

**§ 300.371 State matching.**

Beginning with the period July 1, 1976-June 30, 1979, and for each following fiscal year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 300.360.

(Authority: 20 U.S.C. 1411 (c)(2)(B), (c)(4)(B))

**Note:** The requirement in § 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

**§ 300.372 Applicability of nonsupplanting requirement.**

Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 300.706(a) for administration, direct services, or support services.

(Authority: 20 U.S.C. 1411(c)(3))

**Comprehensive System of Personnel Development****§ 300.380 General.**

Each State shall—

(a) Develop and implement a comprehensive system of personnel development that—

(1) Is consistent with the purposes of the Act and with the comprehensive system of personnel development described in 34 CFR § 303.360;

(2) Meets the requirements in §§ 300.381–300.383; and

(3) Is consistent with the provisions on personnel standards in § 300.153; and

(b) Include in its State plan a description of the personnel development system required in paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1413 (a)(3), (a)(14))

**§ 300.381 Adequate supply of qualified personnel.**

Each State plan must include a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified personnel (as the term "qualified" is defined at § 300.15), including special education and related services personnel and leadership personnel, necessary to carry out the purposes of this part. The procedures and activities must include the development, updating, and implementation of a plan that—

(a) Addresses current and projected special education and related services

personnel needs, including the need for leadership personnel; and

(b) Coordinates and facilitates efforts among SEA and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

(Authority: 20 U.S.C. 1413(a)(3)(A))

**§ 300.382 Personnel preparation and continuing education.**

Each State plan must include a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared. The procedures and activities must include—

(a) A system for the continuing education of regular and special education and related services personnel to enable these personnel to meet the needs of children with disabilities under this part;

(b) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(c) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(Authority: 20 U.S.C. 1413(a)(3)(B))

**§ 300.383 Data system on personnel and personnel development.**

(a) *General.* The procedures and activities required in §§ 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) *Data on qualified personnel.* (1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis—

(i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

(ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

(iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of

the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

(2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff.

(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) *Data on personnel development.* The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

(Authority: 20 U.S.C. 1413(a)(3)(A))

**§§ 300.384–300.387 [Reserved].****Subpart D—Private Schools****Children With Disabilities in Private Schools Placed or Referred by Public Agencies****§ 300.400 Applicability of §§ 300.400–300.402.**

Sections 300.401–300.402 apply only to children with disabilities who are or have been placed in or referred to a

submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the SEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

**§ 300.483 Request to show cause.**

An SEA seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1413(d)(3)(A))

**§ 300.484 Show cause hearing.**

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the SEA and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1413(d)(3)(A))

**§ 300.485 Decision.**

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

**§ 300.486 Judicial review.**

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in section 613(d)(3)(B)-(D) of the Act.

(Authority: 20 U.S.C. 1413(d)(3)(B)-(D))

**Subpart E—Procedural Safeguards**

**Due Process Procedures for Parents and Children**

**§ 300.500 Definitions of "consent," "evaluation," and "personally identifiable."**

(a) As used in this part: "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) "Evaluation" means procedures used in accordance with §§ 300.530-300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(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 social security number or student 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. 1415, 1417(c))

**§ 300.501 General responsibility of public agencies.**

Each SEA shall ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§ 300.500-300.515.

(Authority: 20 U.S.C. 1415(a))

**§ 300.502 Opportunity to examine records.**

The parents of a child with a disability shall be afforded, in accordance with the procedures of §§ 300.562-300.569, an opportunity to inspect and review all education records with respect to—

(a) The identification, evaluation, and educational placement of the child; and  
(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

**§ 300.503 Independent educational evaluation.**

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§ 300.500-300.515.

**§ 300.507 Impartial hearing officer.**

- (a) A hearing may not be conducted—
- (1) By a person who is an employee of a public agency that is involved in the education or care of the child; or
  - (2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.
- (b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
- (c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

**§ 300.508 Hearing rights.**

- (a) Any party to a hearing has the right to:
- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
  - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.
  - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.
  - (4) Obtain a written or electronic verbatim record of the hearing.
  - (5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall—
    - (i) Transmit those findings and decisions to the State advisory panel established under § 300.650; and
    - (ii) Make those findings and decisions available to the public.
- (b) Parents involved in hearings must be given the right to—
- (1) Have the child who is the subject of the hearing present; and
  - (2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

**§ 300.509 Hearing decision; appeal.**

A decision made in a hearing conducted under § 300.506 is final,

unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

**§ 300.510 Administrative appeal; impartial review.**

- (a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- (b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:
- (1) Examine the entire hearing record.
  - (2) Ensure that the procedures at the hearing were consistent with the requirements of due process.
  - (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.
  - (4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.
  - (5) Make an independent decision on completion of the review.
  - (6) Give a copy of written findings and the decision to the parties.
- (c) The SEA, after deleting any personally identifiable information, shall—

- (1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under § 300.650; and
  - (2) Make those findings and decisions available to the public.
- (d) The decision made by the reviewing official is final unless a party brings a civil action under § 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94-664, at p. 49 (1975))

**Note 1:** The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

**Note 2:** All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508 relating to hearings also apply.

**§ 300.511 Civil action.**

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510, and any party aggrieved by the decision of a reviewing officer under § 300.510, has the right to bring a civil action under section 615(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

**§ 300.512 Timeliness and convenience of hearings and reviews.**

- (a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing—
- (1) A final decision is reached in the hearing; and
  - (2) A copy of the decision is mailed to each of the parties.
- (b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—
- (1) A final decision is reached in the review; and
  - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

**§ 300.513 Child's status during proceedings.**

- (a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

**Note:** Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

**§ 300.514 Surrogate parents.**

- (a) *General.* Each public agency shall ensure that the rights of a child are protected when—
- (1) No parent (as defined in § 300.13) 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 public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for

(a)(1) The child's regular teacher; or  
 (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

**§ 300.541 Criteria for determining the existence of a specific learning disability.**

(a) A team may determine that a child has a specific learning disability if—

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas—

- (i) Oral expression;
- (ii) Listening comprehension;
- (iii) Written expression;
- (iv) Basic reading skill;
- (v) Reading comprehension;
- (vi) Mathematics calculation; or
- (vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—

- (1) A visual, hearing, or motor impairment;
- (2) Mental retardation;
- (3) Emotional disturbance; or
- (4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

**§ 300.542 Observation.**

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

**§ 300.543 Written report.**

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

**Least Restrictive Environment**

**§ 300.550 General.**

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.550–300.556.

