

**The Public School System  
Statewide System of Early Intervention Services  
for  
Infants and Toddlers with Disabilities  
34 CFR Part 303  
The Individuals with Disabilities Education Act 2004  
As Amended September 28, 2011  
  
Policies and Procedures**

## **Section A**

### **Purpose of Early Intervention**

The purpose of the Early Intervention Program for Infants and Toddlers with Disabilities is to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families and to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources, including public and private insurance coverage. To enhance the CNMI's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families. To enhance the capacity of the CNMI service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, and rural children, and infants and toddlers in foster care.

## **Section B**

### **Definitions Used in Early Intervention**

The definitions of terms used in this Policy and Procedure document conform to 34 CFR Part 303; Early Intervention Program for Infants and Toddlers with Disabilities, as amended on September 28, 2011 including any reference to section numbers.

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

**At-risk infant or toddler** means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. At the CNMI's discretion, at-risk infant or toddler may include an infant or toddler who is at risk of experiencing developmental delays because of biological or environmental factors that can be identified (including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure).

**Child** means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in 34 CFR §303.21.

**Consent** means that;

- The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language.
- The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought and the consent form describes that activity and lists the early intervention records, if any, that will be released and to whom they will be released.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked)

**Council** means the CNMI Interagency Coordinating Council

**Day** means calendar day, unless otherwise indicated.

**Developmental Delay** when used with respect to a child residing in the CNMI, has the meaning given that term by the CNMI in Section C of this document.

**Early Intervention Service Program or EIS program** means an entity designated by the Public School System for reporting under 34 CFR §§303.700 through 303.702.

**Early Intervention Service Provider or EIS Provider** means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives Federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under Part C of the Act. An EIS provider is responsible for;

- Participating in the multidisciplinary individualized family service plan (IFSP) Team's ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant's or toddler's family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;

- Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
- Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

**Early Intervention Services** means developmental services that are;

- Provided under public supervision.
- Are selected in collaboration with the parents.
- Are provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees.
- Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP Team in any one or more of the following areas, including;
  - Physical development
  - Cognitive development
  - Communication development
  - Social or emotional development;
  - Adaptive development;
- Meet the standards of the CNMI in which the early intervention services are provided, including the requirements of Part C of the Act.
- Include services identified in this section.
- Are provided by qualified personnel including the types of personnel listed in this section.
- To the maximum extent appropriate, are provided in natural environments and are provided in conformity with an IFSP.

**Types of Early Intervention Services include the following services;**

**Assistive Technology Device** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

**Assistive Technology Service** means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes;

- The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
- Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and
- Training or technical assistance for professionals (including individuals providing education or

rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

**Audiology Services** include;

- The identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques.
- The determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedure.
- Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment.
- The provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services.
- Provision of services for prevention of hearing loss and
- Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

**Family Training, Counseling, and Home Visits** means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

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

**Nursing Services** include;

- The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems.
- The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development and the administration of medications, treatments, and regimens prescribed by a licensed physician.

**Nutrition Services** include;

- Conducting individual assessments in nutritional history and dietary intake.
- Anthropometric, biochemical, and clinical variables.
- Feeding skills and feeding problems.
- Food habits and food preferences.
- Developing and monitoring appropriate plans to address the nutritional needs of children eligible for early intervention services based and
- Making referrals to appropriate community resources to carry out nutrition goals.

**Occupational Therapy** include;

- Services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, adaptive play, sensory, motor, and postural development.
- These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings and include identification, assessment, and intervention.
- Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills.
- Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of

functional ability.

**Physical Therapy** include;

- Services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation.
- These services include screening, evaluation, and assessment of children to identify movement dysfunction.
- Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problem and
- Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

**Psychological Services** include;

- Administering psychological and developmental tests and other assessment procedures.
- Interpreting assessment results.
- Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
- Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

**Service Coordination Services (case management)** mean services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under this part. Each infant or toddler with a disability and the child's family must be provided with one service coordinator who is responsible for;

1. Coordinating all services required under this part across agency lines; and
2. Serving as the single point of contact for carrying out the activities specific service coordination services.
3. Service coordination is an active, ongoing process that involves assisting parents of infants and toddlers with disabilities in gaining access to and coordinating the provision of, the early intervention services required under this part; and
4. Coordinating the other services identified in the IFSP under 34 CFR §303.344(e) that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.

**Specific Service Coordination Services** include;

- Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for a needed services and scheduling appointments for infants and toddlers with disabilities and their families.
- Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided.
- Coordinating evaluations and assessments.
- Facilitating and participating in the development, review, and evaluation of IFSPs;.
- Conducting referral and other activities to assist families in identifying available EIS providers;.
- Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner.
- Conducting follow-up activities to determine that appropriate Part C services are being provided.

- Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources.
- Coordinating the funding sources for services required under this part; and
- Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

**Use of the Term Service Coordination or Service Coordination Services** The lead agency's or an EIS provider's use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act--Medicaid), for purposes of claims in compliance with the requirements of §§303.501 through 303.521 (Payor of last resort provisions).

**Sign language and Cued Language Services** include;

- Teaching sign language
- Cued language, and auditory/oral language
- Providing oral transliteration services, such as amplification, and
- Providing sign and cued language interpretation

**Social Work Services** include;

- Making home visits to evaluate a child's living conditions and patterns of parent-child interaction.
- Preparing a social or emotional developmental assessment of the infant or toddler within the family context.
- Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents.
- Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and
- Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

**Special Instruction** include;

- The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.
- Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability.
- Providing families with information, skills, and support related to enhancing the skill development of the child; and
- Working with the infant or toddler with a disability to enhance the child's development.

**Speech-language Pathology Services** include;

- Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills.
- Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills, and

- Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

**Transportation and Related Costs** include the cost of travel and other costs that is necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

**Vision Services** means the evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development. Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both and communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

**Qualified Personnel** The following are the types of qualified personnel who provide early intervention services;

- Audiologists
- Family therapists
- Nurses
- Occupational therapists
- Orientation and mobility specialists
- Pediatricians and other physicians for diagnostic and evaluation purposes
- Physical therapist
- Psychologists
- Registered dietitians
- Social workers
- Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness)
- Speech and language pathologists.
- Vision specialists, including ophthalmologists and optometrists.

**Other Services** The services and personnel identified and defined above do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in early intervention service provider paragraph or of another type of personnel that may provide early intervention services in accordance with this part, provided such personnel meet the requirements of *qualified personnel*.

**Elementary School** means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under CNMI law.

**Free Appropriate Public Education or FAPE**, means special education and related services that are provided at public expense, under public supervision and direction, and without charge. Meet the standards of the CNMI educational agency, the Public School System, including the requirements of Part B of the Act. Include an appropriate preschool, elementary school, or secondary school education in the CNMI and are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

**Health Services** mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this part during the time that the child is eligible to receive early intervention services. The term includes;

- Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
- Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.
- The term does not include services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus).

- Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose) or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
- Nothing in this part limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.
- Nothing in this part prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly.
- Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

**Homeless Children** means children who meet the definition given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

**Include or including** means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

**Indian; Indian Tribe** means an individual who is a member of an Indian tribe.

**Indian Tribe** means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.). Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian Tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

**Individualized Family Service Plan or IFSP** means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant's or toddler's family that is based on the evaluation and assessment described in 34 CFR §303.321, includes the content specified 34 CFR §303.344. The IFSP is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained and is developed in accordance with the IFSP procedures.

**Infant or Toddler with a Disability** means an individual under three years of age who needs early intervention services because the individual is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas;

- Cognitive development.
- Physical development, including vision and hearing.
- Communication development.
- Social or emotional development.
- Adaptive development; or

Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and includes;

- Conditions such as chromosomal abnormalities
- Genetic or congenital disorders
- Sensory impairments
- Inborn errors of metabolism
- Disorders reflecting disturbance of the development of the nervous system
- Congenital infections
- Severe attachment disorders; and
- Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

**Infant or Toddler with a Disability** may include, at the CNMI's discretion, an at-risk infant or toddler.

**Infant or Toddler with a Disability** may include, at the CNMI's discretion, a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part until the child enters, or is eligible under CNMI law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children ages three and older who receive Part C services pursuant to §303.211; and a written notification to parents of a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619 of the Act.

**Lead Agency** means the agency designated by the CNMI's Governor under section 635(a)(10) of the Act and §303.120 that receives funds under section 643 of the Act to administer the CNMI's responsibilities under Part C of the Act.

