pay.

In proposed § 303.520(d)(5)(ii)(B), the same requirement of taking into account family expenses as in proposed § 303.520(d)(4) ("inability to pay")

would apply to the determination of a family's position on a sliding fee scale.

Proposed § 303.520(e) discusses procedural safeguards regarding payments by families. States with a system of payments must give families written notice of their applicable policies on the matters covered in § 303.520, which includes the services that must be at no cost, the types of fees in the State's system, and the State's guidelines for "inability to pay," so that families are aware of their rights.

The notice required by proposed § 303.520(e) may be incorporated into the notice given to the families under § 303.403, or the State may create a separate notice for this purpose. The notice must be given, however, before services begin, and cannot delay the provision of services.

Proposed § 303.520(e)(3) clarifies a family's options for contesting a fee imposed, or contesting a State's determination of the family's ability to pay. Families have the right in these circumstances to file for a due process hearing, agree to mediation, or file a State complaint.

Some States have offered parents an additional option, designed by the State, in order to resolve more quickly these financial issues. Because the State-designed options are often less formal, less time-consuming, and less expensive than the existing options under this part, States are encouraged to offer their own process. However, State remedies may not delay or deny a parent's procedural rights under Part C and its implementing regulations. Thus, a State could not require parents to use its own process as a precondition before filing a State complaint or requesting a due process hearing. The State must include these redress rights in its notice to parents.

Section 303.521 (Fees) would be amended by deleting the section in its entirety, and replacing it with a proposed new § 303.521, entitled, "Use of insurance," as described in the following paragraphs:

#### *Use of Insurance*

Proposed new § 303.521 addresses a State's use of families' public and private insurance in funding Part C services. Under this proposed regulation, States would have the following options:

- (1) Having no system of payments and providing services at no cost to parents. States would need parental consent for use of private insurance or for use of public insurance where there is a cost to the family.
- (2) Having a system of payments and, if it includes a sliding fee scale, giving



parents the option of paying the applicable fee or fees or using their private insurance.

The Department had proposed provisions on the use of private insurance in its October 22, 1997, Notice of Proposed Rulemaking (NPRM) (see 62 FR 55026–55123, 34 CFR 303.520(d)). In that NPRM, the Department requested comments on the proposed provision and on the related issue of public insurance proceeds. The final regulations published on March 12, 1999 did not contain the insurance provision. Instead, the preamble noted that “the policy will not be finalized until more thorough examination of the issues can be done through the process initiated by the April 14 and August 14, 1998 solicitations for comments, and in light of the specific Part C statutory language and framework.” (64 FR 12655, March 12, 1999).

During that review process, many groups and individuals submitted comments regarding the use of insurance by States’ early intervention programs. In addition, in the Department’s administration and monitoring of Part C, it has found confusion and inconsistency surrounding issues of State financing of early intervention services, particularly regarding the use of sliding fee scales and use of families’ insurance. There is a great need for guidelines and clarity as to the legal limits in this area. The provisions in proposed § 303.521, therefore, are the result of examining the recommendations of commenters; of weighing the costs and benefits to families and to States of the various possible interpretations of the statute; and of determining the most sound policy consistent with the language and purposes of the Part C statute.

The Department’s past policy with regard to States’ use of insurance is reflected in several Part C policy letters as well as in the October 22, 1997 NPRM provision. Under that policy, States were not permitted to access a family’s private insurance without consent if such use would entail costs to the family.

As pointed out by many of the commenters, the statutory language for Part C is different from Part B’s “at no cost” requirement. Under Part C, services must be “provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees.” IDEA section 632(4)(B).

The statute also makes clear that Part C funds are to be “payor of last resort;” all other available funds from public or private sources are to be used first. See IDEA section 640(a). Many commenters

pointed out what they perceive to be a conflict between the “payor of last resort” requirement and the “no cost” requirement. In States where there is no system of payments, for example, and the use of a family’s private insurance would entail costs for the family, then to require use of that insurance would violate the “no cost” requirement, while to use Part C funds and not the insurance would appear to violate the “payor of last resort” requirement. (Under Departmental policy, however, a State does not violate “payor of last resort” if it uses Part C funds after making all reasonable attempts to secure other funding, including when parents decline to use insurance.)

The history and purpose of Part C (then Part H) provides support for the Department’s attempt to balance these two policies; while the statute provides for a system of payments, the legislative history shows that Congress was also concerned that parents be protected from costs. See Sen. Rep. 99–315 at 11 (99th Cong. 2nd Sess. (1986)).

Clearly, Congress intended that the funding of early intervention services through private and public insurance would continue when it enacted Part C. What apparently was not envisioned, however, was the type of catastrophic financial losses that some families have suffered through use of private insurance for early intervention services, such as reaching lifetime caps when a child is still young, with no further insurance coverage available for the child.

The goal of these proposed regulations, therefore, is to assist States in their responsibility to maximize various financial resources, using Federal Part C dollars only as a last resort, while protecting parents from overly burdensome costs that can make early intervention services prohibitive for families.

Proposed § 303.521(a) contains the same prohibition as in Part B against forcing families to enroll in a public insurance program, such as Medicaid, as a condition of receiving services. The Department received comments both supporting and opposing this policy for Part C. Although it is true, as stated by several commenters, that if States are prevented from requiring families to enroll in Medicaid, they lose a potential funding source, that source was not a preexisting one for that family, and some families have reasons (cultural, privacy etc.) for not wanting to enroll in such public insurance programs. Moreover, if a child, otherwise deemed eligible for Part C services by the State, were denied services because the State wanted the parents to enroll in

Medicaid and the parents refused, this would effectively add an additional eligibility test for the child that is not justified by the statute. For families already enrolled, however, or who voluntarily enroll in public insurance programs, States may access that insurance to finance early intervention services, as provided in proposed § 303.521(b).

Proposed § 303.521(b) addresses a State’s use of a family’s public insurance. Many commenters suggested that, in States that ensure services at no cost to families (or without a system of payments), States be prohibited from requiring parents to use public or private insurance. This policy does not permit States, however, to optimize resources and use Part C funds as “payor of last resort” where there is no cost to the family, as may be the case with public insurance. As many other commenters noted, if deprived of the ability to access these insurance resources, States could find it difficult financially to continue in the Part C program.

Proposed § 303.521(b) applies in States with or without a system of family payments. It provides that States can require that families access their public insurance, whether it be Federal or State, as long as there is no cost to the family.

Under proposed § 303.521(b)(1)(ii), a State that wishes to access a family’s public insurance proceeds may require the parents to incur out-of-pocket costs such as co-payments and deductibles under those public insurance programs, only if such costs are included in a system of payments under § 303.520(b)(2). Even in those States in which such payments are included, however, parents are still protected from such costs if they are unable to pay (which may be likely for many Medicaid families), or under any of the other circumstances listed in § 303.520(c).

The State may also choose to use Part C funds to pay the co-pay or deductible amounts, as provided in proposed § 303.521(e), as an incentive for families to agree to access their insurance for early intervention purposes. For parents choosing the option of using their private insurance (proposed § 303.521(c)), and for parents with private insurance in a State with no system of payments, this may help the State in obtaining parent consent to use the insurance.

In proposed § 303.521(b)(1)(iii), the Department proposes the same criteria for a “cost” to families as in the Part B provision on public insurance (34 CFR 300.142(e)(2)(iii)). We particularly invite comment on whether these criteria are

equally applicable to families with infants and toddlers.

In the majority of cases, use of Federal, State, or local public insurance programs by a State to provide or pay for a service to a child will not result in a current or foreseeable future cost to the family or child. For example, under the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program of Medicaid, potentially available benefits are only limited based on what the Medicaid agency determines to be medically necessary for the child and are not otherwise limited or capped. Many infants and toddlers with disabilities who are eligible for public insurance programs are eligible for services under the EPSDT program. Where there is no cost to the family or the child, States are encouraged to use the public insurance benefits to the extent possible.

The language in proposed § 303.521(b)(1)(iii)(D) has been changed from the corresponding Part B provision, to read “risk loss of eligibility for, or decrease in benefits under, home and community-based waivers \* \* \*” to more accurately reflect the common problem for families of children who are covered under such waivers, that was intended to be addressed by the Part B language.

Proposed § 303.521(b)(2) further provides that, if any of the listed costs apply, the State may still access the family’s public insurance if it first obtains written consent under the provisions in § 303.401.

Proposed § 303.521(b)(3) addresses the relatively small number of families who are covered by both public and private insurance. Under this provision, in States without a system of payments, in order to access the family’s private insurance the State must follow the consent requirements in proposed § 303.521(d). Thus, if a Medicaid-enrolled child also is covered by private insurance, the State without a system of payments must choose one of two options—either obtain the parent’s consent to use the private insurance, or not use Medicaid to provide the service. One way the State might be able to obtain that consent would be to offer to cover the costs that would normally, under Medicaid, be assessed against the private insurer. Part C funds can be used for this purpose. (See proposed § 303.521(e)).

Proposed § 303.521(b)(4) provides that, for States with fee scales, the State cannot bill a family’s public insurance for more than the cost of the service, and can not bill for any amounts for which the parents are responsible under the fee scale. Thus, if a State’s fee

system charges a family a fee equal to one-third the cost of the service, the State can only bill the Medicaid or other public insurance for the remaining two-thirds.

For private insurance, many commenters suggested, as a way to balance the competing interests of the State’s “payor of last resort” responsibility and the “at no cost” provision of the statute, that in States with a system of payments, States should first determine what the family has to pay, then let the parents decide whether to use their private insurance or pay the fee. This policy of parental choice, which is consistent with the Department’s past Part C policy on private insurance, has been adopted and proposed as § 303.521(c) for those States that have, under State law, fees specifically for early intervention services, as described in proposed § 303.520(b)(1).

For such States, proposed § 303.521(c) would govern their treatment of all families who have private insurance. Under this provision, the State gives the family the option of accessing the insurance or paying the applicable fee directly. Some families with private insurance, want to avoid long-term negative consequences of using that with private insurance, such as exceeding a lifetime cap or risking cancellation of insurance; these families may prefer to pay the applicable fee without using their insurance. Other families may not have such extreme risks from using insurance, or are able to negotiate with their insurance company and determine an amount the company will pay that will avoid these risks. The State can assist families with this process, either by giving the duty to service coordinators, under proposed § 303.302(d)(8), or by otherwise providing for such assistance under the proposed revision to § 303.3 (“Use of Funds”).

If a family opts to pay the fee, the State cannot then also access the family’s insurance to cover the remaining cost of the service, unless the family gives consent. Similarly, if a family opts to use its insurance but the insurance does not cover the entire cost of a service, the State could only require the family to pay the uncovered portion up to but not exceeding the amount of the State fee. Families with no insurance would be required to pay the exact amount of the applicable fee (subject to the “ability to pay” requirement), and States could not apply a different standard or different fee scale for families with insurance.

When giving parents the option described in proposed § 303.521(c), the

protections in § 303.520(c) apply. Thus a family that has private insurance may be “unable to pay,” under the State’s definition of that term, and the option would not apply to that family. Services would then be at no cost to the family and the State would need consent to access the family’s private insurance (under proposed § 303.521(d)).

Proposed § 303.521(c) would require States to give parents this option for “each service” for which the State charges fees, rather than for each incidence of a service. Thus, when the IFSP is first written, and thereafter for any change in the frequency or type of service, the State would need to give the parents this option. If the parent’s insurance does not cover a particular IFSP service, the family pays the applicable fee for that service.

The policy that families cannot be forced to use their private insurance, in States with no system of payments, has been adopted in proposed § 303.521(d). This provision also applies in States with a system of payments, for situations covered under § 303.520(c) (when fees may not be charged), and in States whose system of payments includes only public insurance co-pays or deductibles (fees described in § 303.520(b)(2)). This provision therefore applies in all circumstances except that of a State with a system of payments that includes fees described in § 303.521(b)(1), such as a sliding fee scale.

Under this provision, if a State has no system of payments (and in the other applicable circumstances), the State is prohibited from using a family’s private insurance without the parent’s consent. The provisions governing this consent are the same as the parallel provision in Part B, § 300.142(f). The Part B provision requires parental consent for any use of private insurance, because all services must be at no cost to the family, and use of private insurance entails costs. Similarly, for Part C in a State without a system of payments, services are at no cost and the State must obtain consent to use private insurance.

Under proposed § 303.521(d), a State needs parental consent for using the family’s private insurance for each separate service in a child’s IFSP. For example, if at an IFSP meeting the State wants to access the family’s insurance for only the child’s physical therapy, which is to be provided twice a week, the State obtains parental consent for that use. If, at a subsequent IFSP review, the physical therapy service is changed to three times per week, the State must obtain new written consent from the parents; they need not obtain consent for every session of each service. This

policy is consistent with the intended meaning of the corresponding Part B provision, § 300.142(f)(2), but because its wording ("Each time the public agency proposes to access \* \* \*") has caused confusion, we propose more detailed language in this Part C provision.

This proposed treatment of private insurance should not lead to a burdensome change in existing practice among the States. The Department's past policy required, for all States, consent when there is a cost to the family (and in practice there appears to be virtually always some cost). Under the proposed rule, only States without fees such as sliding fees would be required to obtain consent; States with a system of payments that includes sliding fees would give families the option described in proposed § 303.521(b).

States are encouraged, however, to access all available sources of funding, using Part C funds as a last resort. To this end, some States have worked to increase the amount of funding by public and private insurers, by taking steps such as negotiating for changes in their State's Medicaid plan, passing State legislation governing private insurers, and working with families to negotiate with, or clarify the limitations of, private insurance coverage.

This regulation would make clear, in proposed § 303.521(e), "Use of Part C funds," that a State is able to use Part C funds to pay the cost that would otherwise be covered by a third party payer, in order to access the family's insurance. Proposed § 303.521(e) contains language taken from the Part B regulations at § 300.142(g). If the State fails to obtain parental consent for use of private insurance (or public insurance where costs are involved), the State may use Part C funds for the service. In such a situation the State does not violate the "payor of last resort" provision because it has first taken all reasonable steps to secure alternate funding sources. This provision also would provide, as in Part B, that to make it easier for parents to consent to private insurance use (or to choose to use public insurance), a State may use Part C funds to pay co-pay or deductible amounts. This practice can also assist States in situations in which services must be at no cost to the family, due to any of the circumstances described in proposed § 303.520(c); by using Part C funds to pay the family's required co-pay or deductible amount, the State avoids a cost to the family.

#### *Other Changes to Subpart F*

Section 303.523 (Interagency agreements) would be amended in

several ways. First, the language in § 303.523(a) would be clarified to require the lead agency to enter into an interagency agreement with any other State-level agency involved in the State's early intervention program, whether that involvement is through provision of services or through funding to entities that use those funds for early intervention purposes.

Second, the substance of the note following § 303.523 would be added to the text of the regulations as proposed new § 303.523(c)(2), and the note would be deleted. The substance of the note clarifies that, with respect to resolving intra-agency and interagency disputes, a State may meet the requirement in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review the dispute and render a decision; (2) assignment of the responsibility by the Governor to the lead agency or Council; or (3) having the final decision made by the Governor. This change would strengthen the provision regarding dispute resolution in paragraph (c)).

Finally, paragraph (d) of § 303.523, regarding additional components of agreements, would be revised to reference three specific topics that should be addressed if appropriate and relevant to the two agencies: transition, policies on payment for services, and child find. Regarding transition, current § 303.148(c) (proposed § 303.148(f)) requires a lead agency that is not the State educational agency (SEA) to have an interagency agreement with the SEA that ensures coordination on the transition of eligible children to Part B services; proposed § 303.523(d) should reference that requirement.

Similarly, proposed § 303.523(d)(2) would reference the requirement in current § 303.520 (proposed § 303.519(a)(2)) that policies related to payment for services must be reflected in the appropriate interagency agreements. This includes both policies on family payments, and payments by other agencies, as specified in §§ 303.173 and 303.522. Thus, if a State adopts a system of payments that involves Medicaid co-payments, that policy must be in the interagency agreement with the State Medicaid agency. The use of funds or the provision of services would be relevant topics for an interagency agreement between the lead agency and any other State agency that provides either funding or services for early intervention purposes (e.g., a Health or developmental disabilities agency, or a State Department of Education providing Part B funds).

