

PART C OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

FINAL REGULATIONS NONREGULATORY GUIDANCE



Office of Special Education Programs
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**IDEA PART C FINAL REGULATIONS
ISSUED SEPTEMBER 28, 2011
AND EFFECTIVE OCTOBER 28, 2011**

**CHANGES IN EARLY INTERVENTION:
A SUMMARY OF MAJOR REGULATORY CHANGES
FOR PARENTS, EARLY INTERVENTION SERVICE
PROVIDERS, AND STATE LEAD AGENCIES**

NON-REGULATORY GUIDANCE

November 2011
Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education

PURPOSE OF THIS GUIDANCE

This guidance provides parents, early intervention service (EIS) providers, State lead agencies, and other interested parties with detailed information about some of the changes made to the Individuals with Disabilities Education Act (IDEA or Act) Part C Regulations in 34 CFR Part 303, as those regulations were published in the Federal Register on September 28, 2011 and made effective on October 28, 2011 (Final Regulations). The Final Regulations can be found at <http://idea.ed.gov/part-c/search/new>.

The Final Regulations reflect changes made to the IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004, and make other necessary changes needed to implement the Early Intervention Program for Infants and Toddlers with Disabilities.

This non-regulatory guidance focuses on the following topics where changes were made to regulatory requirements that directly affect infants and toddlers with disabilities and their families and local EIS providers and programs: (1) Family Engagement; (2) Child Find/Evaluations/Assessments/Eligibility/Initial IFSP (Individualized Family Service Plan); (3) IFSP Development, Implementation, and Review; (4) Transition (including Part C to Part B)/Exiting Part C; and (5) Coordination with Head Start/Early Head Start, Early Education, and Child Care programs.

This non-regulatory guidance identifies some of the changes made to the Final Regulations in these areas and does not impose additional requirements beyond those required under the IDEA and the Final Regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations can be found at <http://idea.ed.gov/part-c/search/new>.

I. Family Engagement

The Final Regulations acknowledge the importance of parents and other family members in supporting a child's development. This section identifies the changes made to 34 CFR Part 303 by the Final Regulations as they directly affect the involvement of parents and families of infants and toddlers with disabilities.

- Section 303.209(d)(1)(ii) requires that the family of a toddler with a disability who is served under Part C be included in the development of the transition plan required under §§303.209(d)(1)(ii) and 303.344(h). (See Section IV related to Transition.)
- Section 303.322 clarifies that if the lead agency determines, after conducting an evaluation, that a child is not an infant or toddler with a disability, the lead agency must provide the parent with prior written notice, including information about the parent's right to dispute the eligibility determination through the IDEA Part C dispute resolution mechanisms.
- Section 303.404(d) requires the lead agency to provide parents with an initial notice when a child is referred to Part C that informs parents about their rights under the IDEA Part C confidentiality provisions and a summary of the record maintenance, destruction, retention, and storage policies with which participating agencies¹ must comply.
- Section 303.405(a) requires a participating agency to comply with a parent's request to inspect and review the early intervention records of his/her child in no more than 10 days after the parent makes the request.
- Section 303.409(c) requires a participating agency to provide, at no cost to the parent, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
- Section 303.414 states the general rule that parental consent is required before a participating agency may disclose personally identifiable information under the IDEA Part C regulations and identifies (rather than incorporating by reference) the IDEA-specific and FERPA-related exceptions to this rule.

II. Child Find/Evaluations and Assessments/Eligibility/Initial IFSP

¹ "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the Part C regulations with respect to a particular child. A participating agency includes the lead agency and EIS providers, but does not include primary referral sources, or those public agencies or private entities that act solely as funding sources for Part C services.

Section 303.300 identifies the major components of the statewide comprehensive, coordinated, multidisciplinary interagency system by specifically distinguishing between pre-referral activities (public awareness and child find), referral, and post-referral IFSP activities (including screening; evaluations; assessments; and IFSP development, review, and implementation). This section identifies the changes made to 34 CFR Part 303 by the Final Regulations as they directly affect these major component areas.

Child Find

- Section 303.117 clarifies that the central directory of early intervention services in the State must be accessible to the general public (i.e., through the lead agency's Web site and other appropriate means) and include accurate, up-to-date information about early intervention services, professional and other groups that provide services to infants and toddlers with disabilities, and research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities.
- Section 303.301(c) requires each lead agency to inform parents of toddlers served under Part C about preschool programs under section 619 of the Act as part of the transition requirements when a child exits the Part C program; that information must be provided not fewer than 90 days prior to the toddler's third birthday.
- Section 303.302(c) requires the State to ensure that the child find system is coordinated with specific agencies, including the following State agencies (in addition to those long-referenced in 34 CFR Part 303): the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA), the State Early Hearing Detection and Intervention (EHDI) system, the Home Visiting program under Maternal and Child Health (MCH-Title V), Child Care programs, and the Children's Health Insurance Program (CHIP).
- Section 303.303(a)(2)(i) requires primary referral sources to refer a child to the Part C program as soon as possible but in no case more than seven days after identification.
- Section 303.310 requires that, within 45 days after the lead agency or EIS provider receives a referral of a child, the screening (if applicable), initial evaluation, initial assessments (of the child and family), and the initial IFSP meeting for that child must be completed (45-day timeline).

Screening

- Section 303.320 adds new screening procedures and confirms that such screening procedures are not required under the Act; rather, using screening procedures is an option that a State may choose to include as a part of its comprehensive child find system.

- Under §303.320(a)(1)(i), the State must provide the parent with prior written notice of its intent to screen the child to determine whether the child is suspected of having a disability and obtain parental consent before administering the screening. That notice must explain the parent's right to request an evaluation at any time during the screening process.
- Section 303.420(a)(1) requires the State to obtain parental consent prior to administering any screening procedures that the State elects to adopt under IDEA Part C.
- Section 303.320(a)(2) requires the State to provide notice of the screening results to the parent and, if the screening results indicate that the child is suspected of having a disability, the State must conduct an evaluation after obtaining parental consent.

Evaluations and Assessments

- Section 303.310(b)(2) adds an exception to the 45-day timeline. If a parent has not provided consent to the initial screening, evaluation, or assessment of a child, despite documented, repeated attempts to obtain parental consent, the lead agency must complete the initial evaluation, assessments, and IFSP meeting as soon as possible after parental consent is obtained.
- Section 303.321(a)(2)(i) clarifies that the term initial evaluation refers to the evaluation of a child that is used to determine his or her initial eligibility for services under Part C of the Act. Section 303.321(a)(2)(iii) clarifies that the term initial assessments refers to the assessment of the child and the family assessment that are conducted prior to the child's first IFSP meeting.
- The definition of multidisciplinary in §303.24 requires the IFSP Team to include the parent and at least two individuals from separate disciplines or professions, and one of these individuals must be the service coordinator.
- Sections 303.25(a) and 303.321(a)(5) and (a)(6) clarify that when conducting evaluations and assessments, the native language for a child who is limited English proficient is the language of the child's parents but that it may be the language of the child, if determined developmentally appropriate by the qualified personnel conducting the evaluation and assessment.
- In the definition of native language in §303.25(a), the term limited English proficient (LEP) has the same meaning as in IDEA section 602(18), which cross-references the same term in section 9101 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Eligibility

