

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA97

Early Intervention Program for Infants and Toddlers With Disabilities

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

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Early Intervention Program for Infants and Toddlers with Disabilities. These amendments are needed to conform the existing regulations to changes enacted in the Individuals with Disabilities Education Act Amendments of 1997.

DATES: These regulations take effect on July 1, 1998. However, affected parties do not have to comply with the information collection requirements in §§ 303.100, 303.145, 303.148, 303.167, 303.344, 303.361, 303.426, 303.601, 303.650, and 303.653 until the Department of Education publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers in a separate final regulation notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Thomas Irvin, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3090, Washington, DC 20202. Telephone: (202) 205-5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-5465.

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SUPPLEMENTARY INFORMATION:**Background**

These regulations conform existing regulations to the amendments to the Early Intervention Program for Infants and Toddlers with Disabilities made by the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Public Law 105-17, enacted on June 4, 1997. The statutory amendments governing Part H take effect on July 1, 1998. One of those amendments

transfers the Early Intervention Program from Part H of the IDEA to Part C. Because these regulations also take effect on July 1, 1998, we refer to the Early Intervention Program in these regulations as "Part C" of the IDEA.

The Secretary is publishing in this issue of the **Federal Register** a Notice of request for advice and recommendations on regulatory issues regarding Part C of IDEA.

These final regulations incorporate statutory amendments and remove obsolete regulatory provisions. However, on October 22, 1997, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (62 FR 55025) for Parts 300, 301, and 303, that contains proposed regulations of IDEA that were not affected by the IDEA Amendments of 1997. (See 62 FR 55053-55054, 55122-55123).

Significant Changes

Although many of the statutory amendments reflected in these regulations make minor changes, several will have a significant impact on States. The following is a summary of the major statutory provisions incorporated in 34 CFR Part 303, the Department's regulations for the Early Intervention Program for Infants and Toddlers with Disabilities.

1. Policies and Procedures on Natural Environments

The IDEA Amendments of 1997 added two provisions relating to the provision of early intervention services in natural environments. The first requires, as a component of each statewide system, policies and procedures to ensure that, to the maximum extent appropriate, early intervention services are provided in natural environments, and occur elsewhere only if early intervention cannot be achieved in a natural environment. This provision is reflected in § 303.167(c) of these regulations. Because the components of the statewide system must be addressed in each State's application for funds under Part C, States must develop written policies and procedures for submission to the Department as part of each State's application for funds, and must implement those policies beginning on July 1, 1998. The second provision, found in § 303.344(d)(1)(ii) of these regulations, requires that each individualized family service plan (IFSP) contain a statement of the natural environments in which services are to be provided and a justification of the extent, if any, to which the services will not be provided in a natural

environment. In addition, the Secretary moves the definition of "natural environments" from § 303.12(b) to a new § 303.18 to make it easier to find.

2. Personnel Standards

Section 303.361 is amended to implement two new statutory provisions that mirror changes regarding personnel made to the Part B program (Assistance to States for the Education of Children with Disabilities). The first provision, in section 635(a)(9) of the IDEA and added to these regulations as § 303.361(f), allows paraprofessionals and assistants who are appropriately trained and supervised, under State law, regulations or policy, to be used to assist in the provision of early intervention services under this part. Also added, as § 303.361(g), is the new provision from section 635(b) of the IDEA that a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services, including, in a geographic area where there is a shortage of those personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meeting State standards within three years.

A State may exercise the option in § 303.361(g) even though the State has reached its established date, under § 303.361(c), for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State. As a practical matter, it is essential that a State have a mechanism for serving eligible children if service needs exceed available personnel who meet appropriate professional requirements in the State for a specific profession or discipline. A State that continues to have shortages of personnel meeting appropriate professional requirements in the State must address those shortages in its comprehensive system of personnel development under § 303.360.

If a State has established only one entry-level academic degree for employment of personnel in a specific profession, modification of that standard as necessary to ensure the provision of early intervention services to all eligible infants and toddlers in the State would not violate the provisions of § 303.361(b) and (c).

