

New Part C Regulations: Policy Changes Needed for Statewide Implementation

2011 Tri-State Regional Special Education Law Conference

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Part C Regulations

- Final regulations were published in *Federal Register* September 28, 2011
- Became effective October 28, 2011
- New regulations must be implemented by July 1, 2012
- Public comment periods and hearings required

<http://idea.ed.gov>

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The screenshot shows a web browser window displaying the U.S. Department of Education's website for IDEA 2004. The page title is "IDEA 2004: Building the Legacy" and the subtitle is "Part C (birth - 2 years old)". The website features a search bar, navigation tabs for "Home", "Statute", "Regulations", and "Q&A Corner", and a "News" section with two items: "Final Regulations in the Federal Register" and "Posny remarks on IDEA Part C Final Regulations". The page also includes a welcome message and a description of the site's purpose as a "one-stop shop" for resources related to Part C of the Individuals with Disabilities Education Act (IDEA).

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IDEA Part C Side-By-Side Comparison

- Released October 14, 2011 by:
 - Council for Exceptional Children
www.cec.sped.org
 - Division for Early Childhood of CEC (DEC)
www.dec-sped.org
 - IDEA Infant Toddler Coordinators Association
www.ideainfanttoddler.org

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Format of Regulations Package

- Analysis of Comments and Changes
- Eight subparts of regulations
- Notes were eliminated
- Applicable Part B language was incorporated with necessary terminology and other changes made
- Includes a model IFSP form
- NPRM on Part C MOE coming soon for public comment

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Part C Regulations

- Subpart A – General [*303.1 through 303.37*]
- Subpart B – State Eligibility for a Grant and Requirements for a Statewide System [*303.100 through 303.126*]
- Subpart C- State Application and Assurances [*303.200 through 303.236*]
- Subpart D – Child Find, Evaluations and Assessments, and IFSPs [*303.300 through 303.346*]

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Part C Regulations

- Subpart E – Procedural Safeguards
[303.400 through 303.449]
- Subpart F – Use of Funds and Payor of Last Resort [303.500 through 303.521]
- Subpart G – SICC [303.600 through 303.605]
- Subpart H – State Monitoring and Enforcement; Federal Monitoring and Enforcement; Reporting; and Allocation of Funds [303.700 through 303.734]

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Topics For Discussion

- Definitions
- Program and Service Components
(Screening, Evaluation and Assessment, IFSP)
- B-5 Option
- Transition
- Procedural Safeguards
- Finance
- Other changes and additions

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Definitions

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Early Intervention Services

- “While nursing services and nutrition services are not specifically mentioned in the Act, they historically have been included in the definition of early intervention services.”
- Adds “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.”

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Assistive Technology Device

“Whether a hearing aid or an appropriate related audiological service is considered an assistive technology device or an early intervention service, respectively, for an infant or toddler with a disability depends on whether the device or service is used to increase, maintain, or improve the functional capabilities of the child and whether the IFSP Team determines that the infant or toddler needs the device or service in order to meet his or her specific developmental outcomes.”

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Assistive Technology

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.

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Vision Services

“clarified ...evaluations and assessments of visual functioning include the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development. [The Department] also agrees that reference to independent living applies to older children and have deleted the reference...”

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Service Coordination

- Clarifies responsibilities to include:
 - the coordination of early intervention services and other services that the child needs or is being provided;
 - conducting referral and other activities;
 - ensuring the timely provision of services; and
 - conducting follow-up activities to determine that appropriate Part C services are being provided.

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Special Educators

“The term ‘special educators’ consists of many distinct professions including teachers of children with hearing impairments and teachers of children with visual impairments. Therefore, including teachers of children with hearing impairments and teachers of children with visual impairments as examples of special educators ... is appropriate and listing these terms separately is not necessary.”

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Other Services

Adds “Other services. The services and personnel identified and defined ...do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel ... Nothing in this section prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified ...of another type of personnel that may provide early intervention services ...”

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Multidisciplinary

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 in §303.340 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 (consistent with §303.343(a)(1)(iv)).

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Native Language

- The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, ...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.

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Native Language

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).

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Native Language

“[the Department] has not included in these final regulations the requirement in proposed §303.25(a)(2) that native language be used in all direct contact with the child. However, as recipients of Federal financial assistance, Part C lead agencies must comply with the requirements in Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance.”