- Section 303.5 adds a definition for at-risk infant or toddler. An at-risk infant or toddler is a child less than three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the child. A State may expand the definition to include a child who is at risk of experiencing developmental delays because of biological or environmental factors that can be identified.
- Section 303.21(a)(2) provides the following examples of infants or toddlers with disabilities who have a diagnosed physical or mental condition that has a high probability of resulting in developmental delays:
 - chromosomal abnormalities;
 - severe attachment disorders;
 - disorders secondary to exposure to toxic substances, including fetal alcohol syndrome;
 - genetic or congenital disorders;
 - sensory impairments;
 - inborn errors of metabolism;
 - congenital infections; and
 - disorders reflecting disturbance of the development of the nervous system.
- Section 303.111 requires each State to provide a rigorous definition of developmental delay that will be used by the State in carrying out programs under Part C in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C. Section 303.203 requires each State to include its definition of developmental delay in the State's IDEA Part C grant application.

III. IFSP Development, Implementation, and Review

This section identifies the changes made to 34 CFR Part 303 by the Final Regulations as they directly affect IFSP development, implementation, and review.

- Section 303.31 defines qualified personnel as personnel who have met State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.
- Section 303.32 provides that scientifically based research has the meaning given the term in section 9101(37) of the ESEA.²

² The term “scientifically based research” under the ESEA—
(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

- Section 303.34 provides that service coordination (in addition to the other functions and duties that have been longstanding in 34 CFR Part 303) includes (a) conducting follow-up activities to determine that appropriate early intervention services are provided (§303.34(b)(7)) and (b) coordinating funding sources for early intervention services required under Part C (§303.34(b)(9)). Service coordinators are no longer required to coordinate funding for other services identified in the IFSP, but not required to be provided, under Part C.

IV. Transition (including Part C to Part B)/Exiting Part C

Transition services are those services that assist a toddler with a disability and his or her family to experience a smooth and effective transition from the early intervention program under Part C to the child's next program or other appropriate services, including services that may be identified for a child who is no longer eligible to receive Part C or Part B services. This section identifies the changes made to 34 CFR Part 303 by the Final Regulations as they directly affect the transition of children exiting the Part C program.

Application Requirements: Intra-agency and Interagency Agreements and Opt-Out Policy

- Section 303.209(a)(3) requires that all lead agencies, including those in which the State educational agency (SEA) is the lead agency, to establish an interagency or an intra-agency agreement between the early intervention program under Part C of the Act and the preschool program under section 619 of Part B of the Act. (Previously, the State lead agency was only required to establish and submit an interagency agreement if it was not also the SEA responsible for administering the Part B preschool program under IDEA section 619.)
- Section 303.209(a)(3)(ii) requires that interagency and intra-agency agreements include specific IDEA Part B and C transition requirements.
- Section 303.401(e) permits the State to adopt an opt-out policy that requires EIS providers to inform parents of a toddler with a disability of the intended disclosure of

(B) includes research that—

- employs systematic, empirical methods that draw on observation or experiment;
 - involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.
- (20 U.S.C. 7801)

personally identifiable information (child's name, child's date of birth, and parent contact information) to the SEA and the local educational agency (LEA) where the child resides and allows the parents a specified time period to object to the disclosure in writing.

Transition Notification

- Section 303.209(b)(1)(i) requires LEA/SEA Notification: For children exiting Part C and potentially eligible for Part B services, the lead agency must notify, not fewer than 90 days before the toddler's third birthday, the SEA and the LEA for the area where the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law.
- Sections 303.209(b)(1) and 303.401 require that the LEA/SEA Notification include the child's name, date of birth, and parent contact information.
- Section 303.209(b)(1)(ii) clarifies that if the lead agency determines a child to be eligible for Part C early intervention services between 45 and 90 days prior to the toddler's third birthday, the lead agency must provide the LEA/SEA Notification as soon as possible after the toddler's eligibility determination.
- Section 303.209(b)(1)(iii) provides that if a child is referred to the lead agency fewer than 45 days before that toddler's third birthday, the lead agency is not required to conduct the initial evaluation, assessment, or IFSP meeting, and if that child may be eligible for preschool services or other services under Part B of the Act, the lead agency, with parental consent, required under §303.414, must refer the toddler to the SEA and appropriate LEA.
- Section 303.209(b)(2) requires the State to ensure that the LEA/SEA Notification is consistent with any opt-out policy that the State has adopted, which would permit a parent to object to disclosure of personally identifiable information.

Transition Conference and Meeting

- Section 303.209(c) clarifies that, for a child exiting Part C, the transition conference must be held, with family approval, at least 90 days and not more than nine months prior to the toddler's third birthday for children potentially eligible for Part B services.
- Section 303.209(e) clarifies that a transition conference or meeting to develop the transition plan must meet the IFSP meeting requirements and that this conference and the IFSP meeting may be combined.

Transition Plan

- Section 303.209(d)(2) clarifies that the transition plan be included in the IFSP.
- Section 303.209(d)(2) requires that a transition plan be established in a child's IFSP not fewer than 90 days (and at the discretion of all parties, not more than 9 months) before a toddler's third birthday.
- Section 303.209(d)(3) requires the transition plan to include steps for the toddler with a disability and his or her family to exit from the Part C program (§303.209(d)(3)(i)) and any transition services that the IFSP team identifies as needed by that toddler and his or her family (§303.209(d)(3)(ii)).
- Section 303.344(h) clarifies that the steps included in the IFSP must support transition to one of the following: preschool services under Part B of the Act; early education, Head Start, Early Head Start, or child care programs; other appropriate services or, for children participating under a State's option in §303.211 to provide early intervention services to children beyond age three, to preschool services, kindergarten, or elementary school.

Serving Children Ages Three and Older

- Section 303.211 allows each State to develop and implement a policy under which parents of children who are receiving early intervention services and who are eligible to receive services under section 619 of Part B of the Act can choose for these children to continue receiving early intervention services under Part C of the Act. At the State's option, early intervention services could be available to these children beyond age three until they enter, or are eligible under State law to enter, kindergarten.
- Section 303.211(b)(1), requires parents whose child is receiving services beyond age three under §303.211 to be provided an annual notice of procedural safeguards.
- Section 303.211(b)(3) clarifies that parents whose child is receiving services under Part C past the age of three retain the right, at any time, to opt-out of these early intervention services and, instead, to obtain a free appropriate public education (FAPE) under Part B of the Act for their child.
- Section 303.211(b)(4) clarifies that the lead agency must continue to provide all early intervention services identified in the IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR §300.306.
- Section 303.211(b)(5) requires the lead agency to obtain informed consent from

the parent of any child with a disability for the continuation of early intervention services for that child. Consent must be obtained before the child reaches three years of age, where practicable.

- In a State that elects to offer Part C services to children ages three and older, §§303.209(f) and 303.211(b)(6) clarify when and what transition requirements in §303.209 apply to toddlers with disabilities at age three and to children receiving services under §303.211 as they transition to preschool, kindergarten, or elementary school.