3. Mediation

Section 303.419 is added to these regulations to reflect the new statutory provisions of section 615(e) of the Act concerning mediation, made applicable

to Part C by section 639(a)(8) of the Act. These provisions include the general responsibility to establish and implement mediation procedures, specific requirements regarding the mediation process, and the statutory provision that requires parents who elect not to use mediation to meet with a disinterested party who would explain the benefits of mediation and encourage its use.

With respect to § 303.419(b)(2), regarding the list of qualified mediators, the House Committee Report on Public Law 105-17 includes the following statement:

* * * the bill provides that the State shall maintain a list of individuals who are qualified mediators. The Committee intends that whenever such a mediator is not selected on a random basis from that list, both the parents and the agency are involved in selecting the mediator, and are in agreement with the individual who is selected * * *. Individuals who serve as mediators under part C of this bill are expected to be selected in the same manner described in this paragraph and to meet the same criteria of impartiality with respect to employment in the lead agency [which is prohibited] and not having a personal and professional conflict of interest. (H. Rep. No. 105-95, pp. 106-107 (1997)).

High standards of impartiality will encourage the use of mediation by ensuring parties to a dispute the availability of an objective third party to mediate disputes.

Section 615(e)(2)(A)(ii) of the Act provides that the mediation process shall not be used to deny or delay a parent's right to due process. In accordance with that provision, a public agency should not deny or delay a parent's right to a due process hearing based on a parent's failure to participate in the meeting described in § 303.419(c)(1) of these regulations.

With regard to the provision in § 303.419(b)(6) that mediation discussions must be confidential and may not be used in any subsequent due process hearings or civil proceedings, the House Committee Report on Public Law 105-17 notes that "nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties." (H. Rep. No. 105-95, p. 107 (1997)). The Report also includes an example of a confidentiality pledge, which makes clear that the intent of this provision is to protect discussions that occur in the mediation process from use in subsequent due process hearings and civil proceedings under the Act, and not to exempt from discovery, because it was disclosed during mediation,

information that otherwise would be subject to discovery.

4. Payor of Last Resort

Language is added to § 303.527 to reflect the amendment to section 640 of the Act regarding the prohibition against using Part C funds to pay for services that would have been paid for from another source in the absence of Part C. The amendment specifically includes the CHAMPUS program as such a source of funds. As stated by the House Report accompanying the bill, "[t]he bill clarifies that part C is truly the payor of last resort even for military families who are eligible for medical programs administered by the Department of Defense." (H. Rep. No. 105-95, p. 116 (1997)).

5. SICCs

Section 641 of the Act made several changes regarding State Interagency Coordination Councils (SICCs). First, as reflected in § 303.600, State discretion as to the number of members on SICCs has been increased, as Congress deleted the previous membership range. Second, § 303.601 is amended to include additional required members of SICCs: At least one representative from a State Head Start agency or program, and at least one from a State agency responsible for child care. Third, two new provisions reflect statutory changes that expand the scope of SICCs' functions. New § 303.650(c) authorizes SICCs to advise agencies regarding the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for services in that State. Finally, in § 303.653, regarding the transition of toddlers with disabilities, SICCs are now required to give advice and assistance regarding transition not just of toddlers with disabilities who are eligible for Part B preschool services, but also transitions of all other toddlers, to any appropriate services.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that all children in America will start school

ready to learn. The regulations further the objective of this goal by implementing a program that gives infants and toddlers with disabilities the services and support needed to prepare them to participate in school with their peers.

Waiver of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes and remove obsolete regulatory provisions. Removal of the regulations does not establish or affect substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

Because these regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

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 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.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 303

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

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

Dated: April 7, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends part 303 of title 34 of the Code of Federal Regulations as follows:

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

1. The authority citation for part 303 is revised to read as follows:

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

2. In the table below, for each section listed in the left column, remove the authority citation following the section listed in the middle column, and add the authority citation listed in the right column:

Section	Remove	Add
303.1	20 U.S.C. 1471	20 U.S.C. 1431.
303.2	20 U.S.C. 1401(a)(6), 1484	20 U.S.C. 1401(27), 1443.
303.7	20 U.S.C. 1472(1)	20 U.S.C. 1432(5).
303.8	20 U.S.C. 1472(4)	20 U.S.C. 1432(2).
303.9	20 U.S.C. 1471–1485	20 U.S.C. 1431–1445.
303.10	20 U.S.C. 1472(3)	20 U.S.C. 1432(3).
303.11	20 U.S.C. 1471–1485	20 U.S.C. 1431–1445.
303.12	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)..	20 U.S.C. 1401(1) and (2); 1432(4).
303.13	20 U.S.C. 1472(2)	20 U.S.C. 1432(4).
303.14	20 U.S.C. 1477	20 U.S.C. 1436.
303.15	20 U.S.C. 1471–1485	20 U.S.C. 1431–1445.
303.16	20 U.S.C. 1472(1)	20 U.S.C. 1432(5).
303.17	20 U.S.C. 1476(b)(3), 1477(a)	20 U.S.C. 1435(a)(3), 1436(a).
303.18	20 U.S.C. 1477	20 U.S.C. 1436.
303.19	20 U.S.C. 1471–1485	20 U.S.C. 1431–1445.
303.20	20 U.S.C. 1471–1485	20 U.S.C. 1431–1445.
303.21	20 U.S.C. 1472(2)	20 U.S.C. 1432(4).
303.22	20 U.S.C. 1472(2)	20 U.S.C. 1432(4).
303.23	20 U.S.C. 1401(a)(6)	20 U.S.C. 1401(27).
303.24	20 U.S.C. 1471–1485	20 U.S.C. 1431–1445.
303.101	20 U.S.C. 1478	20 U.S.C. 1437.
303.110	20 U.S.C. 1478(a)(4)	20 U.S.C. 1437(a)(3).
303.111	20 U.S.C. 1478(a)(4)(A)	20 U.S.C. 1437(a)(7).
303.112	20 U.S.C. 1478(a)(4)	20 U.S.C. 1437(a)(7).
303.120	20 U.S.C. 1478(b)	20 U.S.C. 1437(b).
303.121	20 U.S.C. 1478(b)(4)	20 U.S.C. 1437(b)(4).
303.122	20 U.S.C. 1478(b)(3)	20 U.S.C. 1437(b)(3).
303.123	20 U.S.C. 1478(b)(5)(A)	20 U.S.C. 1437(b)(5)(A).
303.124	20 U.S.C. 1478(b)(5)(B)	20 U.S.C. 1437(b)(5)(B).
303.125	20 U.S.C. 1478(b)(6)	20 U.S.C. 1437(b)(6).
303.126	20 U.S.C. 1478(b)(2)	20 U.S.C. 1437(b)(2).
303.127	20 U.S.C. 1478(b)(1)	20 U.S.C. 1437(b)(1).
303.128	20 U.S.C. 1478(b)(7)	20 U.S.C. 1437(b)(7).
303.141	20 U.S.C. 1478(a)(3)	20 U.S.C. 1437(a)(3).
303.142	20 U.S.C. 1478(a)(1)	20 U.S.C. 1437(a)(1).
303.143	20 U.S.C. 1478(a)(2)	20 U.S.C. 1437(a)(2).
303.144	20 U.S.C. 1478(a)(4)	20 U.S.C. 1437(a)(3).
303.145	20 U.S.C. 1478(a)(4) and (a)(6)	20 U.S.C. 1437(a)(3) and (a)(5).
303.146	20 U.S.C. 1478(a)(5)	20 U.S.C. 1437(a)(7).
303.148	20 U.S.C. 1478(a)(8)	20 U.S.C. 1437(a)(8).
303.160	20 U.S.C. 1476(a), 1478(a)(9)	20 U.S.C. 1435(a), 1437(a)(9).
303.161	20 U.S.C. 1476(b)(1)	20 U.S.C. 1435(a)(1).
303.162	20 U.S.C. 1476(b)(7)	20 U.S.C. 1435(a)(7).
303.164	20 U.S.C. 1476(b)(6)	20 U.S.C. 1435(a)(6).
303.165	20 U.S.C. 1476(b)(5)	20 U.S.C. 1435(a)(5).
303.166	20 U.S.C. 1476(b)(3); 1477(a)(1), (d)(2), and (d)(3)	20 U.S.C. 1435(a)(3); 1436(a)(1), (d)(2), and (d)(3).
303.167	20 U.S.C. 1476(b)(4), 1477(d)	20 U.S.C. 1435(a)(4), 1436(d).
303.168	20 U.S.C. 1476(b)(8)	20 U.S.C. 1435(a)(8).
303.169	20 U.S.C. 1476(b)(13)	20 U.S.C. 1435(a)(9).
303.170	20 U.S.C. 1476(b)(12)	20 U.S.C. 1435(a)(13).
303.171	20 U.S.C. 1476 (b)(9)(A)	20 U.S.C. 1435(a)(10)(A).
303.172	20 U.S.C. 1476(b)(9)	20 U.S.C. 1435(a)(10).
303.173	20 U.S.C. 1476(b)(9)(D) and (b)(d)(E), 1476(b)(11), 1481	20 U.S.C. 1435(a)(10)(D) and (E), 1435(a)(12), 1440.