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Natural Environments

- 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 §303.126.
- “[the Department] does not believe that a clinic, hospital or service provider’s office is a natural environment for an infant or toddler without a disability; therefore, such a setting would not be natural for an infant or toddler with a disability.”

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Parent

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);

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Parent (cont)

- 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.

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Parent (cont)

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.

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Parent (cont)

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.

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Definitions Moved

Definitions moved from Procedural Safeguards to Subpart A:

- ❑ Consent
- ❑ Native Language
- ❑ Personally identifiable

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Definitions Added

- Homeless Children
- Lead Agency
- Local Educational Agency
- Indian and Indian Tribe
- Scientifically-based Research
- State Educational Agency
- Ward of the State

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Program and Service Components (Screening, Evaluation and Assessment, IFSP)

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Program and Service Components

- Pre-referral
 - Public awareness
 - Child find
- Referral
- Post-referral
 - Screening
 - Evaluation and assessment
 - Development, review & implementation of IFSPs

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Changes to Child Find

- Requires “rigorous standards” to appropriately identify children to reduce need for future services
- Added programs for coordination of child find efforts
 - Home Visiting
 - Child Protection and Welfare including CAPTA
 - Family Violence Prevention and Services Act
 - Early Hearing Detection and Intervention (EHDI)
 - Children’s Health Insurance Program (CHIP)
 - Child Care

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Primary Referral Sources

- Emphasis on word “include”
- Added:
 - Public agencies and staff in the child welfare system, including child protective services and foster care
 - Homeless family shelters
 - Domestic violence shelters and agencies

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Referral

- Added CAPTA language with clarification that intent is not to include siblings of child, but only child “substantiated”
- Requires referral as soon as possible, but in no case more than seven days, after the child has been identified

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Timeline

- Retains 45 day timeline from date the lead agency or EIS provider receives a referral to the IFSP meeting
- Establishes two circumstances in which 45 day timeline would not apply:
 - Child or parent is unavailable due to exceptional family circumstances
 - Parent has not provided consent despite documented repeated attempts

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Timeline

- Both exceptions must be documented in the child's early intervention record
- Activity must be completed as soon as possible after the documented circumstance no longer exists
- The initial family assessment must be completed within the 45 day timeline if the parent concurs

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Screening Policies and Procedures

- Lead agency may adopt screening
- Screening procedures
 - Means activities ...that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, ...infants and toddlers suspected of having a disability and in need of early intervention services; and
 - Includes the administration of appropriate instruments by personnel trained to administer those instruments.

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Screening Requirements

- Must provide notice of screening including right to evaluation & obtain parental consent
- If screening results indicate:
 - “child is suspected of having a disability” must provide written prior notice and obtain consent to conduct evaluation/assessment
 - “child is not suspected of having a disability” must provide written prior notice including right to request evaluation

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Evaluation

- An evaluation is required unless eligibility has been determined through a diagnosed condition
- If child is found eligible, following are required:
 - Multidisciplinary assessment of child; and
 - Family-directed assessment of the family

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Definition of Evaluation

- Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of infant or toddler with a disability in §303.21.
- An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under this part

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Evaluation Procedures

Must include:

- Administering an evaluation instrument
- Taking the child's history including interviewing parent
- Identifying the child's level of functioning in each of the developmental areas
- Gathering information from other sources
- Reviewing medical, educational or other records

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Definition of Assessment

- 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 under this part and includes the assessment of the child, consistent withand the assessment of the child's family, consistent with ...
- Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

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Assessment Procedures

Must include:

- Review of evaluation results
- Personal observation of the child
- Identification of child's needs in each of developmental areas

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Informed Clinical Opinion

- Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child.
- Lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility ...even when other instruments do not establish eligibility;
- In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility

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Family Assessment

Must:

- Be voluntary on part of each family member participating
- Be based on information obtained through an **assessment tool** and an interview
- Include family description of its resources, priorities and concerns related to enhancing child's development

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IFSP Content

- Changes language in "status" from "must be based on professionally acceptable objective criteria" to "based on the information from that child's evaluation and assessments."
- Changes "major outcomes" to "measurable results or measurable outcomes"
- Adds "(including pre-literacy and language skills, as developmentally appropriate for the child)" to outcomes or results statement

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IFSP Service Language

The IFSP must include 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 identified including:

- The length, duration, frequency, intensity, and method of delivering ...