**Local Educational Agency or LEA** means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

**Educational Service Agencies and Other Public Institutions or Agencies:** The term includes the following;

- **Educational service agency**, defined as a regional public multiservice agency authorized by State law to develop, manage, and provide services or programs to LEAs and recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.
- Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.
- Entities that meet the definition of **intermediate educational unit** or **IEU** in section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition an **intermediate educational unit** or **IEU** means any public authority other than an LEA that is under the general supervision of a State educational agency;
- Is established by State law for the purpose of providing FAPE on a regional basis; and
- Provides special education and related services to children with disabilities within the State.
- **BIE-funded schools**. The term includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

**Multidisciplinary** means the involvement of two or more separate disciplines or professions and with respect to evaluation of the child and assessments of the child and family may include one individual who is qualified in more than one discipline or profession. The IFSP Team must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator.

**Native Language**, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph below. And for evaluations and assessments conducted the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

**Native Language**, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired,

or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

**Natural Environments** means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of *early intervention services in natural environments*

**Parent** means a biological or adoptive parent of a child. A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent. A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State). An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare or a surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.

Except as provided in the paragraph above, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

**Parent Training and Information Center** means a center assisted under section 671 or 672 of the Act.

**Personally Identifiable Information** means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in this part and any reference to "school" means "EIS provider" as used in this part.

**Public Agency** means the lead agency and any other agency or political subdivision of the State.

**Qualified Personnel** means personnel who have met CNMI approved or 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.

**Scientifically Based Research** has the meaning given the term in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to "education activities and programs" refers to "early intervention services."

**Secretary** means the Secretary of Education.

**State** except as provided in §303.732(d)(3) (regarding State allotments under this part), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

**State Educational Agency or SEA** means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. The term includes the agency that receives funds under sections 611 and 619 of the Act to administer the State's responsibilities under Part B of the Act.

**Ward of the State** means a child who, as determined by the State where the child resides, is;

1. A foster child

2. A ward of the State; or
3. In the custody of a public child welfare agency

**Exception: Ward of the State** does not include a foster child who has a foster parent who meets the definition of a parent in §303.27.

## Section C

### Minimum Components of the Statewide System

The minimum components of the CNMI statewide system include the CNMI definition of developmental delay, availability of early intervention services, evaluation, assessment and nondiscriminatory procedures, individualized family service plans, comprehensive child find system, public awareness program, central directory, comprehensive system of personnel development, personnel standards, the PSS role in supervision, monitoring, funding, interagency coordination and other responsibilities, the CNMI policy for contracting or otherwise arranging for services, reimbursement procedures, procedural safeguards, data collection, the CNMI interagency coordinating council, and early intervention in natural environments.

#### Definition of Developmental Delay

The CNMI provides early intervention services to infants and toddlers, under three years of age, who need early intervention services because the individual has a developmental delay or an established condition that has a high probability of resulting in a delay.

#### Developmental Delay:

Eligibility may be established for infants and toddlers, under three years of age, who are experiencing a developmental delay, who have been identified by a qualified, multidisciplinary team, as measured by appropriate diagnostic instruments and procedures, as having a 25% delay in functioning in one or more of the following areas;

- Cognitive Development.
- Physical Development, including Vision and Hearing
- Communication Development
- Social or emotional Development
- Adaptive Development

#### Established Condition:

Eligibility may be established by the identification of a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Included in this group are individuals under age three who will need early intervention services because of the natural history of their condition, even though they may not exhibit development delays at the time of diagnosis. Such conditions include but are not limited to:

- Conditions such as chromosomal abnormalities
- Genetic or congenital disorders
- Sensory impairments
- Inborn errors of metabolism
- Disorders reflecting disturbance of the development of the nervous system
- Congenital infections
- Severe attachment disorders; and
- Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

#### Informed Clinical Opinion

Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. Informed clinical opinion may be used as an independent basis to establish a child's eligibility even when other instruments do not establish or confirm eligibility. In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility. Informed Clinical Opinion is defined as procedures including clinical assessment and observation used by qualified professional under CNMI early intervention standards to document the eligibility of children whose disability or developmental delay cannot be determined solely by a standardized measure or for whom the standardized procedures are not appropriate for a given age or developmental area.

#### At-risk Infant or Toddler

The CNMI **does not** include individuals under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. These include infants or

toddlers who are at risk of experiencing developmental delays because of biological or environmental factors that can be identified, including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

### **Availability of Early Intervention Services**

Appropriate and culturally competent Early Intervention Services, based on scientifically based research to the extent practicable, are available to all infants and toddlers with disabilities and their families including infants and toddlers with disabilities who live in all geographic locations in the CNMI, including the islands of Rota and Tinian and infants and toddlers with disabilities and their families who are homeless children and children who are wards of the State. Early Intervention Services are developmental services that are provided under public supervision, selected in collaboration with the parents, are provided at no cost to the parent, are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development. Early Intervention Services meet the CNMI standards, are provided by qualified personnel in the natural environment to the maximum extent appropriate and are provided in conformity with an Individualized Family Service Plan (IFSP). Early Intervention Services, as defined in the definition section used in Early Intervention include;

- Assistive Technology Device
- Assistive Technology Service
- Audiology Services
- Family Training, Counseling, and Home Visits
- Medical Services
- Nursing Services
- Nutrition Services
- Occupational Therapy
- Physical therapy
- Psychological Services
- Service Coordination Services (case management)
- Sign language and Cued Language Services
- Social Work Services
- Special Instruction
- Speech-language Pathology Services Transportation and Related Costs
- Vision Services
- Qualified Personnel
- Other Services (as defined in Section A of this document)

### **Pre-Referral Procedures: Public Awareness Program**

An effective Public Awareness and Child Find system is implemented that focuses on the early identification of infants and toddlers with disabilities and provides information to parents of infants and toddlers through primary referral sources. Information includes the purpose and scope of Early Intervention Services and how to make referrals. The Early Intervention program has a rigorous standard for appropriately identifying infants and toddlers with disabilities for early intervention services that will reduce the need for future services.

### **Information for Parents: Preparation and Dissemination:**

The Early Intervention Program prepares information on the availability of Early Intervention Services and other services in the CNMI and disseminates the information to all primary referral sources, especially hospitals, private clinics, and physicians. The information is given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications. The Early Intervention Program also disseminates the Public Awareness and Child Find procedures, including **timelines**, to all primary referral sources, especially hospitals, private clinics, and physicians.

### Parent Information Packets

The information packets disseminated to primary referral sources for parents includes a description of the Early Intervention Service available in the CNMI, a description of the Child Find process, how to make a referral for children under age three for an evaluation or early intervention services, copies of the referral forms, the central directory and contact information for the Children Developmental Assistance Center.

Welcome Baby Packets, to be disseminated to parents, includes developmental checklists, brochures on child development, new born hearing screening, autism, understanding signals of pre-mature infants, the central directory and contact and location information for the Children Developmental Assistance Center, the point of entry in Saipan and the Head Start Parent Resource Center on Rota and Tinian.

### Information Specific to Toddlers with Disabilities

The Early Intervention Program informs parents of toddlers with disabilities of the availability of preschool special education services, under section 619 of IDEA, not fewer than 90 days prior to the toddler's third birthday.

### **Pre-Referral Procedures: Child Find System**

The comprehensive child find system is consistent with Part B of the Act (see 34 CFR 300.111) and includes a system for making referrals to the Early Intervention Program under Part C including timelines and provides for the participation of the primary referral sources. The comprehensive child find system ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under Part C that will reduce the need for future services.

All infants and toddlers with disabilities in the CNMI who are eligible for early intervention services under Part C are identified, located, and evaluated, including infants and toddlers with disabilities who are homeless, in foster care, and wards of the State. Infants and toddlers under age three who are the subject of a substantiated case of child abuse or neglect or are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure are required to be referred to the Early Intervention Program.