V. **Coordination with Head Start/Early Head Start, Early Education, and Child Care**

The U.S. Department of Education is committed to helping States transform early learning programs and services into integrated early learning systems that focus on improving the health (including physical), social, emotional, communication, adaptive, and cognitive outcomes of children through collaborative efforts with participating agencies.

- Section 303.210(a) requires each State application for IDEA Part C funds to include a description of the State's efforts to promote collaboration among Head Start, Early Head Start, early education, and child care programs, and services under Part C.
- Section 303.210(b) requires all State lead agencies to participate on the Head Start State Advisory Council on Early Childhood Education and Care established under the Head Start Act.
- Section 303.605(c) permits the State Interagency Coordinating Council to coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other State interagency early learning initiatives, as appropriate.

**IDEA PART C FINAL REGULATIONS
PUBLISHED SEPTEMBER 28, 2011
AND EFFECTIVE OCTOBER 28, 2011**

**USE OF PUBLIC BENEFITS OR INSURANCE OR
PRIVATE INSURANCE TO PAY FOR PART C SERVICES**

NON-REGULATORY GUIDANCE

November 2011
Office of Special Education Programs
Office of Special Education and Rehabilitative Services
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PURPOSE OF THIS GUIDANCE

This guidance provides parents, early intervention service (EIS) providers, State lead agencies, and other interested parties with detailed information about some of the changes made to the Individuals with Disabilities Education Act (IDEA or Act) Part C Regulations in 34 CFR Part 303, as those regulations were published in the Federal Register on September 28, 2011, and made effective on October 28, 2011, (Final Regulations). The Final Regulations can be found at <http://idea.ed.gov/part-c/search/new>.

The Final Regulations reflect changes made to the IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004, and make other necessary changes needed to implement the Early Intervention Program for Infants and Toddlers with Disabilities.

This non-regulatory guidance focuses on State responsibilities and parents' rights regarding the use of different funding sources to pay for Part C services, including public benefits or insurance, private insurance, and family fees, if the State elects to use such funding sources. It includes information regarding parental consent and notification requirements prior to a State's use of a child's or parent's public or private insurance, the State option to implement a system of payments for Part C services, and State requirements to have in place methods (such as a State statute or regulation or interagency agreement or other appropriate written methods) to ensure the timely provision of, and payment for, Part C services.

This non-regulatory guidance describes the regulatory changes reflected in the Final Regulations and does not impose additional requirements beyond those required under the IDEA and the Final Regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations can be found at <http://idea.ed.gov/part-c/search/new>.

The Department has revised the Part C regulations regarding the use of public benefits or insurance (e.g., Medicaid) and private insurance to pay for Part C services. IDEA sections 635(a)(10)(A) and 640 require States to use Federal IDEA Part C funds as a payor of last resort and to identify and coordinate all available funding resources to pay for Part C services.

Additionally, IDEA section 632(4)(B) requires Part C services to be provided at no cost unless a State has adopted a system of payments for Part C services, which system can include use of public benefits or insurance or private insurance or costs to parents for some services (e.g., speech, physical, or occupational therapy).¹ A system of payments is the State's written policy regarding the costs parents and children may incur for receipt of Part C services and may include use of public or private insurance or a sliding fee scale. The Part C regulations provide the following important protections for parents of infants and toddlers with disabilities when States use public benefits or insurance or private insurance to pay for Part C services.

I. Federal Requirements for States to Coordinate Resources for Part C Services, Use Part C Funds as a Payor of Last Resort, and Ensure Methods to Ensure the Provision of, and Financial Responsibility for, Part C Services

- Section 303.120(b) requires each State lead agency to identify and coordinate all available resources to pay for early intervention services, including Federal, State, local, and private sources.
- Section 303.202 requires the State to provide a certification with its application that its methods under 303.511 and contracts with EIS providers are current as of the date of submission of the application and reflect the applicable requirements in Subpart F of the Part C regulations (which include use of funds, payor of last resort, and system of payments requirements).
- Section 303.501 sets forth the permissive uses of Federal IDEA Part C funds by lead agencies.
- Section 303.510 requires Federal IDEA Part C funds to be used as a payor of last resort.
- Section 303.511 requires the State to have methods in place that define the financial and service responsibility of each State-level agency that provides or pays for Part C services.
- Section 303.511(a)(2) and (b) requires that the State's methods be embodied in a State statute or regulation or interagency agreement or other appropriate written method that is submitted with the State's IDEA Part C grant application and approved by the Secretary of the U.S. Department of Education.

¹ Section 303.521(b) lists those required functions of the lead agency, which the lead agency must make available and for which fees may not be charged. These required functions are child find, evaluation and assessment, service coordination, the development and review of the IFSP, and implementation of the procedural safeguards.

- Section 303.511 requires that the State's methods must include:
 - Procedures for the timely resolution of any interagency or intragency disputes related to the payment for Part C services (§303.511(c)).
 - A method to ensure that Part C services are not delayed or denied to an eligible child or family because of disputes between agencies (§303.511(d)).

II. Federal Requirements for a State's System of Payments

- Section 303.14(a)(3) defines early intervention services under IDEA Part C as services provided at no cost, unless, the State has implemented policies establishing a system of payments by families in accordance with §§303.520 and 303.521, including a schedule of sliding fees.
- Section 303.520 permits a State to develop policies that may result in a cost to the family to participate in the State's Part C system. A State may include a range of funding sources to pay for Part C services including:
 - the child's or parent's public benefits or insurance
 - the child's or parent's private insurance
 - co-payments
 - deductibles
 - direct payment such as through a sliding fee scale or a cost participation schedule.
- Sections 303.520 and 303.521 clarify the requirements for a State's system of payments policies (i.e., using sources such as public benefits or insurance or private insurance, and family fees) to pay for Part C services. Under §303.521(a), the State's system of payments policies must be in writing and specify which functions or services are subject to the system of payments.
- Section 303.521(c) provides that if the State has a State law requiring the provision of a free appropriate public education (FAPE) for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any Part C services that constitute FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the IDEA.

A. Use of Family Fees or Cost Participation to Pay for IDEA Part C Services

Under §303.521(a) the State's system of payments for family fee policies must also include:

- The payment system and **schedule of sliding or cost participation fees** (co-payments or deductibles) that may be charged to the parent for Part C services.
- The **base and amount of payments or fees**.

- The State's definition of **ability to pay** and its definition of **inability to pay**, and how the State makes the determination of the ability or inability to pay.
- The State's **procedural safeguard rights** for children and families under the State's system of payments.
- Provisions stating that failure to provide the requisite income information may result in a charge of a fee as indicated on the fee schedule and specifying the fee to be charged.
- Provisions that permit, but do not require, the lead agency to use Federal IDEA Part C funds or other funds to pay for out-of-pocket costs such as premiums, deductibles, or co-payments.
- Under §303.521(a)(4), the State must provide **assurances** that:
 - Families will not be charged for the cost of those required functions specified in §303.521(b), including service coordination, child find, evaluations and assessments, Individualized Family Service Plan (IFSP) development, and implementation of procedural safeguards.
 - The inability to pay for services will not result in a delay or denial of Part C services. If the parent or family meets the State's definition of inability to pay, all Part C services must be provided at no cost to the child or parent.
 - Families will not be charged an amount that exceeds the actual cost of providing a particular Part C service.
 - Families with public benefits or insurance or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance.