Section	Remove	Add
303.174	20 U.S.C. 1476(b)(9)(E)	20 U.S.C. 1435(a)(10)(E) and (F).
303.175	20 U.S.C. 1476(b)(10)	20 U.S.C. 1435(a)(11).
303.176	20 U.S.C. 1476(b)(14)	20 U.S.C. 1435(a)(14).
303.180	20 U.S.C. 1484(b); H.R. Rep. No. 198, 102d Cong., 1st Sess.22 (1991)	20 U.S.C. 1443(b).
303.200	20 U.S.C. 1484(c)	20 U.S.C. 1443(c).
303.201	20 U.S.C. 1484(d)	20 U.S.C. 1443(d).
303.202	20 U.S.C. 1484(c)(1)	20 U.S.C. 1443(c)(2).
303.203	20 U.S.C. 1484(b)	20 U.S.C. 1443(b).
303.300	20 U.S.C. 1472(1), 1476(b)(1)	20 U.S.C. 1432(5), 1435(a)(1).
303.301	20 U.S.C. 1476(b)(7)	20 U.S.C. 1435(a)(7).
303.320	20 U.S.C. 1476(b)(6)	20 U.S.C. 1435(a)(6).
303.321	20 U.S.C. 1472(2)(E)(vii), 1476(b)(5)	1432(4)(E)(vii), 1435(a)(5).
303.322	20 U.S.C. 1476(b)(3); 1477(a)(1), (a)(2), (d)(1), and (d)(2)	20 U.S.C. 1435(a)(3); 1436(a)(1), (a)(2), (d)(1), and (d)(2).
303.323	20 U.S.C. 1476(b)(3); 1477(a)(1), (d)(2), and (sic)	20 U.S.C. 1435(a)(3); 1436(a)(1), (d)(2), and (d)(3).
303.340	20 U.S.C. 1477	20 U.S.C. 1436.
303.342	20 U.S.C. 1477	20 U.S.C. 1436.
303.343	20 U.S.C. 1477(b)	20 U.S.C. 1436(b).
303.344	20 U.S.C. 1477(d)	20 U.S.C. 1436(d).
303.345	20 U.S.C. 1477(c)	20 U.S.C. 1436(c).
303.346	20 U.S.C. 1477	20 U.S.C. 1436.
303.360	20 U.S.C. 1476(b)(8)	20 U.S.C. 1435(a)(8).
303.361	20 U.S.C. 1476(b)(13)	20 U.S.C. 1435(a)(9).
303.400	20 U.S.C. 1480	20 U.S.C. 1439.
303.401	20 U.S.C. 1480	20 U.S.C. 1439.
303.402	20 U.S.C. 1480(4)	20 U.S.C. 1439(a)(4).
303.404	20 U.S.C. 1480	20 U.S.C. 1439.
303.405	20 U.S.C. 1480(3)	20 U.S.C. 1439(a)(3).
303.406	20 U.S.C. 1480(5)	20 U.S.C. 1439(a)(5).
303.420	20 U.S.C. 1480(1)	20 U.S.C. 1439(a)(1).
303.421	20 U.S.C. 1480(1)	20 U.S.C. 1439(a)(1).
303.422	20 U.S.C. 1480	20 U.S.C. 1439.
303.423	20 U.S.C. 1480(1)	20 U.S.C. 1439(a)(1).
303.424	20 U.S.C. 1480(1)	20 U.S.C. 1439(a)(1).
303.425	20 U.S.C. 1480(7)	20 U.S.C. 1439(a)(7).
303.460	20 U.S.C. 1480(2), 1483	20 U.S.C. 1439(a)(2), 1442.
303.500	20 U.S.C. 1476(b)(9)	20 U.S.C. 1435(a)(10).
303.501	20 U.S.C. 1476(b)(9)(A)	20 U.S.C. 1435(a)(10)(A).
303.521	20 U.S.C. 1472(2)	20 U.S.C. 1432(4).
303.522	20 U.S.C. 1476(b)(9)(B)	20 U.S.C. 1435(a)(10)(B).
303.523	20 U.S.C. 1476(b)(9)(C) and (b)(9)(F)	20 U.S.C. 1435(a)(10)(C) and (a)(10)(F).
303.524	20 U.S.C. 1476(b)(9)(C) and (b)(9)(E)	20 U.S.C. 1435(a)(10)(C) and (a)(10)(E).
303.525	20 U.S.C. 1476(b)(9)(D)	20 U.S.C. 1435(a)(10)(D).
303.526	20 U.S.C. 1476(b)(10)	20 U.S.C. 1435(a)(11).
303.527	20 U.S.C. 1481	20 U.S.C. 1440.
303.528	20 U.S.C. 1476(b)(11)	20 U.S.C. 1435(a)(12).
303.540	20 U.S.C. 1476(b)(14)	20 U.S.C. 1435(a)(14).
303.560	20 U.S.C. 1473, 1476(b)(9)	20 U.S.C. 1433, 1435(a)(10).
303.600	20 U.S.C. 1482(a)	20 U.S.C. 1441(a).
303.601	20 U.S.C. 1482(b)	20 U.S.C. 1441(b).
303.602	20 U.S.C. 1479, 1482(c) and (d)	20 U.S.C. 1438, 1441(c) and (d).
303.603	20 U.S.C. 1482(c) and (d)	20 U.S.C. 1441(c) and (d).
303.604	20 U.S.C. 1482(f)	20 U.S.C. 1441(f).
303.650	20 U.S.C. 1482(e)(1)(A) and (e)(2)	20 U.S.C. 1441(e)(1)(A) and (e)(2).
303.651	20 U.S.C. 1482(e)(1)(A)	20 U.S.C. 1441(e)(1)(A).
303.652	20 U.S.C. 1482(e)(1)(B)	20 U.S.C. 1441(e)(1)(B).
303.653	20 U.S.C. 1482(e)(1)(C)	20 U.S.C. 1441(e)(1)(C).
303.654	20 U.S.C. 1482(e)(1)(D)	20 U.S.C. 1441(e)(1)(D).