### **Coordination**

In order to ensure there is no unnecessary duplication of effort by various programs in the CNMI, the Early Intervention Program, with the advise and assistance of the Interagency Coordinating Council, coordinates with all other major efforts to locate and identify children by other agencies responsible for administering the various education, health, and social service programs relevant to early intervention. The Early Intervention Program makes use of the resources available through each public agency and EIS providers in the CNMI to implement the child find system in an effective manner. The effort is coordinated with the;

- Program authorized under Part B of the Act
- Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a));
- Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B))
- Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
- Head Start Act (the CNMI does not have Early Head Start programs)
- Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
- The Department of Community and Cultural Affairs responsible for administering Child protection and child welfare programs, foster care, the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a)), child care programs, and the services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.)
- Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and
- Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

### **Referral Procedure**

Primary Referral Sources are required to fill out referral forms provided to them by the Early Intervention Program. The referral forms are faxed or hand delivered to the Early Intervention Program or the Primary Referral source can call the Early Intervention Program to pick up the form.

### **Referral Timelines**

Primary Referral sources must refer a child under the age of three as soon as possible but in no case more than seven (7) days after the child has been identified.

### **Referral of Specific At-Risk Infants and Toddlers**

Primary Referral sources must also refer infants and toddlers under age three who are the subject of a substantiated case of child abuse or neglect or are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure are required to be referred to the Early Intervention Program.

### **Primary Referral Sources**

Primary Referral sources include;

- Hospitals, including prenatal and postnatal care facilities
- Physicians
- Parents, including parents of infants and toddlers
- Child care programs and early learning programs
- Schools
- Public health facilities
- Other public health or social service agencies
- Other clinics and health care providers
- Public agencies and staff in the child welfare system, including child protective service and foster care
- Homeless family shelters
- Domestic violence shelters and agencies

### **Central Directory**

Development and revisions to the CNMI central directory is a coordinated effort among various public and private agencies in the CNMI including the Head Start Program, the Ayuda Network, the Developmental Disabilities Council, the Maternal Child Health program, Protection and Advocacy System, Department of Community and Cultural Affairs, Special Education and the Early Intervention Program. The Central Directory is accessible to the general public through hard copies and it is posted on agency websites. It includes accurate, up-to-date information about public and private early intervention services, resources, and experts available in the CNMI. Professional and other groups including parent support, and training and information centers, such as those funded under the Act, that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families and research and demonstration projects being conducted in the CNMI relating to infants and toddlers with disabilities.

### **Evaluation, Assessment, and Nondiscriminatory Procedures**

Each infant or toddler with a disability are provided a timely, comprehensive, multidisciplinary evaluation of their functioning and a family-directed identification of the needs of their family to assist appropriately in the development of the infant or toddler. The Early Intervention program has a rigorous standard for appropriately identifying infants and toddlers with disabilities for early intervention services that will reduce the need for future services.

### **Post-Referral Procedures--Screenings, Evaluations, and Assessments**

#### **Post-Referral Timeline (45 days)**

The initial evaluation and the initial assessments of the child and family and the initial IFSP meeting must be completed within 45 days from the date the Early Intervention Program receives the referral of the child. The 45-day timeline does not apply for any period when;

- The child or parent is unavailable to complete the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in

- the child's early intervention records; or
- The parent has not provided consent for the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the Early Intervention Program to obtain parental consent.

### **Exceptional Family Circumstance Documentation**

The Early Intervention Program Service Coordinator must;

- Fill out the *Reason for Delay* form to document the exceptional family circumstances or repeated attempts by the Early Intervention Program to obtain parental consent.
- File The *Reason for Delay* form in the child's early intervention records
- Complete the initial evaluation, the initial assessments of the child and family, and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances no longer exist or parental consent is obtained for the initial evaluation, and the initial assessment of the child.
- Develop and implement an interim IFSP, to the extent appropriate and consistent with procedures for an Interim IFSPs
- The initial family assessment must be conducted within the 45-day timeline if the parent concurs and even if other family members are unavailable.

### **Screening Procedures (optional)**

The PSS **has not adopted** procedures to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under the Early Intervention Program.

### **Evaluation of the Child and Assessment of the Child and Family**

Each child under the age of three who is referred for evaluation or early intervention services under Part C and suspected of having a disability, upon obtaining parental consent, receives a timely, comprehensive, multidisciplinary evaluation unless eligibility is established by medical and other records without conducting an evaluation of the child if those records indicate that the child's level of functioning in one or more of the developmental areas constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability. The multidisciplinary evaluation must include the use of evaluation instruments that will describe the child's functioning in each of the developmental areas and establish a 25% delay in one or more areas of the child's development.

If the child is determined eligible as an infant or toddler with a disability, a multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs is conducted. A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler is conducted. The assessments of the child and family are described below and these assessments may occur simultaneously with the evaluation, provided that the requirements of this section are met.

- **Evaluation** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of infant or toddler with a disability.
- **Initial evaluation** refers to the child's evaluation to determine his or her initial eligibility for Early Intervention
- **Assessment** means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility for Early Intervention and includes the assessment of the child, and the assessment of the child's family.
- **Initial assessment** refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

### **Medical and Other Records**

A child's medical and other records may be used to establish eligibility, without conducting an evaluation of the child, under Early Intervention if those records indicate that the child's level of functioning in one or more of the developmental areas constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability. If medical and other records establish the child's Part C eligibility, the Early Intervention Program must conduct assessments of the child and family in accordance with the description above.

### **Informed Clinical Opinion**

Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. Informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C even when other instruments do not establish eligibility. However, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility as described above.

### **Qualified Personnel**

All evaluations and assessments of the child and family are conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

### **Native Language**

Unless clearly not feasible to do so, all evaluations and assessments of a child are conducted in the native language of the child, and family assessments are conducted in the native language of the family members being assessed, in accordance with the definition of native language in 34 CFR §303.25.

### **Procedures for Evaluation of the Child**

In conducting an evaluation, no single procedure is used as the sole criterion for determining a child's eligibility under Part C. The Early Intervention Program will include the administration of an evaluation instrument that identifies the child's level of functioning in each of the developmental areas. The CNMI criteria is a 25% delay in one or more areas of development. The Early Intervention Program will also take the child's history, including interviews with the parent and gather information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs. The Early Intervention Program will review medical, educational, or other records.

### **Procedures for Assessment of the Child and Family**

Qualified personnel conduct an assessment of each infant or toddler with a disability in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child includes a review of the results of the evaluation conducted, personal observations of the child and the identification of the child's needs in each of the developmental areas.

Qualified personnel conduct a family-directed assessment in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment is **voluntary** on the part of each family member participating in the assessment, is based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and includes the family's description of its resources, priorities, and concerns related to enhancing the child's development.

### **Determination That A Child Is Not Eligible**

If, based on the evaluation conducted, the Early Intervention Program determines that a child is not eligible under Part C, the Early Intervention Program provides the parent with prior written notice, and includes in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms, such as requesting a due process hearing or mediation or filing a State complaint.

### **Individualized Family Service Plan (IFSP)**

For each infant or toddler with a disability and his or her family, an Individualized Family Service Plan (IFSP), is developed, reviewed and implemented by a multidisciplinary team, which includes the parent and includes service coordination services.

### **Procedures for IFSP Development, Review, and Evaluation**

#### **Meeting to Develop Initial IFSP: Timelines**

For a child referred to the Early Intervention Program and determined to be eligible for Early Intervention Services as an infant or toddler with a disability, a meeting to develop the initial IFSP is conducted within 45-days from the date

the Early Intervention Program received the referral, unless exceptional family circumstances exist that are documented in the child's file.

#### **Periodic Review**

A review of the IFSP for a child and the child's family is conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. The purpose of the periodic review is to determine the degree to which progress toward achieving the results or outcomes identified in the IFSP is being made and whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

#### **Annual Meeting to Evaluate the IFSP**

A meeting is conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted are used in determining the early intervention services that are needed and will be provided.

#### **Accessibility and Convenience of Meetings**

IFSP meetings are conducted in settings and at times that are convenient for the family and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements are made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

#### **Parental Consent**

The contents of the IFSP is fully explained to the parents and informed written consent, must be obtained, prior to the provision of early intervention services described in the IFSP. Each early intervention service is provided as soon as possible after the parent provides consent for that service but in no case later than start date indicated on the IFSP.

#### **Participants of Initial and Annual IFSP Team Meeting and Periodic Review**

Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP includes the following participants:

- The parent or parents of the child
- Other family members, as requested by the parent, if feasible to do so
- An advocate or person outside of the family, if the parent requests that the person participate
- The service coordinator designated by the Early Intervention Program to be responsible for implementing the IFSP
- A person or persons directly involved in conducting the evaluations and assessments
- As appropriate, persons who will be providing early intervention services to the child or family

If a person listed above is unable to attend a meeting, arrangements are made for the person's involvement through other means, including one of the following participating in a telephone conference, having a knowledgeable authorized representative attend the meeting, making pertinent records available at the meeting.

