

(1) *Appropriate professional requirements in the State* means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) *Profession or discipline* means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) *State approved or recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies

and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

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

Note: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

Subpart E—Procedural Safeguards

General

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) *Consent* means that—

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

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

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

(b) *Native language*, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) *Personally identifiable* means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under Part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(4))

§ 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in § 303.423.

§ 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, *impartial* means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1480(1))

§ 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to

early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

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

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

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

(Authority: 20 U.S.C. 1480)

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1480(1))

Note: Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1480(1))

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency

and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1480(7))

Confidentiality

§ 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in § 303.5(b).

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1480(2), 1483)

Note: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (§ 303.460).

The Part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

General

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

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

§ 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for—

(i) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1472(2))

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the Act;

(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94-103); and

(7) Other Federal programs.

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

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial

responsibility, in accordance with § 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.*

(1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

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

Note: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 ("financial designee") shall assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the "payor of last resort" provisions in § 303.527.

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment

of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee shall reassign the responsibility to the appropriate agency; and

(ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with § 303.525.

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

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

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

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

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

Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and

(7) At least one member must be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

(b) The Council may include other members selected by the Governor, including a representative from the BIA or, where there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(b))

§ 303.602 Use of funds by the Council.

(a) *General.* Subject to the approval by the Governor, the Council may use funds under this part—

(1) To conduct hearings and forums;

(2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);

(3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;

(4) To hire staff; and

(5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* Except as provided in paragraph (a) of this section, Council members shall serve without compensation from funds available under this part.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1479, 1482 (c) and (d))

§ 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must —

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482 (c) and (d))

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(f))

Functions of the Council

§ 303.650 General.

(a) Each Council shall—

(1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and

(4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(A) and (e)(2))

§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(A))

§ 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(B))

§ 303.653 Transitional services.

Each Council shall advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under Part B of the Act, to the extent those services are appropriate.

(Approved by the Office of Management and Budget under control number 1820-0578)

(Authority: 20 U.S.C. 1482(e)(1)(C))

§ 303.654 Annual report to the Secretary.

(a) Each Council shall—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(e)(1)(D))

Existing Councils

§ 303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1482(g))

Appendix—Analysis of Comments and Responses

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 May 1, 1992 (57 FR 18986). 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 generally not addressed.

information be provided on the use of informed clinical opinion.

Discussion: The use of informed clinical opinion in determining a child's eligibility under Part H is substantively unaffected by the proposed regulations. Section 303.322(c)(2), which is unchanged, requires that the evaluation and assessment of each child be based upon informed clinical opinion. The note following § 303.300, which is also unchanged in substantive terms, provides further guidance on the use of informed clinical opinion. The Secretary believes that no further guidance to States on this matter is necessary.

Changes: None.

Section 303.321 Comprehensive Child Find System

Comment: Two commenters requested that the Department add Supplemental Security Income (SSI) to the list of programs to be coordinated with the Part H child find system by the lead agency. Commenters requested the addition of several other programs as well.

Discussion: The list of programs that may locate and identify children in need of early intervention services in § 303.321(c)(1) is not exhaustive. However, the Secretary agrees with the suggestion to add the SSI program because it represents a major national effort to locate and identify children who may have disabilities.

Changes: Section 303.321(c)(1) has been revised to add a reference to the Supplemental Security Income program under Title XVI of the Social Security Act.

Section 303.322 Evaluation and Assessment

Comment: Commenters requested that the Department clarify the term "family assessment." One commenter requested that the term be changed to "description of family resources, priorities, and concerns." Another commenter recommended that the term be changed to "family-directed assessment." Finally, one commenter recommended that § 303.322 incorporate the new requirement relating to "natural environments." See § 303.12(b).

Discussion: The revisions of § 303.322 relating to the term "family assessment" used in paragraph (d) are for the purpose of incorporating the new requirement for a family-directed assessment in section 677(a)(2) of the Act. The Secretary believes that the substantive provisions of the amended statute are fully and accurately reflected in the revised regulations and that there is no need to revise the term "family assessment."

The Secretary declines to adopt the suggestion to incorporate the "natural environments" requirement in this section because it is not the function of the evaluation and assessment to identify where early intervention services should be provided. Like all other aspects of services to a particular child, the setting for service delivery must be determined through the IFSP process described in §§ 303.340-303.344. The "natural environments" requirement is referenced in § 303.344(d)(1)(ii) of the regulations relating to the IFSP process.

Changes: The citation of authority following § 303.322 has been corrected.

Section 303.342 Procedures for IFSP Development, Review, and Evaluation

Comment: One commenter requested that the Department clarify whether parents may withdraw consent for a particular service after initially approving the service. Other commenters suggested that the Department implement more effective procedures for ensuring that a family's and child's needs are identified, that the family has the opportunity to make choices from among alternatives as to how to meet those needs, and that the periodic review of IFSPs address the "natural environments" requirement in § 303.12(b).