(b) Each public agency shall ensure—

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

**§ 300.551 Continuum of alternative placements.**

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or

itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(5)(B))

**§ 300.552 Placements.**

Each public agency shall ensure that:

(a) The educational placement of each child with a disability—

(1) Is determined at least annually;

(2) Is based on his or her IEP; and

(3) Is as close as possible to the child's home.

(b) The various alternative placements included at § 300.551 are available to the extent necessary to implement the IEP for each child with a disability.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(Authority: 20 U.S.C. 1412(5)(B))

*Note:* Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550–300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550–300.556 include—

(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and

(3) Locating classes for preschool children with disabilities in regular elementary schools.

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.563 Record of access.**

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.564 Records on more than one child.**

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

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.565 List of types and locations of information.**

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

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.566 Fees.**

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.567 Amendment of records at parent's request.**

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance

with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.568 Opportunity for a hearing.**

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.569 Result of hearing.**

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.570 Hearing procedures.**

(1) A hearing held under § 300.568 must be conducted according to the procedures under § 99.23 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.571 Consent.**

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.572 Safeguards.**

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 and part 99 of this title.

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

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

**§ 300.573 Destruction of information.**

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under § 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

(m) (1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p) (1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1413(c))

**§ 300.585 Initial decision; final decision.**

(a) The Hearing Official or Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the SEA under § 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial

comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

**§ 300.586 Judicial review.**

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 1416(b)(1))

**§§ 300.587-300.588 [Reserved]**

**§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.**

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, SEAs and LEAs must ensure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to LEAs (See § 300.372).

(b) If the State provides clear and convincing evidence that all children with disabilities have FAPE available to them, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form that provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of FAPE to all children with disabilities. The special study must include statements by a representative sample of organizations that deal with children with disabilities, and parents and teachers of children with disabilities, relating to the following areas—

(1) The adequacy and comprehensiveness of the State's system for identifying, locating, and evaluating children with disabilities;

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of FAPE for all children with disabilities, including—

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year; and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information that the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have FAPE available to them, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(Authority: 20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

children with disabilities; and appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to ensure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

**§ 300.652 Advisory panel functions.**

The State advisory panel shall—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on the State plan and rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618 of the Act.

(Authority: 20 U.S.C. 1413(a)(12))

**§ 300.653 Advisory panel procedures.**

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1413(a)(12))

**State Complaint Procedures**

**§ 300.660 Adoption of State complaint procedures.**

Each SEA shall adopt written procedures for:

(a) Resolving any complaint that meets the requirements of § 300.662 by—

(1) Providing for the filing of a complaint with the SEA; and

(2) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint.

(b) Informing parents and other interested individuals about the procedures in §§ 300.660-300.662.

(Authority: 20 U.S.C. 2831(a))

**§ 300.661 Minimum State complaint procedures.**

Each SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 300.660(a) to—

(1) Carry out an independent on-site investigation, if the SEA 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 B 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 SEA's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the SEA's final decision.

(Authority: 20 U.S.C. 2831(a))

**§ 300.662 Filing a complaint.**

An organization or individual may file a signed written complaint under the procedures described in §§ 300.600-300.661. The complaint must include—

(a) A statement that a public agency has violated a requirement of part B of the Act or of this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

**Subpart G—Allocation of Funds; Reports**

**Allocations**

**§ 300.700 Special definition of the term State.**

For the purposes of § 300.701, § 300.702, and §§ 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau.

(Authority: 20 U.S.C. 1411(a)(2))

**§ 300.701 State entitlement; formula.**

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 3 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States—

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of children with disabilities aged 6 through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the United States (which, for the purpose of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the

**§ 300.710 Payments to the Secretary of the Interior for Indian tribes or tribal organizations.**

(a) *General.* (1) Beginning with funds appropriated under part B of the Act for fiscal year 1992, the Secretary, subject to this section, makes payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of those tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3 through 5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(2) The amount of the payment under paragraph (b)(1) of this section for any fiscal year is .25 percent of the aggregate amounts available for all States under this part for that fiscal year.

(3) None of the funds allocated under this section may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(b) *Distribution of funds.* The Secretary of the Interior shall distribute the total amount of the .25 percent under paragraph (a) of this section in accordance with section 611(f)(4) of the Act.

(Authority: 20 U.S.C. 1411(f))

**§ 300.711 Entitlements to jurisdictions.**

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau, (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99-658).

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged 3 through 21 in each jurisdiction. However, no jurisdiction shall receive less than \$150,000, and other allocations shall be ratably reduced if necessary to

ensure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or \$35,000, whichever is greater.

(Authority: 20 U.S.C. 1411(e))

**Reports**

**§ 300.750 Annual report of children served—report requirement.**

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities aged 3 through 21 residing in the State who are receiving special education and related services.