B. Use of Public Benefits or Insurance to Pay for IDEA Part C Services

- Under §303.520(a)(2)(ii), the State may not require parents to sign up for or enroll in a public benefits or insurance program as a condition for their child to receive Part C services and the State must obtain parental consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in a public benefits or insurance program.
- Section 303.520(a)(2)(ii) requires the State to obtain parental consent to use a child's or parent's public benefits or insurance if the child or parent is already enrolled in such a program and use of such benefits or insurance to pay for Part C services would:
 - Decrease available lifetime coverage or any other insured benefit for the child or parent.
 - Result in the child's parents paying for services that would otherwise have been paid for by the public benefits or insurance program.
 - Result in any increase in premiums or cancellation of public benefits or insurance for the child or parents.
 - Risk the loss of eligibility for the child or the child's parents for home and community-based waivers based on total health-related costs.
- Section 303.520(a)(2)(iii) also provides that if the parent does not provide consent for the use of the child's or parent's public benefits or insurance when such consent is required

(i.e., the child or parent is already enrolled and one of the no-cost protections cited above applies or if the child or parent is not enrolled in such a program), the State lead agency must still make all Part C services on the IFSP available to the child and family, subject to any State's system of payments, if applicable.

- When the State uses a child's or parent's public benefits or insurance to pay for Part C services (regardless of whether consent is required), the State must provide a notification to the parent, which must include:
 - A statement that parental consent is required under §303.414 (if applicable) before the Part C lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State agency responsible for administering the State's public benefits or insurance program (§303.520(a)(3)(i)). Note that parental consent is not required under §303.414, when the State lead agency is the same agency that administers the public benefits or insurance program unless the State lead agency chooses to require parental consent even if the State lead agency is the Medicaid or public benefits or insurance agency.
 - A statement that parents have the right to withdraw their consent to disclosure of personally identifiable information to the State agency responsible for administration of the State's public benefits or insurance program at any time (§303.520(a)(3)(iii)).
 - A statement of the general categories of costs to parents for participating in the public benefits or insurance program (such as co-payments or deductibles or the required use of private insurance as the primary insurance) (§303.520(a)(3)(iv)). If the general costs are not identified in the notification, the State cannot charge those costs to the parent (§303.520(a)(4)).

C. Use of Private Insurance to Pay for IDEA Part C Services

- Section 303.520(b)(1) clarifies that parental consent is required for the use of a parent's private insurance to pay for Part C services unless the exception in §303.520(b)(2) applies.
- Section 303.520(b)(1) provides that parental consent must be obtained when the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.
- Section 303.520(b)(2) clarifies that parental consent is not required when a State has enacted a State statute regarding private health insurance coverage for Part C services that expressly provides that the use of private health insurance to pay for Part C services:
 - Cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the child, the parent, or the child's family members who are covered under that health insurance policy;

- Cannot negatively affect the availability of health insurance to the child with a disability, the parent, or the child's family members who are covered under that health insurance policy; and health insurance coverage may not be discontinued for these individuals due to the use of private health insurance to pay for Part C services; and
- Cannot be the basis for increasing the health insurance premiums of the child with a disability, the parent, or the child's family members covered under that health insurance policy.
- Under §303.520(b)(1)(ii), if a State requires a parent to use private insurance to pay for Part C services and that use results in a cost to the parent (such as co-payments, deductibles), those general types of costs must be included in the State's system of payments or the State may not charge those costs to parents.
- Under §303.520(b)(1)(iii), the State must provide a copy to the parent of its system of payment policies that identify the potential costs that the parents may incur as a result of the use of their private insurance to pay for Part C services.

D. Procedural Safeguards

- Section 303.521(e)(1) provides that a State's system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one or more of the following:
 - Participate in mediation in accordance with §303.431
 - Request a due process hearing under §§303.436 or 303.441, whichever is applicable
 - File a State complaint under §303.434
 - Use any other procedure established by the State for the speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights, including the right to pursue, in a timely manner, the options described above.
- Section 303.521(e)(2) provides that a State must inform parents of these procedural safeguard options by either:
 - Providing parents with a copy of the State's system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or
 - Including this information with the notice provided to parents under §303.421.

III. Treatment of Funds Received under Public Benefits or Insurance, Private Insurance, or Family Fees

A. Treatment of Funds for Purposes of Program Income

- Public Benefits or Insurance or Private Insurance: Section 303.520(d)(1) provides that proceeds or funds from public benefits or insurance or from private insurance are not treated as program income for purposes of 34 CFR 80.25.
- Family Fees: Sections 303.520(e) and 303.521(d)(1) provide that funds or fees or costs collected from a parent or the child's family or received by the State from a parent or family member under the State's system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds--(1) are not deducted from the total allowable costs charged under Part C of the IDEA (as set forth in 34 CFR 80.25(g)(1)); and (2) must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2).

B. Treatment of Funds for Purposes of IDEA Part C Maintenance of Effort/Nonsupplanting Requirements

- Federal Funds: Section 303.520(d)(2) provides that if the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for Part C services, those funds are considered neither State nor local funds for maintenance of effort (MOE) purposes under §303.225(b).
- Private Insurance: Section 303.520(d)(3) provides that if the State spends funds from private insurance for services, those funds are considered neither State nor local funds for MOE purposes under §303.225. Section 303.520(b)(3) provides that if a State has enacted a State statute that meets the requirements in §303.520(b)(2), regarding the use of private health insurance coverage to pay for early intervention services under Part C of the IDEA, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.
- Family Fees: Sections 303.520(e) and 303.521(d)(2) provide that funds received by the State from a parent or family member under the State's system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds are considered neither State nor local funds for MOE purposes under §303.225(b).

**IDEA PART C FINAL REGULATIONS
PUBLISHED SEPTEMBER 28, 2011
AND EFFECTIVE OCTOBER 28, 2011**

**CHANGES IN EARLY INTERVENTION:
A SUMMARY OF MAJOR REGULATORY CHANGES
RELATED TO THE ADMINISTRATIVE RESPONSIBILITIES OF
STATE LEAD AGENCIES**

NON-REGULATORY GUIDANCE

November 2011
Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education

PURPOSE OF THIS GUIDANCE

This guidance provides State lead agencies with detailed information about specific changes made to the Individuals with Disabilities Education Act (IDEA or Act) Part C Regulations in 34 CFR Part 303, as those regulations were published in the Federal Register on September 28, 2011, and made effective on October 28, 2011, (Final Regulations). The Final Regulations can be found at <http://idea.ed.gov/part-c/search/new>.

The Final Regulations reflect changes made to the IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004, and make other necessary changes needed to implement the Early Intervention Program for Infants and Toddlers with Disabilities.