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IFSP Changes

- Added and defined “length” and “duration”:
 - 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).

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New Language in Other Services

- Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this part; 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.

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Additional IFSP NE Language

“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, must be--

- (1) Made by the IFSP Team (which includes the parent and other team members);
- (2) Consistent with the provisions in §§ 303.13(a)(8), 303.26, and 303.126; and
- (3) Based on the child’s outcomes that are identified ...”

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IFSP Transition Language

- Adds “and services” to “steps”
- Confirmation that child find information about the child has been transmitted to the LEA ... and with parental consent ... transmission of additional information needed by the LEA 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 ... and
- Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

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Birth to Kindergarten Option

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State Option Until Kindergarten

State determine age range for policy:

- From 3 until beginning of school year following 3rd birthday;
- From 3 until beginning of school year following 4th birthday; or
- From 3 until beginning of school year following 5th birthday.

May not go beyond age the child actually enters, or is eligible under State law to enter, kindergarten or elementary school

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State Option Until Kindergarten

- Annual notice required that contains:
 - Description of the rights of the parents to elect to receive services pursuant to this section or under Part B of the Act; and
 - An explanation of the differences between services provided under each option including:
 - Types of services and the locations at which the services are provided;
 - Procedural safeguards that apply; and
 - Possible costs if any
- Services will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills.

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State Option Until Kindergarten

- Any child has the right, at any time, to receive FAPE instead of early intervention services
- Lead agency must obtain informed consent for the continuation of early intervention services. Consent must be obtained before the child reaches three years of age, where practicable.
- Lead agency must ensure a smooth transition from services under this section to preschool, kindergarten or elementary school by:
 - Providing the SEA and LEA notification not fewer than 90 days before the child will no longer be eligible or will no longer receive, early intervention services under this section

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State Option Until Kindergarten

- With the approval of the parents of the child, must convene a transition conference to discuss any services that the child may receive under Part B of the Act; and
- Must establish a transition plan
- A referral to Part C is required, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.

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Transition

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Transition

Each state must ensure a smooth transition for children who are:

- Moving to preschool or other appropriate services; or
- Exiting Part C

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Transition

- Includes timelines for ONE notification of children who “may be eligible for special education”
- Includes option for an opt-out policy
- Requires notification to LEA and SEA
- Clarifies transition plan is not separate document – part of IFSP
- Requires interagency and intra-agency agreements
- Transition conference must meet IFSP requirements

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Transition Notification

- No fewer than 90 days before 3rd birthday, if child “may be eligible for preschool services under Part B”, must notify SEA and LEA of the child.
- If Part C eligibility is determined more than 45 days but less than 90 days before 3rd birthday, and child “may be eligible for preschool”, must notify SEA and LEA as soon as possible after determining eligibility for Part C
- If child is referred with fewer than 45 days before 3rd birthday, and child “may be eligible for preschool” with parental consent, must notify SEA and LEA – no eligibility determination for Part C required.

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Transition Conference

- For a child who “may be eligible” for preschool services under Part B:
 - Not fewer than 90 days, not more than 9 months prior to the child’s third birthday
 - With the approval of the family, must convene conference with Lead agency, family, LEA
- For other children, the lead agency with approval of family, must make reasonable effort to convene a conference with family and other appropriate providers of service

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Procedural Safeguards

- General Responsibilities
- Confidentiality of Information
- Parental Consent and Notice
- Surrogate Parent
- Dispute Resolution Options

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General Responsibilities

- Adds requirement to make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

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Confidentiality of Information

- Incorporates Part B language (300.610 - 300.627) with modifications
- Clarifies procedures apply as soon child is referred for EI services
- Lead agency or an EIS provider must accept referral without parent consent
- Primary referral source may be required to obtain parental consent prior to making a referral under other applicable laws (such as HIPAA, CAPTA, or State laws). “

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Confidentiality

- Reinforces applicability of FERPA to Part C
- Changed timeline for parental access to records from 45 days to 10 days
- Added “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.”