**Periodic Review:** Each periodic review provides for the participation of persons listed above. If conditions warrant, provisions are made for the participation of other representatives identified in this section.

#### **Content of an IFSP: Information About the Child's Status**

The IFSP includes a statement of the infant or toddler with a disability's present levels of physical development, including vision, hearing, and health status, cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments.

#### **Content of an IFSP: Family Information**

With the concurrence of the family, the IFSP includes a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the family-directed assessment of the family.

#### **Results or Outcomes**

The IFSP includes a statement of the measurable results or measurable outcomes expected to be achieved for the child, including pre-literacy and language skills, as developmentally appropriate for the child and family, and the

criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes identified in the IFSP is being made and whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

### **Early Intervention Services**

The IFSP includes a statement of the specific early intervention services, based on peer-reviewed research, to the extent practicable, that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes including;

- The length, duration, frequency, intensity, and method of delivering the early intervention services
- The location of the early intervention services
- The payment arrangements, if any
- **Frequency and Intensity** means the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis.
- **Method** means how a service is provided
- **Length** means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and
- **Duration** means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).
- **Location** means the actual place or places where a service will be provided.

### **Natural Environment**

The IFSP includes a statement that each early intervention service is provided in the **natural environment** for that child or service to the maximum extent appropriate, or a justification as to why an early intervention service will not be provided in the natural environment. The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, is made by the IFSP Team, which includes the parent and other team members, based on the child's outcomes that are identified by the IFSP team and are consistent with the provisions in 34 CFR §§303.13(a)(8), 303.26, and 303.126 of IDEA. For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

### **Other Services**

To the extent appropriate, the IFSP also identifies medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded Early Intervention Program and if those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

### **Dates and Duration of Services**

The IFSP includes the projected date for the initiation of each early intervention service which the date must be as soon as possible after the parent consents to the service and the anticipated duration of each service.

### **Service Coordinator**

The IFSP includes the name of the service coordinator from the profession most relevant to the child's or family's needs or who is otherwise qualified to carry out all applicable responsibilities under the Early Intervention Program, who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services and coordination with other agencies and persons. In meeting this requirement, the term "profession" includes "service coordination."

### **Transition from Part C Services**

The IFSP includes the **steps and services** to be taken to support the smooth transition of the child, from Part C services to preschool services under Part B of the Act, to the extent that those services are appropriate, to early intervention services or other appropriate services. The required "**steps**" include;

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

- Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting
- Confirmation that child find information about the child has been transmitted to the Part B program or other relevant agency, and the transmission of additional information needed by the Part B program to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed
- Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

#### **Interim IFSPs: Provision of Services Before Evaluations and Assessments are Completed**

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in, if parental consent is obtained and an interim IFSP is developed that includes;

- The name of the service coordinator who will be responsible, for implementing the interim IFSP and coordinating with other agencies and persons; and
- The early intervention services that have been determined to be needed immediately by the child and the child's family
- Evaluations and assessments are completed within the 45-day timeline

#### **Responsibility and Accountability**

Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

#### **Comprehensive System of Personnel Development (CSPD)**

The comprehensive system of personnel development, includes training of paraprofessionals and primary referral sources with respect to the basic components of early intervention services available in the CNMI. The comprehensive system of personnel development includes;

- Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers
- Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and
- Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, an elementary school program under Part B of the Act, or another appropriate programs.
- Training personnel in the emotional and social development of young children
- Training personnel to support families in participating fully in the development and implementation of the child's IFSP.

#### **Personnel Standards**

The Public School System maintains qualification standards for personnel necessary to carry out the purposes of the Early Intervention Program. Personnel are appropriately and adequately prepared and trained consistent with CNMI State Board of Education-approved or CNMI State Board of Education-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services. The PSS uses paraprofessionals and assistants who are appropriately trained and supervised in accordance with the Board of Education policies, to assist in the provision of Early Intervention Services under Part C of the Act to infants and toddlers with disabilities. The PSS makes an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, in all geographic areas, including the islands of Tinian and Rota where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the qualification standards.

#### **Supervision, Monitoring, Funding, Interagency Coordination and Other Responsibilities**

The Public School System (PSS), the designated Lead Agency, is responsible for;

1. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.
2. The monitoring of programs and activities used by the CNMI to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act), to ensure that the CNMI complies with Part C of the Act, including;
3. Monitoring agencies, institutions, organizations, and EIS providers used by the CNMI to carry out Part C of the Act
4. Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these regulations
5. Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers
6. Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and
7. Conducting these activities and any other activities required by the CNMI under those sections.
8. The identification and coordination of all available resources for early intervention services within the CNMI, including those from Federal, State, local, and private sources, consistent with subpart F of Part C of IDEA
9. The assignment of financial responsibility in accordance with subpart F of IDEA
10. The development of procedures in accordance with subpart F of IDEA to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.
11. The resolution of intra- and interagency disputes in accordance with subpart F of IDEA.
12. The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with 34 CFR §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with CNMI law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of IDEA. Refer to Section C of this Document

#### **Contracting or Otherwise Arranging for Services**

The Public School System contracts or makes other arrangements with public or private individuals or agency services providers to provide Early Intervention Services when necessary. All contracts or other arrangements with public or private individuals or agency service providers include a requirement that all Early Intervention Services must meet CNMI standards and be consistent with the provisions of IDEA and the Education Department General Administrative Regulations in 34 CFR part 80.

Prior to awarding contracts the PSS determines a need for the service and circulates a Request for Proposals for 30 days. The RFP describes the area of need, the scope of work to be performed, PSS policies regarding the system of payment provisions, use of public and private insurance, benefits and fees, the funding source, and other general contract requirements. Public or private providers must respond to Request for Proposals as per the PSS Procurement Regulations by submitting proposals. All contracts with Early Intervention Providers include PSS policies regarding the system of payment provisions, use of public and private insurance, benefits and fees. Contractors must acknowledge and abide by the PSS policies. Contracts are awarded to responsible contractors who meet the PSS Procurement requirements.

#### **Reimbursement Procedures**

If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, Early Intervention funds may be used to pay the provider of services for services and functions authorized under Early Intervention, including health services, as defined in 34 CFR §303.16, but not medical services, functions of the child find system described in 34 CFR §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in 34 CFR §303.321, pending reimbursement from the agency or entity that has ultimate responsibility for the payment. Within a reasonable time after the determination that another agency or entity had ultimate responsibility for payment, the PSS will inform the agency of the reimbursable amount to PSS and an acceptable time period to submit payment not to exceed 60 days.

**Data Collection**

The CNMI compiles and reports timely and accurate data that meets the requirements of section 34 CFR §§303.700 through 303.702 and 303.720 through 303.724 of IDEA. The data system includes a description of the process that the PSS uses to compile data on infants or toddlers with disabilities receiving early intervention services, including a description of the PSS's sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.

## **Section D**

### **Interagency Coordinating Council**

#### **Establishment of Council**

The CNMI has established an Interagency Coordinating Council (Council), appointed by the Governor. The membership of the Council reasonably represents the population of the CNMI. The Governor requires the Council to select its chairperson. Any member of the Council who is a representative of PSS may not serve as the chairperson of the Council.

#### **Composition**

The Council must be composed as follows:

1. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.
2. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.
3. At least 20 percent of the members must be public or private providers of early intervention services.
4. At least one member must be from the State legislature.
5. At least one member must be involved in personnel preparation.
6. At least one member must;
  - a. Be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and
  - b. Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.
7. At least one member must;
  - a. Be from the SEA responsible for preschool services to children with disabilities; and
  - b. Have sufficient authority to engage in policy planning and implementation on behalf of the SEA.
8. At least one member must be from the agency responsible for the State Medicaid and CHIP program.
9. At least one member must be from a Head Start or Early Head Start agency or program in the State.
10. At least one member must be from a State agency responsible for child care.
11. At least one member must be from the agency responsible for the State regulation of private health insurance.
12. At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
13. At least one member must be a representative from the State child welfare agency responsible for foster care.
14. At least one member must be from the State agency responsible for children's mental health.
15. The Governor may appoint one member to represent more than one program or agency listed in line 7 through 14

The Council may include other members selected by the Governor. No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

#### **Meetings**

The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary. The meetings must;

- Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
- To the extent appropriate, be open and accessible to the general public; and
- As needed, provide for interpreters for persons who are deaf and other necessary services for Council members and participants. The Council may use funds under this part to pay for those services.