The third topic, child find, is proposed as optional for the lead agency to include in its interagency agreements, although States are encouraged to do so. Child find may be an appropriate issue to include in agreements between the lead agency and most other relevant State agencies.

The proposed changes to §§ 303.173 and 303.523 are intended to strengthen the regulatory requirements on interagency cooperation. The Secretary has found, through monitoring, that many States' early intervention systems suffer from a lack of interagency cooperation, to the detriment of infants and toddlers with disabilities and their families. The interagency requirements of Part C are crucial to implementing an actual statewide system that pulls together the various existing efforts in the State.

The Secretary has found, in some States, that political or "turf-war" differences keep agencies from working together or even communicating; in others, it is only the lead agency's lack of effort that keeps agencies from coordinating. Although the Department is aware that the existence of a written agreement between agencies does not ensure that it will be implemented, the fact that specific elements would be required in the agreement should cause the necessary discussions to take place, greatly increasing the chances of actual cooperation.

#### **Subpart G—State Interagency Coordinating Council**

Section 303.653 (Transitional services) would be amended by making technical changes to improve the clarity and readability of the section, including—(1) changing the title of the section to "Transition services;" (2) replacing "toddlers with disabilities" with "eligible children under this part;" and (3) adding "preschool" before "services under Part B."

#### *Executive Order 12866*

##### **1. Potential cost and benefits**

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly

interfere with State, local, private, and tribal governments in the exercise of their governmental functions.

#### *Summary of Potential Costs and Benefits*

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

#### *Benefits and Costs of Statutory Changes*

Following is an analysis of the costs and benefits of the most significant changes in the regulations for the Grants for Infants and Families program (Part C). In conducting this analysis, the Department examined the extent to which changes made by these proposed regulations add to or reduce the costs for State lead agencies and others as compared to the costs of implementing Part C under the previously published regulations. Variation in practice from State to State makes it hard to predict the effect of these changes. However, based on this analysis, the Secretary has concluded that the changes included in these regulations will not, on net, impose significant costs in any one year. An analysis of specific provisions follows:

#### *Section 303.341—Policies and Procedures on Natural Environments*

Section 303.341 of the proposed regulations clarifies that decisions on natural environments, and any justifications needed, are made by the IFSP team and are made separately for each service to be provided to the child. It also clarifies that services may be provided in a setting other than a natural environment, such as a center-based program or other setting appropriate to the age and needs of the child, if appropriately justified based on the child's needs. Over 200 of the 328 comments received by the Department on the Part C regulations expressed concern about the provisions related to natural environments. Questions raised by many of these commenters indicated that there is confusion as to what is required and that the provisions were being misinterpreted to mean that services could only be provided in the home of an eligible child or in community settings in which children without disabilities participate. No cost impact is assigned to this clarification since the provisions do not represent a change in policy or impose new substantive requirements. However, the proposed clarification should benefit both families and providers by making it clear that services may be provided in

settings other than the natural environment if the IFSP team determines that this is necessary to meet the needs of the child.

#### *Section 303.519(a)—Policies Related to Payment for Services*

Section 303.519(a) clarifies that a State without a system of payments must have a policy stating that all services are at no cost to parents. Office of Special Education Programs (OSEP) monitoring activities indicate that some States, local agencies, and local programs are charging for services, even though the State has not adopted a system of payments. Current IDEA section 632(4)(B), which is the same as prior section 672(2)(B), provides that services must be "provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees." Because this change in the regulations is a clarification of, rather than a change in the law, no cost impact is assigned to this requirement.

#### *Section 303.519(c)—Nonsupplanting Requirement*

Under proposed § 303.519(c)(3), the provisions of current § 303.520(d)(2) would be revised to clarify that, in addition to reimbursements from Federal funds, if a State receives and spends payments from private insurance plan, those funds are not considered "State and local funds" for purposes of the nonsupplanting requirements in § 303.124. This provision provides a benefit to States by alleviating them of the requirement to align State funding with reimbursements for services rendered from private insurance that will fluctuate from year to year depending on factors such as the number of parents who have private insurance, whether the particular services provided are eligible for reimbursement, and variation in reimbursement rates. Those factors are not under the control of the State agency and are not budgeted items.

#### *Section 303.519(d)—Use of Part B Funds*

Section 303.519(d) would require States proposing to use funds under Part B to serve infants and toddlers to have a written policy regarding the use of Part B funds that identifies the age range or other characteristics of the groups to be served. A written policy is necessary in order for OSEP to monitor the States and the States to monitor at the local level to ensure that children for whom Part B funds are spent are receiving everything they are entitled to under both Part C and Part B, including a free

appropriate public education. Since States have the discretion to decide whether to use Part B funds for this purpose, this provision will not result in increased program costs. The provision may impose a short-term administrative burden on States that choose to use Part B funds for infants and toddlers with disabilities and do not currently have a written policy on the use of these funds for this purpose. However, we believe that most States would develop a written policy for administrative reasons, regardless of the existence of this requirement. In addition, the short-term burden of developing a written policy is offset by the long-term positive benefit derived from having a written policy. A clear policy will help reduce confusion among State and local education agencies as to which children will be served with Part B funds, and reduces the potential for costly audit findings regarding the proper use of Part B funds. States, at their discretion, may also use Part B Preschool Grants program funds to provide a free appropriate public education to two-year-olds who will turn 3 during the school year. IDEA, section 619(h) provides that, if a State uses Part B Preschool Grants funds for two-year-olds in this instance, only Part B applies. According to a May, 1999 "section 619 Profile" study by the National Early Childhood Technical Assistance System (NECTAS), as of fiscal year 1999, approximately 22 States had developed or were developing policies on the use of Preschool Grant funds for these children.

#### *Section 303.520(b)—Establishment of a System of Payments in State Law or Regulation*

Proposed § 303.520(b) specifies that a system of payments may contain either fees established specifically for early intervention or participation fees required to access State or Federal insurance programs. This proposed paragraph further provides that the system of payments must be established under State law and the participation fees authorized or enacted by State or Federal law. This provision is being added to the regulations to ensure that States are aware of and have fully considered policies that will have cost implications for State agencies and consumers, reduce the potential for arbitrary changes in policy, and improve the ability of the Federal Government to monitor compliance. It will also provide more clarity for families, and policy makers as to which fees, if any, families must pay under the State's early intervention system and reduces

potential confusion over which policies must be authorized by State statute or regulations versus those that can be issued administratively. To date, a total of 49 of the 56 Part C lead agencies reported information for fiscal year 2000 on the status of their systems of payment. This data indicates that 18 of these States have policies related to systems of payment. Of these States, 16 had policies established under State law or regulations. Currently it appears that only two States would be affected by this change. We believe that the benefits described above will offset any burden associated with establishing these policies in State law or regulations that may be experienced by these two States or other States deciding to adopt systems of payment in the future. The requirement also will result in consistent practice among all the States.

*Section 303.520(c)(3)—States That Provide FAPE to Infants and Toddlers With Disabilities*

Currently, eleven of the 56 States and Outlying Areas have legislation requiring that FAPE be provided to some or all children with disabilities beginning at birth, and an additional State requires that FAPE be provided to children with disabilities beginning at age 2. Section 303.521(c) of the current regulations provides that States with mandates to serve children from birth may not charge parents for any service required under that law that are provided to children under Part C. New § 303.520(c)(3) replaces § 303.521(c) and modifies that provision to clarify that the State may establish a system of payments for other services that are not a part of FAPE. Similarly, this new provision also specifies that, if a State uses Part B section 611 funds to pay for some services for infants and toddlers, the State may still establish a system of payments for services that are not part of a child's free appropriate public education. These changes clarify a State's ability to charge for services that are not required to be provided free of charge under the FAPE requirements. Because most Part C services would also be FAPE services, these changes should result in very little shifting of costs between State agencies and families.

*Section 303.520(d)(4)—Criteria for Judging Inability To Pay*

The current regulations at § 303.520(a)(3)(ii) specify that, "The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family." Proposed § 303.520(d)(4) adds a requirement that States with a system of payments must

include their criteria for judging "inability to pay" in their policies submitted to OSEP. Most of the approximately 18 States that have systems of payment do not currently include their guidelines for judging "inability to pay" in their policies submitted to OSEP. We believe these criteria should be part of the official, public policies of the States to ensure that the criteria are administered uniformly, parents know what criteria are being used to determine their ability to pay, and the requirement is efficiently administered and monitored. The resultant burden to the State in developing or submitting criteria for judging inability to pay is minimal compared to the anticipated benefit of having clear guidelines for families and providers affected by this provision.

*Sections 303.520(d)(4) and 303.520(d)(5)(ii)(B)—Consideration of Applicable Family Expenses*

Proposed § 303.520(d)(4) on judging ability to pay, and § 303.520(d)(5)(ii)(B) on sliding fee scales would require that States take into consideration applicable family expenses, using the best available data. The cost to States of this change is indeterminate because States will have flexibility to determine how they will address this requirement, including the extent to which expenses would be considered in determining the family's ability to pay. While we expect that there may be some cost to States, the Department believes that there is a direct offsetting benefit to society by ensuring that families are not unduly burdened or that children with disabilities are not denied services because extraordinary expenses were not considered in the calculation of whether the family has the ability to pay. We further believe that this benefit to families outweighs any potential administrative burden or cost to the State derived from the incorporation of this provision.

*Section 303.520(d)(5)(ii)(A)—Family Insurance and the Calculation of Position on the State Fee Scale*

Section 303.520(d)(5)(ii)(A) provides that, for States with fees for early intervention services that have implemented a fee scale, the calculation of a family's position on the scale may not take into account the existence of a family's insurance. Inclusion of the family's insurance in the calculation can result in these families being placed at the top of the fee scale, even if those families intend to cover the fees themselves. Most of the States with a system of payments have implemented fee scales. Since the National Early

Intervention Longitudinal Study (NEILS) indicates that approximately 57 percent of the families participating in Part C have some form of private insurance, this provision could result in a shift of costs from families to the States to the extent that States are currently taking insurance into account in determining a family's ability to pay. While we anticipate that there will be no net change in the cost to society, we particularly invite comments on the impact of this provision.

*Section 303.520(e)(3)—Procedural Safeguards*

Proposed § 303.520(e)(3) sets out the procedures for redress if a parent wishes to contest the imposition of a fee. Families have always had the right to seek mediation, file for a due process hearing, and file a State complaint. However, the Department is concerned that some Part C families may not be aware that these rights apply to the imposition of a fee or a State's determination of a family's ability to pay. This section clarifies that these rights apply to this situation. Since the procedural safeguards under Subpart E (or the Part B hearing procedures if the State has adopted them) already apply, we are not ascribing a cost impact to this provision.

*Section 303.521—Prohibition Against Mandatory Enrollment in Public Insurance Programs*

Proposed § 303.521(a) provides that no State may require parents to sign up for or enroll in a public insurance program in order for their child to receive early intervention services. OSEP is aware that a small number of States have required families to apply for third-party resources such as Medicaid. The increased cost to States that may result from the proposed change is outweighed by the benefits of protecting the privacy and autonomy of the family. A family's decision to enroll in public insurance programs may be affected by religious concerns, the perceived stigma of public insurance, and considerations related to family finances. However, nothing in this provision precludes a State from providing information on and promoting public insurance programs, assisting families with application forms, or using combined enrollment forms. We believe that most families will want to enroll in these programs to obtain medical coverage for the entire family. However, we do not have data on the number or percentage of eligible families participating in this program that refuse to enroll in public insurance programs. We invite commenters to

provide this information, if it is available on the State or local level.

*Section 303.521(b)(1)(iii)—State Access to Public Insurance Benefits*

The NEILS indicates that approximately 44 percent of the families participating in the Part C program participate in a government-assisted health insurance program such as Medicaid or the SCHIP. For families already enrolled or who voluntarily enroll in public insurance programs, State agencies are currently accessing that insurance to finance early intervention services. Proposed § 303.521(b)(1)(iii) provides that a State may not use a child's benefits under a public insurance program without obtaining parental consent if that use would result in a negative outcome for the family such as a decrease in available lifetime coverage or any other insured benefit, the family paying for services that would otherwise be covered by the insurance program, an increase in premiums, or the discontinuation of insurance. The proposed regulations adopts the same criteria regarding parental consent as in the Part B regulations (see § 300.142(e)). We expect this to have a limited effect. In most cases, use of Federal, State, or local public insurance programs by a State to provide or pay for a service will not result in a current or foreseeable future cost to the family or child, and States will not be required to get consent. In the limited number of cases where a State might need to obtain consent, the burden to States is outweighed by the benefit to families of having this protection.

*Section 303.521(c)—Parental Payment Option*

According to preliminary data obtained from the NEILS, approximately 95 percent of children participating in Part C are covered by some form of insurance. For States with a fee scale for early intervention services, proposed section 303.521(c) gives parents the option of using their public or private insurance or paying the applicable fee for each service. This provision will provide a direct benefit to some families. While it clearly places the locus of responsibility for payments with the family, it provides the family with options as to how it will fulfill that responsibility. For example, a family may choose to pay the fee rather than jeopardize future benefits or eligibility under a private insurance policy. This provision may diminish State access to insurance if more parents in States with systems of payments, when given a clear choice, opt to pay the applicable fees.

However, any loss of access is offset by the benefits to families of increasing parental choice and may increase the likelihood that children with disabilities will get the services they need.

*Section 303.521(d)—Parental Permission To Access Private Insurance Benefits*

Section 303.521(d) provides that, in States with no system of payments, the State needs parental consent for using a family's private insurance. This is a slight variation on past practice, which required consent when there is a cost to the family. As there is virtually always some cost, this provision does not represent a change in practice and should not result in increased costs for States with no system of payments. For States that do have a system of payments, the provision described at § 303.521(c) precludes the need for formal consent.

*Section 303.521(e)—Use of Part C Funds*

Under proposed § 303.521(e), States may choose to use Part C funds to pay co-pay or deductible amounts for families in order to access public or private insurance that would otherwise not be available. States may be unable to obtain parental consent to use a family's insurance if the parents would be required to pay co-pay or deductible amounts. This section may help States to access additional funds. In States with a system of payments, the State could pay the co-pay amount as an incentive for parents to choose the insurance option, thus benefiting both the State and the family. We foresee no negative consequence for the family.

**2. Clarity of the Regulations**

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 303.1 Purpose of the early intervention

program for infants and toddlers with disabilities.

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulation easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make this proposed regulation easier to understand to the person listed in the **ADDRESSES** section of the preamble.

*Regulatory Flexibility Act Certification*

The Secretary certifies that this regulatory document will not have a significant economic impact on a substantial number of small entities. These regulations govern States in their implementation of the IDEA Part C program. States are not small entities under the Regulatory Flexibility Act. Part C does not authorize subgrants, and thus there are no small entities directly affected by these regulations. The small entities that would be indirectly affected are local entities that enter into contracts with the State to provide Part C services. However, the regulations would not have a significant economic impact on these small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements, concerning the issue of providing services in natural environments, and the issue of use of insurance, to ensure the proper expenditure of program funds.

*Paperwork Reduction Act of 1995*

Sections 303.100, 303.121, 303.122, 303.123, 303.124, 303.125, 303.126, 303.127, 303.128, 303.141, 303.142, 303.143, 303.144, 303.145, 303.146, 303.148, 303.160, 303.161, 303.162, 303.164, 303.165, 303.166, 303.167, 303.168, 303.169, 303.170, 303.171, 303.172, 303.173, 303.174, 303.175, 303.176, 303.180, 303.300, 303.301, 303.320, 303.321, 303.322, 303.323, 303.340, 303.341, 303.342, 303.343, 303.344, 303.345, 303.346, 303.360, 303.361, 303.420, 303.421, 303.422, 303.423, 303.424, 303.425, 303.460, 303.500, 303.501, 303.519, 303.520, 303.522, 303.523, 303.524, 303.525, 303.526, 303.527, 303.528, 303.540, 303.600, 303.601, 303.602, 303.603, 303.604, 303.650, 303.651, 303.652, 303.653, and 303.654 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the

Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

For purposes of addressing the Paperwork Reduction Act requirements, we have divided the sections listed in the preceding paragraph into three categories, as follows:

The first category includes three sections that contain, for the first time, information collection requirements that have been added by this NPRM, including §§ 303.100, 303.341, and 303.519. However, in large part, these provisions do not add new paperwork burden, as described in the following paragraphs:

First, we have included § 303.100 in the list of new information collection requirements to clarify, within the general application requirements in subpart B of this part, that the information contained in a State's application must include "copies of all applicable State statutes, regulations, and other State documents that show the basis of that information." This proposed change, which conforms to the final Part B regulations (34 CFR 300.110(b)(2)), does not add a new burden, but merely clarifies and gives added emphasis to existing State application requirements in the Part C regulations. (The Department and the States have appropriately interpreted the existing definition of "policies" in § 303.20 to ensure that if a State policy is found in a State statute or regulation, the Part C application must include that document.)