(Authority: 20 U.S.C. 1411(a)(3))

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(a)(3))

*Note:* It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 14 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

**§ 300.751 Annual report of children served—information required in the report.**

(a) In its report, the SEA shall include a table that shows—

(1) The number of children with disabilities receiving special education and related services on December 1 of that school year;

(2) The number of children with disabilities aged 3 through 5 who are receiving FAPE;

(3) The number of those children with disabilities aged 6 through 21 within each disability category, as defined in the definition of "children with disabilities" in § 300.7; and

(4) The number of those children with disabilities aged 3 through 21 for each year of age (3, 4, 5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The SEA may not report a child aged 6 through 21 under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1411(a)(3); (5)(A)(ii); 1418(b))

**§ 300.752 Annual report of children served—certification.**

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

**§ 300.753 Annual report of children served—criteria for counting children.**

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either—

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(b) The SEA may not include children with disabilities in its report who—

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefiting from special education;

(4) Are counted by a State agency under subpart 2 of part D of chapter 1 of Title I of the Elementary and Secondary Education Act of 1985; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b).

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

*Note 1:* Under paragraph (a) of this section, the State may count children with disabilities in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

*Note 2:* Special education, by statutory definition, must be at no cost to parents. As



42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a child with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must an IEP for a child with a disability indicate the extent that the child will be educated in the regular educational program? (Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

#### § 300.348 Private school placements by Public Agencies

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

#### § 300.349 Children with Disabilities Enrolled in Parochial or Other Private Schools

#### § 300.350 Individualized education programs—accountability

60. Is the IEP a performance contract?

Authority: Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411-1420), unless otherwise noted.

#### Individualized Education Programs (IEPs)

##### Interpretation of Requirements of Part B of the Individuals With Disabilities Education Act

##### I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and

regulations: (1) The IEP meeting(s), where parents and school personnel jointly make decisions about an educational program for a child with a disability, and (2) the IEP document itself, that is, a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning the special education needs of a child with a disability; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

Note: The Act does not require that teachers or other school personnel be held accountable if a child with a disability does not achieve the goals and objectives set forth in the IEP. See § 300.350, Individualized education program—accountability.

##### II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340-300.350 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

1. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every child with a disability in the State has FAPE available, regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

Note: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of children with disabilities, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for students with deafness or students with blindness), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a child with a disability in a school or program operated by another State agency:

a. **SEA POLICIES OR INTERAGENCY AGREEMENTS.** The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all children with disabilities in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

Note: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and non-educational purposes.

Frequently, more than one agency is involved in developing or implementing an IEP of a child with a disability (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of FAPE to a child with a disability. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

Note: The SEA must also ensure that any agency involved in the education of a child with a disability is in compliance with the LRE provisions of the Act and regulations,

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

**11. Who can initiate IEP meetings?**

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a child with a disability believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

**Note:** Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

**12. May IEP meetings be tape-recorded?**

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an education record, within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR part 99) and Part B (34 CFR §§ 300.580-300.575).

**13. Who can serve as the representative of the public agency at an IEP meeting?**

The representative of the public agency could be any member of the school staff, other than the child's teacher, who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities. (Section 602(a)(20) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not

be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a child with a disability who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

**Note:** IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

**14. Who is the representative of the public agency if a child with a disability is served by a public agency other than the SEA or LEA?**

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following:

(1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

**Note:** In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

**15. For a child with a disability being considered for initial placement in special education, which teacher should attend the IEP meeting?**

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

**Note:** Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is

given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

**16. If a child with a disability is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?**

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, as necessary, to consult with and be a resource to the child's regular teacher.

**17. If a child with a disability in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?**

**No.** Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

b. While large meetings are generally inappropriate, there may be specific circumstances where the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

**18. If a child's primary disability is a speech impairment, must the child's regular teacher attend the IEP meeting?**

**No.** A speech-language pathologist would usually serve as the child's teacher for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

**19. If a child is enrolled in a special education class because of a primary disability, and also receives speech-language pathology services, must both specialists attend the IEP meeting?**

**No.** It is not required that both attend. The special education teacher would attend the meeting as the child's teacher. The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

**20. When may representatives of teacher organizations attend IEP meetings?**

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504-300.505), it would not be necessary for the agency to do so again at the IEP meeting.

Section 300.504(a) of the regulations states that "written notice that meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child."

Section 300.505(a) states that the notice must include "(1) A full explanation of all of the procedural safeguards available to the parents under § 300.500, §§ 300.502-300.515, and §§ 300.582-300.589."

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act.

Note: Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a) (1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506. Impartial due process hearing.)

33. Does the IEP include ways for parents to check the progress of their children?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding the special education program of a child with a disability. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. Must IEPs include specific checkpoint intervals for parents to confer with teachers and to revise or update their children's IEPs?

No. The IEP of a child with a disability is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual

situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies if there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas where there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under part B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) that both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513. Child's status during proceedings.) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A child with a disability is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

Note: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service would continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each child with a disability. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points that should be taken into account in writing this part of the IEP:

a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

Note: Labels such as mental retardation or deafness may not be used as a substitute for the description of present levels of educational performance.

disability, and related services as those services that are necessary to assist the child to benefit from special education.) (See §§ 300.17 and 300.16, respectively.)

For some children with disabilities, the IEP will only address a very limited part of their education (e.g., for a child with a speech impairment, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those with profound mental retardation), the IEP might cover their total education. An IEP for a child with a physical disability with no mental or emotional disability might consist only of specially designed physical education. However, if the child also has a mental or emotional disability, the IEP might cover most of the child's education.

**Note:** The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. If modifications are necessary for a child with a disability to participate in a regular education program, must they be included in the IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a child with a hearing impairment, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. When must physical education (PE) be described or referred to in the IEP?