#### **Use of funds by the Council**

Subject to the approval by the Governor, the Council may use funds under this part to;

- Conduct hearings and forums;
- Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);
- Pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;
- Hire staff; and
- Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.
- Council members must serve without compensation from funds available under Part C of the Act.

#### **Functions of the Council--required duties**

The Council must advise and assist the Public School System in the performance of its responsibilities of the Act, including;

- Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
- Assignment of financial responsibility to the appropriate agency;
- Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find, monitoring, and financial responsibility and provision of early intervention services and transition and
- Preparation of applications under this part and amendments to those applications.

#### **Advising and Assisting on Transition**

The Council must advise and assist the PSS regarding the transition of toddlers with disabilities to preschool and other appropriate services.

#### **Annual Report to the Governor and to the Secretary**

The Council must;

- Prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the CNMI; and
- Submit the report to the Secretary by a date that the Secretary establishes.
- Each annual report must contain the information required by the Secretary for the year for which the report is made.

#### **Authorized Activities by the Council**

The Council may carry out the following activities:

- Advise and assist the PSS regarding the provision of appropriate services for children with disabilities from birth through age five.
- Advise appropriate agencies in the CNMI 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 CNMI.
- 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 CNMI interagency early learning initiatives, as appropriate.

## **Section E**

### **Public Participation Policies and Procedures**

At least 60 days prior to being submitted to the Department, the PSS application for funds under Part C, including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application is published in a manner that will ensure circulation throughout the CNMI 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 adopting any new policy or procedure, including any revision to an existing policy or procedure needed to comply with Part C of the Act, the PSS

- Holds public hearings on the new policy or procedure, including any revision to an existing policy or procedure
- Provides notice of the hearings at least 30 days before the hearings are conducted to enable public participation; and
- Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure, including any revision to an existing policy or procedure, needed to comply with Part C of the Act and these regulations.

## **Section F**

### **Transition to Preschool and Other Programs Policy and Procedure**

All infants and toddlers with disabilities under the age of three and their families will be provided a smooth transition from Part C to Preschool or other appropriate services for toddlers with disabilities or exiting the program for infants and toddlers with disabilities.

The method used to ensure a seamless transition between services under the Public School System Part C, Early Intervention Program, and the Public School System Part B, Special Education Program, is an intra-agency DIRECTIVE issued by the Commissioner of Education to the Coordinator of the Early Intervention Program and the Director of Special Education. The DIRECTIVE includes the following:

#### **Notification to the Part B (Special Education) Program**

Not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the Early Intervention Program notifies the Special Education Program that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act.

If the Early Intervention program determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the Early Intervention Program, as soon as possible after determining the child's eligibility, notifies the Special Education Program that the toddler, on his or her third birthday, will reach the age of eligibility for services under Special Education.

If a toddler is referred to the Early Intervention Program fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the Early Intervention program, with parental consent, refers the toddler to the Special Education Program. The Early Intervention Program is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances. If parent did not consent to the referral or the disclosure of personally identifiable information, the Early Intervention Program will provide the parent with Special Education Program contact information.

#### **Conference to Discuss Services**

If a toddler with a disability may be eligible for preschool services under Part B of the Act, the Early Intervention Program, with the approval of the family of the toddler, convenes a conference, among the Early Intervention Program, the family, and the Special Education Program not fewer than 90 days, and, at the discretion of all parties, not more than 9 months before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act.

If the Early Intervention Program determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the Early Intervention Program, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the Early Intervention Program, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

#### **Transition Plan**

For all toddlers with disabilities, the Early Intervention Program reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year. Each family of a toddler with a disability who is served in the Early Intervention Program is included in the development of the transition plan. The Early Intervention Program establishes a transition plan in the IFSP not fewer than 90 days, and, at the discretion of all parties, not more than 9 months before the toddler's third birthday. The transition plan in the IFSP includes, as appropriate steps for the toddler with a disability and his or her family to exit from the Part C program and any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

#### **Transition Conference and Meeting to Develop Transition Plan**

The Transition Conference or meeting to develop the transition plan may be combined into one meeting. The

Transition Conference or meetings must be conducted in settings and at times that are convenient for the family and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

### **Parental Consent**

The contents of the Transition Plan in the IFSP must be fully explained to the parents and informed written consent, must be obtained, prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service.

### **The Transition Conference or Meeting Participants**

The Transition Conference or meeting must include the following participants:

- The parent or parents of the child.
- Other family members, as requested by the parent, if feasible to do so.
- An advocate or person outside of the family, if the parent requests that the person participate.
- The service coordinator designated by the public agency to be responsible for implementing the IFSP.
- A person or persons directly involved in conducting the evaluations and assessments
- As appropriate, persons who will be providing early intervention services to the child or family.
- Head Start or child care representatives if appropriate

If a person listed above is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including, participating in a telephone conference call, or having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting.

The Special Education Program will participate in the transition planning conferences arranged by the Early Intervention Program. By the third birthday of a child, an IEP or, if consistent with 34 CFR §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and (c). In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Early Intervention service coordinator or other representatives of the Early Intervention Program to assist with the smooth transition of services.

### **Coordination with Head Start, Maternal Child Health, Developmental Disabilities Council, Autism Society, and Child Care Programs**

The Early Intervention Program is an active participant and community partner on the Head Start Policy Council, and the Head Start Community Partnership Committee, the MCH Early Childhood Comprehensive Systems (ECCS) Program, *Big Steps for Little Feet*, the Autism Society, and the CNMI Council on Developmental Disabilities.

### **CNMI Option to NOT make Services Under Part C Available to Children Ages Three and Older**

The CNMI elects to NOT include a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services Part C, the continuation of early intervention services under Part C after the child turns three.

## **Section G**

### **Procedural Safeguards**

The PSS has adopted procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality in §§ 303.401 through 303.417, parental consent and notice in §§ 303.420 and 303.421, surrogate parents in § 303.422, and dispute resolution procedures in § 303.430. The PSS ensures the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part and makes available to parents an initial copy of the child's early intervention record, at no cost to the parents.

### **Confidentiality of Personally Identifiable Information and Early Intervention Records**

#### **Confidentiality and Opportunity to Examine Records**

The CNMI ensures that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.

#### **Confidentiality Procedures**

As required under sections 617(c) and 642 of the Act, the regulations in 34 CFR §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the CNMI PSS and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. The CNMI has procedures in effect to ensure that

- Participating agencies (including the PSS and EIS providers) comply with the Part C confidentiality procedures in 34 CFR §§303.401 through 303.417; and
- The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.

#### **Applicability and Timeframe of Procedures**

The confidentiality procedures described above apply to the personally identifiable information of a child and the child's family that;

- Is contained in early intervention records collected, used, or maintained under Part C by the PSS or an EIS provider; and
- Applies from the point in time when the child is referred for early intervention services under Part C until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

#### **Disclosure of Information**

The Part C program must disclose to the Part B program and the LEA where the child resides, in accordance with 34 CFR §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:

- A child's name.
- A child's date of birth.
- Parent contact information (including parents' names, addresses, and telephone numbers).
- The information described in the above paragraph is needed to enable the Part B program, to identify all children potentially eligible for services under §303.211 and Part B of the Act.

#### **Option to Inform A Parent About Intended Disclosure**

The CNMI has not adopted a policy permitting a parent to object to the disclosure of personally identifiable

information.

### **Confidentiality**

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by PSS and EIS providers pursuant to Part C of the Act, and consistent with 34 CFR §§303.401 through 303.417. The regulations in 34 CFR §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the CNMI PSS and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

### **Definitions**

The following definitions apply to 34 CFR §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:

- **Destruction** means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.
- **Early intervention records** mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.
- **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 regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

### **Notice to Parents**

The PSS must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in 34 CFR §303.402, including;

- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in 34 CFR §§303.401 through 303.417; and
- A description of the extent that the notice is provided in the native languages of the various population groups in the State.