Second, although we have included § 303.341 in the list of new information requirements, States have traditionally been required to submit policies and procedures on natural environments. New section 303.341 includes, in modified form, the requirements for policies and procedures on natural environments that are currently included in 303.167(c) of the existing regulations. Current § 303.167(c) would be amended by this NPRM, by removing the substance on natural environments to new § 303.341(a), and further revising the language in § 303.167(c) to clarify that each application must include "Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344."

Finally, new § 303.519 has been included under category 1, even though many of the information collection requirements in that section were moved from current § 303.520, as part of an effort to improve the readability and clarity of those provisions. (See description of the proposed changes to

State financing of early intervention services, included earlier in this preamble).

The second category includes sections that are currently approved by OMB, but are being revised by this NPRM. This category includes §§ 303.124, 303.128, 303.148, 303.165, 303.167, 303.169, 303.173, 303.174, 303.321, 303.340, 303.344, 303.361, and 300.523.

The third category contains sections currently approved by OMB that either are not affected by the NPRM or do not contain any new information collection requirements. This category includes §§ 303.122, 303.123, 303.125, 303.126, 303.127, 303.141, 303.142, 303.143, 303.144, 303.145, 303.146, 303.160, 303.161, 303.162, 303.165, 303.166, 303.168, 303.170, 303.171, 303.172, 303.174, 303.175, 303.176, 303.180, 303.301, 303.302, 303.322, 303.323, 303.342, 303.343, 303.345, 303.346, 303.360, 303.420, 303.421, 303.422, 303.423, 303.424, 303.425, 303.460, 303.500, 303.501, 303.522, 303.524, 303.525, 303.526, 303.527, 303.528, 303.540, 303.600, 303.601, 303.602, 303.603, 303.604, 303.650, 303.651, 303.652, 303.653, and 303.654.

The new or revised sections with paperwork requirements that are described under categories 1 and 2 in the preceding paragraphs contain information collection provisions that affect a State's application for a grant under this part, including the sections with specific application requirements in subpart B of this NPRM, and the substantive sections to which they refer in subparts D and F. A description of this information collection is included in the following paragraphs.

#### *Collection of Information: Early Intervention Program for Infants and Toddlers With Disabilities*

State Application for a Grant, §§ 303.100, 303.124, 303.128, 303.148, 303.165, 303.167, 303.169, 303.173, 303.174, 303.321, 303.340, 303.341, 303.344, 303.361, 303.519, 303.523. In order to receive funds under this part for any fiscal year, a State must have on file with the Secretary a statement of assurances and an approved application that meets specified requirements under subpart B of these regulations. All States have approved applications on file with the Secretary that meet the requirements under the current regulations.

In all of the sections listed in the preceding paragraph, States are not required to submit any information that is currently on file with the Secretary, but are only required to submit new information that would be added by this NPRM. Consistent with changes made by the IDEA Amendments of 1997 (Pub.

L. 105–17), the new or revised State policies and procedures required by this NPRM must be submitted only one time to the Secretary, and remain in effect unless amended. Therefore, States will have a one-time paperwork burden in complying with these proposed changes, and not an annual burden.

The one-time burden for meeting the application requirements described in the preceding paragraphs is estimated to average 8 hours for 56 respondents, including reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Thus, the total burden for this one-time collection is estimated to be 448 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.



### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

### Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Among other requirements, the Executive order requires us to consult with State and local elected officials respecting any regulations that have federalism implications and either preempt State law or impose substantial direct compliance costs on State and local governments, and are not required by statute, unless the Federal government provides the funds for those costs. Although we do not believe that these proposed regulations have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to comment specifically on whether they may impose substantial direct compliance costs on State and local governments without reimbursement of those costs by the Federal government. Also, though we do not intend to preempt State law, we are asking for comments as to whether these proposed regulations would result in any unintended preemption of State law.

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To use the PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-800-293-6498; or in the Washington, D.C. area, at (202) 512-1530.

**Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

(Catalog of Federal Domestic Assistance Number: 84-181 Early Intervention Program for Infants and Toddlers with Disabilities)

### List of Subjects in 34 CFR Part 303

Education of individuals with disabilities, Grant programs—education, Infants and toddlers, Reporting and recordkeeping requirements.

Dated: August 23, 2000.

**Richard W. Riley,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 303 to read as follows:

## PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

### Subpart A—General

#### Purpose, Eligibility, and Other General Provisions

Sec.

- 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.
- 303.2 Eligible recipients of an award.
- 303.3 Use of Part C funds.
- 303.4 Limitation on eligible children.
- 303.5 Applicable regulations.

#### Definitions

- 303.6 Act.
- 303.7 Children.
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- 303.9 Day; business day.
- 303.10 Developmental delay.
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- 303.12 Early intervention services.
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- 303.15 Include; including.
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- 303.17 Multidisciplinary.
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- 303.23 State.
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#### General Requirements

- 303.100 Conditions of assistance.
- 303.101 How the Secretary disapproves a State's application statement of assurances.

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- 303.110 General requirements and timelines for public participation.
- 303.111 Notice of public hearings and opportunity to comment.
- 303.112 Public hearings.
- 303.113 Reviewing public comments received.

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- 303.121 Reports and records.
- 303.122 Control of funds and property.
- 303.123 Prohibition against commingling.
- 303.124 Prohibition against supplanting.
- 303.125 Fiscal control.
- 303.126 Payor of last resort.
- 303.127 Assurance regarding expenditure of funds.
- 303.128 Traditionally underserved groups.

#### General Requirements for a State Application

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- 303.141 Information about the Council.
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- 303.146 Information about public participation.
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- 303.148 Transition to preschool or other appropriate services.

#### Components of a Statewide System—Application Requirements

- 303.160 Minimum components of a statewide system.
- 303.161 State definition of developmental delay.
- 303.162 Central directory.
- 303.163 [Reserved]
- 303.164 Public awareness program.
- 303.165 Comprehensive child find system.
- 303.166 Evaluation, assessment, and non-discriminatory procedures.
- 303.167 Individualized family service plans.
- 303.168 Comprehensive system of personnel development (CSPD).
- 303.169 Personnel standards.
- 303.170 Procedural safeguards.
- 303.171 Supervision and monitoring of programs.
- 303.172 Lead agency procedures for resolving complaints.
- 303.173 Policies and procedures related to financial matters.
- 303.174 Interagency agreements; resolution of individual disputes.
- 303.175 Policy for contracting or otherwise arranging for services.
- 303.176 Data collection.

#### Participation by the Secretary of the Interior

- 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.

**Subpart C—Procedures for Making Grants to States**

- 303.200 Formula for State allocations.
- 303.201 Distribution of allotments from non-participating States.
- 303.202 Minimum grant that a State may receive.
- 303.203 Payments to the Secretary of the Interior.
- 303.204 Payments to the jurisdictions.

**Subpart D—Program and Service Components of a Statewide System of Early Intervention Services****General**

- 303.300 Child eligibility—criteria and procedures.
- 303.301 Central directory.
- 303.302 Service coordination.

**Identification and Evaluation**

- 303.320 Public awareness program.
- 303.321 Comprehensive child find system.
- 303.322 Evaluation and assessment.
- 303.323 Non-discriminatory procedures.

**Individualized Family Service Plans (IFSPs)**

- 303.340 Definition of IFSP; lead agency responsibility.
- 303.341 Policies and procedures on natural environments.
- 303.342 Development, review, and revision of IFSPs.
- 303.343 IFSP team—meetings and periodic reviews.
- 303.344 Content of IFSP.
- 303.345 Provision of services before evaluation and assessment are completed.
- 303.346 Responsibility and accountability.

**Personnel Training and Standards**

- 303.360 Comprehensive system of personnel development (CSPD).
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**Subpart E—Procedural Safeguards****General**

- 303.400 General responsibility of lead agency for procedural safeguards.
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- 303.424 Civil action.
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- 303.511 An organization or individual may file a complaint.
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- 303.560 Use of funds for administration.

**Subpart G—State Interagency Coordinating Council****General**

- 303.600 Establishment of Council.
- 303.601 Composition.
- 303.602 Use of funds by the Council.
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**Functions of the Council**

- 303.650 General.
- 303.651 Advising and assisting the lead agency in its administrative duties.
- 303.652 Applications.
- 303.653 Transition services.
- 303.654 Annual report to the Secretary.

**Authority:** 20 U.S.C. 1431–1445, unless otherwise noted.

**Subpart A—General****Purpose, Eligibility, and Other General Provisions****§ 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) Maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of 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 the States' 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

(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(Authority: 20 U.S.C. 1431)

**§ 303.2 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 Virgin Islands, the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(27), 1443)

**§ 303.3 Use of Part C funds.**

(a) Funds under Part C of the Act may be used for the following activities:

(1) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families.

(2) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(3) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(4) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.

(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 or private community-based organizations, services, and personnel for the purpose of—

(i) Identifying and evaluating at-risk infants and toddlers;

(ii) Making referrals of the infants and toddlers identified and evaluated under paragraph (a)(5)(i) of this section; and

(iii) Conducting periodic follow-up on each referral under paragraph (a)(5)(ii) of this section 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.

(6) To assist families—

(i) To understand the sources of financing early intervention services, including public and private insurance programs, and how to access those sources; and

(ii) To be knowledgeable about any potential long-term costs involved in accessing the sources described in paragraph (a)(6)(i) of this section, and how to minimize those costs.

(b)(1) Funds under Part C of the Act may not be used to pay costs of a party related to an action or proceeding under section 639 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a lead agency from using funds under Part C of the Act for conducting due process hearings under section 639 of the Act (for example, paying a hearing officer, providing a place for conducting a hearing, and paying the cost of providing the parent with a transcription of the hearing).

(Authority: 20 U.S.C. 1433 and 1438)

#### **§ 303.4 Limitation on eligible children.**

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

(Authority: 20 U.S.C. 1419(h))

#### **§ 303.5 Applicable regulations.**

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for § 76.103;

(ii) Part 77 (Definitions that Apply to Department Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act—Enforcement);

(vi) Part 82 (New Restrictions on Lobbying);

(vii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants));

(viii) Part 97 (Protection of Human Subjects);

(ix) Part 98 (Student Rights in Research, Experimental Programs and Testing; and

(x) Part 99 (Family Educational Rights and Privacy).

(2) The regulations in this part 303.

(3) The following regulations in 34 CFR part 300 (Assistance to States for the Education of Children with Disabilities Program): §§ 300.506–300.512 (Part B due process hearing procedures), if the lead agency adopts these provisions under § 303.420(a)(1); §§ 300.560–300.577 (Confidentiality of information); and §§ 300.580–300.587 (Department procedures for determining a State's eligibility under Part C of the Act).

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) *State educational agency* means the lead agency under this part;

(2) *Special education, related services, free appropriate public education, free public education, or education* means “early intervention services” under this part;

(3) *Participating agency*, when used in reference to a local educational agency or an intermediate educational agency, means a local service provider under this part; and

(4) *Section 300.127* (confidentiality of personally identifiable information) means § 303.460.

(Authority: 20 U.S.C. 1401, 1416, 1417, 1442)

#### **Definitions**

**Note to §§ 303.6–303.23:** Sections 303.6–303.23 contain definitions, including a definition of “natural environments” in § 303.18, that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. The following is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 303.361(a)(1))

Assessment (§ 303.322(b)(2))

Consent (§ 303.401(a))

Evaluation (§ 303.322(b)(1))

Frequency and intensity (§ 303.344(d)(2)(i))

Highest requirements in the State applicable to a profession or discipline (§ 303.361(a)(2))

Individualized family service plan and IFSP (§ 303.340(b))

Impartial (§ 303.421(b))

Method (§ 303.344(d)(2)(ii))

Native language (§ 303.401(b))

Personally identifiable (§ 303.401(c))

Primary referral sources

(§ 303.321(d)(3))

Profession or discipline (§ 303.361(a)(3))

Special definition of “aggregate amount” (§ 303.200(b)(1))

Special definition of “infants and toddlers” (§ 303.200(b)(2))

Special definition of “State” (§ 303.200(b)(3))

State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))

#### **§ 303.6 Act.**

As used in this part, the term *Act* means the Individuals with Disabilities Education Act.

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

#### **§ 303.7 Children.**

As used in this part, the term *children* means infants and toddlers with disabilities as that term is defined in § 303.16.

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

#### **§ 303.8 Council.**

As used in this part, the term *Council* means the State Interagency Coordinating Council.

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

#### **§ 303.9 Day; business day.**

(a) As used in this part, the term *day* means calendar day, unless otherwise indicated as business day in accordance with paragraph (b) of this section.

(b)(1) If a State, under § 303.420(a)(1), adopts the Part B due process hearing procedures in 34 CFR part 300, the term business day is used with respect to hearing rights in 34 CFR 300.509.

(2) *Business day* means Monday through Friday, except for Federal and State holidays.

(Authority: 20 U.S.C. 1431–1445)

#### **§ 303.10 Developmental delay.**

As used in this part, the term *developmental delay*, when used with respect to a child residing in a State, has the meaning given to that term under § 303.300(b).

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

#### **§ 303.11 Early intervention program.**

As used in this part, the term *early intervention program* means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1431–1445)

#### **§ 303.12 Early intervention services.**

(a) *General.* As used in this part, the term *early intervention services* means developmental services that—

(1) Are provided—

(i) Under public supervision; and

(ii) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides for a system of payments by

families, including a schedule of sliding fees;

(2) Are designed to meet—

(i) The developmental needs of each child eligible under this part in one or more of the areas listed in § 303.16(a)(1); and

(ii) The needs of the family related to enhancing the child's development;

(3) Are selected in collaboration with the parents;

(4) Meet the standards of the State, including the requirements of this part;

(5) Subject to the exclusions on health services in § 303.13(c), include the services listed in paragraph (b) of this section;

(6) Are provided in a timely manner by qualified personnel, as defined in § 303.22, including the types of personnel listed in paragraph (c) of this section;

(7) Are provided in conformity with an individualized family service plan (IFSP); and

(8) To the maximum extent appropriate to the needs of the child, are provided in natural environments, as defined in § 303.18.

(b) *Types of services; definitions.* The term *early intervention services* includes the following:

(1)(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 children with disabilities.

(ii) *Assistive technology service* means a service that directly assists an eligible child or the child's parents in the selection, acquisition, or use of an assistive technology device for the child. The term includes—

(A) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children 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 a child with disabilities or, if appropriate, that child's family; and

(F) Training or technical assistance for professionals (including individuals providing early intervention services) or

other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(2) *Audiology services* includes—

(i) Identification of children with hearing loss, using 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 children with hearing loss;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices; and

(vii) Counseling and guidance of children, parents, and teachers regarding hearing loss.

(3) *Family training, counseling, and home visits* means services provided, as appropriate, by social workers, psychologists, special educators, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) *Health services* (See § 303.13).

(5) *Medical services only for diagnostic or evaluation purposes* means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) *Nutrition services* includes—

(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 (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(7) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes services to address the functional needs of a child 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—

(A) Identification, assessment, and intervention;

(B) 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

(C) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(8) *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 infants and toddlers 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.

(9) *Psychological services* includes—

(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.

(10) *Service coordination* means assistance and services provided by a service coordinator to a child eligible under this part and the child's family, in accordance with § 303.302.

(11) *Social work services* includes—

(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 child 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 child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(12) *Special instruction* includes the following:

(i) The design of learning environments and activities that promote the child's acquisition of skills in the following developmental areas: cognitive; physical; communication; social or emotional; and adaptive.

(ii) Planning that leads to achieving the outcomes in the child's IFSP, including curriculum planning, the planned interaction of personnel, and planning with respect to the appropriate use of time, space, and materials.

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child.

(iv) Working with the child to enhance the child's development.