Discussion: The Secretary agrees that the regulations should make clear that parents may bar the provision of a particular early intervention service by withdrawing consent that they have previously given for that service. This clarification is based upon the legislative history of the 1991 Amendments. See S. REP. No. 84, 102d Cong., 1st Sess. 28 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 21 (1991). The Secretary believes that the requirements for the development, review, and evaluation of an IFSP contained in current regulations and those derived from the 1991 Amendments provide sufficiently detailed guidance and declines to prescribe additional requirements on the subject.

Changes: Section 303.342(e) has been revised to provide that if parents withdraw consent to a particular early intervention service after first providing consent, that service may not be provided. In addition, a parallel change has been made in § 303.405—Parent right to decline service.

Section 303.344 Content of an IFSP

Paragraph (d)—Early intervention services.

Comment: Some commenters requested that the Department provide flexibility to States in determining which environments are "natural environments." Other commenters requested that the Department provide parents with the option of choosing the environments in which their children will receive Part H services. Finally, commenters requested that the Department require that IFSPs include the provision of information to the family on funding sources and the steps that will be taken to secure Part H services through public or private sources.

Discussion: Commenters are referred to the above discussion of the "natural environments" provisions of § 303.12(b) for the Secretary's views on the process by which decisions on the settings for service delivery are made. Respecting the early intervention services that must be included in an IFSP, commenters are advised that § 303.344(d)(1)(iv) requires any payment arrangements for services to be included in that document. The Secretary does not believe it is necessary to prescribe the inclusion of funding sources and the steps to be taken to secure them for services provided or paid for by a public agency. Arrangements for those services will already have been made as a part of the establishment of the early intervention system.

Changes: None.

Paragraph (e)—Other services.

Comment: Several commenters addressed the proposed requirement, in paragraph (e)(1)(ii), that funding sources for medical and other non-required services that are included in the IFSP also be included in that document. Some commenters supported the proposed requirement. Other commenters opposed it, stating that the requirement would cause confusion for families, create burdens for the lead agency and others, or delay the provision of services. One commenter recommended continuing the approach in current regulations, which requires that if an IFSP includes non-required services it must also include the steps to be taken to secure those services through public or private sources. Another commenter recommended that the current and proposed approaches be combined.

Commenters also requested that the Department (1) clarify the responsibilities and obligations of the service coordinator in assessing or assuring the provision of or payment for the non-required services included in the IFSP; (2) add services that address family needs, as well as the child's needs; (3) clarify that some services may not require funding, but rather may be addressed through "natural supports;" and (4) substitute the phrase "child-specific needs" for "child needs" to avoid an interpretation that the regulation addresses housing and employment.

Discussion: The proposed requirement to include in the IFSP the funding sources of listed non-required services is based upon language in the note following § 303.13 of the current regulations. The language of the note, incorporated in proposed § 303.344(e)(1)(ii), is quoted with approval in the legislative history of the 1991 Amendments. See S. REP. No. 84, 102d Cong., 1st Sess. 21 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 13-14 (1991). The Secretary believes the proposed language should be adopted. However, the Secretary also believes the approach in current § 303.344(e)(1)(ii), which requires that the IFSP include the steps to be taken to secure services, may be appropriate when the funding sources for all listed non-required services are not immediately identifiable. Therefore, that paragraph has been revised to combine the two approaches.

The Secretary encourages States to apply the regulations in § 303.344(e) consistent with their broad purpose of providing a comprehensive picture of the family's need for services and assisting the family in obtaining those services. Note 3 following § 303.344 discusses the medical and other non-required services addressed in this paragraph. The note, which is substantively unchanged, states some of the reasons why the inclusion of non-required services in an IFSP can be helpful to both the child's family and the service coordinator. These same reasons underlie the requirement to include in the IFSP information described in paragraph (e)(1)(ii) for those non-required services that are listed in that document. Note 3 also makes clear that services to meet the needs of the family related to enhancing the development of the child are a proper subject for the IFSP. The Secretary believes that the guidance in current Note 3 is

unnecessary. See, in particular, paragraphs (a)(2)(ii) and (d)(3).

Changes: None.

Subpart B—State Application for a Grant

Section 303.124 Prohibition Against Supplanting

Comment: One commenter recommended that the "particular cost" test not be removed from the supplanting prohibition in the Part H regulations until the effects of doing so were studied further.

Discussion: The removal of the prohibitions against using funds under Part B and Part H to displace State or local funds for any "particular cost" was proposed in an NPRM published on December 30, 1991 (56 FR 67420). The May 1, 1992 NPRM for Part H included § 303.124 as it had been proposed to be revised in the earlier notice. The comment described above was submitted in response to both NPRMs. On August 19, 1992, the Secretary adopted final regulations that removed the "particular cost" test from both the Part B and the Part H supplanting prohibitions. In the analysis of comments and changes that accompanied those regulations, the Secretary expressed the view that there was no need to delay the removal of the "particular cost" test from the Part H regulations. See 56 FR 37653.