### **Access Rights**

Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to 34 CFR §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made. The right to inspect and review early intervention records under this section includes;

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
- The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

- The right to have a representative of the parent inspect and review the early intervention records.
- An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

### **Record of Access**

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

### **Records On More Than One Child**

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

### **List of Types and Locations of Information**

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

### **Fees for Records**

Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in the paragraph below.

- A participating agency may not charge a fee to search for or to retrieve information under this part.
- A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

### **Amendment of Records at A Parent's Request**

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

The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

### **Opportunity for A Hearing**

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in 34 CFR §303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the State's procedures in 34 CFR §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

### **Result of Hearing**

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

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early

intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the early intervention records of the child under this section must;

- Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and
- If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

### **Hearing Procedures**

A hearing held under 34 CFR §303.411 must be conducted according to the procedures under 34 CFR 99.22.

### **Consent Prior to Disclosure or Use**

Except as provided in paragraph above, prior parental consent must be obtained before personally identifiable information is;

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or
- Used for any purpose other than meeting a requirement of this part.

A lead agency or other participating agency may not disclose personally identifiable information, as defined in 34 CFR §303.29, to any party except participating agencies, including the lead agency and EIS providers that are part of the State's Part C system without parental consent unless authorized to do so under--

- (1) Sections 34 CFR §§303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or
- (2) One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to--
  - (i) 34 CFR 99.30 means 34 CFR §303.414(a);
  - (ii) "Education records" means early intervention records under 34 CFR §303.403(b);
  - (iii) "Educational" means early intervention under this part;
  - (iv) "Educational agency or institution" means the participating agency under 34 CFR §303.404(c);
  - (v) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this part;
  - (vi) "State and local educational authorities" means the lead agency under 34 CFR §303.22; and
  - (vii) "Student" means child under this part.

The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent's right to refuse consent under §303.420.

### **Safeguards**

Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 34 CFR §§303.401 through 303.417 and 34 CFR part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

### **Destruction of Information**

The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80. The information must be destroyed at the request of the parents. However, a permanent record of a 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 may be maintained without time limitation.

### **Enforcement**

The PSS has in effect policies and procedures, including sanctions and the right to file a complaint under 34 CFR §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with 34 CFR §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.

### **Parental Consent and Notice**

#### **Parental Consent and Ability to Decline Services**

The PSS must ensure parental consent is obtained before;

- Administering screening procedures under 34 CFR §303.320 that are used to determine whether a child is suspected of having a disability;
- All evaluations and assessments of a child are conducted under 34 CFR §303.321;
- Early intervention services are provided to the child under this part;
- Public benefits or insurance or private insurance is used if such consent is required under 34 CFR §303.520; and
- Disclosure of personally identifiable information consistent with 34 CFR §303.414.
- If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent—
  - Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
  - Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.
- The lead agency may not use the due process hearing procedures under this part or Part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section
- The parents of an infant or toddler with a disability;
  - Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and
  - May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

#### **Prior Written Notice and Procedural Safeguards Notice**

Prior written notice must be provided to parents a reasonable time before the PSS or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

#### **Content of Notice**

The notice must be in sufficient detail to inform parents about;

- The action that is being proposed or refused;
- The reasons for taking the action; and
- All procedural safeguards that are available under this subpart, including a description of mediation in 34 CFR §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under 34 CFR §303.430(d), and any timelines under those procedures.

#### **Native Language**

The notice must be;

- Written in language understandable to the general public; and
- Provided in the native language, as defined in 34 CFR §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- If the native language or other mode of communication of the parent is not a written language, the

public agency or designated EIS provider must take steps to ensure that;

- The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- The parent understands the notice; and
- There is written evidence that the requirements of this paragraph have been met.

### **Surrogate Parents**

The PSS or other public agency must ensure that the rights of a child are protected when

- No parent (as defined in 34 CFR §303.27) can be identified;
- The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or
- The child is a ward of the State under the laws of that State.

### **Duty of PSS and other Public Agencies**

The duty of the PSS, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for;

- Determining whether a child needs a surrogate parent; and
- Assigning a surrogate parent to the child.
- In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child

### **Wards of the State**

In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

### **Criteria for Selection of Surrogate Parents**

The PSS or other public agency may select a surrogate parent in any way permitted under CNMI law. Public agencies must ensure that a person selected as a surrogate parent;

- Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
- Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- Has knowledge and skills that ensure adequate representation of the child.

### **Non-employee Requirement; Compensation**

A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

### **Surrogate Parent Responsibilities**

The surrogate parent has the same rights as a parent for all purposes under this part.

### **Lead Agency (PSS) Responsibility**

The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

### **Dispute Resolution Options**

#### **State Dispute Resolution Options**

The CNMI system includes written procedures for the timely administrative resolution of complaints through mediation, CNMI complaint procedures, and due process hearing procedures, described in the paragraphs below.

#### **Mediation**

The PSS makes available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in 34 CFR §303.431.

### **State Complaint Procedures**

PSS has adopted written CNMI complaint procedures to resolve any CNMI complaints filed by any party regarding any violation of this part that meet the requirements in 34 CFR §§303.432 through 303.434.

### **Due Process Hearing Procedures**

The PSS has adopted written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in 34 CFR §303.421(a). The CNMI has adopted the Part B due process hearing procedures under section 615 of the Act and 34 CFR §§303.440 through 303.449 (with a 45-day timeline for resolving due process complaints, as provided in 34 CFR §303.440(c)).

### **Status of a Child During the Pendency of a Due Process Complaint**

During the pendency of any proceeding involving a due process complaint, unless the PSS and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

### **Mediation**

PSS ensures that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

### **Requirements**

The procedures meet the following requirements: The procedures ensure that the mediation process—

- Is voluntary on the part of the parties;
- Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques
- The CNMI must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
- The PSS must select mediators on a random, rotational, or other impartial basis.
- The CNMI must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.
- 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.
- If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
- States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.

A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

### **Impartiality of Mediator**

An individual who serves as a mediator under this part;

- May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
- Must not have a personal or professional interest that conflicts with the person's objectivity.
- A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

### **Meeting to Encourage Mediation**

The PSS may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party;

- Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
- Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

### **State Complaint Procedures**

#### **Adoption of State Complaint Procedures**

PSS adopted written procedures for;

- Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in 34 CFR §303.434 by providing for the filing of a complaint with the lead agency; and
- Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under 34 CFR §§303.432 through 303.434.

#### **Remedies for Denial of Appropriate Services**

In resolving a complaint in which the PSS has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under Part C of the Act, must address;

- The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

#### **Minimum State Complaint Procedures**

##### **Time Limit; Minimum Procedures**

The PSS includes in its complaint procedures a time limit of 60 days after a complaint is filed under 34 CFR §303.434 to;

- Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum
  - At the discretion of the lead agency, a proposal to resolve the complaint; and
  - An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;
- Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains;
  - Findings of fact and conclusions; and
  - The reasons for the lead agency's final decision.

##### **Time Extension; Final Decision; Implementation**

The PSS procedures described in this section also;

- Permit an extension of the time limit only if
  - Exceptional circumstances exist with respect to a particular complaint; or
  - The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider

involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and

- Include procedures for effective implementation of the lead agency's final decision, if needed, including;
  - Technical assistance activities
  - Negotiations; and
  - Corrective actions to achieve compliance

#### **Complaints Filed Under This Section and Due Process Hearings Under 34 CFR §303.430**

If a written complaint is received that is also the subject of a due process hearing under 34 CFR §303.430(d), or contains multiple issues of which one or more are part of that hearing, the PSS must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties;

- The due process hearing decision is binding on that issue; and
- The lead agency must inform the complainant to that effect.

A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.

#### **Filing a Complaint**

An organization or individual may file a signed written complaint under the procedures described in 34 CFR §§303.432 and 303.433. The complaint must include;

- A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations with respect to a specific child;
  - The name and address of the residence of the child;
  - The name of the EIS provider serving the child;
  - A description of the nature of the problem of the child, including facts relating to 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.
- The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR §303.432.
- The party filing the complaint 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.

#### **Due Process Hearing Procedures (Part B) under Section 615 of the Act**

##### **Filing a Due Process Complaint**

A parent, EIS provider, or PSS may file a due process complaint on any of the matters described in 34 CFR §303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under Part C of the Act.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the CNMI has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in 34 CFR §303.443(f) apply to the timeline in this section.

##### **Information for Parents**

The PSS must inform the parent of any free or low-cost legal and other relevant services available in the area if;

- The parent requests the information; or
- The parent or EIS provider files a due process complaint under this section.