(13) *Speech-language pathology services* includes—

(i) Identification of children with communicative or swallowing 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 communicative or swallowing disorders and delays in development of communication skills;

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or swallowing disorders and delays in development of communication skills; and

(iv) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) *Transportation and related costs* includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(15) *Vision services* means—

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(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, independent living skills training, and additional training necessary to activate visual motor abilities.

(c) *Qualified personnel*. Qualified personnel providing early intervention services under this part include—

- (1) Audiologists;
- (2) Family therapists;
- (3) Nurses;
- (4) Nutritionists;
- (5) Occupational therapists;
- (6) Orientation and mobility specialists;
- (7) Pediatricians and other physicians;
- (8) Physical therapists;
- (9) Psychologists;
- (10) Social workers;
- (11) Special educators; and
- (12) Speech and language pathologists.

(d) *General role of service providers*.

To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(Authority: 20 U.S.C. 1401(1) and (2); 1432(4))

**Note to § 303.12:** The lists of services in paragraph (b) and qualified personnel in paragraph (c) of this section are not exhaustive. Early intervention services may include such services as the provision of respite and other family support services. Qualified personnel may include such personnel as vision specialists, paraprofessionals, parent-to-parent support personnel, augmentative communication specialists, and technology specialists.

#### § 303.13 Health services.

(a) As used in this part, the term *health services* means services

necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) Subject to paragraph (c) of this section, 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;

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services; and

(3) Nursing services, including—

(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) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, the shunting of hydrocephalus, or the installation of devices such as pacemakers, cochlear implants, or prostheses); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical or other condition (such as pacemakers, cochlear implants, prostheses, or shunts).

(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))

**Note to § 303.13:** The definition in this section distinguishes between the health services that are required under this part and the medical-health services that are not required. The IFSP requirements in subpart D of this part provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See

§ 303.344 (f) and note 3 following that section.)

#### **§ 303.14 IFSP; IFSP team.**

As used in this part, the term—  
(a) *IFSP* means the individualized family service plan, as that term is defined in § 303.340(a); and

(b) *IFSP team* means the group of participants described in § 303.343 that is responsible for developing, reviewing, and, if appropriate, revising an IFSP for an eligible child under this part.

(Authority: 20 U.S.C. 1221e–3; 1436)

#### **§ 303.15 Include; including.**

As used in this part, the term *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. 1431–1445)

#### **§ 303.16 Infants and toddlers with disabilities.**

(a) As used in this part, the term *infants and toddlers with disabilities* means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, 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) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

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

**Note 1 to § 303.16:** The phrase “a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,” as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

**Note 2 to § 303.16:** With respect to paragraph (b) of this section, children who

are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled.

Under this provision, States have the authority to define who would be “at risk of having substantial developmental delays if early intervention services are not provided.” In defining the “at risk” population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers “at risk” for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that “at risk” factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

#### **§ 303.17 Multidisciplinary.**

As used in this part, the term *multidisciplinary* means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322 and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1435(a)(3), 1436(a))

#### **§ 303.18 Natural environments.**

As used in this part, the term *natural environments*—

- (a) Means settings that are natural or normal for an eligible child's age peers who have no disabilities; and
- (b) Includes—
  - (1) The home; and
  - (2) Community settings in which children without disabilities participate.

(Authority: 20 U.S.C. 1435 and 1436)

#### **§ 303.19 Parent.**

(a) *General.* As used in this part, the term *parent* means—

- (1) A natural or adoptive parent of a child;
- (2) A guardian, but not the State if the child is a ward of the State;
- (3) A person acting in the 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); or
- (4) A surrogate parent who has been assigned in accordance with § 303.406.

(b) *Foster parent.* Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part C of the Act if—

- (1) The natural parents' authority to make the decisions required of parents under the Act has been extinguished under State law; and
- (2) The foster parent—

- (i) Has an ongoing, long-term parental relationship with the child;
- (ii) Is willing to make the decisions required of parents under the Act; and
- (iii) Has no interest that would conflict with the interests of the child.

(Authority: 20 U.S.C. 1401(19), 1431–1445)

#### **§ 303.20 Policies.**

(a) As used in this part, the term *policies* means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

- (1) A State's commitment to maintain the statewide system (see § 303.140);
- (2) A State's eligibility criteria and procedures (see § 303.300);
- (3) Policies concerning the State's system of payments, if any, and the State's financing of early intervention services, in accordance with §§ 303.519 through 303.521.

(4) A State's standards for personnel who provide services to children eligible under this part (see § 303.361);

(5) A State's position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and

(6) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1431–1445)

#### **§ 303.21 Public agency.**

As used in this part, the term *public agency* includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1431–1445)

#### **§ 303.22 Qualified personnel.**

As used in this part, the term *qualified personnel* means personnel who have met State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing early intervention services.

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

**Note to § 303.22:** These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under part B of the Act (i.e., that the State educational agency establish

standards and ensure that those standards are currently met for all programs providing special education and related services).

Section 303.12(a)(6) provides that early intervention services must be provided by qualified personnel.

Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

### **§ 303.23 State.**

Except as provided in § 303.200(b)(3), the term State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1401(27))

### **§ 303.24 EDGAR definitions that apply.**

The following terms used in this part are defined in 34 CFR 77.1:

Applicant  
Award  
Contract  
Department  
EDGAR  
Fiscal year  
Grant  
Grantee  
Grant period  
Private  
Public  
Secretary

(Authority: 20 U.S.C. 1431–1445)

## **Subpart B—State Application for a Grant**

### **General Requirements**

#### **§ 303.100 Conditions of assistance.**

(a) *General.* (1) In order to receive funds under this part for any fiscal year, a State must have on file with the Secretary—

(i) A statement of assurances that meets the requirements of §§ 303.120 through 303.128; and

(ii) An approved application that contains—

(A) The information required in §§ 303.140–303.148 and 303.161 through 303.176; and

(B) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information.

(2) An application that meets the requirements of this part remains in effect until the State submits to the Secretary modifications of that application.

(b) *Exception for prior State policies on file with the Secretary.* If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any

policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.

(c) *Amendments to a State's application.* 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 the regulations under this part;

(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. 1434 and 1437)

#### **§ 303.101 How the Secretary disapproves a State's application or statement of assurances.**

The Secretary follows the procedures in 34 CFR 300.581–300.586 before disapproving a State's application or statement of assurances submitted under this part.

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

### **Public Participation**

#### **§ 303.110 General requirements and timelines for public participation.**

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State must—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request the Secretary to waive compliance with the timelines in paragraph (a) of this section. The Secretary grants the request if the State demonstrates that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that will be followed provide an adequate opportunity for public participation and comment.

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

#### **§ 303.111 Notice of public hearings and opportunity to comment.**

The notice required in § 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to part C of the Act;

(2) The length of the comment period and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

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

#### **§ 303.112 Public hearings.**

Each State must hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

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

#### **§ 303.113 Reviewing public comments received.**

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency must—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Submission to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency must include copies of news releases, advertisements, and announcements used to provide notice to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities.

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

### **Statement of Assurances**

#### **§ 303.120 General.**

(a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.128.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement



is consistent with the requirements in §§ 303.121 through 303.128.

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

#### **§ 303.121 Reports and records.**

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping such records and affording access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

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

#### **§ 303.122 Control of funds and property.**

The statement must provide assurance satisfactory to the Secretary 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.

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

#### **§ 303.123 Prohibition against commingling.**

(a)(1) The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(2) As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure.

(b) The assurance in paragraph (a)(1) of this section is satisfied by the use of an accounting system that includes an audit trail of the expenditure of funds awarded under this part. Separate bank accounts are not required.

(c) To the extent that funds from Federal, State, local, and private funding sources can be identified, with a clear audit trail for each source, a State, at its discretion—

(1) May allow those funds to be consolidated for carrying out the requirements of this part; and

(2) May set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

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

#### **§ 303.124 Prohibition against supplanting.**

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under

this part will be used to supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b)(1) 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.

(2) Allowance may be made for—

(i) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(c) For purposes of paragraph (b) of this section, subject to the exceptions in paragraph (b)(2) of this section, a State must be able to demonstrate, in any fiscal year, that the total amount of State and local funds expended for early intervention services equaled or exceeded the lesser of—

(1) The budgeted amount that is referenced in paragraph (b) of this section, for that same fiscal year; and

(2) The amount actually expended for early intervention services in the most recent preceding fiscal year.

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

#### **§ 303.125 Fiscal control.**

The statement must provide assurance satisfactory to the Secretary that fiscal control and fund accounting procedures will be adopted to the extent necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.

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

#### **§ 303.126 Payor of last resort.**

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

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

#### **§ 303.127 Assurance regarding expenditure of funds.**

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under

this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

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

#### **§ 303.128 Traditionally underserved groups.**

The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, inner-city, and rural families, 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.

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

#### **General Requirements for a State Application**

##### **§ 303.140 General.**

A State's application under this part must contain information and assurances demonstrating to the satisfaction of the Secretary that—

(a) The statewide system of early intervention services required in § 303.160 is in effect; and

(b) A State policy is in effect that ensures 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.

(Authority: 20 U.S.C. 1434 and 1435(a)(2))

##### **§ 303.141 Information about the Council.**

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of subpart G of this part.

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

##### **§ 303.142 Designation of lead agency.**

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

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

##### **§ 303.143 Designation regarding financial responsibility.**

Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.

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

**§ 303.144 Assurance regarding use of funds.**

Each application must include an assurance that funds received under this part will be used to assist the State to maintain and implement the statewide system required under subparts D through F of this part.

(Authority: 20 U.S.C. 1475, 1437(a)(3))

**§ 303.145 Description of use of funds.**

(a) *General.* Each application must include a description of how a State proposes to use its 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) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Maintenance and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in § 303.16(b), and their families, consistent with §§ 303.521 and 303.527;

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *At-risk infants and toddlers.* For any State that does not provide direct services for at-risk infants and toddlers described in paragraph (d)(1) of this section, but chooses to use funds as described in § 303.3(e), each application must include a description of how those funds will be used.

(f) *Activities by other agencies.* If other 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.

(Authority: 20 U.S.C. 1437(a)(3) and (a)(5))

**§ 303.146 Information about public participation.**

Each application must include the information on public participation that is required in § 303.113(b).

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

**§ 303.147 Services to all geographic areas.**

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

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

**§ 303.148 Transition to preschool or other appropriate services.**

(a) *General.* Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including the information required in paragraphs (b) through (f) of this section.

(b) *Family involvement; notification of local educational agency.* The application must describe—

(1) How the families of children served under this part will be included in the transition plans for the children; and

(2) How the lead agency under this part will notify the local educational agency (LEA) for the area in which an eligible child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law.

(c) *Transmittal of records; parental consent.* (1) The application must include, in accordance with paragraphs (c)(2) and (c)(3) of this section, a description of the policies and procedures for transmitting records about the child to an LEA, or any other agency, for the purposes of—

(i) Facilitating the child's smooth transition to preschool or other appropriate services; and

(ii) Ensuring continuity of services for the child.

(2)(i) Subject to paragraph (c)(3) of this section, the lead agency must obtain parental consent, in accordance with

§ 303.401(a), before transmitting any records about the child.

(ii) The records referred to in paragraph (c) of this section include any personally identifiable information about the child, including—

(A) Evaluation and assessment information required in § 303.322; and

(B) Copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.

(3) Consent is not required before transmitting directory information about a child to an LEA (e.g., the child's name, address, telephone number, and age), if the information is provided for the specific purpose of assisting the LEA in implementing the child find requirements under 34 CFR 300.125.

(d) *Conference to discuss services.* The application must describe how the lead agency will—

(1) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the parents of the child, convene a conference among the lead agency, the family, and the LEA at least 90 days (and at the discretion of the parties, up to 6 months) before the child is eligible for the preschool services, to discuss any services that the child may receive; or

(2) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the parents of the child, 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.

(e) *Program options; transition plan.* The application must include a description of the policies and procedures to be used—

(1) To review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(2) To establish a transition plan for the child.

(f) *Interagency agreement.* If the State educational agency (SEA) (the agency responsible for administering preschool programs under part B of the Act) is not the lead agency under this part, the policies and procedures described in paragraph (a) of this section must provide for the establishment of an interagency agreement between the lead agency and the SEA, to ensure appropriate coordination on transition matters.

(Authority: 20 U.S.C. 1437(a)(8))

**Note:** Among the matters that should be considered in developing policies and procedures to ensure a smooth transition of children from one program to the other are the following:

The financial responsibilities of all appropriate agencies.

The responsibility for performing evaluations of children.

The development and implementation of an individualized education program (IEP) or an IFSP for each child, consistent with the requirements of law (*see* § 303.344(i), section 612(a)(9) of the Act, and 34 CFR 300.132).

The coordination of communication between agencies and the child's family.

The mechanisms to ensure the uninterrupted provision of appropriate services to the child.

### **Components of a Statewide System—Application Requirements**

#### **§ 303.160 Minimum components of a statewide system.**

Each application must address the minimum components of a statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services 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. The minimum components of a statewide system are described in §§ 303.161 through 303.176.

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

#### **§ 303.161 State definition of developmental delay.**

Each application must include the State's definition of developmental delay, as required in § 303.300(b).

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

#### **§ 303.162 Central directory.**

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.

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

#### **§ 303.163 [Reserved]**

#### **§ 303.164 Public awareness program.**

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.

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

#### **§ 303.165 Comprehensive child find system.**

Each application must include—

(a) The policies and procedures required in § 303.321(b);

(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;

(c) The referral procedures required in § 303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

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

#### **§ 303.166 Evaluation, assessment, and nondiscriminatory procedures.**

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Authority: 20 U.S.C. 1435(a)(3); 1436(a)(1), (d)(2), and (d)(3))

#### **§ 303.167 Individualized family service plans.**

Each application must include the following:

(a) An assurance that a current IFSP is in effect and implemented for each eligible child and the child's family.

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340 through 303.343, and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(c) Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3).

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

#### **§ 303.168 Comprehensive system of personnel development (CSPD).**

Each application must include information to show that the requirements in § 303.360(b) are met.

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

#### **§ 303.169 Personnel standards.**

Each application must include policies and procedures that are consistent with the requirements in § 303.361.

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

#### **§ 303.170 Procedural safeguards.**

Each application must include procedural safeguards that—

(a) Are consistent with §§ 303.400 through 303.406, 303.419 through 303.425 and 303.460; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.419, 303.420(b), and 303.421 through 303.425.

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

#### **§ 303.171 Supervision and monitoring of programs.**

Each application must include information to show that the requirements in § 303.501 are met.

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

#### **§ 303.172 Lead agency procedures for resolving complaints.**

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

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

#### **§ 303.173 Policies and procedures related to financial matters.**

Each application must include/the following:

(a) Funding policies that meet the requirements in § 303.519.

(b)(1) Information about funding sources, as required in § 303.522, including the identification of each State agency that provides early intervention services, or funding for those services, for children eligible under Part C, even if the agency does not receive Part C funds.

(2) The information required in paragraph (b)(1) of this section must include—

(i) The name of the agency; and

(ii)(A) The specific funds used by the agency for early intervention services (*e.g.*, State Medicaid or State special education funds); and

(B) The intended use of those funds.

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525.

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Authority: 20 U.S.C. 1435(a)(10) (D) and (E), 1435(a)(12), 1440)

#### **§ 303.174 Interagency agreements; resolution of individual disputes.**

Each application must include—

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

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

**§ 303.175 Policy for contracting or otherwise arranging for services.**

Each application must include a policy that meets the requirements in § 303.526.

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

**§ 303.176 Data collection.**

Each application must include procedures that meet the requirements in § 303.540.

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

**Participation by the Secretary of the Interior**

**§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.**

(a) The Secretary makes payments to the Secretary of the Interior 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 and secondary schools for Indian children operated or funded by the Department of the Interior.

(b)(1) The Secretary of the Interior must distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.

(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (BIA).

(c)(1) 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.

(2) 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.

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

**Subpart C—Procedures for Making Grants to States**

**§ 303.200 Formula for State allocations.**

(a) For each fiscal year, from the aggregate amount of funds available

under this part 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) For the purpose of allotting funds to the States under paragraph (a) of 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 § 303.203 and to the jurisdictions under § 303.204;

(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))

**§ 303.201 Distribution of allotments from non-participating States.**

If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).