Section 300.307(a) provides that physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE. The following paragraphs (1) set out some of the different PE program arrangements for students with disabilities, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. Regular PE with nondisabled students. If a student with a disability can participate fully in the regular PE program without any special modifications to compensate for the student's disability, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. Specially designed PE. If a student with a disability needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. PE in separate facilities. If a student with a disability is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the

physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for students with deafness), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

50. If a student with a disability is to receive vocational education, must it be described or referred to in the student's IEP?

The answer depends on the kind of vocational education program to be provided. If a student with a disability is able to participate in the regular vocational education program without any modifications to compensate for the student's disability, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

**Note:** The parents should be notified whenever this occurs.

52. Must the IEP of a child with a disability indicate the extent that the child will be educated in the regular educational program?

Yes. Section 300.346(c) provides that the IEP for each child with a disability must include a "statement of . . . the extent that the child will be able to participate in regular educational programs." One way of meeting

this requirement is to indicate the percent of time the child will be spending in the regular education program with nondisabled students. Another way is to list the specific regular education classes the child will be attending.

**Note:** If a child with a severe disability, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with nondisabled students (e.g., lunch, assembly periods, club activities, and other special events).

53. Can the anticipated duration of services be for more than twelve months?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term instructional objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term instructional objectives.

**Note:** In many instances, these components are incorporated directly into the objectives.

**Other Questions About the Content of an IEP**

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(a)(20) of the Act defines the IEP as a written statement developed in any meeting with the agency representative, the teacher, the parent, and, if appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their children with disabilities. (See, e.g., S.

(2) The provision of direct and support services for children with disabilities aged three through five years; and

(3) At the State's discretion, the provision of a free appropriate public education to two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under Part H of the Act.

(d) If a State provides services to preschool children with disabilities because some or all LEAs and IEOs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or IEOs to provide special education and related services to children with disabilities aged three through five years, and to two-year-old children with disabilities in accordance with paragraph (b)(3) of this section, residing in the area served by those LEAs and IEOs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2), 1419(f))

#### Appendix

(Not to be Codified in the Code of Federal Regulations)

#### Appendix

#### Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

The following is an analysis of the comments and of the changes in the regulations since publication of the NPRM on August 19, 1991 (56 FR 41266). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed. References to section numbers in this appendix are to the final regulations.

#### Assistive Technology Device; Assistive Technology Service (§§ 300.5 and 300.6)

*Comment:* One commenter requested that the proposed definitions of "assistive technology device" and "assistive technology service" be modified to make them as educationally relevant as possible. Another commenter stated that, in the definition of "assistive technology service" (§ 300.6(f)), the term "children" should be used in lieu of "individuals." Another commenter suggested that each State be required to include in the State plan its system for providing information and technological assistance for LEAs

regarding assistive technology acquisition.

A commenter requested that procedures for determining when a child needs assistive technology be added to the final regulations. Another commenter requested that evaluations be done by personnel qualified to assess the technological needs of children with disabilities. Another commenter was concerned that school personnel would not have the training and knowledge to provide required services.

*Discussion:* The definitions of "assistive technology device" and "assistive technology service" are taken from sections 602(a)(25) and 602(a)(26) of the Act, and there is no authority to change the substance of those definitions. However, the requirement in § 300.308 limits the provision of assistive technology to educational relevancy—i.e., an assistive technology device or service is only required if it is determined, through the IEP process, to be (1) special education, as defined in § 300.17, (2) a related service, as defined in § 300.16, or (3) supplementary aids and services required to enable a child to be educated in the least restrictive environment. The Secretary believes that the effect of § 300.308 is to limit the provision of assistive technology devices and services to those situations in which they are required in order for a child to receive FAPE.

The Note following "assistive technology service" in the NPRM explained that, except for replacing "child" for "individual," the definition is taken directly from section 602(a)(25)–(26) of the Act. The term "individuals" was inadvertently included in paragraph (f) of that definition. Therefore, that term is being changed to "children" in these final regulations.

The Secretary believes that while an SEA, at its discretion, might choose to provide technical assistance to LEAs about assistive technology or other provisions required in this part, it would be inappropriate and burdensome to require that a State include a description of a technical assistance system on assistive technology in the State plan.

It is not necessary to add procedures for determining the need for assistive technology services because this determination is made as part of the individual evaluation of each child required in §§ 300.530–300.534. These evaluations must be done by qualified individuals, as specified in § 300.532(a)(3).

In instances where LEA personnel do not have the knowledge to provide assistive technology services, funds under this part may be used to obtain the necessary expertise, and, if

appropriate, to train existing school personnel. The Secretary does not believe that further guidance is needed on the matters raised by these commenters.

*Changes:* In § 300.6(f), the clause "or are otherwise substantially involved in the major life functions of individuals with disabilities" has been revised to substitute the term "children" for "individuals."

#### Autism (§ 300.7(b)(1))

*Comment:* Some commenters proposed that the phrase "generally evident before the age of three" be eliminated because it may result in excluding children who exhibit those characteristics after age three. One commenter requested that the regulations clarify that autism is a medical diagnosis, while another commenter asked if a medical diagnosis would be required for this disability.

*Discussion:* The reference to age three is not an age limitation, but merely indicates that children identified as having autism generally exhibit characteristics of this disability before age three. The Secretary does not agree that a medical diagnosis is required to determine whether a child falls within the disability category of "autism." The definition of "children with disabilities" in § 300.7(a)(1) states that the term means "those children evaluated in accordance with §§ 300.530–300.534 . . ." The required procedures in those sections are broad enough to ensure that diagnostic and placement decisions are based on comprehensive information about the child, including medical information that may be needed to determine whether the child has a disability and is in need of special education and related services.

*Changes:* None.