**Timeline for Resolution** The PSS has adopted 45-day timeline, subject to 34 CFR §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under 34 CFR §303.421, the specific timeline it has adopted.

**Due Process Complaint**

The PSS has procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint which must remain confidential. The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.

**Content of Complaint**

The due process complaint required in the paragraph above must include;

- The name of the child;
- The address of the residence of the child;
- The name of the EIS provider serving the child;
- In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child;
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time.

**Notice Required Before a Hearing on a Due Process Complaint**

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

**Sufficiency of Complaint**

The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in of this section.

Within five days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if;

- The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or
- The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.

**Lead Agency Response to a Due Process Complaint**

If the PSS has not sent a prior written notice under 34 CFR §303.421 to the parent regarding the subject matter contained in the parent’s due process complaint, the PSS or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes;

- An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;
- A description of other options that the IFSP Team considered and the reasons why those options were rejected;

- A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; and
- A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.

A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent's due process complaint was insufficient, where appropriate.

**Other Party Response to a Due Process Complaint**

Except as provided in the paragraph above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

**Resolution Process: Resolution Meeting**

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 CFR §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that—

- Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and
- May not include an attorney of the lead agency unless the parent is accompanied by an attorney.

The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.

The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if;

- The parent and lead agency agree in writing to waive the meeting; or
- The parent and lead agency agree to use the mediation process described in 34 CFR §303.431.
- The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

**Resolution Period**

If the PSS has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in paragraph above, the timeline for issuing a final decision under 34 CFR §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above paragraphs of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent's due process complaint.

If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

**Adjustments to 30-day Resolution Period**

The 45-day timeline adopted by the PSS under 34 CFR §303.440(c) for the due process hearing described in 34 CFR §303.447(a) starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting.
- After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

- If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.

#### **Written Settlement Agreement**

If a resolution to the dispute is reached at the meeting described in paragraphs above, the parties must execute a legally binding agreement that is;

- Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and
- Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.

#### **Agreement Review Period**

If the parties execute an agreement pursuant to paragraph above, a party may void the agreement within three business days of the agreement's execution.

#### **Impartial Due Process Hearing**

Whenever a due process complaint is received consistent with 34 CFR §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.

#### **Agency Responsible for Conducting the Due Process Hearing**

The hearing described in paragraph (a) of this section must be conducted by the PSS directly responsible for the early intervention services of the infant or toddler, as determined under CNMI statute, CNMI regulation, or a written policy of the lead agency.

#### **Impartial Hearing Officer**

At a minimum, a hearing officer

- Must not be;
  - An employee of the PSS or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or
  - A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
- Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

Each lead agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

#### **Subject Matter of Due Process Hearings**

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §303.441(b), unless the other party agrees otherwise.

#### **Timeline for Requesting a Hearing**

A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due

process hearing under this part, in the time allowed by that State law.

#### **Exceptions To The Timeline**

The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to;

- Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or
- The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to the parent.

#### **Hearing Rights**

Any party to a hearing conducted pursuant to 34 CFR §§303.440 through 303.445, or an appeal conducted pursuant to 34 CFR §303.446, has the right to;

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants or toddlers with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing
- Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- Obtain written or, at the option of the parents, electronic findings of fact and decisions.

#### **Additional Disclosure of Information**

At least five business days prior to a hearing conducted pursuant to 34 CFR §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

#### **Parental Rights at Hearings**

Parents involved in hearings must;

- Be given the right to open the hearing to the public; and
- Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.

#### **Decision of Hearing Officer**

Subject to the paragraph below, a hearing officer's determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the Act, must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early intervention services under Part C of the Act only if the procedural inadequacies;

- Impeded the child's right to identification, evaluation, and placement or provision of early intervention services for the child and that child's family under Part C of the Act;
- Significantly impeded the parent's opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child's family under Part C of the Act; or
- Caused a deprivation of educational or developmental benefit.

Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under 34 CFR §§303.400 through 303.449.

#### **Construction Clause**

Nothing in 34 CFR §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the PSS under 34 CFR §303.446(b), if the PSS level appeal is available.

### **Separate Due Process Complaint**

Nothing in 34 CFR §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

### **Findings and Decisions to General Public**

The PSS, after deleting any personally identifiable information, must make the findings and decisions available to the public.

### **Finality of Decision; Appeal; Impartial Review**

#### **Finality of Hearing Decision**

A decision made in a hearing conducted pursuant to 34 CFR §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and 34 CFR §303.448.

#### **Appeal of Decisions; Impartial Review**

The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency.

If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must;

- Examine the entire hearing record;
- Ensure that the procedures at the hearing were consistent with the requirements of due process;
- Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 34 CFR §303.444 apply
- Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- Make an independent decision on completion of the review; and
- Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.

### **Findings of Fact and Decision to the General Public**

The PSS, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.

### **Finality of Review Decision**

The decision made by the reviewing official is final unless a party brings a civil action under §303.448.

### **Timelines and Convenience of Hearings and Reviews**

The PSS must ensure that not later than 45 days (consistent with the CNMI's written policies and procedures adopted under 34 CFR §303.440(c)) after the expiration of the 30-day period in 34 CFR §303.442(b), or the adjusted 30-day time periods described in §303.442(c));

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties.

The PSS must ensure that not later than 30 days after the receipt of a request for a review;

- A final decision is reached in the review; and
- A copy of the decision is mailed to each of the parties.

A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in the above paragraphs at the request of either party.

Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

### **Civil Action**

Any party aggrieved by the findings and decision made under 34 CFR §§303.440 through 303.445 who does not have the right to an appeal under 34 CFR §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The action may be brought in any CNMI court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

#### **Time Limitation**

The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by that State law.

#### **Additional Requirements**

In any action brought under paragraph (a) of this section, the court;

- Receives the records of the administrative proceedings;
- Hears additional evidence at the request of a party; and
- Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

#### **Jurisdiction of District Courts**

The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

#### **Rule of Construction**

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under 34 CFR §§303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

#### **State Enforcement Mechanisms**

Notwithstanding 34 CFR §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the CNMI from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.

## **Section H**

### **Use of Funds, Pavor of Last Resort and System of Payments**

#### **Use of Funds**

The PSS will use Early Intervention funds for activities or expenses that are reasonable and necessary for implementing the Early Intervention Program for infants and toddlers with disabilities including funds;

- For direct early intervention services for infants and toddlers with disabilities and their families that are not otherwise funded through other public or private sources.
- To expand and improve services for infants and toddlers with disabilities and their families that are otherwise available
- To provide FAPE as the term is defined in 34 CFR §303.15 in accordance to Part B of the Act to children with disabilities from their third birthday to the beginning of the following school year. The provision of FAPE does not apply to children who continue to receive early intervention service in lieu of FAPE provided in accordance to Part B to children with disabilities from their third birthday until those child enter kindergarten.
- 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 and private community-based organizations, services, and personnel for the purposes of identifying and evaluating at-risk infants and toddlers, making referrals for at-risk infants and toddlers and conducting periodic follow-up on each referral, 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.

#### **Pavor of Last Resort**

**Nonsubstitution of Funds:** Except as provided in the paragraph below (**Interim Payments—Reimbursement**), Early Intervention Program funds will not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, Early Intervention funds will be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source.

**Interim Payments—Reimbursement:** If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, Early Intervention funds may be used to pay the provider of services for services and functions authorized under Early Intervention, including health services, as defined in 34 CFR §303.16, but not medical services, functions of the child find system described in 34 CFR §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in 34 CFR §303.321, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

**Non-reduction of Benefits:** Nothing in this part may be construed to permit the CNMI to reduce medical or other assistance available in the CNMI or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq. (SSA) relating to maternal and child health or Title XIX of the SSA, 42 U.S.C. 1396 relating to Medicaid, including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

#### **System of Payments**

The CNMI has not established a system of payments for early intervention services under Part C of IDEA. Fees will not be charged to parents for Early Intervention Services including services that the child is entitled to including; implementing the child find requirements, evaluation, assessment, and the functions related to evaluation and assessment, service coordination services, administrative and coordinative activities related to the development, review and evaluation of IFSP's and interim IFSP's and implementation of the procedural safeguards and the other components of the statewide system of early intervention services.