This non-regulatory guidance focuses on some of the changes in the administrative responsibilities of State lead agencies, which changes are organized by the following topics: (1) Application Requirements; (2) Federal and State Monitoring and Enforcement; (3) State Interagency Coordinating Council; and (4) Procedural Safeguards.

This non-regulatory guidance identifies some of the changes made to the Final Regulations in these areas and does not impose additional requirements beyond those required under the IDEA and the Final Regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and its regulations can be found at <http://idea.ed.gov/part-c/search/new>.

I. State Application and Assurances

This section identifies changes made to 34 CFR Part 303 by the Final Regulations that directly affect the specific content information that States must provide as part of their annual IDEA Part C grant application.

The IDEA 2004 amendments revised the application requirements in section 635 of the IDEA to be assurance requirements, instead of States having to submit policies and procedures related to those requirements. This change substantially reduced the administrative burden for States. However, section 637(a) of the IDEA continues to require States to submit additional content information for the requirements referenced in that section.

The Final Regulations reorganized the provisions in 34 CFR Part 303 to set forth in Subpart B (§§303.100 through 303.126) the assurance and related application requirements from section 635 of the IDEA, and to set forth in §§303.200 through 303.227 in Subpart C the application requirements from section 637 of the IDEA.

Section 303.101(a) requires the State to provide in its Part C, IDEA grant application assurances to the Secretary regarding early intervention services and the statewide system of early intervention services, which assurances must meet the requirements of section 635 of the IDEA, including the components required in §§303.111 through 303.126 of the Final Regulations.

Section 303.101(b) requires the State to provide to the Secretary: (1) Information that shows that the State meets the State application requirements that are in §§303.200 through 303.212; and (2) Assurances that the State also meets the requirements in §§303.221 through 303.227, which are predominantly fiscal-related assurances.

Section 303.101(c) requires the State to obtain approval from the Secretary before implementing any policy or procedure required to be submitted as part of the State's application based on the requirements in these seven regulatory sections: §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

This guidance identifies the application changes to application requirements in §§303.202 through 303.211 of the Final Regulations. The Department will provide a separate grant application checklist that identifies changes reflected in the Final Regulations that affect Part C, IDEA grant application requirements, including those assurance requirements in §303.101 and §§303.111 through 303.126 of Subpart B and §§303.221 through 303.227 in Subpart C.

A. Certification and Methods to Ensure Services--§§303.202 and 303.203(b)(2)

The IDEA 2004 amendments revised sections 637(a)(2) and 640 of the IDEA to require States to have in place methods to ensure the provision of, and fiscal responsibility for, Part C services, comparable to the IDEA Part B requirements.

- Section 303.202 requires the State to certify in its application that its arrangements and contracts for establishing financial responsibility for providing Part C services are consistent with §§303.500 through 303.521 and are current as of the date of the submission of the certification.
- Section 303.203(b)(2) clarifies that the State's application include, as part of the coordination of all resources, any signed interagency or intra-agency agreements or other written methods, referenced in §303.511(b)(2) and (b)(3), the State uses to ensure the provision of, and establishing the financial responsibility for, early intervention services and to ensure that such services are consistent with the requirements of the IDEA.

B. Information Needed to Understand the State's System (Description of Services, System of Payments and Definitions of Developmental Delay and At-Risk Infant and Toddler)--§§303.21(b), 303.203, and 303.204

- Section 303.203(a) requires the State applications to include a description of the services to be provided to infants and toddlers with disabilities and their families through the State's system under Part C. The description of those services must be consistent with the revised definitions in the Final Regulations.
- Section 303.203(b)(1) requires the State to submit its system of payments policies and procedures that meet the requirements in §§303.510, 303.520, and 303.521. The system of payments includes any policies and procedures that the State has regarding the use of the following funding sources to pay for Part C services: public benefits or insurance, private insurance, and a family cost participation or family fee structure. There is a separate guidance document that addresses the system of payments requirements. The document "Changes in Early Intervention: Use of Public Benefits or Insurance or Private Insurance to Pay for Part C Services" provides specific non-regulatory guidance regarding the Part C system of payment requirements and can be found at the following link: <http://idea.ed.gov/part-c/search/new>.
- Section 303.203(c) requires the State to submit with its application the State's definition of developmental delay.
- If the State provides Part C services to at-risk infants and toddlers, §303.204 requires lead agencies to include in the application the State's definition of at-risk infants and toddlers, which must be consistent with the definition in §§303.5 and 303.21(b), and a description of the early intervention services provided to at-risk infants and toddlers.

C. Use of Funds--§303.205

- Section 303.205 includes the long-standing requirement that the application must describe the use of funds under Part C of the IDEA for the fiscal year or years covered by the application. In addition, §303.205(b) requires lead agencies other than State educational agencies (SEAs) to include in the application the total amount of funds retained by the lead agency for administration purposes, and the number of full-time equivalent administrative positions to be used to implement Part C of the IDEA.

D. Referral Policies for Specific Children--§303.206

- Section 303.206 specifies that the application must include the State's policies and procedures that require the referral for early intervention services under Part C of the IDEA of children under the age of three who are the subject of a substantiated case of child abuse or neglect, or who are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

E. Public Participation Requirements--§303.208

- Section 303.208(a) requires that the State's IDEA Part C grant application be published in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period before the application is submitted to the Department.
- Section 303.208(b) clarifies that the State must include in the State application a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the IDEA and the regulations, the lead agency:
 - Holds public hearings on the new policy or procedure, after providing notice for the public hearing at least 30 days before the hearing is held to enable public participation; and
 - Provides an opportunity for the general public to comment for at least 30 days on the new policy or procedure.

F. Transition Requirements--§303.209

Under §303.209, each State application must include a description of the policies and procedures it will use to ensure a smooth and effective transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under Part C of the IDEA to preschool or other appropriate services, or exiting the program for infants and toddlers with

disabilities. This section identifies the changes made to 34 CFR Part 303 as they affect the transition requirements for all toddlers with disabilities receiving services under Part C of the IDEA before those toddlers turn age three.

- Intra-agency and Interagency Agreements: Section 303.209(a)(3) requires that all States, including those in which the SEA is the lead agency, to establish an interagency or an intra-agency agreement, as appropriate, between the early intervention program under Part C and the preschool program under section 619 of Part B of the IDEA. (Previously, the State lead agency was only required to establish and submit an interagency agreement if it was not also the SEA responsible for administering the Part B preschool program under section 619 of the IDEA.)
 - Section 303.209(a)(3)(ii) requires the transition interagency or intra-agency agreement to address how the lead agency and the SEA will meet the IDEA Part C early childhood transition requirements in §303.209(b) through (f) (including any policies adopted by the lead agency under §303.401(d) and (e), and §303.344(h)) and the IDEA Part B early childhood transition requirements in §§300.101(b), 300.124, 300.321(f) and 300.323(b).
- Transition Notification and Timelines: Section 303.209(b)(1) requires that, for toddlers with disabilities who may be eligible for preschool services under Part B of the IDEA, the lead agency notify (consistent with any opt-out policy adopted by the State under §303.401(e)), the local education agency (LEA) where the toddler resides, and the SEA that the toddler will reach the age of eligibility for Part B services on his or her third birthday. Under the Final Regulations, the Transition Notification:
 - Is only for toddlers with disabilities exiting Part C who are potentially eligible for preschool services under Part B and not all toddlers with disabilities exiting Part C.
 - Must occur no fewer than 90 days before the toddler's third birthday unless the lead agency determines that the toddler is eligible for early intervention services more than 45 days but less than 90 days before that toddler's third birthday, in which case the notification must occur as soon as possible after determining the toddler's eligibility.
 - Must be provided to not only the LEA where the toddler resides, but also the SEA (to permit SEAs to track early childhood transition data that is required under IDEA section 616).
- Opt-Out Policy: Section 303.209(b)(2) incorporates the long-standing policy that the Transition Notification must be consistent with any opt-out policy adopted by the State under §303.401(e). The State's Transition Notification policy must include the details of any opt-out policy adopted by the State lead agency. If the State adopts an opt-out policy, it must comply with