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

**§ 303.202 Minimum grant that a State may receive.**

No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or \$500,000, whichever is greater.

(Authority: 20 U.S.C. 1443(c)(2))

**§ 303.203 Payments to the Secretary of the Interior.**

The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

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

**§ 303.204 Payments to the jurisdictions.**

(a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(b) The provisions of Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.

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

**Subpart D—Program and Service Components of a Statewide System of Early Intervention Services**

**General**

**§ 303.300 Child eligibility—criteria and procedures.**

(a) *General.* (1) Each statewide system of early intervention services (system) must include the eligibility criteria and procedures, consistent with § 303.16, that—

(i) Will be used by the State in carrying out programs under this part; and

(ii) Meet the requirements in paragraphs (b) through (d) of the section.

(2) The information required in paragraph (a)(1) of this section must be on file in the State, and be available for public review.

(b) *State definition of developmental delay.* The State must define developmental delay by—

(1) Describing, for each of the areas listed in § 303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and

(2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas.

(c) *Diagnosed condition.* The State must describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under § 303.16(a)(2).

(d) *Children who are at risk.* If the State elects to include in its system children who are at risk under § 303.16(b), the State must describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

(Authority: 20 U.S.C. 1432(5), 1435(a)(1))

**Note to § 303.300:** Under this section and 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

**§ 303.301 Central directory.**

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups (including parent support groups and advocate associations) that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency must arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons with disabilities.

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

### § 303.302 Service coordination.

(a) *General.* (1) Each system must ensure that service coordination is available to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2)(i) If a State has an existing service coordination system, the State may use or adapt that system, so long as it is consistent with the requirements of this part.

(ii) A public agency's use of the term service coordination is not intended to affect the agency's authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to case management services.

(b) *Entitlement to service coordination.* (1) Each eligible child and the child's family must be provided with one service coordinator who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(2) In accordance with paragraphs (b)(1), (c), and (d) of this section, service

coordination is an on-going, coordinative process designed to facilitate and enhance the delivery of early intervention services under this part. Therefore, service coordination is not required to be included in the statement of services under § 303.344(d)(1).

(c) *Scope of service coordination.*

Service coordination is an active, ongoing process that involves—

(1) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(2) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(3) Facilitating the timely delivery of available services; and

(4) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(d) *Specific service coordination activities.* Service coordination activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of IFSPs;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers;

(7) Facilitating the development of a transition plan to preschool services, if appropriate; and

(8) At the discretion of the State, assisting families—

(i) To understand the sources of financing early intervention services, including public and private insurance programs, and how to access those sources; and

(ii) To be knowledgeable about any potential long-term costs involved in accessing the sources described in paragraph (d)(8)(i) of this section, and how to minimize those costs.

(e) *Employment and assignment of service coordinators.* (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be

designed and implemented to ensure that service coordinators are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(f) *Qualifications of service coordinators.* Service coordinators must be persons who, consistent with § 303.344(h), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part C of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1432(4); 14353(a)(4), 1436(d)(7), H.R. Rep. No. 198, 102d Cong., 1st Sess. 12 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 20 (1991).)

### Identification and Evaluation

#### § 303.320 Public awareness program.

(a) Each system must include a public awareness program that—

(1) Focuses on the early identification of children who are eligible to receive early intervention services under this part; and

(2) Includes—

(i) The preparation by the lead agency of information for parents on the availability of early intervention services under this part, and how to access those services; and

(ii)(A) The agency's dissemination of the information to all primary referral sources identified in § 303.321(d)(3) (especially physicians and hospitals) for their use in providing the information to parents of infants and toddlers; and

(B) Procedures for determining the extent to which the primary referral sources disseminate the information to the parents.

(b) The public awareness program must provide for informing the public about—

(1) The State's early intervention program;

(2) The child find system, including—

(i) The purpose and scope of the system;

(ii) How to make referrals; and

(iii) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(3) The central directory.

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

**Note 1 to § 303.320:** An effective public awareness program is one that does the following:

Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

Has coverage broad enough to reach the general public, including those who have disabilities; and

Includes a variety of methods for informing the public about the provisions of this part.

**Note 2 to § 303.320:** Examples of methods for informing the general public about the provisions of this part include: use of television, radio, and newspaper releases, pamphlets and posters displayed in physicians' offices, hospitals, and other appropriate locations, and the use of a toll-free telephone service.

#### **§ 303.321 Comprehensive child find system.**

(a) *General.* (1) Each system must include a comprehensive child find system that is consistent with part B of the Act (see 34 CFR 300.125), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, must be responsible for implementing the child find system.

(b) *Policies and procedures.* The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated, including children with disabilities from—

(i) Traditionally underserved groups, including minority, low-income, inner-city, and rural families; and

(ii) Highly mobile groups (such as migrant and homeless families); and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services.

(c) *Coordination.* (1) The lead agency, with the assistance of the Council, must ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—

(i) Program authorized under part B of the Act;

(ii) Maternal and Child Health program under title V of the Social Security Act;

(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act;

(v) Head Start Act; and

(vi) Supplemental Security Income program under title XVI of the Social Security Act.

(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 various agencies involved in the State's child find system under this part; and

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

(d) *Referral procedures.* (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources;

(ii) Ensure that referrals are made as soon as reasonably possible after a child has been identified; and

(iii) Include, in accordance with § 303.320(a)(2)(ii)(B), procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants and toddlers.

(3) As used in paragraph (d)(1) of this section, primary referral sources includes, if appropriate—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care and child care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies;

(viii) Other health care providers; and

(ix) Other Federally funded programs such as Head Start, Early Head Start, and Even Start.

(e) *Timelines for public agencies to act on referrals.* (1) Once the public

agency receives a referral, it must appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the public agency must—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Authority: 20 U.S.C. 1431(a)(5), 1432(4)(E)(vii), 1435(a)(5))

**Note to § 303.321:** In developing the child find system under this part, States should consider tracking systems based on high-risk conditions at birth, and other activities that are being conducted by various agencies or organizations in the State.

#### **§ 303.322 Evaluation and assessment.**

(a) *General.* (1) Each system must include the performance of—

(i) A timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation; and

(ii) A family-directed identification of the needs of each child's family to appropriately assist in the development of the child, that meets the requirements of paragraph (d) of this section.

(2) The lead agency must be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with disabilities" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) 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 the child.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be family-directed and designed to determine 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 child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency must develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (*e.g.*, if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345(b)(1) and (b)(2).

(Authority: 20 U.S.C. 1435(a)(3); 1436(a)(1), (a)(2), (d)(1), and (d)(2))

### § 303.323 Nondiscriminatory procedures.

Each lead agency must adopt nondiscriminatory evaluation and assessment procedures. The procedures

must provide that public agencies responsible for the evaluation and assessment of children and families under this part must ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Authority: 20 U.S.C. 1435(a)(3); 1436(a)(1), (d)(2), and (d)(3))

### Individualized Family Service Plans (IFSPs)

#### § 303.340 Definition of IFSP; lead agency responsibility.

(a) *Definition of IFSP.* As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child's family that—

(1) Is developed by the child's IFSP team, in accordance with §§ 303.341 through 303.343;

(2) Is based on the evaluation and assessment described in § 303.322; and

(3) Includes the information required in § 303.344, as determined by the IFSP team.

(b) *Lead agency responsibility.* The lead agency in each State must ensure that—

(1) The State's early intervention system under this part has in effect policies and procedures on IFSPs that meet the requirements of this section and §§ 303.341 through 303.346; and

(2)(i) An IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part.

(ii) If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency must resolve the dispute or assign responsibility.

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

**Note to § 303.340:** In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it contains all of the required information in § 303.344, and is developed in accordance with the requirements of this part.

### § 303.341 Policies and procedures on natural environments.

(a) *General.* Each system must have in effect, in accordance with paragraphs (b) through (d) of this section, policies and procedures to ensure that—

(1) To the maximum extent appropriate, early intervention services are provided in natural environments; and

(2) The provision of early intervention services for each eligible child occurs in a setting other than a natural environment only if the IFSP team, based on the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c), determines that early intervention cannot be achieved satisfactorily for the child in a natural environment.

(b) *Determination of natural environment for each IFSP service.* (1) The IFSP team for each eligible child under this part must determine, for each early intervention service to be provided to the child, if the child's needs can be met in a natural environment.

(2) If, after making the determinations required by paragraph (b)(1) of this section, the team determines that a specific service for the child must be provided in a setting other than a natural environment (such as in a center-based program that serves children with disabilities, or another setting appropriate to the age and needs of the child), a justification that meets the requirements of paragraph (c) of this section must be included in the child's IFSP.

(c) *Justification.* The justification required in paragraph (b)(2) of this section must—

(1) Include a statement describing the basis of the IFSP team's decision to provide a specific early intervention service for the child in a setting other than a natural environment;

(2) Be based on the identified needs of the child and the projected outcomes, as determined by the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c); and

(3) If appropriate, be based on the nature of the service required to meet the unique needs of the child.

(d) *Services to parents or other family members.* The provisions on natural environments in this part do not apply to services listed in an IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child (*e.g.*, participation of a parent in a parent-support program).

(Authority: 20 U.S.C. 1435(a)(4), (a)(16), 1436(d)(5))



**§ 303.342 Development, review, and revision of IFSPs.**

(a) *Development of IFSP.* (1) *General.* For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP for the child must be conducted within the 45-day time period required in § 303.321(e).

(2) *Consideration of special factors.* In developing each child's IFSP, the IFSP team must—

(i) In the case of a child whose behavior impedes his or her development, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) In the case of a child of a family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;

(iii) In the case of a child who is blind or visually impaired, if appropriate, provide for exposing the child to pre-literacy or readiness activities related to the use of Braille (e.g., through tactile stimulation and the use of "raised" picture books);

(iv) Consider the communication needs of the child, and, in the case of a child who is deaf or hard of hearing, consider—

(A) The appropriateness of oral stimulation and language-development activities; and

(B) Opportunities for direct communication with peers, professional personnel, and deaf adults in the child's language and communication mode, consistent with the developmental level of the child; and

(v) Consider whether the child requires assistive technology devices and services.

(b) *Periodic review.* (1) A review of the IFSP for each eligible child and the child's family must be conducted every six months, or more frequently if conditions warrant or if the family requests a review.

(2) The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(3) The review may be carried out in a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* (1) A meeting must be conducted on at least an annual basis to evaluate the IFSP for each eligible child and the child's family, and, as appropriate, to revise its provisions.

(2) The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, are used at the meeting in determining what services 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 to families; 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; and

(2) Meeting arrangements are 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 before providing services.* The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

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

**Note to § 303.342:** The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation or assessment procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

**§ 303.343 IFSP team—meetings and periodic reviews.**

(a) *Initial and annual IFSP meetings.*

(1) Each initial meeting and each annual 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 who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section (who has been directly involved in conducting evaluations or assessments) is unable to attend an IFSP meeting, the public agency must take steps to ensure—

(i) The person's involvement through other means (e.g., participating in a telephone conference call); or

(ii) That the results of the evaluations and assessments are appropriately interpreted at the meeting, by making pertinent records available at the meeting, and having a person attend the meeting who is qualified to interpret the evaluation and assessment results and their service implications (who may be one of the participants described in paragraphs (a)(1)(i) through (a)(1)(vi) of this section).

(b) *Periodic reviews.* Each periodic review 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. 1436(b))

**§ 303.344 Content of IFSP.**

(a) *Information about child's status.*

(1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development.

(2) The statement required in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* (1) 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.

(2) The statement required in paragraph (b)(1) of this section must be based on the family assessment conducted under § 303.322(d).

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family (based on the evaluation and assessments required in § 303.322(c) and (d)), and the criteria, procedures, and timelines used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) *Statement of services.* The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section. The statement must include the information required in paragraphs (d)(2) through (d)(4) of this section.

(2) *Frequency, intensity, and method.* (i) The IFSP must specify the frequency, intensity, and method of delivering each early intervention service.

(ii) As used in paragraph (d)(2)(i) of this section—

(A) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(B) Method means how a service is provided.

(3) *Natural environments—location of services.* In accordance with § 303.341, the IFSP must—

(i) Specify the natural environments (locations or settings) where each early intervention service will be provided; and

(ii) Include a justification of the extent, if any, to which each service will not be provided in a natural environment.

(4) *Payment arrangements.* The IFSP must include a statement of the payment arrangements, if any, for each early intervention service.

(e) *Evaluations and assessments.* Except as provided in paragraph § 303.345, evaluations and assessments required under § 303.322 (including evaluations in each of the developmental areas in § 303.322(c)(3)(ii), and those described under the applicable early intervention services definitions in § 303.12(b)) must be completed prior to, and in preparation for, conducting the IFSP meeting for an eligible child under this part. Therefore, conducting those evaluations and assessments may not be listed as an early intervention service in the IFSP.

(f) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps

that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and “well-baby” and care), unless a child needs those services and the services are not otherwise available or being provided.

(g) *Dates; duration of services.* The IFSP must include—

(1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and

(2) The anticipated duration of those services.

(h) *Service coordinator.* (1) The IFSP must include the name of the service coordinator from the profession most immediately 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 the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (h)(1) of this section, the public agency may—

(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or

(ii) Appoint a new service coordinator.

(3) As used in paragraph (h)(1) of this section, the term profession includes “service coordination.”

(i) *Transition from Part C services.* (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with § 303.148, to—

(i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (i)(1) of this section 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)(A) The transmission of information about the child to the LEA or other relevant agency, in accordance with § 303.148(c); and

(B) The holding of the conference in accordance with § 303.148(d); and

(iv) Other activities that the IFSP team determines are necessary to support the transition of the child.

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

**Note 1 to § 303.344:** With respect to the requirements in paragraph (e) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, childcare centers, or other community settings) to the maximum extent appropriate to the needs of the child.

**Note 2 to § 303.344:** Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

**Note 3 to § 303.344:** The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12. However, the “other services” in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by determining if there is a public agency that could provide financial assistance, if needed, assisting in the preparation of eligibility claims or insurance claims, if needed, and assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining who will provide each service, and when, where, and how it will be provided, and how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

**Note 4 to § 303.344:** Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about what services are to be provided, the actions that are to be taken by the service coordinator in initiating those services, and what actions will be taken by the parents.

**§ 303.345 Provision of services before evaluation and assessment are completed.**

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, 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 (h), for implementation of the interim IFSP and coordination 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) The evaluation and assessment are completed within the time period required in § 303.322(e), except under exceptional circumstances as provided in § 303.322(e)(2).

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

**Note to § 303.345:** This section is intended to accomplish two specific purposes: to facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and to ensure that the requirements for the timely evaluation and assessment are not circumvented.

**§ 303.346 Responsibility and accountability.**

Each agency or person 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 agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

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

**Personnel Training and Standards**

**§ 303.360 Comprehensive system of personnel development (CSPD).**

(a) *General CSPD requirements.* Each system must include a comprehensive system of personnel development that—

- (1) Is consistent with the comprehensive system of personnel development required under Part B of the Act and its implementing regulations (section 612(a)(14), and 34 CFR 300.380 through 300.382); and
- (2) Meets the requirements in paragraphs (b) and (c) of this section.

(b) *Scope of training.* The comprehensive system of personnel development under this part must—

- (1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

- (2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and

- (3) Ensure that the training provided relates specifically to—

- (i) Understanding the basic components of early intervention services available in the State;

- (ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and

- (iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(c) *Authorized activities.* A personnel development system under this part may include—

- (1) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

- (2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

- (3) Training personnel to work in rural and inner-city areas; and

- (4) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under part B of the Act, or to other preschool or other appropriate services.

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

**§ 303.361 Personnel standards.**

(a) *Definitions.* As used in this part—

(1) *Appropriate professional requirements in the State* means entry level requirements that—

- (i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

- (ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) *Profession or discipline* means a specific occupational category that—

- (i) Provides early intervention services to children eligible under this part and their families;

- (ii) Has been established or designated by the State; and

- (iii) Has a required scope of responsibility and degree of supervision.

(4) *State approved or recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b) *Policies and procedures.* (1)(i) Each system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

- (ii) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

- (2) Each State may—

- (i) Determine the specific occupational categories required to provide early intervention services within the State; and

- (ii) Revise or expand those categories as needed.

- (3) Nothing in this part requires a State to establish a specified training standard (e.g., a masters degree) for

personnel who provide early intervention services under Part C of the Act.