### **Methods to Ensure the Provision of, and Financial Responsibility for, Part C Services**

The Public School System Commissioner of Education is the designated authority to ensure interagency coordination for the provision of and establishing financial responsibility for early intervention services provided under Part C. Such services are consistent with the requirement in section 635 of the Act and the State's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between CNMI agencies.

Listed below are the methods used to ensure coordination between CNMI agencies and the financial responsibility for the provisions of Early Intervention Services and to ensure that no services that a child is entitled to receive under Early Intervention are delayed or denied because of disputes between agencies regarding financial or other responsibilities and are consistent with the written funding policies adopted by the CNMI. The methods may include the use of an impartial hearing officer to resolve disputes, necessary to ensure effective cooperation and coordination among agencies.

- Signed interagency agreements that clearly identify the financial and service provision responsibilities of each agency or entity within the agency.
- Signed Intra-agency Directive from the Commissioner of Education to the Coordinator of the Early Intervention Program and the Director of Special Education to ensure a smooth transition between the Early Intervention Program (Part C) and the Special Education Program (619 of Part B)
- Contracts with public or private individuals or agency service providers to provide Early Intervention Services

### **Procedures for Resolving Disputes**

#### **Interagency Agreements:**

The interagency agreements include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the CNMI's early intervention service program. Those procedures include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved. The method permits the agency to resolve its own internal disputes, based on the agency's procedures that are included in the agreement, so long as the agency acts in a timely manner and include the process that will followed in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

If, during the resolution of the dispute, the Governor, Governor's designee, or PSS determines that the assignment of financial responsibility under this section was inappropriately made- the dispute shall be referred to an impartial hearing officer. The hearing shall be informal with both parties having the opportunity to present its side of the dispute. The hearing officer's decision, which may include reimbursement, shall be final and binding. The PSS will make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

#### **Intra-agency Agreement**

The Intra-agency Directive form the Commissioner of Education to the Coordinator of Early Intervention Program and the Director of Special Education Programs include procedures for achieving a timely resolution of disputes between both programs to ensure a smooth transition from Part C to Part B. The method permits the programs to resolve its own internal disputes so long as the programs act in a timely manner and include the process that will be followed in achieving resolution of disputes. The Early Intervention Program and Special Education Program shall be permitted to resolve any disputes that arise between the programs regarding service provisions, including transition service provisions within a reasonable time period. If the program coordinators or directors are unable to resolve within a reasonable time, the matter shall be handled by the Deputy Commissioner for Instructional Services. Either or both the Early Intervention Program Coordinator and Director of Special Education will submit to the Office of Instructional Services written statements summarizing the nature of the dispute and their attempts to resolve the dispute. The Deputy Commissioner of Instructional Services may either require the Early Intervention Program Coordinator and Director of Special Education to attend a meeting to discuss the dispute or render a decision which will be final and binding. If the dispute can not be resolved as a result of the meeting, the Deputy Commissioner of

Instructional Services will render a decision which will be final and binding.

### **Contracting For Early Intervention Services**

All contracts or other arrangements with public or private individuals or agency service providers to provide Early Intervention Services in the CNMI are consistent with the provisions of Part C of the Act, including the contents of the application and the conditions of the contract or other arrangements and include a requirement that all Early Intervention Services must meet CNMI standards and the provisions of IDEA and contracts are consistent with the Education Department General Administrative Regulations in 34 CFR part 80.

### **Payor of Last Resort & System of Payments Provisions--Use of Insurance, Benefits, Systems of Payments, and Fees**

#### **Use of Private Insurance to Pay for Part C Services**

The CNMI has not adopted a system of payments therefore will not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services, including contracts with public or private Early Intervention providers.

#### **Inability to Pay**

The CNMI has not adopted a system of payments therefore a parents in ability to pay will not be used to delay or deny any services under this part to that child or family including contracts with public or private Early Intervention providers.

#### **Proceeds or Funds from Public Insurance or Benefits or From Private Insurance**

The CNMI has not adopted a system of payments therefore proceeds or funds from public insurance or benefits or from private insurance will not be received.

#### **Funds Received from a Parent or Family Member under a State's System of Payments**

The CNMI has not adopted a system of payments therefore will not receive funds or fees from any parent or family member.

#### **System of Payments and Fees**

The CNMI has not adopted a system of payments therefore does not have system of payment policies.

#### **Functions Not Subject to Fees**

The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

- Implementing the child find requirements in 34 CFR §§303.301 through 303.303.
- Evaluation and assessment, in accordance with 34 CFR §303.320, and the functions related to evaluation and assessment in 34 CFR §303.13(b).
- Service coordination services, as defined in 34 CFR §§303.13(b)(11) and 303.33.
- Administrative and coordinative activities related to the development, review, and evaluation of IFSPs and interim IFSPs in accordance with 34 CFR §§303.342 through 303.345; and
- Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.

#### **States with FAPE Mandates, or That Use Funds Under Part B of the Act to Serve Children Under Age Three**

The CNMI does not have in effect a State law requiring the provision of 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.

#### **Family Fees**

The CNMI has not adopted a system of payments therefore will not receive funds or fees from any parent or family member.

## **Section I**

### **Monitoring, Enforcement and Reporting**

The PSS has adopted monitoring procedures to monitor the implementation of the early intervention program. The monitoring procedures include enforcement mechanisms, including, if applicable, technical assistance and imposing conditions on the Early Intervention Program and providers, corrective actions or improvement plans and withholding of funds, consistent with PSS Disciplinary policies. The Early Intervention Program reports annually on the performance of the CNMI Early Intervention Program.

In exercising its monitoring responsibilities in this section, the PSS ensures that when it identifies noncompliance with the requirements of this part by the Early Intervention Program and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the identification of the noncompliance.

The primary focus of the PSS monitoring activities are on improving early intervention results and functional outcomes for all infants and toddlers with disabilities and ensuring that the Early Intervention program and EI providers meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

As a part of its monitoring, enforcement and reporting responsibilities, the PSS uses quantifiable and qualitative indicators as are needed to adequately measure performance in the priority areas and the indicators established by the Secretary for the State performance plans. The priority areas are:

- Early intervention services in natural environments.
- State exercise of general supervision, including child find, effective monitoring, the use of resolution sessions, due process hearing procedures, mediation, and a system of transition services as defined in section 637(a)(9) of the Act.

### **State Performance Plans and Data Collection**

The PSS has in place a performance plan that meets the requirements described in section 616 of the Act and is approved by the Secretary. It includes an evaluation of the PSS's efforts to implement the requirements and purposes of Part C of the Act, a description of how the PSS will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary. The PSS reviews its State performance plan at least once every six years and submits any amendments to the Secretary. The PSS collects valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans. If the Secretary permits CNMI to collect data on specific indicators through CNMI monitoring or sampling, and the CNMI collects data for a particular indicator through CNMI monitoring or sampling, the CNMI will collect and report data on those indicators at least once during the six-year period of a State performance plan. Nothing in Part C of the Act may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

### **Public Reporting and Privacy**

The CNMI reports annually to the public on the performance the Early Intervention Program in the CNMI on the targets in the State's performance plan as soon as practicable but no later than 120 days following the CNMI's submission of its annual performance report to the Secretary and makes the State's performance plan and annual performance reports available through public means, including by posting on the PSS website, distribution to the media, and distribution to other agencies and programs. If the CNMI, in meeting the requirements of this section, collects data through State monitoring or sampling, the CNMI includes in its public report on the Early Intervention the most recently available performance data and the date the data were collected.

### **Privacy**

The CNMI does not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

## **Section J**

### **Public Reports: Program Information, Data Requirements**

The PSS annually reports to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary. The PSS submits the report to the Secretary in the manner prescribed by the Secretary.

### **Annual Report of Children Served--Report Requirement**

For the purposes of the annual report required by section 618 of the Act and §303.720, the PSS counts and reports the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report includes;

1. The number and percentage of infants and toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services and include in this number any children reported to it by tribes, tribal organizations, and consortia
2. The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and
3. The number and percentage of at-risk infants and toddlers, as defined in section 632(1) of the Act, by race and ethnicity, who are receiving early intervention services under Part C of the Act.
4. The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

### **Data Reporting: Protection of Identifiable Data**

The Early Intervention Program in a manner that does not result in disclosure of data identifiable to individual children publicly reports the data.

### **Annual Report of Children Served—Certification**

The PSS includes in its report a certification signed by an authorized official of the agency that the information provided under 34 CFR §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.