§303.401(e), which allows a State, through policies and procedures, to require early intervention service (EIS) providers to inform the parents of a toddler with a disability of the intended disclosure and allow the parents a specified time to object. If the parents object within the period established by the State, the EIS provider cannot make the disclosure.

- Referral Fewer Than 45 Days Before Third Birthday: Section 303.209(b)(1)(iii) provides that if a child is referred to the lead agency fewer than 45 days before the toddler's third birthday, the lead agency is not required to conduct an evaluation, assessment, or initial Individualized Family Service Plan (IFSP) meeting. If that child may be eligible for preschool services under Part B of the IDEA, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the appropriate LEA.
- Transition Conference Requirements and Timeline: Section 303.209(e) clarifies that transition conferences must meet the accessibility, convenience, consent, and participant requirements for IFSP meetings in §§303.342(d) and (e) and 303.343.
 - Section 303.209(c)(1) incorporates the timeline from section 637(a)(9)(A)(ii)(II) of the IDEA that the transition conference for a toddler with a disability who may be eligible for preschool services under Part B of the IDEA be held not fewer than 90 days, and at the discretion of all parties, not more than 9 months before the toddler's third birthday.
- Transition Plan in IFSP and Timeline: Section 303.209(d)(2) clarifies that the transition plan is not a separate document, but is included in the IFSP, and §303.209(e) clarifies that any meeting to develop the transition plan must meet the accessibility, convenience, consent, and participant requirements for IFSP meetings in §§303.342(d) and (e) and 303.343.
 - New timeline: Section 303.209(d)(2) provides that the transition plan must be established not fewer than 90 days, and at the discretion of all parties, not more than 9 months before the toddler's third birthday.
 - New content requirements: Under §303.209(d)(1)(ii) and (3)(i) and (ii), the transition plan in the IFSP must include, consistent with §303.344(h), any appropriate steps for the toddler to exit the Part C program and any transition services needed by that toddler and his or her family. Under §303.344(h)(2)(iii), the transition steps must include confirmation that the child find information has been transmitted to the LEA and SEA (consistent with any opt-out policy adopted by the State lead agency) and confirmation of transmission of additional information such as the most recent evaluation, assessments, and IFSP (with parent consent, where applicable under §303.414).

- While these are not new requirements, the following statutory requirements from IDEA section 637(a)(9) are now explicitly in the regulations:
 - Section 303.209(d)(1)(i) clarifies that the transition plan must provide for a review of the program options for the toddler for the period from the toddler's third birthday through the remainder of the school year.
 - Under §303.209(d)(1)(ii), the lead agency must include the family in the development of the transition plan.
- Public Awareness Regarding Section 619 of the IDEA and Timeline: As part of its public awareness program under §303.301(c), the lead agency must provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the IDEA.
 - Information regarding the availability of services under section 619 of the IDEA must be provided to parents of toddlers with disabilities not fewer than 90 days prior to the toddler's third birthday.

G. Coordination with Head Start and Early Head Start--§303.210

- Section 303.210(a) requires the State to include in its application a description of the State efforts to promote collaboration among Head Start and Early Head Start programs, early education and child care programs, and services under Part C of the IDEA.
- As a condition of receiving IDEA Part C funds, §303.210(b) requires lead agencies to participate on the State Advisory Council on Early Childhood Education and Care established under the Head Start Act.

H. Serving Children Ages Three and Older--§303.211

The Final Regulations acknowledge the importance of providing States flexibility in the delivery of services to toddlers and young children with disabilities. The State lead agency may choose, for children who are receiving Part C services and are eligible for preschool services under section 619 of the IDEA, to extend Part C services to those children, beyond age three until they enter, or are eligible under State law to enter, kindergarten. The State may choose to implement this option for children beyond age three until the beginning of the school year following their third, fourth or fifth birthday. If the State chooses to implement this option, the Final Regulations at §303.211 provide a full description of the requirements the State must adopt to provide Part C services for children three and older. Here are a few of the requirements for States that elect to offer Part C services beyond age three:

- Section 303.211(b)(3) clarifies that any child receiving services under Part C of the IDEA who is three or older retains the right, at any time, to instead receive a free appropriate public education (FAPE) under Part B of the IDEA.

- Section 303.211(b)(4) clarifies that the lead agency must continue to provide all early intervention services identified in the IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the IDEA is made, unless the LEA has requested parental consent for the initial Part B evaluation and the parent has not provided that consent.
- Sections 303.209(f) and 303.211(b)(6) clarify when and what transition requirements in §303.209 apply to toddlers with disabilities under the age of three and to children receiving services under §303.211 as they transition to preschool, kindergarten, or elementary school.

II. Federal and State Monitoring and Enforcement

The Final Regulations incorporate the monitoring and enforcement provisions in section 616 of the IDEA that apply to the IDEA Part C program through section 642 of the IDEA. This section II, Federal and State Monitoring and Enforcement, identifies some of the major changes made to 34 CFR Part 303 by the Final Regulations as they directly affect State Monitoring and Enforcement, including State Performance Plans (SPPs), data collection and reporting, and Federal Monitoring and Enforcement.

A. State Monitoring and Enforcement

- Section 303.700(a)(2) incorporates the statutory requirements in section 616 of the IDEA and requires the State to make determinations annually about the performance of each early intervention service (EIS) program using the categories specified in the Part C regulations at §303.703(b). The term EIS program is defined at §303.11 as an entity designated by the lead agency for reporting under §§303.700 through 303.702 and allows States flexibility in defining its EIS programs.
- Section 303.700(a)(3) requires the State to select from enforcement mechanisms identified in §303.704 which include:
 - Providing technical assistance, or imposing conditions on the lead agency's funding of an EIS program or an EIS provider identified as "needs assistance" for two consecutive years.
 - Requiring corrective action or an improvement plan that should allow the program to correct noncompliance within a year for an EIS program or an EIS provider identified as "needs intervention" for three or more consecutive years;
 - Withholding of funds, in whole or in part, by the lead agency from an EIS program or an EIS provider identified as "needs intervention" for three or more consecutive years, or identified as "needs substantial assistance" at any time.