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Confidentiality

- Clarifies right to amend records only applies to information about the parent and child, not other family members
- Defines early intervention records
- Includes opt-put policy for notification
- Adds GEPA and EDGAR provisions to language about destruction of records

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Parental Consent and Notice

- Clarifies parental consent required before:
 - Administering screening
 - All evaluations and assessments
 - Providing early intervention services
 - Use of public benefits or insurance or private insurance are accessed, if required
 - Disclosure of personally identifiable information
- May not use hearing procedures under Part B or Part C to challenge parent's refusal to provide consent (now including consent to evaluation)

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Determination Child Is Not Eligible

- “If, based on the evaluation... the lead agency determines that a child is not eligible under this part, the lead agency must provide the parent with prior written notice required in §303.421, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under §303.430, such as requesting a due process hearing or mediation or filing a State complaint.”

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Surrogate Parent

- 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.
- In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements.

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Surrogate Parent

- Expands language regarding who may not be a surrogate parent to include "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"
- Requires reasonable efforts to ensure assignment of surrogate parent not more than 30 days after determination child needs a surrogate parent.

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Mediation

- May be requested at any time
- Mediation agreement a legally binding agreement is enforceable in state or federal court
- Agreement is signed by both the parent and a representative of the lead agency who has the authority to bind such agency
- Adds impartiality criteria for a mediator
- Changes optional procedure to offer (not require) meeting to encourage mediation

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State Complaint Procedures

- Eliminates option to have another agency investigate a complaint with subsequent lead agency review
- Adds reference to compensatory services
- Deletes three year reference for filing deadline; only one year now

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Complaints

- Changes language to “the lead agency, public agency, or EIS provider” has violated Part C
- Requires party filing complaint to provide copy to agency or provider serving child at same time as filing complaint
- Adding requirement the complaint must include signature and contact information for complainant, and if related to a specific child, name/address of child, name of provider, description of problem and proposed resolution

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Complaints

- Gives agency opportunity to respond and at state discretion to offer a resolution
- Adds option to extend timeline if parties agree
- Requires mediation option

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Due Process Hearing

- Retains state option to use either Part B or Part C process
- Incorporates Part B procedures into Part C regulations with modifications including option of 30 or 45 day timeline
- Under Part C process, extension of 30 day timeline can now be granted
- Requires copies of transcription and facts and findings to be provided to parents at no cost

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Finance

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Finance Provisions

- Need consent to require parent to apply for Medicaid and to use Medicaid if parent will incur any cost
- Requires written notice if you want to use Medicaid including consent to release personal information to Medicaid agency
- Requires consent for use of private insurance unless state legislation meets specified requirements
- Requires parents get copy of family cost participation policies and procedures
- Co-pays, deductibles and premiums are family costs
- Prohibits disproportionate family cost related to public and private insurance
- Cannot be charged more than actual cost of service

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Finance

“A State may establish, consistent with §§303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-payments, premiums, or deductibles) required to be paid under Federal, State, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child’s family is enrolled, that meets the requirements of §§303.520 and 303.521.”

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Methods

“Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the Officer must ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure:

- The provision of, and establishing financial responsibility for, early intervention services...; and
- Such services are consistent with the requirement in ...including the provision of such services during the pendency of any dispute between State agencies.”

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Certification of Financial Responsibility

- Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency’s contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.

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Other Changes and Additions

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SICC Changes

- The NPRM provision saying a “parent” may not be employee was not kept in final regulation
- Permits ICC to coordinate and collaborate with state Early Learning Council
- Permits one person to represent several programs or agencies on the council

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Data Reporting

- “The lead agency must include in its report a certification signed by an authorized official of the agency that the information provided under §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.”

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Data Reporting

- “...the lead agency must conduct its own child count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must:
 - Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;
 - Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);
 - Obtain certification from each EIS provider that an unduplicated and accurate count has been made;

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Additional Required State Policies

- State conformity with Part C of the Act
- Abrogation of state sovereign immunity
- Acquisition of equipment and construction or alteration of facilities
- Positive efforts to employ and advance qualified individuals with disabilities

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State Collaboration Required

- Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq., as amended), early education and child care programs, and services under this part.

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State Lead Agency Collaboration

- The State lead agency must participate, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act, on the State Advisory Council on Early Childhood Education and Care established under the Head Start Act.

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State Application Requirement

- Each application must contain a description of the steps the State is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by section 427(b) of GEPA;

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