(4) A State with only one entry-level academic degree for employment of personnel in a specific profession or discipline may modify that standard, as necessary, to ensure the provision of early intervention services without violating the requirements of this section.

(c) *Steps for retraining or hiring personnel.* To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include—

(1) The steps the State is taking;

(2) The procedures for notifying public agencies and personnel of those steps; and

(3) The timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d) *Status of personnel standards in the State.* (1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) *Applicability of State statutes and agency rules.* In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(f) *Use of paraprofessionals and assistants.* A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to eligible children under this part.

(g) *Policy to address shortage of personnel.* (1) In implementing this section, 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 eligible children, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law, within three years.

(2) If a State has reached its established timelines in paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.

(3)(i) Each State must have a mechanism for serving eligible children under this part if the need for early intervention services exceeds appropriate professional requirements in the State for a specific profession or discipline.

(ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under § 303.361.

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

## Subpart E—Procedural Safeguards

### General

#### § 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency must be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

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

#### § 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) *Consent* means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3)(i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(ii) If a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked);

(b) *Native language*, if used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part; and

(c) *Personally identifiable* means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

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

#### § 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, due process hearings, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1439(a)(4))

#### § 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action;

(3) All procedural safeguards that are available under §§ 303.401 through 303.460 of this part; and

(4) The State complaint procedures under §§ 303.510–303.512, including a description of how to file a complaint

and the 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 of the parents, 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 service 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.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

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

#### **§ 303.404 Parent consent.**

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services (see § 303.342(e)).

(b) If consent is not given, the public agency must make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

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

**Note 1 to § 303.404:** In addition to the consent requirements in this section, other consent requirements are included in § 303.460(a), regarding the exchange of personally identifiable information among agencies, and the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

**Note 2 to § 303.404:** Under § 300.505(b) of the Part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all

children with disabilities in a State, including infants and toddlers.

#### **§ 303.405 Parent right to decline service.**

The parents of a child eligible under this part—

(a) May determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law; and

(b) May decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

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

#### **§ 303.406 Surrogate parents.**

(a) *General.* Each lead agency must ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.19) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of 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.* 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 must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (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) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate parent may not be—

(i) An employee of any State agency; or

(ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

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

Mediation and Due Process Procedures for Parents and Children

#### **§ 303.419 Mediation.**

(a) *General.* (1) Each State must ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 303.403(a) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under § 303.420.

(2) The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(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 under § 303.420, 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) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (c) 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) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Meeting to encourage mediation.* A State may establish procedures to require parents who elect not to use the

mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

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

### **§ 303.420 Due process procedures.**

(a) Each system must include written procedures for the timely administrative resolution of requests for due process hearings filed by the parents of eligible children under this part concerning any of the matters described in § 303.403(a). A State may meet this requirement by—

(1)(i) Adopting the mediation and due process procedures in 34 CFR 300.506–300.512; and

(ii) Developing procedures that meet the requirements of § 303.425; or

(2) Developing procedures that—

(i) Meet the mediation and due process requirements in § 303.419 and §§ 303.421–303.425; and

(ii) Provide parents an appropriate means of filing a request for a due process hearing.

(b) If a parent initiates a hearing under paragraph (a)(1) or (a)(2) of this section, the lead agency must inform the parent of the availability of mediation described in § 303.419.

(Authority: 20 U.S.C. 1439(a)(1), (8))

**Note to § 303.420:** It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

### **§ 303.421 Impartial hearing officer.**

(a) *Qualifications and duties.* Each lead agency must ensure that any due process hearings carried out under section 639 of the Act and subpart E of this part are conducted by an impartial hearing officer who—

(1) Has knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Performs the following duties:

(i) Listens to the presentation of relevant viewpoints about the dispute that is the subject of the hearing.

(ii) Examines all information relevant to the issues.

(iii) Seeks to reach a timely resolution of the dispute.

(iv) Provides a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, impartial means that a person who serves as a hearing officer in accordance with this section—

(i) Is not an employee of any agency or other entity 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 complaint resolution process.

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

### **§ 303.422 Parent rights in due process hearings.**

(a) *General.* Each lead agency must ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any due process hearing carried out under § 303.420.

(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 children eligible under this part;

(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 at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

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

### **§ 303.423 Convenience of hearings; timelines. Each lead agency must ensure that—**

(a) Any due process hearing conducted under this part is carried out at a time and place that is reasonably convenient to the parents; and

(b) Not later than 30 days after the receipt of a parent's request for a due process hearing, the hearing is conducted and a written decision is mailed to each of the parties.

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

**Note:** Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (*i.e.*, within 45 days after the

receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

### **§ 303.424 Civil action.**

Any party aggrieved by the findings and decision made under § 303.420 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))

### **§ 303.425 Status of a child during proceedings.**

(a) During the pendency of any administrative or judicial proceeding involving a request for a due process hearing under § 303.420, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the proceeding involves an application for initial services under this part, the child must receive those services that are not in dispute.

(c) This section does not apply if a child is transitioning from early intervention services under this part to preschool services under Part B of the Act.

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

### **Confidentiality**

### **§ 303.460 Confidentiality of information.**

(a) Each State must adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560–300.576, with the modifications specified in § 303.5(b).

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

**Note to § 303.460:** With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be

used by public agencies to meet the confidentiality requirements under part C of the Act and this section (§ 303.460).

The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

## Subpart F—State Administration

### General

#### **§ 303.500 Lead agency establishment or designation.**

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

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

#### **§ 303.501 Supervision and monitoring of programs.**

(a) *General.* Each lead agency is responsible for—

(1) The general administration and supervision of programs and activities receiving assistance under this part; and

(2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) *Methods of ensuring compliance.* In meeting the requirement in paragraph (a) of this section, the lead agency must adopt and use proper methods of ensuring compliance, including—

(1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;

(2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correcting deficiencies that are identified through monitoring.

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

### **Lead Agency Procedures for Resolving Complaints**

#### **§ 303.510 Adopting 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 any public agency or private service provider is violating a requirement of Part C of the Act or this part by—

(i) Providing for the filing of a complaint with the lead agency; and

(ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510 through 303.512.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address:

(1) How to remediate the 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

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

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

#### **§ 303.511 An organization or individual may file a complaint.**

(a) *General.* An individual or organization may file a written signed complaint under § 303.510. The complaint must include—

(1) A statement that the State has violated a requirement of Part C of the Act or the regulations in this part; and

(2) The facts on which the complaint is based.

(b) *Limitations.* The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency, unless a longer period is reasonable because—

(1) The alleged violation continues for that child or other children; or

(2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

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

#### **§ 303.512 Minimum State complaint procedures.**

(a) *Time limit—minimum procedures.* Each lead agency must include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under § 303.510(a) to—

(1) Carry out an independent on-site investigation, if the lead agency

determines that such 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) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and

(4) 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 decisions; 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 exceptional circumstances exist with respect to a particular complaint; 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 § 303.420.* (1) If a written complaint is received that is also the subject of a due process hearing under § 303.420, 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 action must be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section.

(2) 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—

(i) The hearing decision is binding; and

(ii) The lead agency must inform the complainant to that effect.

(3) A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.

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



## Policies and Procedures Related to Financial Matters

### § 303.519 Policies related to payment for services.

(a) *General.* (1) Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program.

(i) For a State that has adopted a system of payments, the policies must meet the requirements in §§ 303.519 through 303.522.

(ii) For a State that has not adopted a system of payments, the policies must—

(A) Include a statement that all early intervention services will be at no cost to parents; and

(B) Meet the requirements of this section and § 303.522.

(2) The policies required in paragraph (a)(1) of this section must be reflected in the appropriate interagency agreements required in § 303.523.

(b) *Procedures to ensure the timely provision of services.* The State must implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(c) *Proceeds from public or private insurance.* (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) A State may add fees collected under a system of payments, which are program income under 34 CFR 80.25, to its Part C grant funds. The fee income must be used for the purposes and under the conditions of the grant agreement.

(3) If a public agency spends reimbursements from Federal funds (e.g., Medicaid), or uses private insurance payments for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in § 303.124 (Prohibition against supplanting).

(d) *State policy relating to the use of Part B funds.* A State lead agency that proposes to use funds under Part B of the Act to provide services to any children eligible under this part must do so in accordance with a State policy that is in effect and meets the following requirements:

(1) Assures that—

(i) Any eligible child under this part who receives services using Part B funds will be provided a free appropriate public education in accordance with the requirements of Part B of the Act and its implementing regulations (34 CFR Part 300);

(ii) If the State uses funds received under section 611 of IDEA to provide services to eligible infants and toddlers, the State will meet the requirements of both Parts B and C of the Act and their implementing regulations for those children; and

(iii) If the State uses funds received under section 619 of IDEA to provide services to two-year-olds who will turn three during the school year, the State will meet the requirements of Part B for those children, and is not required to comply with Part C.

(2) Specifies what category, age group, or other segment of the eligible infant and toddler population will receive services with funds under Part B of the Act, and, therefore, are entitled to a free appropriate public education.

(e) *Construction.* Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations, or policy under title XIX, or title XXI of the Social Security Act, or any other Federal insurance program.

(Authority: 20 U.S.C. 1411, 1419(a), (h), 1432(4)(B), 1435(a)(10))

### § 303.520 System of payments.

(a) *General.* (1) A system of payments is a written State policy that—

(i) Meets the requirements of this section; and

(ii) Describes the fees or costs that will be borne by families who receive services under the early intervention system.

(2) The lead agency is responsible for ensuring compliance with the system of payments.

(b) *Types of fees.* A system of payments may include either or both of the following:

(1) A fee system of payments by families established under State law specifically for early intervention services, such as a schedule of sliding fees based on family income.

(2) Cost participation fees (e.g., co-pay or deductible amounts) required under existing State or Federal law to access State or Federal insurance programs in which the child or family is enrolled.

(c) *System of payments—assurance.* A State with a system of payments must assure that no fees will be charged to parents in the following circumstances:

(1) *Functions and services at no cost.* The State must carry out the following functions and services at public expense:

(i) Implementing the child find requirements in § 303.321.

(ii) Evaluation and assessment, as required in § 303.322, and including the

functions related to evaluation and assessment in § 303.12.

(iii) Service coordination, as included in §§ 303.302 and 303.344(h).

(iv) Administrative and coordinative activities related to—

(A) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346;

(B) Implementation of the procedural safeguards in subpart E of this part; and

(C) The other components of the statewide system of early intervention services in subparts D and F of this part.

(2) *Inability to pay.* The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family.

(3) *Free appropriate public education and the use of Part B funds.* If a State has in effect a State policy that requires the provision of a free appropriate public education to children below age three, or uses Part B section 611 funds to provide early intervention services to eligible children below age three in accordance with § 303.519(d), the State—

(i) May not charge parents for any services that are part of free appropriate public education, as defined in 34 CFR 300.13, for the child; and

(ii) May, under a system of payments, charge parents for other services that are not covered under paragraph (c)(3)(i) of this section.

(d) *System of payments: State policies.* The policies of a State with a system of payments must—

(1) Include the assurance described in paragraph (c) of this section regarding the circumstances under which no fees may be charged;

(2) Specify which early intervention services are subject to the system of payments;

(3) Specify which types of fees or payments described in paragraph (b) of this section are included;

(4) Include the State's criteria for judging inability to pay, provided that, in considering a family's ability to pay, the State uses criteria that take into consideration applicable family expenses, using the best available data; and

(5) For States whose system includes fees for early intervention services as described in paragraph (b)(1) of this section, include—

(i) The schedule of fees that will be used, including the basis for and amount of fees; and

(ii) The basis for determining a family's position on the fee scale, if applicable, provided that the State—

(A) Does not take into account the existence of a family's public or private insurance; and

(B) Uses criteria that take into consideration applicable family expenses, using the best available data.

(e) *Procedural safeguards*—(1) *Notice*. In States with a system of payments, the State must give written notice to parents of the information required in this section.

(2) *How to give notice*. In order to give the notice required in paragraph (e)(1) of this section, a State may—

(i) Include the information in the notice the State gives the family under § 303.403; or

(ii) Create a separate notice for this information, and provide the notice to families prior to commencement of early intervention services for their child.

(3) *Redress by parents*. If a parent wishes to contest the imposition of a fee, or the State's determination of the family's ability to pay, the parent may do the following:

(i) Participate in mediation in accordance with § 303.419.

(ii) Request a due process hearing under § 303.420.

(iii) File a State complaint under § 303.510.

(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 (iii) of this section.

(Authority: 20 U.S.C. 1432(4)(B), 1439(a)(1), (a)(8))

#### § 303.521 Use of insurance.

(a) *Public insurance—No mandatory enrollment*. A State may not require parents to sign up for or enroll in a public insurance program in order for their child to receive early intervention services.

(b) *Use of public insurance*. (1)(i) A State may use the Medicaid or other public insurance benefits in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(ii) The State may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a public insurance claim for services provided pursuant to this part, unless those expenses are included in a system of payments as described in § 303.520(b)(2); but pursuant to paragraph (e) of this section, the State may pay the cost that the parent otherwise would be required to pay.

(iii) The State may not use a child's benefits under a public insurance program without obtaining parental consent, if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program if not for the provision of services under this part;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for, or decrease in benefits under, home and community-based waivers, based on aggregate health-related expenditures.

(2) If any of the circumstances listed in paragraph (b)(1)(iii) of this section apply, the State may use the child's benefits, if it obtains the parent's written consent in accordance with § 303.401(a).

(3) If a family's public insurance program requires access to the family's private insurance as a precondition—

(i) The State may not require families to access their private insurance; and

(ii) The State may access the private insurance if parents give consent in accordance with paragraph (d) of this section, or choose to use private insurance under the provisions of paragraph (c) of this section.

(4) In a State with a system of payments that includes fees as described in § 303.520(b)(1), the State may not bill the family's public insurance for an amount greater than the cost of the service, after subtracting any applicable fee amount owed or paid by the family.

(c) *Use of private insurance—States with a fee scale for early intervention services*. In a State with a system of payments, if the system of payments includes fees as described in § 303.520(b)(1), the State must—

(1) First determine the applicable family fee for each service, in accordance with § 303.520(d)(5)(ii); and

(2) Give parents the option of using their private insurance, if any, or paying the applicable fee, for each service.

(d) *Use of private insurance—States with no system of payments*. (1)(i) Subject to paragraph (d)(1)(ii) of this section, the provisions in this paragraph apply in all States except a State with a system of payments that includes fees as described in § 303.520(b)(1), such as a sliding fee scale.

(ii) The provisions of this paragraph also apply to a State with a system of payments that includes fees as described in § 303.520(b)(1), such as a sliding fee scale, if any of the circumstances in § 303.520(c) are present (when no fees can be charged).

(2) The State may access a parent's private insurance only if the parent provides informed consent in accordance with § 303.401(a), following the procedures in paragraph (d)(3) of this section.

(3) For each service in the initial IFSP and each subsequent change to a service (including a change in the frequency and intensity of delivering the service), in order to access a family's private insurance to fund that service, the State must—

(i) Obtain parental consent, in accordance with § 303.401(a); and

(ii) Inform the parents that their refusal to permit the State to access their private insurance does not relieve the State of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) *Use of Part C funds*. (1) If a State is unable to obtain parental consent to use the parent's private insurance to pay for a service under this part, or public insurance if the parent would incur a cost for the service under paragraph (c)(4) of this section, the State may use its Part C funds to pay for the service.

(2) To avoid financial cost to parents, a State may use its Part C funds to pay the cost the parents otherwise would have to pay to use their public or private insurance (e.g., the deductible or co-pay amounts).

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

#### § 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and C of the Act;

(5) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94-103); and

(6) Other Federal programs.

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

**§ 303.523 Interagency agreements.**

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved, whether by providing services or funding, in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility, in accordance with §§ 303.143 and 303.173, of the agency for paying for or providing early intervention services (in accordance with State law and the requirements of this part).

(c) *Procedures for resolving disputes.*

(1) Each agreement 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 program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including—

(i) Providing for a third party (*e.g.*, an administrative law judge) to review a dispute and render a decision;

(ii) Assignment of the responsibility by the Governor to the lead agency or Council; or

(iii) Having the final decision made directly by the Governor.