Changes: None.

Section 303.128 Traditionally Underserved Groups

Comment: Commenters requested that the Department clarify the meaning of "traditionally underserved," "meaningfully involved," "culturally competent services," and "local geographical area" as used in this section. Some commenters suggested that the regulations incorporate minimum standards for the involvement of, and services to, traditionally underserved groups or that illustrations of satisfactory State policies and practices be provided. Other commenters requested that the Department clarify the responsibilities of States to ensure the meaningful involvement of Indian tribes and the provision of culturally competent services to Indian families on reservations.

Discussion: The Secretary declines to provide further guidance at this time on the content of the new required assurance concerning traditionally underserved groups. Respecting Indian tribes and families on reservations, commenters are advised that the 1991 Amendments extend the State's duty to ensure the availability of early intervention services to Indian children on reservations served by BIA schools. See § 303.302.

While the regulations do not prescribe State policies and practices in this area, the Secretary points out that considerations of cultural competency are relevant to many aspects of the statewide system under Part H—e.g., the development of a central directory of information (see § 303.301), the establishment of a public awareness program (see § 303.320), the content of a comprehensive child find system (see § 303.321), the procedures for the evaluation and assessment of children and for family assessments (see § 303.322), and the content of the comprehensive system of personnel development (see § 303.360)—as well as the

provision of early intervention services. The Secretary encourages States to explore effective means of involving minority, low-income, and rural families and other traditionally underserved groups in the Part H system and of ensuring effective services to these groups.

Changes: None.

Section 303.148 Transition to Preschool Programs

Comment: Commenters suggested that the Department change all references to children who "are eligible" for participation in Part B to children who "may be eligible." This change was suggested to emphasize that a determination of eligibility for Part B occurs when a child exits the Part H program and that transition plans should be developed only for children who are reasonably likely to be eligible for Part B services. Another commenter suggested broadening the scope of the section to address the transition from Part H of children who are not eligible for Part B. This commenter urged that service delivery models appropriate under Part H be available to all children with disabilities from birth through age five.

Commenters also requested that the Department clarify the use of evaluation data and the role and financial responsibility of each State agency in the transition process. One commenter asked that the Department add language to emphasize that the goal is an individualized program, whatever the funding source.

Discussion: The Secretary agrees that it would be helpful to clarify when the conference described in § 303.148(b)(2) must be convened. The clarification adopted in the final regulations is based upon the legislative history of the 1991 Amendments. See S. REP. NO. 84, 102d Cong., 1st Sess. 17 (1991).

The Secretary does not believe it is appropriate to expand the requirements for transition planning beyond the scope of the statute. However, Note 2 following this section encourages States to facilitate a smooth transition of all children who are exiting the Part H program. As regards service delivery models, nothing in these regulations precludes the use of models that are appropriate to Part H under the preschool program authorized by Part B so long as services comply with Part B requirements. Moreover, regulations under Part B specifically authorize the use of an IFSP for children aged three through five under certain conditions. See 34 CFR 300.343(a).

The Secretary declines to prescribe the appropriate elements of transition planning in greater detail. The Secretary contemplates that the use of evaluation data and the allocation of financial responsibility will be addressed in any State's planning and in the interagency agreement required by paragraph (c) in a State where the SEA is not the lead agency under Part H. Note 1 following this section lists several matters that should be considered in developing policies and procedures to ensure a smooth transition of children from the Part H to the Part B program.

Changes: Paragraph (b)(2) has been revised to provide that the statutorily-required conference among the lead agency, the

family, and the local educational agency or unit must be convened at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the Part B preschool program under State law. A conforming change has been made in § 303.344(b)(1). In addition, the citation of authority following § 303.148 has been corrected.

Section 303.180 Payments to the Secretary of the Interior for Indian Tribes and Tribal Organizations

Comment: One commenter requested that, in view of the respective responsibilities of tribes and States, the Department clarify: (1) Whether the Bureau of Indian Affairs (BIA) schools will provide screening, evaluation, and assessment for non-Indian children in rural areas; (2) whether tribal health clinics will be open to the public; (3) whether county health districts will extend outreach into tribal lands and reservations; (4) how States will ensure extension of services to tribal communities; and (5) whether the BIA or the State lead agency will monitor the activities of a tribal school that receives Part H funds. Another commenter asked for clarification of the provision of technical assistance to States and tribes concerning services to Native American children with disabilities on reservations.

Discussion: The Secretary believes it would be inappropriate to provide the requested guidance on the responsibilities of the Secretary of the Interior. Commenters are referred to section 684(b) of the Act for a description of the Secretary of the Interior's responsibility to distribute payments under the Act to tribes and tribal organizations. Many of the clarifications sought by commenters concern matters that are the responsibility of the Department of the Interior, tribes, or States and do not relate specifically to the Part H program. The Secretary declines to address these matters in the Part H regulations.