- Section 303.700(e) incorporates the long-standing requirement that States ensure that all identified noncompliance is corrected as soon as possible and in no case later than one year after the State’s identification of the noncompliance.
- Section 303.701(a) incorporates the requirements in sections 616 and 642 of the IDEA that apply to Part C of the IDEA regarding the SPP. It requires the SPP to meet the requirements of section 616 of the IDEA and be approved by the Secretary. The SPP must include:
 - An evaluation of the State’s efforts to implement the requirements and purposes of IDEA Part C;
 - A description of how the State will improve implementation; and
 - Measurable and rigorous targets for indicators established by the Secretary under the priority areas described in §303.700(d), which include early intervention services in the natural environment and State general supervision of child find, effective monitoring, use of resolution sessions, mediation, and a system of transition services.
- Section 303.701(c) incorporates the requirements from section 616 of the IDEA that States collect and report valid and reliable information as needed to report annually to the Secretary on the State’s performance under the State’s performance plan, as required by §303.702(b)(2). The new regulatory provision in §303.701(c) clarifies that if the State collects data for some indicators through monitoring and sampling then the State must report data on those indicators for each EIS program at least once during the six-year period of a State performance.
- Section 303.702(b) incorporates the statutory requirement in section 616 of the IDEA that States must report annually to the Secretary on the performance of the State under the State’s performance plan, and to the public on the performance of each EIS program in relation to the State’s Annual Performance Report (APR) targets. The new regulatory provision in §303.702(b) adds that the report to the public on the performance of each EIS program must be “as soon as practicable but no later than 120 days” following the State’s APR submission to the Secretary.

B. Federal Monitoring and Enforcement

- Section 303.703(b) incorporates the statutory requirement in section 616(d) of the IDEA that the Secretary, based on the information reported by the State in the State’s APR, information obtained through monitoring visits, and any other public information made available, must determine if the State:
 - Meets the requirements and purposes of Part C of the IDEA;

- Needs assistance in implementing the requirements of Part C of the IDEA;
 - Needs intervention in implementing the requirements of Part C of the IDEA; or
 - Needs substantial intervention in implementing the requirements of Part C of the IDEA.
- Section 303.703(b)(2) incorporates the statutory requirement in section 616 of the IDEA that, for determinations of “needs intervention” and “needs substantial intervention” made under §303.703(b)(1)(iii) and (b)(1)(iv), the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.
- Section 303.704 incorporates the statutory requirement in section 616(e) of the IDEA regarding the enforcement activities that the Secretary takes based on the State’s annual determination.
- Section 303.706 incorporates the statutory requirement in section 616 of the IDEA and provides that if the Secretary proposes to take or is taking an enforcement action pursuant to §303.704, the State must bring such action to the attention of the public within the State, including by posting the notice on the Web site of the State lead agency and distributing the notice to the media and to EIS programs.

III. State Interagency Coordinating Council

The Final Regulations incorporate the changes made by the 2004 IDEA amendments to section 641 of the IDEA regarding the requirement that each State have a State Interagency Coordinating Council (Council) that is appointed by the Governor. This section III, State Interagency Coordinating Council, identifies the changes made to 34 CFR Part 303 by the Final Regulations as they directly affect the composition and function of the Council.

A. Composition of the Council

- Section 303.601(a) lists the members required to compose the Council and incorporates the four new members added by the 2004 IDEA amendments in section 641 of the IDEA and clarifies that the Council must include:
 - At least one member from the agency responsible for the State Medicaid program and Children’s Health Insurance Program (CHIP) program.
 - At least one member from the agency responsible for the State regulation of private health insurance.
 - At least one designated representative from the Office of the Coordination of Education of Homeless Children and Youth.

- At least one member from the State child welfare agency responsible for foster care.
- At least one member must be from the State agency responsible for children's mental health.
- Section 303.601(a) does not prohibit parents who are employees of an EIS provider from serving as parent members on the SICC (as had been included in the proposed regulations).
- Section 303.601(b) allows the Governor to appoint one member to represent more than one of these newly listed programs or agencies as well as the agencies responsible for child care and Head Start or Early Head Start.

B. Functions of the Council

- Section 303.605(c) permits the Council to coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care, which is required to be established by States under the Improving Head Start for School Readiness Act of 2007.

IV. Procedural Safeguards

The Final Regulations incorporate the procedural safeguard provisions from section 639 of the IDEA, including the provisions in section 615 of the IDEA that apply to the IDEA Part C programs through section 639(a)(8) of the IDEA. This section IV, Procedural Safeguards, highlights some of the ways the confidentiality, consent, prior written notice, surrogate parent, and dispute resolution procedures were incorporated into the Final Regulations.

A. Confidentiality of Personally Identifiable Information and Early Intervention Records

The Part C regulations in §§303.401 through 303.417 now explicitly include the confidentiality requirements that apply to Part C of the IDEA, instead of referencing Part B confidentiality provisions, and expressly reference the protections in the Family Educational Rights and Privacy Act (FERPA) in §303.401(b), the definition of personally identifiable information in §303.29, and the applicable FERPA exceptions in §303.414(b)(2). New specific confidentiality provisions for the Part C regulations include:

- Section 303.400(c) requires the lead agency to make available to parents an initial copy of the child's early intervention record, at no cost to the parents.
- Section 303.401(c)(2) clarifies the point in time when the confidentiality provisions in the Part C regulations apply--which occurs when the child is

referred for early intervention services under IDEA Part C until the later of when the participating agency is no longer required to maintain or no longer maintains personally identifiable information regarding that child under applicable Federal and State laws.

- Section 303.403(b) now includes a definition of “early intervention records,” which are defined as all records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and the implementing regulations.
- Section 303.403(c) now includes a definition of “participating agency,” as that term applies to the Part C program. That provision also explains that participating agencies include the lead agency and EIS providers, and any individual or entity that provides any Part C services, but does not include primary referral sources, or public agencies or private entities that act solely as funding sources for Part C services.
- The notice to parents required under §303.404 must be reviewed and revised by the lead agency in each State to ensure that it includes the changes to the Part C confidentiality requirements that were incorporated into the Final Regulations.
- Section 303.405(a), regarding a parent’s right to inspect and review early intervention records and the timeline the agency must follow when a parent makes such a request, is revised to require that the participating agency comply with a parent’s request without unnecessary delay and in no case more than 10 days after the parent makes the request to inspect and review records. (Under Part B of the IDEA, agencies must comply with the requests no more than 45 days after the request is made.)
- Section 303.409(c) requires the participating agency to provide at no cost to the parent, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
- Section 303.411, which provides parents the opportunity for a hearing to challenge information in their child’s record, was revised to clarify that a parent may request a due process hearing under §303.430(d)(1) (Part C due process hearing procedures), if that hearing meets the requirements of §303.413, or a hearing directly under the State’s procedures implemented consistent with §303.413.
- Section 303.414(b) sets forth the specific exceptions to the parental consent requirements for the disclosure of personally identifiable information under Part C of the IDEA. A lead agency or other participating agency may not disclose personally identifiable information (as defined in §303.29 to cross-reference the FERPA definition with appropriate modifications), to any party

except participating agencies (as defined at §303.403(c)) that are part of the State's Part C system without parental consent unless authorized to do so under:

- Sections 303.401(d) and 303.209(b)(1)(i) and (ii) that enable the lead agency, as well as LEAs and SEAs under Part B of the IDEA, to identify all children potentially eligible for services under Part B of the IDEA, by providing notification to the SEA and the appropriate LEA when children are transitioning from Part C to Part B services.
- Section 303.211(b)(6)(ii)(A) which describes transition requirements under the State option to provide Part C services beyond age three.
- The applicable FERPA exceptions in 34 CFR 99.31, which are cross-referenced in §303.414(b)(2).
- Section 303.416(b), regarding the permanent record that may be maintained by the participating agency, was revised to specify that for Part C of the IDEA, the permanent record may include the child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting).
- Section 303.417, regarding the policies and procedures the lead agency must have in effect for enforcement of confidentiality provisions, references the right to file a complaint under §§303.432 through 303.434.
- Section 303.12 clarifies the definition of early intervention service provider to include those individuals and entities that provide, but not those who pay for, Part C services. This definition is applicable throughout the Part C regulations but is particularly important regarding the responsibilities for Part C confidentiality and records maintenance.

B. Parental Consent, Prior Written Notice, and Surrogate Parents

- Section 303.420(a)(1) requires parental consent before the State administers its IDEA Part C screening procedures adopted under §303.320.
- Section 303.420(a)(2) requires parental consent before all evaluations and assessments of a child conducted under §303.321.
- Section 303.420(a)(4) requires parental consent prior to the use of public benefits or insurance or private insurance if such funding sources are used to pay for Part C services and consent is required under §303.520.
- Section 303.420(c) clarifies that a lead agency may not use the due process hearing procedures under Part C or Part B of the IDEA to challenge a parent's

refusal to provide consent under §303.420(a), which includes consent for evaluations and assessments.

- Section 303.421 requires the State to include in its prior written notice information regarding all procedural safeguards available under Subpart E of the regulations. Thus, there are many new content changes (which are described in this section (IV) of this document. Note also that if a lead agency determines that a child is not eligible under Part C of the IDEA, §303.322 requires the lead agency to provide the parent with prior written notice, under §303.421, including information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms.
- Section 303.422(b)(2) requires the lead agency to consult with the public agency that has been assigned care of the child, when implementing the surrogate parent provisions for children who are wards of the State or placed in foster care.
- Section 303.422(c) allows a surrogate parent for a child who is a ward of the State to be appointed by the judge overseeing the infant or toddler's case.
- Section 303.422(g) adds a 30-day timeline requirement regarding the lead agency's obligation to make reasonable efforts to ensure the assignment of a surrogate parent after a public agency determines that the child needs a surrogate parent.
- Section 303.27 clarifies the definition of parent, including a foster parent, when a biological or adoptive parent are presumed to be the parent, and the role of a judicial decree or order regarding educational or early intervention service decisions.

C. Dispute Resolution Procedures

The Final Regulations continue to require lead agencies to have written procedures for the timely resolution of complaints through three mechanisms: (1) mediation; (2) minimum State complaint procedures; and (3) due process hearing procedures.

1. Mediation

The Final Regulations incorporate the mediation provisions in section 615(e) of the IDEA. Section 303.431 provides the specific requirements that must be implemented to allow parties to resolve disputes involving any Part C matter, including matters that arise prior to the filing of a due process complaint, through a mediation process. Some of the requirements the lead agency must implement include that:

- The mediation process is voluntary on the part of the parties;

- Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of early intervention services;
- The lead agency selects mediators on a random, rotational, or other impartial basis; and
- If the parties resolve a dispute through the mediation process, they must sign a legally binding written agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

2. Minimum State Complaint Procedures

The requirements for the minimum State compliant procedures have been revised in a few ways to assist in the voluntary resolution of complaints.

- Section 303.433(b)(1)(ii) provides that extensions of the 60-day timeline for responding to the complaint may be granted if the complainant and the lead agency, public agency or EIS provider agree to engage in mediation. This is in addition to the long-standing provision in §303.433(b)(1)(i), which provides for extensions of the 60-day timeline due to exceptional circumstances that exist with respect to a particular complaint.
- Section 303.433(a)(3) requires that the lead agency, public agency, or EIS provider respond to the complaint, including, at the discretion of the lead agency, providing a proposal to resolve the complaint.
- Section 303.433(a)(3) further requires the lead agency to provide an opportunity for a parent who filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation.
- Sections 303.434(b)(3) and (b)(4) revise the content requirements for written complaints to require the signature and contact information for the complainant, and if the alleged violations relate to a specific child, require that the complaint include the name and address of the child, the name of the EIS provider serving the child, a description of the nature of the problem, and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- Section 303.434(c) provides that the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
- Section 303.434(d) states that the complainant must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.

3. Due Process Hearing Procedures

Under the Final Regulations, States may still choose between adopting the due process procedures under Part C or Part B of the IDEA to resolve individual child disputes. The Part C regulations include the procedures the State would implement to adopt either Part C or Part B due process procedures.

For States that use either the Part C or Part B Procedures

- During the pendency of the proceeding, unless the lead agency and parent agree otherwise, §303.430(e)(1) provides that the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that are consented to by the parents.
- Sections 303.436(a) and 303.440(a)(1) clarify that due process hearings must be made available for disputes regarding the identification of children referred to Part C of the IDEA, and not just disputes regarding children found eligible for Part C of the IDEA.

Some of the requirements specific to the Part C and Part B procedures are provided below.

Part C Due Process Procedures

- Section 303.437(c) now permits the due process hearing officer to grant specific extensions of time beyond the 30-day timeline at the request of either party.
- Section 303.346(b)(4) and (b)(5) require that any parent involved in a due process hearing has the right to receive a written or electronic verbatim transcript of the hearing, and a written copy of the findings of fact and decisions, at no cost to the parent.

Part B Due Process Procedures

The Part C Final Regulations include the provisions that a State must follow if it elects to adopt the Part B due process procedures. These procedures are substantively the same as the Part B procedures in §§300.507 through 300.516, with a few modifications for Part C of the IDEA.

- If a State elects to adopt the Part B due process hearing procedures, the State must adopt all of the procedures required by §§303.440 through 303.449, as required by §303.430(d)(2).
- In a State that elects to adopt Part B due process hearing procedures, §303.440(c) allows the State to adopt either a 30- or 45-day timeline for resolution of due process complaints and requires that the State specify which

timeline it has adopted in the State's written policies and procedures under §303.123 and in the State's prior written notice under §303.421.

- In a State that elects to adopt Part B due process hearing procedures, §303.446 permits, but does not require, the lead agency to establish procedures that would allow any party aggrieved by the findings and decision in the due process hearing to appeal to the State lead agency.
- In a State that elects to adopt Part B due process hearing procedures, §303.445(d) requires the lead agency, after deleting any personally identifiable information, to make due process findings and decisions available to the public.
- In a State that elects to adopt Part B due process hearing procedures, §303.444(c) provides that parents involved in hearings must be given the right to open the hearing to the public and must receive a copy of the record of the hearing and the findings of fact and decisions at no cost.