*Comment:* Several commenters raised issues regarding the characteristics listed in the definition of "autism." For example, some commenters stated that the proposed definition implies that a child must exhibit all of the characteristics listed to be considered to have autism. In addition, a commenter asked that impairments in the development of social relationships be added to the list of characteristics. Commenters raised two concerns about the term "stereotyped movements"—that the term is too vague and that, in some instances, older children may not exhibit stereotyped movements.

One commenter proposed that the phrase "that markedly restricts activities and interests" be included after "generally evident before age three" to be consistent with the

aneurysm" has been deleted from the first sentence of the definition.

*Comment:* A commenter suggested that the word "mild" be deleted from the second sentence of the definition of "traumatic brain injury." Another commenter asked that descriptions of the degree of a child's impairment be eliminated from the definition.

*Discussion:* The Secretary believes that the degree of impairment is not a factor in determining whether a child has a "traumatic brain injury." Therefore, the terms "mild," "moderate," and "severe" should be deleted from this definition. The factors for determining whether a child is eligible under this disability category for services under part B are (1) an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance, and (2) a need for special education and related services because of that disability or impairment. The particular services provided to the child are determined on an individual basis. Thus, as long as the factors described above are met, children are eligible whether or not they have mild, moderate, or severe impairments.

*Changes:* The descriptions of degree of impairment (mild, moderate, and severe) have been deleted from the definition.

#### *Rehabilitation Counseling Services* (§ 300.16(b)(10))

*Comment:* Some commenters indicated that rehabilitation counseling services should be provided by State vocational rehabilitation agencies under title I of the Rehabilitation Act of 1973, and not be a requirement under this part. Commenters also expressed concern regarding the potential responsibility and the financial burden to LEAs to provide services that were previously the responsibility of other agencies, as well as the inability of LEAs to commit the resources of other agencies. Two commenters requested that the definition of "rehabilitation counseling services" be broadened to mention additional services. A commenter requested clarification about the intent of the new requirement, especially with respect to services provided under the Rehabilitation Act of 1973.

*Discussion:* Public Law 101-476 added "rehabilitation counseling" as a type of "counseling service" in the list of related services in part B. The Report of the House Committee on Education and Labor on Public Law 101-476 describes rehabilitation counseling as an

important related service in special education, as well as an important transition service in preparing students with disabilities for employment or postsecondary education. In addition, the report states, "It is the intent of the Committee that rehabilitation counseling \* \* \* be provided to all students with disabilities for whom this service is necessary for the achievement of the individualized education program." (See House Report No. 101-544, 7-8 (1990).)

"Rehabilitation counseling services," as defined in § 300.16(b)(10), includes a variety of services, such as career development, employment counseling, and employment preparation. The term also includes vocational rehabilitation services provided to students with disabilities under the Rehabilitation Act of 1973. The Secretary believes that the definition is broad enough not to require the listing of additional services.

Because "rehabilitation counseling services" is a type of related service under "counseling services" in part B, public agencies must provide that service to any student with a disability, if the IEP team determines that the service is required to assist the student to benefit from special education. As indicated in the discussion to the comment that follows, rehabilitation counseling may be provided by existing LEA staff, if they are qualified under § 300.15 to provide those services in areas appropriate to their disciplines.

The Secretary recognizes that LEAs do not have the authority to commit the resources of another agency. However, the SEA is responsible—through the use of interagency agreements required under § 300.151, or other means—to ensure that services that would have been provided by other agencies will continue to be provided, either by those agencies, or by the LEA responsible for providing FAPE to the child. In accordance with § 300.150, States may not permit LEAs to use funds under this part to provide or pay for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in a student's IEP.

*Changes:* None.

*Comment:* Many commenters requested that the term "qualified counseling professional" be deleted from the definition of "rehabilitation counseling services." They were concerned that it would add a new personnel category that would require States to adopt new certification or licensure standards, and preclude the continued provision of services by existing school staff, who are otherwise

qualified. A few commenters suggested that "certified" be used in lieu of "qualified."

*Discussion:* The Secretary believes that existing school staff (e.g., prevocational counselors, work-study coordinators, or special education teachers), who are qualified under § 300.15, should be permitted to provide rehabilitation counseling services appropriate to their disciplines. The qualifications of personnel providing those services, like the qualifications of personnel providing other services, is a matter to be determined by each State. The method used to specify the qualifications of personnel (e.g., certification, licensure, or registration) is also a matter that is left to State discretion.

*Changes:* The term "a qualified counseling professional" has been changed to "qualified personnel."

#### *Social Work Services in Schools* (300.16(b)(12))

*Comment:* A large number of commenters did not support the proposed deletion of "in schools" from the definition of "social work services," and requested that the current term "social work services in schools" be retained in the final regulations. These commenters stated, among other reasons, that the existing term helps to ensure that the services provided will be educationally relevant and directly linked to the IEP. Some commenters requested that the term be changed to "school social work services."

A few commenters supported the deletion of "in schools" from the defined term, asserting that the change would enable broader services to be provided. One commenter stated that the proposed change would allow schools and other public and private agencies to work together in providing appropriate mental health services to children with serious emotional disturbance.

Another commenter requested the following changes: (1) Substituting developmental "history" for developmental "assessment," (2) adding the phrase "making home visits," to be consistent with the definition in 34 CFR 303.12(d)(11), and (3) changing "mobilizing" to "identifying and coordinating." A few commenters requested that the qualifications of social workers be clarified. Commenters also urged that services be provided by credentialed school social workers.

*Discussion:* The phrase "in schools" was proposed to be omitted from the defined term because the Secretary believed that public agencies understood that phrase to limit the

who were opposed to the concept of sliding fee scales urged the Department not to retain the requirement, relocated from § 303.19 of the current regulations to § 303.520(b)(4)(i) of the proposed regulations, that a State's policies set out any fees that will be charged for early intervention services and the basis for those fees.