The State lead agency's supervision and monitoring responsibilities, including the provision of technical assistance to entities used by the State to carry out the Part H program, are stated in § 303.501. These responsibilities apply to tribal schools to the extent that those schools conduct activities that receive Part H assistance from the State or carry out the State's Part H program. The Part H regulations do not make further provision for technical assistance, and section 684(b)(6) of the Act prohibits use of Part H funds by the Secretary of the Interior for that purpose.

Changes: None.

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

Section 303.300 State Eligibility Criteria and Procedures

Comment: One commenter requested that the Department clarify whether "informed clinical opinion," which is required by this section to be a part of a State's assessment criteria and procedures, permits a determination that a child is eligible for Part H services without "testing." Another commenter suggested that further

sufficiently detailed and declines to address the subject matter of the note further.

Changes: Section 303.344(e)(1)(ii) has been revised to require that the IFSP include, for the non-required services that are listed in that document, either the funding sources to be used in paying for those services or the steps that will be taken to secure them through public or private sources. A conforming change has been made to the language in the note following § 303.13.

Paragraph (f)—Dates; duration of services.

Comment: Commenters requested that the Department clarify the circumstances under which it may be appropriate to delay the start of certain services identified in the IFSP. These commenters expressed the concern that a complete list of services for a child may not be able to be identified at the time of the development of the IFSP. Also, commenters requested that the regulations provide that services be initiated on a schedule formulated by the family and appropriate for the family's particular circumstance.

Discussion: The purpose of the proposed revision of § 303.344(f) is to ensure that there is no unnecessary delay between the development and the implementation of the service plan in the IFSP. The revision does not compel the initiation of all services immediately; the needs of the child and the family determine the timelines for the initiation of services. Like other aspects of the IFSP, the schedule of service delivery is developed in the process described in § 303.342, and the parents of the child are full participants in that process. If a need for additional services is identified after the initial development of the IFSP, the document may be modified as described in § 303.342.

Changes: None.

Paragraph (g)—Service coordinator.

Comment: One commenter requested that the Department add a note stating that parents may serve as their own service coordinators, as well as serve as service coordinators for other families after they receive appropriate training. Another commenter requested that the Department clarify who would be responsible for providing Part H services to hospitalized children and how a child would receive Part H services after discharge from the hospital. Finally, one commenter requested that the Department substitute the phrase "child care" for "day care" in Note 1 following § 303.344.

Discussion: The Secretary acknowledges that parents of children with disabilities have the primary responsibility for coordinating their children's affairs. At the same time, the Part H statute requires that the IFSP identify the person who will be responsible for the implementation of the IFSP and "coordination with other agencies and persons." Section 677(d)(7) of the Act. The Secretary believes this responsibility is properly the State's and that the Part H program functions best when parents work with a service coordinator provided by the State.

The legislative history of the 1991 Amendments suggests that the qualifications for a service coordinator reflected in

§ 303.344(g) were expanded in order to include persons from professions other than the one "most immediately relevant to the (child's) or family's needs" (section 677(d)(7)) and appropriately trained parents of other children. H.R. Rep. No. 198, 102d Cong., 1st Sess. 18–19 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 25–26 (1991). All service coordinators must also meet the qualifications for this area under §§ 303.21 and 303.22. Parents may perform certain coordinating responsibilities for their own children in concert with the service coordinator provided by the State.

The Secretary declines to provide further guidance on the provision of services to hospitalized children, which is governed by the IFSP process discussed above. The Secretary agrees with the commenter's suggested editorial changes in Note 1 following the regulatory text.

Changes: Note 1 following § 303.344 has been revised to refer to "child care centers" rather than "day care centers" in the list of examples of natural environments.

Section 303.360 Comprehensive System of Personnel Development

Comment: One commenter requested that the Department add regulatory language emphasizing interdisciplinary training. Another commenter requested that the Department clearly indicate the supervisory relationship between a paraprofessional and a professional. A third commenter requested that language be added to require training related to the understanding of preschool special education under section 619 of the Act. Fourth, a commenter requested that the comprehensive system of personnel development (CSPD) be permitted to include training personnel to work in urban areas as well as the rural areas referred to in the Act. Finally, commenters requested that the Department expand the list of who may be trained and the types of training they may receive.

Discussion: The Secretary declines to revise the regulations to emphasize interdisciplinary training, which is addressed in § 303.360(b)(2). Commenters are referred to the discussion of the note following § 303.12 for the Secretary's views on the use of paraprofessionals in the Part H program. Training related to the preschool program under section 619 may be included in the CSPD under § 303.360(c)(4), which reflects new section 676(b)(8)(D) of the Act. The Secretary declines to make mandatory an activity that is permissible under the statute. The Secretary interprets the recitation of permissible elements of a CSPD in section 676(b)(8)(A)–(D) (implemented in proposed § 303.360(c)) as illustrative and not exhaustive. Therefore, no regulatory change is needed to allow the inclusion in the CSPD of training personnel to work in urban areas. The determination of whether to include this activity is a matter of State responsibility. Similarly, since the regulations do not specify each type of personnel needed for the early intervention system or the types of training to be provided, no change is necessary in response to the last comment summarized above.