3. In Part 303 revise all references to "Part H" to read "Part C".

§ 303.1 [Amended]

4. Section 303.1(a) is amended by removing the word "Develop" and adding, in its place, the word "Maintain".

§ 303.2 [Amended]

5. Section 303.2 is amended by adding a period after "Mariana Islands" and removing the remainder of the sentence.

6. Section 303.3 is amended by removing "plan, develop," and adding, in its place, the word "maintain" in paragraph (a); and by adding a new paragraph (e) and revising the authority

citation following the section to read as follows:

§ 303.3 Activities that may be supported under this part.

* * * * *

(e) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate

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

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

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

§ 303.5 [Amended]

7. Section 303.5 is amended by removing “; and” at the end of paragraph (a)(1)(vii), and adding, in its place, a period; and by removing paragraph (a)(1)(viii).

§ 303.12 [Amended]

8. Section 303.12 is amended by removing paragraph (b)(2) and removing the paragraph designation “(1)” in paragraph (b).

§§ 303.18–303.24 [Redesignated]

9. Sections 303.18 through 303.24 are redesignated as §§ 303.19 through 303.25, respectively.

10. A new § 303.18 is added to read as follows:

§ 303.18 Natural environments.

As used in this part, *natural environments* means settings that are natural or normal for the child's age peers who have no disabilities.

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

§ 303.20 [Amended]

11. Redesignated § 303.20(b)(1) is amended by removing the words “develop and implement”, and adding, in their place, the word “maintain”; and by removing “303.150”, and adding, in its place, “303.140”.