Commenters who addressed the proposed requirement that States that decide not to charge fees for Part H services provide an explanation of the determination not to charge fees were uniformly opposed to it. These commenters expressed the view that the requirement would place undue burdens on States, would not enhance the ability of States to decide the merits of sliding fee scales, and would improperly interfere with the discretion of States to determine whether to charge fees for Part H services.

Commenters suggested that the Department gather more information on sliding fee scales before adopting a policy in favor of such a system. No comments were received on the elements of useful analyses of sliding fee scales that States might undertake.

*Discussion:* The Secretary has determined not to adopt the requirement in proposed § 303.520(b)(4)(ii) that a State that determines not to charge fees for early intervention services include an explanation for this determination in its policies. The purpose of this proposed requirement was to encourage States to establish sliding fee scales for direct services based on a family's ability to pay, as authorized by section 672(2)(B) of the Act. However, the Secretary is persuaded that the proposed requirement could impose unnecessary burdens on States and presents other problems noted in the comments summarized above. The Secretary has determined to adhere to the policy on sliding fee scales for early intervention services that is contained in current regulations and that the legislative history of the 1991 Amendments expressly endorses. See S. REP. No. 84, 102d Cong. 1st Sess. 20 (1991) and

H.R. REP. No. 198, 102d Cong., 1st Sess. 13 (1991). That policy requires that a State provide information about any system of payments it adopts but does not require an explanation for the decision not to adopt a system of payments.

*Changes:* The requirement in proposed paragraph (b)(4)(ii), described above, has been deleted. The requirement in proposed paragraph (b)(4)(i), which is taken from current § 303.19, is retained with conforming editorial changes.

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

##### *Section 303.602 Use of Funds by the Council*

*Comment:* One commenter requested that the regulations provide that Council members be reimbursed for only extraordinary—and not normal—child care expenses incurred while attending Council meetings and performing Council duties.

*Discussion:* The proposed regulations incorporate statutory language from the 1991 Amendments. See section 682(d) of the Act. Under this language, the use of funds for child care expenses of parent representatives is permitted, but not required, if those expenses are "reasonable and necessary." The Secretary declines to provide more specific guidance on this topic.

*Changes:* None.

##### *Section 303.650 General*

*Comment:* Commenters expressed concern about the revision of the Council's functions that permits it to advise and assist the SEA regarding the provision of appropriate services for children. Commenters pointed out that the SEA is required to establish its own statewide advisory panel under Part B. They expressed concern that the new function of the Part H Council would be duplicative and confusing. One commenter asked that the regulations provide that the

SEA has the discretion to arrange to obtain the Council's advice and assistance. Another commenter requested that paragraph (b) of this section emphasize advice and assistance on transition matters.

*Discussion:* Proposed § 303.650 incorporates the language in section 682(e)(2) of the Act, as added by the 1991 Amendments. The Secretary declines to prescribe the procedure by which advice may be sought or given, or to expand upon the statutory language in other respects. However, the Secretary encourages the use of advisory bodies to facilitate better communication on matters of mutual concern. The Secretary also offers the observations that the Council's advice and assistance on the provision of services under paragraph (b) is permitted but not required, and that the SEA is not bound by any advice it receives.

*Changes:* None.

##### *Section 303.653 Transitional Services*

*Comment:* One commenter expressed concern that the added requirement that the Council advise and assist the SEA regarding the transition of children with disabilities to Part B services may prove duplicative and confusing. Another commenter requested that the regulations require the Council to advise and assist the State lead agency as well as the SEA on transition matters.

*Discussion:* The proposed regulations incorporate the statutory requirement in section 682(e)(1)(C), as added by the 1991 Amendments. The Secretary declines to prescribe how the new role of the Part H Council regarding transition issues should be performed or to expand that role by regulation.

*Changes:* None.

[FR Doc. 93-18110 Filed 7-29-93; 8:45 am]  
BILLING CODE 4000-01-U









# Federal Register

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Friday  
July 30, 1993

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Part III

## Department of Education

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34 CFR Part 303

Early Intervention Program for Infants  
and Toddlers With Disabilities; Final Rule

include the material in proposed § 303.510(c) concerning such an investigation. Finally, § 303.512 has been revised to provide clarifications that parallel those in § 300.661 of regulations adopted on September 29, 1992 (57 FR 44794, 44829), under Part B of the Act.

**Section 303.520 Policies Related to Payment of Services**

The final regulations do not include the requirement in proposed paragraph (b)(4)(ii) of this section that a State that determines not to charge fees for early intervention services include an explanation for this determination in its policies. The requirement in proposed paragraph (b)(4)(i), which is taken from current § 303.19, is retained with conforming editorial changes.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 173 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations. Comments on provisions outside the scope of the proposed regulations will be considered in any future rulemaking for the Part H program.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**List of Subjects in 34 CFR Part 303**

Education, Education of individuals with disabilities, Programs-Education, Medical personnel, State educational agencies.

Dated: May 6, 1993.

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

(Catalog of Federal Domestic Assistance Number 84.181, Early Intervention Programs for Infants and Toddlers with Disabilities)

The Secretary amends 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 Activities that may be supported under this part.
- 303.4 Limitation on eligible children.
- 303.5 Applicable regulations.