Changes: The numbering of paragraphs in § 303.360(c) has been corrected.

Subpart E—Procedural Safeguards

Section 303.404 Parent Consent

Comment: Commenters requested clarification of whether a parent's refusal to consent to either the provision of services or an initial evaluation of his or her child is final, or whether a public agency may override a parent's refusal to consent through a due process hearing. Also, one commenter requested that written parental consent be required for initial IFSP development.

Discussion: The Secretary agrees that a clarification of the consequences of a parent's refusal to consent would be useful. A public agency may not override a parent's refusal to consent to the provision of Part H services. See § 303.405. However, the initial evaluation of a child is a requirement under Part B as well as Part H. See § 300.128(a)(1) and Note 2 following that section of the Part B regulations. Therefore, the governing regulations in the case of a parent's refusal to consent to an initial evaluation are those issued under Part B. Under § 300.504(b) of those regulations, a public agency may initiate procedures (described in that section) to challenge the parents' refusal to permit the evaluation to take place. If the agency is successful in its challenge, the evaluation may proceed.

Regulations under Part H require written parental consent before early intervention services described in the IFSP may be provided. See § 303.342(e). As a practical matter, the participation of parents is essential to the development of the IFSP.

Changes: Note 2 following § 303.404 has been revised to clarify that a public agency may initiate procedures to challenge a parent's refusal to consent to the child's initial evaluation, as discussed above.

Section 303.460 Confidentiality of Information

Comment: One commenter requested that the Department state that the phrase "consistent with Federal and State law" in paragraph (a) of this section means only that the written notice and consent provisions do not supersede existing child abuse and other relevant statutes protecting children or the public health that also provide for the sharing of information among agencies.

Second, commenters requested that the Department add a provision requiring that agencies or programs participating in the State's early intervention system obtain parental consent prior to making a referral to either the Part H program or the Part B program. These commenters stated that parental consent prior to referral is necessary to protect against the unauthorized disclosure of the child's identity to another agency or program.

Third, commenters requested that the Department define the term "agency" to mean the traditional administrative entity responsible for a defined function or activity (e.g., public health or mental health) so that parental consent would be required for the exchange of information within an umbrella agency that encompassed many functions.

Finally, one commenter requested that the Department add a note encouraging the lead agency and other agencies to pursue 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.

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BILLING CODE 4000-01-U



TWENTY-SECOND GUAM LEGISLATURE

SENATOR MADELEINE Z. BORDALLO

CHAIRPERSON

COMMITTEE ON EDUCATION

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PUBLIC HEARING

Public Hearing Room

Temporary Legislative Building, Agana

Thursday, April 07, 1994

2:00 p.m.

AGENDA

BILLS:

- I. Bill No. 802
"An Act to utilize the old Guam Memorial Hospital building as the central records office for the government of Guam."
- II. Bill No. 955
"An Act to amend Chapter 14A of Title XII of the Government Code of Guam relative to providing educational and training facilities and opportunities for all individuals with disabilities; thereby making local legislation conform with federal legislation, the 'Individuals with Disabilities Education Act'."

MINA'BENTE DOS NA
LIHESLATURA

Senador

Madeleine Z. Bordallo

GEHILO

KUMITEN IDUKASION

MEMBER

COMMITTEE ON HEALTH,
ECOLOGY AND WELFARE

COMMITTEE ON YOUTH,
SENIOR CITIZENS AND
CULTURAL AFFAIRS

COMMITTEE ON JUDICIARY
AND CRIMINAL JUSTICE

COMMITTEE ON
ELECTRICAL POWER, AND
CONSUMER PROTECTION

COMMITTEE ON WATER
UTILITIES AND
ELECTRONIC
COMMUNICATIONS

COMMITTEE ON TOURISM
AND TRANSPORTATION

**MEMBERS OF THE GENERAL PUBLIC ARE INVITED
TO ATTEND AND EXPRESS THEIR VIEWS.**

**COMMITTEE ON EDUCATION
 TWENTY SECOND GUAM LEGISLATURE**

PUBLIC HEARING ROOM
 Temporary Legislative Building, Agana
 Thursday, April 07, 1994
 2:00 p.m.