(3) The agreement with each agency 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.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program, including provisions on—

(1) Transition from Part C services, in accordance with § 303.148(c);

(2) Applicable policies regarding payments by families, and the use of funds from other State agencies, in accordance with §§ 303.173, 303.519(a), and 303.522; and

(3) At the State's discretion, child find, consistent with § 303.321(c).

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

**§ 303.524 Resolution of disputes.**

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 (*i.e.*, the financial designee) must assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the payor of last resort provisions in § 303.527.

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee must reassign the responsibility to the appropriate agency; and

(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency must—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with § 303.525.

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

**§ 303.525 Delivery of services in a timely manner.**

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

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

**§ 303.526 Policy for contracting or otherwise arranging for services.**

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State

standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

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

**Note to § 303.526:** In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

**§ 303.527 Payor of last resort.**

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) 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 Secretary 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 eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments—reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or "well-baby" health care (see § 303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (SSA) (relating to maternal and child health) or title XIX of the SSA (relating

to Medicaid for children eligible under this part) within the State.

(Authority: 20 U.S.C. 1440)

**Note to § 303.527:** The Congress intended that the enactment of part C not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title must be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to part C of the Act.

#### **§ 303.528 Reimbursement procedure.**

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).

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

#### **Reporting Requirements**

##### **§ 303.540 Data collection.**

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

- (1) Include a process for—
  - (i) Collecting data from various agencies and service providers in the State;
  - (ii) Making use of appropriate sampling methods, if sampling is permitted; and
  - (iii) Describing the sampling methods used, if reporting to the Secretary; and
- (2) Provide for reporting data required under section 618 of the Act that relates to this part.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

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

#### **Use of Funds for State Administration**

##### **§ 303.560 Use of funds for administration.**

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1433, 1435(a)(10))

#### **Subpart G—State Interagency Coordinating Council**

##### **General**

##### **§ 303.600 Establishment of Council.**

(a) A State that desires to receive financial assistance under this part must establish a State Interagency Coordinating Council.

(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)(1) Subject to paragraph (c)(2) of this section, the Governor must designate a member of the Council to serve as the chairperson of the Council or require the Council to do so.

(2) Any member of the Council who is a representative of the lead agency designated under § 303.500 may not serve as the chairperson of the Council.

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

**Note to § 303.600:** To avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

It is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

##### **§ 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 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.
- (ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six 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 provisions 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 State educational agency responsible for preschool services to children with disabilities; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of that agency.

(7) At least one member must be from the agency responsible for the State governance of health insurance.

(8) At least one member must be from a Head Start agency or program in the State.

(9) At least one member must be from a State agency responsible for child care.

(b) The Council may include other members selected by the Governor, including a representative from the BIA or, if there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council.

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

##### **§ 303.602 Use of funds by the Council.**

(a) *General.* Subject to the approval of the Governor, the Council may use funds under this part—

- (1) To conduct hearings and forums;
- (2) 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);
- (3) 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;
- (4) To hire staff; and
- (5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* Except as provided in paragraph (a) of this section, Council members must serve without compensation from funds available under this part.

(Authority: 20 U.S.C. 1438, 1441 (c) and (d))

##### **§ 303.603 Meetings.**

(a) The Council must meet at least quarterly and in such places as it deems 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; and
- (2) To the extent appropriate, be open and accessible to the general public.
- (c) Interpreters for persons who are deaf and other necessary services must

be provided at Council meetings, both 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) and (d))

#### **§ 303.604 Conflict of interest.**

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.

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

#### **Functions of the Council**

##### **§ 303.650 General.**

(a) Each Council must—

(1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and

(4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(c) Each 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.

(Authority: 20 U.S.C. 1441(e)(1)(A) and (e)(2))

##### **§ 303.651 Advising and assisting the lead agency in its administrative duties.**

Each Council must advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

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

##### **§ 303.652 Applications.**

Each Council must advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

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

##### **§ 303.653 Transition services.**

Each Council must advise and assist the State educational agency regarding the transition of eligible children under this part to preschool services under part B of the Act or other appropriate services.

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

##### **§ 303.654 Annual report to the Secretary.**

(a) Each Council must—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) 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)(D))

**BILLING CODE 4000-01-U**

## ATTACHMENT 1 —LIST OF PROPOSED CHANGES IN IDEA- PART C REGULATIONS

[Note: Attachment 1 will not be codified in the Code of Federal Regulations]

Sect. No.	Current Title	Changes <sup>1</sup>
SUBPART A—GENERAL		
303.3	Activities that may be supported under this part.	<ol style="list-style-type: none"> <li>(1) Change title to "Use of Part C funds;" and restructure the section to change pghs "(a)-(e)" to "(a)(1)-(a)(5)."</li> <li>(2) Add a new pgh (a)(6)--Assist families to understand sources of financing early intervention services, including public and private insurance programs...</li> <li>(3) Add a new pgh (b)(1) to clarify that Part C funds may not be used to pay costs of an action or proceeding under sec. 639 of the Act or subpart E of this part.</li> <li>(4) Add a new pgh (b)(2)--Re pgh (b)(1) does not preclude using Part C funds for conducting due process hearings (e.g., paying a hearing officer, and the cost of providing the parent a transcription of the hearing).</li> </ol>
303.5	Applicable regulations.	<ol style="list-style-type: none"> <li>(1) Amend pgh (a)(1) by adding references to other EDGAR regulations that apply (i.e., Parts 97-99).</li> <li>(2) Amend references to Part B Regs in pgh (a)(3), by -- (A) adding a reference to Part B due process hearing procedures in §§300.506-300.512; and (B) changing the citation for Department procedures from §§300.580-300.585 to §§300.580-300.587.</li> <li>(3) Delete pgh (b)(4) (citations are not applicable).</li> <li>(4) Renumber pgh (b)(5) as (b)(4); and correct the citation to read §303.127 ("Confidentiality...").</li> <li>(5) Revise authority cite to include 20 U.S.C. 1442.</li> </ol>
Definitions		
--	"Note" preceding §303.6--List of terms defined in specific subparts.	♦ Delete "Location (§303.344(d)(3))" from the list of terms. (See changes to §303.344(d).)
303.9	Days (Definition).	<ol style="list-style-type: none"> <li>(1) Change title to "Day; business day;" and state that "day" means calendar day, except for hearing rights in §300.509 of the Part B regulations (if a State, under §303.420(a)(1), adopts the Part B due process hearing procedures).</li> <li>(2) Define "business day" as Monday-Friday, except for Federal and State holidays.</li> </ol>
303.10	Developmental delay.	♦ Replace "an individual" with "a child."

<sup>1</sup> This table includes all substantive and technical changes that are proposed in this NPRM, including changes that are made to provide clarity and guidance. However, the table generally does not include simple word changes (e.g., in §303.125, deleting "such;" replacing "assure" with "ensure," or correcting typographical errors.

Sect. No.	Current Title	Changes <sup>1</sup>
303.12	Early intervention services (EIS) (Definition).	<ol style="list-style-type: none"> <li>(1) Change the order of items in pgh (a) to conform more closely to the Act; and further revise "(a)" to clarify that the term "EIS" means "developmental" services.</li> <li>(2) Delete pgh (b) (on natural environments), and move text to §303.18; move pgh (d) (Definitions of individual services) to pgh (b), and change introduction.</li> <li>(3) Clarify, in proposed pgh (a)(5), that the early intervention services listed in pgh (b) are subject to the exclusions on "health services" in §303.13(c).</li> <li>(4) Move pgh (c) (General role of service providers) to pgh (d).</li> <li>(5) Move pgh (e) (Qualified personnel) to pgh (c), and change the introduction.</li> </ol>
303.12(d)(1)	Assistive technology (AT) (AT device & AT service). (Definitions under "EIS")	<ol style="list-style-type: none"> <li>(1) Divide introduction into proposed pghs "(b)(1)(i)" for AT device, and "(b)(1)(ii)" for AT service, etc.</li> <li>(2) Revise AT service to clarify that the service directly Assists an eligible child and the child's parent in the Selection, acquisition, or use of an AT device for the Child.</li> </ol>
303.12(d)(2)	Audiology (Definition under EIS).	<ol style="list-style-type: none"> <li>(1) Change title to "Audiology services," as in the Act.</li> <li>(2) Replace "auditory impairment" with "hearing Loss," and add "Counseling &amp; guidance of Children..." as in Part B.</li> </ol>
303.12.(d)(3)	Family training, counseling, & home visits. (Definition under EIS)	♦ Add -- "special educators" to the list of EIS providers under the definition.
303.12(d)(6)	Nursing services (Definition under EIS)	♦ Move from "EIS" to "health services" (§303.13), and renumber the remaining services under EIS.
303.12(d)(8)	Occupational therapy (OT). (Definition under EIS)	<ol style="list-style-type: none"> <li>(1) Renumber as pgh (b)(7).</li> <li>(2) Add, after "OT," "(i) Means services provided by a qualified occupational therapist, and (ii) Includes..."</li> </ol>
303.12(d)(11)	Service coordination services. (Definition under EIS)	<ol style="list-style-type: none"> <li>(1) Renumber as pgh (b)(10), and change title to "Service coordination."</li> <li>(2) Revise text by striking the phrase, "that are in addition to the functions and activities included under §303.23," and replacing it with "in accordance with §303.302."</li> </ol>
303.12(d)(13)	Special instruction (Definition under EIS)	<ol style="list-style-type: none"> <li>(1) Renumber as pgh (b)(12), and revise (b)(12)(i) by replacing "in a variety of developmental areas..." with a listing of all 5 developmental areas from the Act.</li> <li>(2) Revise pgh (a)(13)(ii), to provide clarifying language regarding "Planning that leads to achieving the outcomes in the child's IFSP..."</li> </ol>



Sect. No.	Current Title	Changes <sup>1</sup>
303.12(d)(14)	Speech-language pathology (Definition under EIS).	(1) Renumber as pgh (b)(13), and add "services" to title, to conform to statute. (2) Replace "oropharyngeal" with "swallowing;" and (3) Add a new pgh (b)(13)(iv) Re -- "Counseling and Guidance of parents..."
--	Note following §303.12.	♦ Clarify that "qualified personnel" who provide EIS may include augmentative communication specialists and technology specialists.
303.13	Health Services.	(1) Add "Nursing services" (from §303.12(d)(6)) to the list of covered "health services" under §303.13 (b) (i.e., new pgh (b)(3)). (2) Add additional examples of services and devices <u>not</u> covered under "Health services" (§303.13(c)), as follows: <ul style="list-style-type: none"> <li>♦ To "services that are surgical in nature," add "the installation of devices such as pacemakers, cochlear implants, or prostheses."</li> <li>♦ To "Devices necessary to control or treat a medical condition," add "or other condition (such as, pacemakers, cochlear implants, prostheses, or shunts)."</li> </ul>
303.14	IFSP.	(1) Change title to "IFSP; IFSP team." (2) Designate "IFSP" definition as pgh (a), and change citation from §303.340(b) to "§303.340(a)." (3) Define "IFSP team" (in pgh (b)) as "the group of participants described in §303.343 that is responsible for..." developing, reviewing, and revising the IFSP.
303.18	Natural environments.	♦ Change §303.18 to "§303.18(a)," and add language on natural environments from §303.12(b) as proposed §303.18(b).
303.19	Parent.	♦ In pgh (a)(2), after "A guardian," add ", but not the State if the child is a ward of the State." (This was inadvertently omitted in 1998-99 Regs)
303.22	Qualified.	♦ Change title to "Qualified personnel," and conform to Part B definition.
303.23	Service coordination (case management).	♦ Move text of definition to new §303.302; delete definition in §303.23; and renumber remaining sections in Subpart A.

Sect. No.	Current Title	Changes <sup>1</sup>
SUBPART B--STATE APPLICATION FOR A GRANT		
303.100	Conditions of assistance.	(1) Revise pgh (a) for clarity; move pgh "(c)" to "(a)(1)," and change pgh "(d)" to "(c);" add headings to pghs (a)-(c); and make other technical changes. (2) Further revise pgh (a) to clarify that each application must contain -- (A) The required information in subpart B; and "(B) Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information."
303.123	Prohibition against commingling.	♦ Incorporate the substance of the note into the text following §303.123, and delete the note.
303.124	Prohibition against supplanting.	♦ Add a new pgh (c) to clarify that, for purposes of pgh (b), a State, in any FY, must spend at least the same amount for EI services that it spent the previous year.
303.128	Traditionally underserved groups.	♦ Add "inner-city" to the list of groups in paragraph (a).
303.148	Transition to preschool programs.	(1) Change title to "Transition to preschool or other appropriate services." (2) Re-structure section for clarity and completeness, including adding headings to each pgh. (3) Add a new pgh (c) (Transmittal of records; parental consent), by including the provisions from §303.344(h) (now "(i)"). (But clarify that consent is not required for directory information to LEA for Part B child find.)
303.161	State definition of developmental delay.	♦ Clarify that each application must contain the State's definition of developmental delay "as required in 303.300(b)."
303.167	Individualized family service plans. (Re—policies & procedures)	(1) Amend pgh (b) to include "§§303.340-303.343" in the list of applicable sections (i.e., to add new §303.341). (2) Amend pgh (c) (on natural environments) by -- (1) moving the substance to a new §303.341(a); and (2) revising the language to state that each application must include "Policies and procedures on natural environments that meet the requirements of §§303.341 and 303.344(d)(3)."

Sect. No.	Current Title	Changes <sup>1</sup>
<b>SUBPART D—COMPONENTS OF A STATEWIDE SYSTEM</b>		
303.300	State eligibility criteria and procedures.	<ol style="list-style-type: none"> <li>(1) Change title to "Child eligibility--criteria and procedures;" and add pgh headings (General; State definition of developmental delay; Diagnosed condition; and Children who are at risk).</li> <li>(2) Revise pgh (a), to clarify that the eligibility criteria must --               <ol style="list-style-type: none"> <li>(A) meet the requirements in §303.300(b)-(d); and (B) be on file in the State, and available for public review.</li> </ol> </li> </ol>
303.301	Central directory.	<ul style="list-style-type: none"> <li>◆ Amend pgh (a)(3) to add the substance of the note following §303.301 to clarify that "Professional and other groups" include "parent support groups &amp; advocate associations;" and delete the note.</li> </ul>
303.302	Service coordination. (New Section)	<ol style="list-style-type: none"> <li>(1) Add the substance of §303.23 to new §303.302; and revise new pgh (a) to state that "Each system must ensure that service coordination is available..."</li> <li>(2) Make technical changes (e.g., delete "(case management)" from the title, and add headings to each pgh).</li> <li>(3) Incorporate the substance of notes 1 and 2 into the text of the regulations, as a new pgh (a)(2); and delete the notes.</li> <li>(4) Add a new pgh (b)(2) to clarify that service coordination is an ongoing process designed to enhance service delivery, and, thus, is not required to be included as an EI service in a child's IFSP.</li> <li>(5) Add a new function of service coordinators, as pgh (d) (8), (i.e., At the discretion of the State, assisting families to understand sources of financing EI services, including public and private insurance programs, and how to access those sources...).</li> </ol>
303.320	Public awareness program.	<ul style="list-style-type: none"> <li>◆ Revise section by making technical changes, to more closely track the statute, and for clarity and improved readability.</li> </ul>
303.321	Comprehensive child find system.	<ol style="list-style-type: none"> <li>(1) In pgh (a), change the Part B child find citation from §300.128 to §300.125.</li> <li>(2) Revise pgh (b)(1) to clarify that the child find system includes children with disabilities from -- "(i) Traditionally underserved groups, including minority, low-income, inner-city, and rural families; and (ii) Highly mobile groups (such as migrant and homeless children)."</li> <li>(3) Revise the referral procedures in pgh (d)(2), as follows:               <ul style="list-style-type: none"> <li>◆ Replace the 2-day timeline requirement in pgh (d)(2)(ii) with "as soon as reasonably possible."</li> <li>◆ In pgh (d)(2)(iii), include a reference to lead agency responsibilities in §303.320(a)(2)(ii)(B)).</li> </ul> </li> <li>(4) Revise the list of referral sources in pgh (d)(3), to:               <ul style="list-style-type: none"> <li>◆ Add the qualification "if appropriate;"</li> <li>◆ Add "and child care" between "Day care" and "programs;" and</li> <li>◆ Add "Other Federally funded programs such as Head start, Early Head Start, and Even Start."</li> </ul> </li> </ol>