**Definitions**

- 303.6 Act.
- 303.7 Children.
- 303.8 Council.
- 303.9 Days.
- 303.10 Developmental delay.
- 303.11 Early intervention program.
- 303.12 Early intervention services.
- 303.13 Health services.
- 303.14 IFSP.
- 303.15 Include; including.
- 303.16 Infants and toddlers with disabilities.
- 303.17 Multidisciplinary.
- 303.18 Parent.
- 303.19 Policies.
- 303.20 Public agency.
- 303.21 Qualified.
- 303.22 Service coordination (case management).
- 303.23 State.
- 303.24 EDGAR definitions that apply.

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

**General Requirements**

- 303.100 Conditions of assistance.
  - 303.101 How the Secretary disapproves a State's application or statement of assurances.
- Public Participation**
- 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 and reporting on public comments received.

**Statement of Assurances**

- 303.120 General.
- 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**

- 303.140 General.
- 303.141 Information about the Council.
- 303.142 Designation of lead agency.
- 303.143 Designation regarding financial responsibility.

- 303.144 Assurance regarding use of funds.
- 303.145 Description of use of funds.
- 303.146 Information about public participation.
- 303.147 Equitable distribution of resources.
- 303.148 Transition to preschool programs.

**Specific Application Requirements for Years One Through Five and Thereafter**

- 303.149 Application requirements for the first and second years.
- 303.150 Third year applications.
- 303.151 Waiver of the policy adoption requirement for the third year.
- 303.152 Fourth year applications.
- 303.153 States with mandates as of September 1, 1986, to serve children with disabilities from birth.
- 303.154 Applications for year five and each year thereafter.
- 303.155 Differential funding.

**Components of a Statewide System—Application Requirements for Years Four, Five, and Thereafter**

- 303.160 Minimum components of a statewide system.
- 303.161 State definition of developmental delay.
- 303.162 Central directory.
- 303.163 Timetables for serving eligible children.
- 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.
- 303.205 Differential funding grants.

(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)); and

(viii) Part 86 (Drug-Free Schools and Campuses).

(2) The regulations in this part 303.

(3) The following regulations in 34 CFR part 300 (Assistance to States for Children with Disabilities Program): §§ 300.560 through 300.576, and §§ 300.581 through 300.586.

(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;

(4) Section 300.128 means §§ 303.164 and 303.321; and

(5) Section 300.129 means § 303.460.

(Authority: 20 U.S.C. 1401–1418, 1420, 1483)

#### Definitions

**Note:** Sections 303.6–303.24 contain definitions, including a definition of “natural environments” in § 303.12(b)(2), that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below 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))

Location (§ 303.344(d)(3))

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, *Act* means the Individuals with Disabilities Education Act.

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

#### § 303.7 Children.

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

(Authority: 20 U.S.C. 1472(1))

#### § 303.8 Council.

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

(Authority: 20 U.S.C. 1472(4))

#### § 303.9 Days.

As used in this part, *days* means calendar days.

(Authority: 20 U.S.C. 1471–1485)

#### § 303.10 Developmental delay.

As used in this part, *developmental delay* has the meaning given to that term by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

#### § 303.11 Early intervention program.

As used in this part, *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. 1471–1485)

#### § 303.12 Early intervention services.

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

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child’s development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(i) Under public supervision;

(ii) By *qualified* personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section;

(iii) In conformity with an individualized family service plan; and

(iv) 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; and

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

(b) *Natural environments.* (1) 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.

(2) As used in paragraph (b)(1) of this section, *natural environments* means settings that are natural or normal for the child’s age peers who have no disability.

(c) *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.

(d) *Types of services; definitions.* Following are types of services included under “early intervention services,” and, if appropriate, definitions of those services:

(1) *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.

*Assistive technology service* means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include—

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

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such

disorders and delays in development of communication skills; and

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

(15) *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.

(16) *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.

(e) *Qualified personnel*. Early intervention services must be provided by qualified personnel, including—

- (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.

(Authority: 20 U.S.C. 1401 (a)(25), and (a)(26), 1472(2); H.R. REP. No. 198, 102d Cong., 1st Sess. 14 (1991); S. REP. No. 84, 102d Cong., 1st Sess. 21–22 (1991))

**Note:** The lists of services in paragraph (d) and qualified personnel in paragraph (e) 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, and parent-to-parent support personnel.

#### § 303.13 Health services.

(a) As used in this part, *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) The term includes—

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

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

(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, or the shunting of hydrocephalus); 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 condition.

(3) Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

**Note:** 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(e) and the note 3 following that section.)

#### § 303.14 IFSP.

As used in this part, *IFSP* means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

#### § 303.15 Include; including.

As used in this part, *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. 1471–1485)

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

(a) As used in this part, *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. 1472(1))

**Note 1:** 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:** 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, *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. 1476(b)(3), 1477(a))

#### § 303.18 Parent.

As used in this part, *parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent

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

(Authority: 20 U.S.C. 1471-1485)

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

**General Requirements**

**§ 303.100 Conditions of assistance.**

(a) In order to receive funds under this part for any fiscal year, a State must—

- (1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and
- (2) Have on file with the Secretary the statement of assurances required under §§ 303.120 through 303.128.

(b) For years one through five, a State shall submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1478)

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

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

(Authority: 20 U.S.C. 1478)

**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 shall—

- (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. 1478(a)(4))

**§ 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 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 H 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. 1478(a)(4)(A))

**§ 303.112 Public hearings.**

Each State shall 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. 1478(a)(4))

**§ 303.113 Reviewing and reporting on 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 shall—

- (1) Review and consider all public comments; and
- (2) Make any modifications it deems necessary in the application or policy.