WITNESS ATTENDANCE SHEET

BILL 955

<u>NAME</u> (PRINT)	<u>SIGNATURE</u>	<u>TESTIMONY</u>		<u>AGENCY/INTEREST GROUP</u>	<u>COMMENTS</u>	
		Written	Oral		Favor	Against
VINCENT LEON GUERRERO	<i>Vincent Guerrero</i>	X		DOE - Special Ed	X	
WILLIAM F. RYMER	<i>W. Rymer</i>			DOE - Sped Ed.	X	
Nieves Flores	<i>Nieves Flores</i>			DOE - SPED	X	
Jully Flores	<i>J Flores</i>			Autism Society of Guam	X	

**TWENTY SECOND GUAM LEGISLATURE
1994 (SECOND) REGULAR SESSION**

**BILL NO. 955(25)
INTRODUCED BY:**

**M. Z. BORDALLO
C. T. C. GUTIERREZ**

"AN ACT TO AMEND CHAPTER 14A OF TITLE XII OF THE GOVERNMENT CODE OF GUAM RELATIVE TO PROVIDING EDUCATIONAL AND TRAINING FACILITIES AND OPPORTUNITIES FOR ALL INDIVIDUALS WITH DISABILITIES; THEREBY MAKING LOCAL LEGISLATION CONFORM WITH FEDERAL LEGISLATION, THE 'INDIVIDUALS WITH DISABILITIES EDUCATION ACT'."

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter 14A of Title XII of the Government Code of Guam is hereby repealed and reenacted to read as follows:

"CHAPTER 14A

**Educational and Training Facilities
and opportunities for students with Disabilities**

Section 11980. Same: Declaration of Public Policy.

It is and shall be the duty of the various branches and divisions of the public school system of Guam to offer free and appropriate public educational and training services and opportunities to all children of school age whether normal, gifted or disabled regardless of the degree of disability.

1 **Section 11981. Same: Purpose.**

2 (a) The purpose of this part is to require that appropriate special
3 education and training facilities, services, classes, and opportunities be provided
4 for all individuals with disabilities of public school age, or within the broader
5 age limits hereinafter provided.

6 (b) As used in this part the term "Children With Disabilities" means
7 those children evaluated as having mental retardation, hearing impairments
8 including deafness, speech or language impairments, visual impairments
9 including blindness, serious emotional disturbance, orthopedic impairments,
10 specific learning disabilities, deaf-blindness, or multiple disabilities, and who
11 because of those impairments need special educational and/or training services,
12 facilities and opportunities.

13 (c) All identified children with disabilities birth (0) through (21) are
14 eligible for services in the categories described in the preceding paragraph,
15 subject to the rules and regulations of the Board of Education.

16 (d) For children zero (0) through two (2) the term "Children With
17 Disabilities" means those children - - - Who require early intervention services
18 because they are experiencing developmental delays or have a diagnosed physical
19 or mental condition that has a high probability of resulting in developmental
20 delay, including children zero (0) through two (2) who are at risk of having
21 substantial developmental delays.

22 (e) For children aged three (3) through five (5) the term "Children With
23 Disabilities" means those children - - - Who are experiencing developmental
24 delays, as defined by the Board of Education and as measured by appropriate
25 diagnostic instruments and procedures, in one or more of the following areas:
26 physical development, cognitive development, communication development,
27 social or emotional development, or adaptive development: and (i) Who, for that
28 reason, need special education and related services.

29

1 **Section 11982.** Same: Identification for Special Education and Related
2 Services.

3 (a) The Annual State Plan for Special Education will assure that, to the
4 maximum extent appropriate, children with disabilities (including children in
5 public or private institutions or other care facilities) are educated with children
6 who are not disabled and that special classes, separate schooling, or other
7 removal of children with disabilities from the regular education environment
8 occurs only when the nature or severity of the disability is such that education
9 in regular classes with the use of supplementary aids and services cannot be
10 achieved satisfactorily.

11 (b) Children suspected of experiencing disabilities and needing special
12 education and related services are to be identified,

- 13 1. At the school level --- through procedures established by the
14 Territorial Board of Education or by concerned staff
15 requesting an In-School Referral Meeting.
- 16 2. Outside the school --- by concerned parents and/or other
17 individuals contacting the Department of Education, Division
18 of Special Education.

19 The policies and procedures for identification and referral of disabled
20 students shall be established by the Board of Education through the "Territory
21 of Guam State Plan for the Delivery of Special Education Services Under Part
22 "B" of the Individuals with Disabilities Education Act (IDEA) and the
23 "Handbook for the Delivery of Special Education Services."

24 (c) Each child, who is determined to be eligible, through the evaluation
25 process established by the Board of Education, for special education and related
26 services shall be subject to an Individualized Education Plan (IEP) to be
27 developed by the appropriate personnel.

- 28 1. The Individualized Education Plan (IEP) must include a
29 statement of the student's current educational functioning

1 level, annual goals and objectives for each area of need, a
2 statement of the specific special education and related services
3 that will be provided to the student, as well as a statement of
4 the extent the student will participate in regular education
5 programs.