Sect. No.	Current Title	Changes <sup>1</sup>
303.322	Evaluation and assessment	(1) Revise pgh (a)(1)(ii) to clarify that "A family directed identification of the needs of each child's family..." must meet the requirements of pgh (d) (Family assessment). (2) In pgh (b)(2)(ii), replace "their infant or toddler with a disability" with "the child."
<b>Individualized Family Service Plans</b>		
303.340	General.	(1) Change title to "Definition of IFSP; lead agency responsibility." (2) Add a new pgh (a) (Definition of IFSP); incorporate the substance of the current definition (from §303.340(b)); and revise the definition to specify (in pghs (a)(1) and (a)(3)) the role of the IFSP team in developing a child's IFSP. (3) Redesignate existing pgh (c) (Lead agency responsibility) as new pgh (b); (4) Redesignate existing pgh (a) (policies and procedures on IFSPs) as new pgh (b)(1); and replace "includes" with "has in effect."
303.341	Policies and procedures on natural environments. (New section)	(1) Add a new §303.341 (Policies and procedures on natural environments), as described in pghs (2)-(5), below: (2) Add a new pgh (a), by incorporating the substance of §303.167(c), to clarify that the provision of EI services in other than a natural environment occurs only if the IFSP team, <u>based on the evaluation and assessment required in §303.322...</u> determines that early intervention cannot be achieved satisfactorily for the child in a natural environment. (3) Add a new §303.341(b) to clarify that -- (A) the IFSP team must determine the natural environment for <u>each</u> service; and (B) if the team determines that a specific service must be provided in another environment, a justification must be included in the IFSP. (4) Add a new §303.341(c), to clarify that the justification in pgh (b) must -- (A) include the basis of the IFSP team's decision; (B) be based on the identified needs of the child and the projected outcomes; and (C) if appropriate, be based on the nature of the service required to meet the unique needs of the child. (5) Add a new §303.341(d), to clarify that the provisions on natural environments do not apply to services designed to meet the needs of a child's parents or other family members.
303.342	Procedures for IFSP development, review, and evaluation.	(1) Change title to "Development, review, and revision of IFSPs;" and add headings to pghs (a) , (a)(1), and (a)(2). (2) Add new pgh (a)(2) ("Consideration of special factors"), as adapted from Part B. (3) Make technical changes to pgh (b) (Periodic review) (i.e., making the last sentence in (b)(1) as new (b)(2), and changing existing pgh (b)(2), as (b)(3)). (4) Revise the second pgh of the note following §303.342 to add "or assessment" after "evaluation" procedures.

Sect. No.	Current Title	Changes <sup>1</sup>
303.343	Participants in IFSP meetings and periodic reviews.	(1) Change title to "IFSP team--meetings and periodic reviews. (2) Revise pgh (a)(2) to clarify how evaluations or assessments are interpreted if the person(s) conducting them is not at the IFSP meeting, i.e., "...steps must be taken to ensure-- (i) The person's involvement through other means (e.g., through participating in a telephone conference call); or (ii) That the results of the evaluations and assessments are appropriately interpreted at the meeting, by making pertinent records available at the meeting, and having a person attend the meeting who is qualified to interpret the evaluation and assessment results and their service implications (who may be one of the participants described in [§303.343(a)(1)]."
303.344(a)	Content of IFSP--Information about child's status.	♦ Revise pgh (a)(2) to add "required" after "statement."
303.344(b)	Content of IFSP--Family information.	♦ Add a new pgh (b)(2), to specify that the statement on family information must be based on the family assessment required under §303.322(d).
303.344(c)	Content of IFSP--Outcomes.	(1) Add that outcomes must be "based on the evaluations and assessments required in 303.322(c) and (d)." (2) Change "timeliness" to "timelines."
303.344(d)	Content of IFSP--EI services.	(1) Restructure pgh (d), and add headings (i.e., "Statement of services;" "Frequency, intensity, and method;" "Natural environments--location of services;" and "Payment arrangements"). (2) Amend pgh (d) (1) to specify that the statement of EI services must include the information required in §303.344(d)(2) through (d)(4). (3) Redesignate pgh (d)(1)(i) as proposed pgh (d)(2), and revise, to clarify that the IFSP must specify the frequency, intensity, and method of delivering <u>each</u> EI service. (4) Replace pgh (d)(1)(ii) and (iii) with proposed pgh (d)(3), and revise to state -- "In accordance with §303.341, the IFSP must-- (i) Specify the natural environments (locations or settings) where each EI service will be provided; and (ii) Include a justification of the extent, if any, to which each service will <u>not</u> be provided in a natural environment." (5) Redesignate pgh (d)(1)(iv) as (d)(4) (Payment arrangements); and add an introductory clause (i.e., "The IFSP must include a statement of the payment arrangements, if any, for <u>each</u> early intervention service.")

Sect. No.	Current Title	Changes <sup>1</sup>
303.344(e) (New)	Content of IFSP (Evaluations and assessments).	(1) Add a new §303.344(e), to specify that evaluations and assessments must be completed prior to, and in preparation for, conducting the IFSP meeting, and therefore, may not be listed as an early intervention service in the IFSP. (2) Renumber existing pghs "e, f, g, and h" as "f, g, h, and i."
303.344(h)	Content of IFSP—Transition from Part C services.	(1) Redesignate "§303.344(h)" as "§303.344(i)." (2) Move the substance of current pgh (h)(2)(iii) (Transmission of information about the child) to §303.148 (discussed earlier), and include a reference to §303.148(c). (3) Add a new pgh (i)(2)(iii)(B) to include a reference to The conference on transition services required in §303.148(d). (4) Add a new pgh (i)(2)(iv) to clarify that the transition steps must include other activities that the IFSP team determines are necessary to support the transition of the child.
<b>Personnel Training and Standards</b>		
303.360	Comprehensive system of personnel development (CSPD).	♦ Restructure and add pgh headings for clarity and to improve the readability of the section
303.361	Personnel standards.	(1) Add pgh headings, for readability and to conform to Part B. (2) Add the substance of the note following 303.361, as new pghs (b)(2) and (b)(3), and delete the note. (3) Add, from the Part B Regs, the substance of 34 CFR 300.136(b)(4) and (g)(2) to the corresponding pghs in §303.361, and otherwise conform this section to Part B personnel standards requirements.
<b>SUBPART E—PROCEDURAL SAFEGUARDS</b>		
303.401	Definitions of consent, native language, and personally identifiable information.	♦ Add a new pgh (a)(3)(ii) Re—If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before it was revoked). This change conforms to Part B.
303.420	Due process procedures.	(1) Replace terms such as "individual child complaints" or "complaints" with "requests for due process hearings" or "due process hearings" throughout this section, and in §§303.402, and 303.421-303.425. (2) Add a new pgh (b) to provide that, if a parent initiates a hearing under §303.420(a)(1) or (a)(2), the lead agency must inform the parent of the availability of mediation described in §303.419. (3) Delete Note 1 following §303.420.
303.421	Appointment of an impartial person.	(1) Change title to "Impartial hearing officer;" and add new introductory language, Re -- "Each lead agency shall ensure that any due process hearings...are conducted by an impartial hearing officer who..." (2) In pgh (a)(2), replace "complaint" with "dispute that is the subject of the hearing," and make structural changes.

Sect. No.	Current Title	Changes <sup>1</sup>
303.421	Appointment of an impartial person. (Continued)	(3) In pgh (b)(1), replace "the person appointed to implement the complaint resolution process" with "a person who serves as a hearing officer in accordance with this section."
303.422	Parent rights in administrative proceedings.	♦ Change title to "Parent rights in due process hearings;" and replace "administrative proceeding(s)" with "due process hearing" in the text.
303.423	Convenience of proceedings; timelines	(1) Amend title to replace "proceedings" with "hearings" (2) Add an introductory phrase ("Each lead agency must ensure that--"), and make other technical changes. (3) In pgh (a), replace the introductory clause with "Any due process hearing conducted under this part ..." (4) In Pgh (b), replace "complaint" or "complaint resolution process" with "due process hearing," etc; & make other technical changes.
303.424	Civil action.	♦ After "Any party aggrieved by the findings and decision," replace "regarding an administrative complaint" with "made under §303.420..."
303.425	Status of child during proceedings.	(1) In pgh (a), add "administrative or judicial" before "proceeding;" and replace "administrative complaint under this part" with "a request for a due process hearing under §303.420." (2) In pgh (b), replace "complaint" with "proceeding." (3) Add a new pgh (c) Re-- "This section does not apply if a child is transitioning from EI services under this part to preschool services under Part B of the Act."
SUBPART F—STATE ADMINISTRATION		
303.501	Supervision and monitoring of programs.	♦ Change title of pgh (b) from "Methods of administering programs" to "Methods of ensuring compliance;" and make a similar change in the text.
Policies & Procedures Related to Financial Matters		
303.519 (New)	Policies related to payment for services.	(1) Add a new §303.519, by incorporating parts of existing §303.520, as follows: ♦ Move existing §303.520(a) (Re-State policies on how EI services will be paid for) to new §303.519(a); and add new paragraphs regarding policy requirements (i.e., (a)(1)(i) for States with a system of payments, and (a)(1)(ii) for those without a system of payments). ♦ Move current §303.520(c) (procedures to ensure timely provision of services) to new §303.519(b); but delete reference to a State's 5th year of participation. ♦ Move current §303.520(d) (Proceeds from public and private insurance) to new §303.519(c); move (c)(2) to (c)(3) and revise to clarify that a State's use of private insurance (as with public insurance) is not considered State or local funds under the nonsupplanting requirements in §303.124. ♦ Add new 303.520(c)(2) regarding use of fee income.



Sect. No.	Current Title	Changes <sup>1</sup>
303.519 (New) (Continued)	Policies related to payment for services. (continued)	(2) Add new §303.519(d), governing the use of Part B funds for EI services to eligible children under Part C. (3) Add new §303.519(e) (Construction), from Part B Regulations.
303.520	Policies related to payment for services.	(1) Change title to "System of payments." (2) Add new §303.520(a)(1) to define "System of payments." (3) Add new §303.520(a)(2) Re – the lead agency is responsible for ensuring compliance with the system of payments. (4) Add new §303.520(b) to provide that a system of payments may have one or both types of fees (i.e., a system established under State law for EI services (e.g., sliding fee scales based on family income); <u>or</u> cost participation (e.g., co-pay or deductible amounts)). (5) Add new §303.520(c) to require (through §§303.520(d)(1) and 303.173) a State to submit an assurance that no fees will be charged in 3 circumstances (services at no cost, inability to pay, and FAPE and the use of Part B funds). (6) Add proposed §303.520(d), to specify requirements for State policies in States with a system of payments. (7) Add proposed §303.520(e), to specify procedural safeguards regarding payments by families.
303.521	Fees.	(1) Change the title to "Use of insurance." (2) Delete the entire text of current §303.521, and add new provisions under the following paragraphs: ♦ (a)--Public insurance--no mandatory enrollment. ♦ (b)--Use of public insurance. ♦ (c)--Use of private insurance--States with a fee scale for early intervention services. ♦ (d)--Use of private insurance—States with no system of payments ♦ (e)--Use of Part C funds.
Other Changes to Subpart F		
303.523	Interagency agreements.	(1) Add the substance of the note following 303.523 to the text (Re—examples of how a State may ensure timely resolution of intra and interagency disputes); and delete the note. (2) Amend §303.523(a), to clarify that the lead agency must enter into agreements with other State-level agencies involved in the State's EI Program -- "whether by services or funding..." (3) Amend §303.523(d) (Additional components), to specify three topics (transition, policies on payment for services, and, at the discretion of the State, child find) to be included in interagency agreements.
SUBPART G—STATE INTERAGENCY COORDINATING COUNCIL		
303.600	Establishment of Council.	♦ Restructure pgh (c) for clarity.
303.653	Transitional services.	♦ Revise title to replace "transitional" with "transition;" replace "toddlers with disabilities" with "eligible children under this part;" and add "preschool" before "services under Part B..."

[Note: Attachment 2 will not be codified in the Code of Federal Regulations]

Section Number	Section Title	Number of Notes
--	Before §303.6--List of terms defined in specific subparts and sections.	1
303.12	Early intervention services--List of services is not exhaustive..	1
303.13	Health services--Required health services vs medical-health services.	1
303.16	Infants & toddlers with disabilities	2
"	Note 1--Diagnosed conditions (Examples).	--
"	Note 2--Information on "at risk" population.	--
303.22	Qualified--Provisions to ensure that personnel are qualified.	1
303.23	Service coordination (Redesignated as p303.302)	2
"	Note 1--Using or adapting existing service coordination systems.	--
"	Note 2--Service coordination is not intended to affect Medicaid.	--
303.123	Prohibition against committing--Meaning of "Commingle."	1
303.148	Transition to preschool programs--Considerations.	1
303.300	State eligibility criteria & procedures--Re "informed clinical opinion."	1
303.301	Central directory--Examples of "appropriate groups."	1
303.320	Public awareness program.	2
"	Note 1--Components of an effective public awareness program.	--
"	Note 2--Examples of methods for informing the general public.	--
303.321	Comprehensive child find system--Consider "tracking systems," etc..	1
303.340	IFSP (General )--Children who must have an IFSP & other "programs."	1
303.342	Procedures for IFSP development, review, and evaluation.	1
"	Periodic reviews vs annual evaluations ; need for frequent evaluations.	--
303.344	Content of an IFSP.	4
"	Note 1--Addresses appropriate location of services.	--
"	Note 2--Addresses variety of roles that family members play.	--
"	Note 3--Differentiates between early intervention & other services.	--
"	Note 4--States that the IFSP does not have to be a detailed document.	--
303.345	Provision of services before evaluation and assessment...	1
"	Describes purpose of §303.345.	--
303.361	Personnel standards.	1

303.404	Parent consent.	2
"	Note 1--Other consent requirements affecting Part C.	--
"	Note 2--Part B Regulations that challenge parent non-consent applies to Pt C.	--
303.420	Due process procedures.	2
	Note 1--Due process hearings vs. State complaints	--
	Note 2--Need for speedy resolution, Re--rapid changes in children.	--
303.423	Convenience of proceedings; timelines--Need for timely resolution.	1
303.460	Confidentiality of information--Part B confidentiality Regulations apply to C.	1
303.526	Policy for contracting or otherwise arranging for services.	1
--	States may continue using past agencies, etc. if they meet Part C.	--
303.527	Payor of last resort--Congressional intent Re not withdrawing funding.	1
303.600	Establishment of Council--Parent Reps--not to be agency employees.	1

[Note: Attachment 3 will not be codified in the Code of Federal Regulations]

**ATTACHMENT 3--PART B REGULATIONS ON THE  
COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)  
(34 CFR Part 300)**

The following is for use by commenters who do not have access to the Part B CSPD requirements from the Part B regulations, to assist them in responding to the questions under §300.360 of the preamble to this NPRM. Those questions concern whether the Part C CSPD provisions should be amended to address the Part B requirements related to (1) ensuring an adequate supply of qualified personnel (see §300.381), and (2) the improvement strategies in §300.382.

**§300.380 General CSPD requirements.**

- (a) Each State shall develop and implement a comprehensive system of personnel development that --
    - (1) Is consistent with the purposes of this part and with section 635(a)(8) of the Act;
    - (2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;
    - (3) Meets the requirements of §§300.381 and 300.382; and
    - (4) Is updated at least every five years.
  - (b) A State that has a State improvement grant has met the requirements of paragraph (a) of this section.
- (Authority: 20 U.S.C. 1412(a)(14))

**§300.381 Adequate supply of qualified personnel.**

Each State must include, at least, an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum --

- (a) The number of personnel providing special education and related services; and
  - (b) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (a) of this section with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.
- (Authority: 20 U.S.C. 1453(b)(2)(B))

**§300.382 Improvement strategies.**

Each State must describe the strategies the State will use to address the needs identified under §300.381. These strategies must include how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan must include a description of how the State will--

- (a) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;
- (b) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;
- (c) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(d) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;

(e) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;

(f) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(g) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, if appropriate, adopt promising practices, materials, and technology;

(h) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;

(i) Insure that the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(j) Provide for the joint training of parents and special education, related services, and general education personnel.

(Authority: 20 U.S.C. 1453 (c)(3)(D))