§ 303.24 [Amended]

12–13. Redesignated § 303.24 is amended by adding a period after “Mariana Islands” and removing the remainder of the sentence.

14. Section 303.100 is revised to read as follows:

§ 303.100 Conditions of assistance.

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

- (1) An approved application that contains the information required in this part, including—
 - (i) The information required in §§ 303.140 through 303.148; and

(ii) The information required in §§ 303.161 through 303.176; and

(2) The statement of assurances required under §§ 303.120 through 303.128, on file with the Secretary.

(b) If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.

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

(d) The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if—

- (1) An amendment is made to the Act, or to a regulation under this part;
- (2) A new interpretation is made to the Act by a Federal court or the State's highest court; or
- (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.

(Authority: 20 U.S.C. 1434 and 1437)

§ 303.111 [Amended]

15. Section 303.111 is amended by adding “, including individuals with disabilities and parents of infants and toddlers with disabilities,” after the word “public” in paragraph (a); and by removing “part H”, and adding, in its place, “part C” in paragraph (b)(1).

16. Section 303.113 is amended by revising the heading, revising paragraph (b), and revising the authority citation following the section to read as follows:

§ 303.113 Reviewing public comments received.

* * * * *

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

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

§ 303.124 [Amended]

17. Section 303.124(a) is amended by removing the words “and increase” after the word “supplement”.

18. Section 303.140 is revised to read as follows:

§ 303.140 General.

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

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

(b) A State policy is in effect that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State.

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

§ 303.144 [Amended]

19. Section 303.144 is amended by removing “plan, develop,” and adding, in its place, “maintain”.

20. Section 303.145 is amended by removing “(d)” in paragraph (a), and adding, in its place, “(e)”; adding “including a description of any services provided to at-risk infants and toddlers as defined in § 303.16(b), and their families,” in paragraph (d)(1) before the word “consistent”; redesignating paragraph (e) as paragraph (f); and adding a new paragraph (e) to read as follows:

§ 303.145 Description of use of funds.

* * * * *

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

* * * * *

21. Section 303.147 is revised to read as follows:

§ 303.147 Services to all geographic areas.

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

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

22. Section 303.148 is amended by revising the undesignated introductory text, paragraph (a), and paragraph (b); and, in note 1 following the authority citation, adding a period after the word “agencies” in the first bullet and removing the remainder of the sentence, adding a period after the word “children” in the second bullet and removing the remainder of the sentence, and removing “sections 613(a)(15) and 614(a)(5) of the Act” and adding, in its

place, "section 612(a)(9) of the Act" in the third bullet; and removing note 2 following the authority citation; to read as follows:

§ 303.148 Transition to preschool programs.

Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including—

(a) A description of how the families will be included in the transition plans;

(b) A description of how the lead agency under this part will—

(1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law;

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

(ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;

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

(4) Establish a transition plan; and

* * * * *

23. Sections 303.149 through 303.155 and the undesignated center heading preceding § 303.149 are removed.

24. The undesignated center heading preceding § 303.160 is amended by removing "for years four, five, and thereafter".

§ 303.160 [Amended]

25. Section 303.160 is amended by removing the words "on reservations" and adding, in their place, the words "and their families residing on a reservation geographically located in the State".

§ 303.163 [Removed and Reserved]

26. Section 303.163 is removed and reserved.

27. Section 303.167 is amended by revising paragraph (a); removing the period at the end of paragraph (b)(2), and adding, in its place, "; and"; and adding a new paragraph (c) to read as follows:

§ 303.167 Individualized family service plans.

* * * * *

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

* * * * *

(c) Policies and procedures to ensure that—

(1) To the maximum extent appropriate, early intervention services are provided in natural environments; and

(2) The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

§ 303.170 [Amended]

28. Section 303.170 is amended by removing "303.420" and adding, in its place, "303.419" in paragraph (a); and inserting "303.419," before "303.420(b)" in paragraph (b)(2).

29. Section 303.204 is amended by designating the existing text as paragraph (a), adding a new paragraph (b), and revising the authority citation following the section to read as follows:

§ 303.204 Payments to the jurisdictions.

* * * * *

(b) The provisions of Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.