6 2. The IEP must include a statement of projected dates for
7 service delivery, and objective criteria and evaluation
8 procedures for determining progress made in achieving stated
9 objectives. For students with disabilities 14 years of age or
10 eighth (8th) grade, (or younger when determined appropriate),
11 the IEP must also include a plan for "transition services."
12 Transition services should include the following areas:

13 a. instruction, community experiences,
14 development of employment and/or other
15 post-school adult living objectives, and if
16 appropriate, acquisition of daily living
17 skills and functional vocational evaluation.
18 Whenever, the issue of transition is to be
19 discussed, the student shall be invited to the
20 IEP meeting. Whether the student attends
21 or not, his or her interests and preferences
22 must be taken into account. Adult service
23 agencies must also include a representative
24 that is likely to be responsible for providing
25 or paying for transition services.

26 3. For the purpose of developing an Individualized Educational
27 Program (IEP) an IEP meeting must be conducted insuring
28 that a plan is designed to meet all eligible disabled student's
29 unique educational needs, and that a determination is made

- 1 as to where the IEP will be implemented.
- 2 4. Re-evaluation of a child's progress within his/her
- 3 Individualized Educational Program (IEP) will be required
- 4 every year.
- 5 5. A formal evaluation of a student with disabilities will be made
- 6 prior to the initial placement or denial of placement of a child
- 7 with a disability into a special education program and as part
- 8 of a three year re-evaluation.
- 9 (d) Placement decisions are to be determined after the IEP has been
- 10 developed.
- 11 1. Placement is to be based upon the student with disabilities
- 12 IEP, and in accordance with the mandate under the Individuals
- 13 with Disabilities Education Act (IDEA) for placement in the
- 14 Least Restrictive Environment. In order for a student with
- 15 disabilities to be removed from the regular classroom
- 16 program, the school must document that supplemental aids and
- 17 services have been appropriately implemented, without
- 18 success.
- 19 2. Placement decisions are not to be based solely upon the
- 20 availability of programs.
- 21 3. A full continuum of services must be available to students
- 22 with disabilities as outlined in the IDEA,
- 23 4. When determining placement for a student with limited
- 24 English proficiency all policies and procedures that are used
- 25 to determine placement for non limited English proficient
- 26 students must be followed. Additionally the full continuum
- 27 of special education and bilingual/LOTE services is to be
- 28 made available to the student with a disability,
- 29 (e) For individuals with disabilities, ages 0-2, an Individualized Family

1 Plan (IFSP) will be developed which will:

- 2 1. Be developed jointly by the family and appropriate qualified
3 personnel involved in the provision of early intervention
4 services.
- 5 2. Be based on a multidisciplinary assessment of the unique
6 strengths and needs of the infant and toddler and the
7 identification of services appropriate to meet such needs.
- 8 3. Be based on a family directed assessment of the resources,
9 priorities, and concerns of the family and the identification of
10 the support and services necessary to enhance the family's
11 capacity to meet the developmental needs of their infant
12 and/or toddler with a disability.

13
14 **Section 11983. Same: Special Education Teachers, Classes, Materials,**
15 **Opportunities, Day Schools, Hospital Classes and Home Instruction.**

16 The Board of Education shall, subject to the limitations hereinafter
17 specified, provide appropriate special education teachers, aides, materials, and
18 opportunities for all children identified, in accordance with the Individuals with
19 Disabilities Education Act (IDEA), as needing special education, so that such
20 children shall be kept in regular school classes unless the nature and severity of
21 the disability requires the establishment and maintenance of special classes. For
22 the same purpose the Board of Education, shall remove all architectural and
23 other barriers as mandated in the Americans with Disabilities Act (ADA) and
24 Section 504 of the Rehabilitation Act of 1973 including the use of certified
25 interpreters for the Hearing Impaired and transcribers and readers for the
26 Visually Impaired, pursuant to qualifications for those positions as established
27 by law.

28 All Government of Guam agencies and departments shall pool their
29 resources for meeting the requirements of this part.

1 **Section 11984. Amended: Payment of Extra Cost of Instruction,**
2 **Education or Training of Children with Disabilities and Other Exceptional**
3 **Children.**

4 (a) Whether the children with disabilities, certified as needing or
5 requiring the special educational or training services, are served in regular
6 classes, special classes, day schools, hospital classes, or in their homes, each
7 school is hereby authorized to include in its program cost the salaries, according
8 to the Official Guam Teachers Salary Schedule, of each special education
9 teacher, therapist, and/or teacher's aide who is qualified according to the
10 requirements of the Board of Education and who is engaged in the teaching or
11 training, exclusively, of individuals with disabilities who are eligible to receive
12 such education or training as specified herein and according to the rules and
13 regulations of the Board of Education.

14 (b) The allotment of teachers as hereinabove stated is to be
15 determined by the Board of Education within the mandates of the
16 IDEA.