(b) *Reporting on comments to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency shall include—

- (1) A summary of the public comments received as a result of the activities required in §§ 303.110 through 303.112;
- (2) The State's responses to those comments; and
- (3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

**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. 1478(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 such 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.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1478(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.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1478(b)(3))

**§ 303.123 Prohibition against commingling.**

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

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1478(b)(5)(A))

**Note:** 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. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified with a clear audit trail for each source—it is appropriate for those funds to be

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.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1478(a)(4) and (a)(6))

**§ 303.146 Information about public participation.**

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

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1478(a)(5))

**§ 303.147 Equitable distribution of resources.**

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1478(a)(7))

**§ 303.148 Transition to preschool programs.**

Each application must include the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under Part B of the Act, including—

- (a) A description of how the families will be included in the transitional plans;
- (b) A description of how the lead agency under this part will—
  - (1) Notify the appropriate local educational agency or intermediate educational unit in which the child resides; and
  - (2) Convene, with the approval of the family, a conference among the lead agency, the family, and the local educational agency or unit at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the preschool program under Part B of the Act in accordance with State law, to—
    - (i) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and

- (ii) Establish a transition plan; and
- (c) If the State educational agency, which is responsible for administering preschool programs under Part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1478(a)(8))

Note 1: 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, consistent with §§ 303.523 and 300.152.
- The responsibility for performing evaluations of children (see §§ 303.322 and 300.531).
- The development and implementation of an individualized education program ("IEP") or an individualized family service plan ("IFSP") for each child, consistent with the requirements of law (see § 303.344(h) and sections 613(a)(15) and 614(a)(5) of the Act).
- The coordination of communication between agencies and the child's family.
- The mechanisms to ensure the uninterrupted provision of appropriate services to the child.

Note 2: While the transition requirements of the Act and this section pertain to children who are eligible for preschool programs under Part B, States are encouraged to adopt policies and procedures to facilitate a smooth transition of other children who are exiting the Part H program as well.

**Specific Application Requirements for Years One Through Five and Thereafter**

**§ 303.149 Application requirements for first and second years.**

A State's annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 through 303.148.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1475, 1478(a))

**§ 303.150 Third year applications.**

(a) General. A State's third year application under this part must contain the following:

- (1) The information required in §§ 303.141 through 303.148.
- (2) Either—
  - (i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or
  - (ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.151.
- (3) Other information that the Secretary may require.

(b) Adoption of policy on statewide system. Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1475(b), 1478(a))

**§ 303.151 Waiver of the policy adoption requirement for the third year.**

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.150(b), if the State, in its third year application, includes a statement requesting a waiver, including—

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.150(b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in § 303.341(a), the policy required in § 303.150(b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1475(b)(2))

Note: An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

**§ 303.152 Fourth year applications.**

A State's application for the fourth year of participation under this part must contain—

- (a) The information required in §§ 303.141 through 303.148;
- (b) Information and assurances to demonstrate that—



**§ 303.167 Individualized family service plans.**

Each application must include—  
(a) An assurance that the IFSP requirements in § 303.341 will be met; and

- (b) Information demonstrating that—  
(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and  
(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(4), 1477(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.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(9))

**§ 303.169 Personnel standards.**

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

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(13))

**§ 303.170 Procedural safeguards.**

Each application must include procedural safeguards that—

- (a) Are consistent with §§ 303.400 through 303.406, 303.420 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 §§ 303.420(b) and 303.421 through 303.425.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(12))

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

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

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(9)(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.

(Approved by the Office of Management and Budget under control number 1820-0650) (Authority: 20 U.S.C. 1476(b)(9))

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

Each application must include—  
(a) Funding policies that meet the requirements in §§ 303.520 and 303.521; (b) Information about funding sources, as required in § 303.522; (c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and  
(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(9)(D) and (b)(9)(E), 1476(b)(11), 1481)

**§ 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.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(9)(E))

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

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

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(10))

**§ 303.176 Data collection.**

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

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1476(b)(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 shall 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 shall 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.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1484(b); H.R. Rep. No. 198, 102d Cong., 1st Sess. 22 (1991))

**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. 1494(c))

**§ 303.201 Distribution of allotments from non-participating States.**

If a State elects not to receive its allotment, the Secretary reallocates those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1494(d))

**Note 2:** Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations, and (3) 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 300.128), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) **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; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) **Coordination.** (1) The lead agency, with the assistance of the Council, shall 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, shall 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 no more than two working days after a child has been identified; and

(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities.

(3) As used in paragraph (d)(1) of this section, **primary referral sources** includes—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) **Timelines for public agencies to act on referrals.** (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the public agency shall—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1472(2)(E)(vii), 1476(b)(5))

**Note:** In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) 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 a timely,

comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall 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 their infant or toddler with a disability.

(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 related to enhancing the development of the child.

(e) **Parental consent.** 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.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1477)

**Note:** 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 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 Participants in IFSP 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 is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including—

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

(b) **Periodic review.** 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.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1477(b))

**§ 303.344 Content of an IFSP.**

(a) **Information about the 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 in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) **Family information.** With the concurrence of the family, the IFS must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.

(c) **Outcomes.** The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness 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) 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, including—

- (i) The frequency, intensity, and method of delivering the services;
- (ii) The natural environments, as described in § 303.12(b), in which early intervention services will be provided;
- (iii) The location of the services; and
- (iv) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

- (i) **Frequency and intensity** mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and
- (ii) **Method** means how a service is provided.

(3) As used in paragraph (d)(1)(iii) of this section, **location** means the actual

place or places where a service will be provided.

(e) **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" care), unless a child needs those services and the services are not otherwise available or being provided.

(f) **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.

(g) **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 (g)(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 (g)(1) of this section, the term "profession" includes "service coordination."

(h) **Transition from Part H services.** (1) The IFSP must include the steps to be taken to support the transition of the child to—

- (i) Preschool services under Part B of the Act, in accordance with § 303.148, to the extent that those services are considered appropriate; or
- (ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

- (i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;