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

§ 303.205 [Removed]

30. Section 303.205 is removed.

§ 303.302 [Amended]

31. Section 303.302 and the note following the section are removed.

§ 303.320 [Amended]

32. Section 303.320 is amended by removing the words "of information materials" in the undesignated introductory text, and adding, in their place, ", especially hospitals and physicians, of materials".

§ 303.321 [Amended]

33. Section 303.321 is amended by adding a period after the word

"services" the first place it appears in paragraph (b)(2) and removing the remainder of the sentence.

§ 303.322 [Amended]

34. Section 303.322 is amended by removing the words "including assessment activities related to the child and the child's family" in paragraph (a)(1) and adding, in their place, "and a family-directed identification of the needs of each child's family to appropriately assist in the development of the child"; removing the words "related to enhancing the development of the child" in paragraph (d)(1), and adding, in their place, "and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child"; and removing the note following the section.

§ 303.341 [Removed and Reserved]

35. Section 303.341 is removed and reserved.

§ 303.344 [Amended]

36. Section 303.344(d)(1)(ii) is amended by adding "§ 303.18" after "§ 303.12(b)" and adding ", and a justification of the extent, if any, to which the services will not be provided in a natural environment" after "provided".

§ 303.360 [Amended]

37. Section 303.360 is amended by adding "and inner-city" after the word "rural" in paragraph (c)(3); and adding "or to other preschool or other appropriate services" after the word "Act" in paragraph (c)(4).

38. Section 303.361 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 303.361 Personnel standards.

* * * * *

(f) A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to eligible children under this part.

(g) In implementing this section, a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to eligible children, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this

section, consistent with State law, within three years.

39. Section 303.406 is amended by revising paragraph (d)(1) to read as follows:

§ 303.406 Surrogate parents.

* * * * *

(d) * * *

(1) A person assigned as a surrogate parent may not be—

(i) An employee of any State agency; or

(ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.

* * * * *

40. The undesignated center heading preceding § 303.420 is revised to read “Mediation and Due Process Procedures for Parents and Children”.

41. A new § 303.419 is added following the undesignated center heading to read as follows:

§ 303.419 Mediation.

(a) *General.* Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under § 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under § 303.420, or to deny any other rights afforded under Part C of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Meeting to encourage mediation.* A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

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

§ 303.420 [Amended]

42. Section 303.420 is amended by revising the heading to read “*Due process procedures.*”; adding “including procedures for mediation as described in § 303.419,” after the words “written procedures” in the undesignated introductory text; adding “mediation and” before “due process” in paragraph (a); adding “§ 303.419 and” before “§ 303.421” in paragraph (b)(1); and, in note 2 following the section, removing the second and third paragraphs.

§ 303.424 [Amended]

43–45. Section 303.424 is revised by removing “section 680(1) of the Act” and adding, in its place, “section 639(a)(1) of the Act.”

§ 303.522 [Amended]

46. Section 303.522 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6), respectively.

§ 303.527 [Amended]

47. Section 303.527 is amended by removing “but for the enactment of Part H of the Act” in paragraph (a), and adding, in its place, “, including any medical program administered by the Secretary of Defense, but for the enactment of Part C of the Act”.

48. Section 303.540 is amended by revising paragraph (a)(2) to read as follows:

§ 303.540 Data collection.

(a) * * *

(2) Provide for reporting data required under section 618 of the Act that relates to this part.

* * * * *

49. Section 303.600 is amended by revising paragraph (a) to read as follows:

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council.

* * * * *

50. Section 303.601 is amended by revising paragraph (a)(7) and adding new paragraphs (a)(8) and (9) to read as follows:

§ 303.601 Composition.

(a) * * *

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

(8) At least one member must be from a Head Start agency or program in the State.

(9) At least one member must be from a State agency responsible for child care.

* * * * *

§ 303.602 [Amended]

51. Section 303.602 is amended by removing the word “by” in paragraph (a) introductory text, and adding, in its place, the word “of”.

52. Section 303.650 is amended by adding a new paragraph (c) to read as follows:

§ 303.650 General.

* * * * *

(c) Each Council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

§ 303.653 [Amended]

53. Section 303.653 is amended by adding “preschool and other appropriate services.” after the word “to” and removing the remainder of the sentence.

§ 303.670 [Amended]

54. Section 303.670 and the preceding undesignated center heading are removed.

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