17 The special education teachers, therapists, and aides employed
18 by the allotment as aforesaid shall primarily serve those children
19 needing special educational or training services for whose benefit
20 the allotment was named. These services shall be rendered under
21 such rules and regulations as the Department of Education may
22 adopt.
23

24 **Section 11985. Same. Qualifications of Supervisors,**
25 **Teachers, Therapists, and Aides.**

26 No person shall be employed as director, supervisor,
27 therapist, teacher, or aide who does not hold a valid degree or
28 certificate as provided by law or unless he/she has had such
29 special training as the Board of Education may require.
30

31 **Section 11986. Same: Purchase of Services.**

1 The Department of Education may, with the consent and
2 approval of the Board of Education, contract with the Department
3 of Public Health and Social Services and Guam Memorial
4 Hospital, or approved private schools, facilities, or contractors for
5 the rendition of special educational and training services, physical
6 and occupational therapy, speech therapy and auditory training, on
7 the job training, or distributive education to particular children
8 with disabilities when for valid reasons it is not feasible or
9 desirable for the Board of Education to itself serve the particular
10 child or children to the same extent. This shall not relieve the
11 Board of Education of the Department of Education of its
12 obligation or supervision. In such event that the Board of
13 Education is authorized to pay tuition or training costs not to
14 exceed the average gross cost per educable student in the school
15 plus the pro rata part of the allotment provided above for serving
16 pupils requiring special education, training, or opportunities. The
17 time of payment may be determined by contract.

18 No pupil shall be eligible for funds for contract services
19 under this Act unless he has been diagnosed and evaluated as
20 eligible to enroll in an appropriate special education class or
21 facility if such were available in his school, following procedures
22 put forth in the Territory of Guam State Plan ensuring that a
23 complete continuum of special education placement, required by
24 34 CFR §300,551 (a) (b) under the IDEA is available for
25 placement in the least restrictive environment.

1 **Section 11987. Same: Administration of Chapter.**

2 The entire provisions of this Chapter shall be
3 administered by the Department of Education with the approval of
4 the Board of Education; and the Board of Education shall
5 promulgate such rules and regulations as it may deem necessary
6 for the proper administration of this chapter.

7 The Board of Education shall prescribe the standards and
8 approve the conditions under which the facilities are furnished or
9 services purchased. The Director of Education shall be
10 responsible for administrating the same.

11
12 **Section 11988. Same: Cooperation With Other Agencies:
13 Gifts or Donations.**

14 School agencies are required to cooperate with other agencies
15 within the Territory, both public and private, that are interested in
16 working toward the education or training or the alleviation of the
17 disabilities or children with disabilities and other exceptional
18 children, and said educational agencies are authorized to accept
19 gifts or donations, or aid from such private agencies.

20
21 **Section 11989. Same: Advisory Committee.**

22 The Territorial Board of Education shall ensure that a
23 Territorial Advisory Panel shall be established composed of fifteen
24 (15) persons involved in or concerned with the education of children with
25 disabilities. The Territorial Board of Education shall be responsible
26 for establishing procedures for appointment of the members,

1 length of terms, and frequency of meetings,

2 The membership must include at least one person
3 representative of each of the following groups:

- 4 (1) Individuals with disabilities;
- 5 (2) Teachers of children with disabilities;
- 6 (3) Parents of children with disabilities;
- 7 (4) Territorial educational officials;
- 8 (5) Special education program administrators;
- 9 (6) A Representative from the Guam Legislature, to be
10 appointed by the Speaker of the Legislature.
- 11 (6) Others at the discretion of the Director of
12 Education and the Guam Territorial Board of
13 Education.

14 The Advisory Panel shall:

- 15 (a) Advise the Board of Education of unmet needs
16 within the Territory in the education of children
17 with disabilities;
- 18 (b) Comment publicly on the State Plan and the
19 policies and procedures proposed for issuance by
20 the Territory regarding the education of children
21 with disabilities and the procedures for distribution
22 of funds under this part; and
- 23 (c) By July 1 of each year the Advisory Panel shall submit an
24 annual report of panel activities and suggestions to the Board
25 of Education. This report will be made available to the public
26 in manner consistent with other public reporting requirements.

1 **Section 11990. Same: Names, Facts and Opinions to be Furnished the**
2 **Board of Education and the Department of Education.**

3 It shall be the duty of all government agencies offering services to children
4 with disabilities to provide to the Department of Education or its designated
5 competent authorities, names, facts, and opinions pertinent to the proper
6 educational or training placement of children with disabilities or other
7 exceptional children who enrolled or expect to enroll in the public schools, and
8 to advise other volunteer agencies by the Board of education of those facts
9 concerning any exceptional child in need of the services provided by that
10 agency.

11 The facts and opinions pertinent to the proper education or training of
12 children with disabilities and other exceptional children shall so far as
13 practicable be used in order to provide services to children to enable them to
14 remain in the mainstream of education to the greatest degree that is appropriate.
15