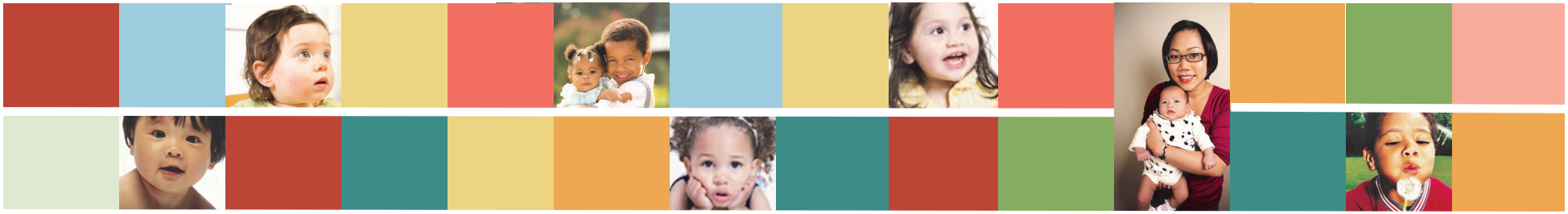

Individuals With Disabilities Education Act Part C: Early Intervention Program for Infants and Toddlers With Disabilities

Final Regulations
Side-by-Side Comparison
October 2011

Council for Exceptional Children
Division for Early Childhood
The voice and vision of special education

IDEA Infant & Toddler Coordinators Association

The Council for Exceptional Children (CEC) is the largest international professional organization dedicated to improving the educational success of individuals with disabilities and/or gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice. *www.cec.sped.org*

For more information, please contact Deborah A. Ziegler, Associate Executive Director for Policy and Advocacy Services at debz@cec.sped.org, 1-800-224-6830 or 703-620-3660, x406

Division of Early Childhood is one of seventeen divisions of the Council for Exceptional Children (CEC) - the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities, and/or the gifted. DEC is especially for individuals who work with or on behalf of children with special needs, birth through age eight, and their families. *www.dec-sped.org*

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Infant and Toddler Coordinators Association
The Individuals with Disabilities Education Act (IDEA) Infant and Toddler Coordinators Association is organized as a not-for-profit corporation to promote mutual assistance, cooperation, and exchange of information and ideas in the administration of Part C and to provide support to state and territory Part C coordinators. *www.ideainfanttoddler.org*

For more information, please contact Maureen Greer, Executive Director or Sharon Walsh, Governmental Liaison at (317)251-0125 or ideaitca@aol.com

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

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Introduction

On Sept. 28, 2011, new regulations for the Part C Early Intervention Program for Infants and Toddlers with Disabilities were published in the Federal Register. These regulations, promulgated under the Individuals with Disabilities Education Act (IDEA), were in response to IDEA 2004, the most recent reauthorization of IDEA. Public comments had been received on a Noticed of Proposed Rulemaking (NPRM) for Part C published May 9, 2007. These final regulations are effective Oct. 28, 2011.

The Council for Exceptional Children (CEC), its Division for Early Childhood (DEC) and the IDEA Infant Toddler Coordinators Association (ITCA) are pleased to provide this side-by-side comparison of the 2011 final Part C regulations to the 1999 Part C regulations. This document is designed as a tool to assist readers in understanding the new regulations in relation to the 1999 regulations.

The document is available for downloading in two different formats. The complete document, organized into its eight subparts, can be downloaded or selected subparts can be downloaded. The document is organized according to the subparts in the 1999 regulations with the exception of a new Subpart H, which is based on the new regulations.

Subpart A: General
Subpart B: State Application for a Grant and Requirements for a Statewide System
Subpart C: Procedures for Making Grants to States
Subpart D: Program and Service Components of a Statewide System of Early Intervention Services
Subpart E: Procedural Safeguards
Subpart F: State Administration
Subpart G: State Interagency Coordinating Council
Subpart H: Monitoring and Enforcement; Reporting; and Allocation of Funds

Both formats of the document are available at the Web sites of all three associations:
www.cec.sped.org
www.dec-sped.org
www.ideainfanttoddler.org

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The side-by-side format of the document includes:

- *Left column* "1999 Part C Regulations" includes the current Part C regulations last published in the Federal Register on March 12, 1999.

- *Middle column* "2011 Part C Regulations" provides sections of the new regulations aligned next to the applicable 1999 regulatory section.

- *Right column* "U.S. Department of Education Selected Analysis of Comments and Changes" includes selected quotes from this introductory section of the new Part C regulations package. These quotes are selected to provide the reader with an understanding of why a particular regulation was changed or not as compared with the NPRM. These quotes also provide additional clarification of the Department's intent when revising or adding a particular final regulation.

The reader should note a few things in reviewing the new regulations. First, all "notes" that are included in the current regulations have been removed. Also, specific language from 34 CFR Part 300, related to confidentiality and dispute resolution, has been incorporated into relevant sections of the Part C regulations package with necessary changes made for applicability to Part C.

Finally, the reader should note that in many instances, the final regulations represent a reorganization of the existing regulations. Numerous provisions have been moved and resulting citations have changed. These changes made the task of alignment difficult. While we have made every effort to ensure accurate alignment of the new provisions, there may be instances in which this was not possible.

The final Part C regulations contain numerous changes and additions. The reader is encouraged to consider and review the new regulations completely. The following are a selected list of changes made and areas to review:

- Definitions of key terms, including multidisciplinary, natural environments, and native language, have been revised and new definitions, including local educational agency (LEA) and scientifically-based research have been added.
- Transition requirements have been revised, including provisions related to notification to the local educational agency (LEA) and state educational agency (SEA), timelines, an opt-out policy, the transition conference, and the transition plan.

- An optional state screening policy has been added as part of a new organizational structure of pre-referral, referral, and post-referral activities.
- The two working-day requirement from identification to referral has been changed to “as soon as possible but no more than 7 calendar days after identification.”
- The 45-day required timeline from referral to the IFSP meeting has been retained with the addition of some provisions permitting documentation of extraordinary circumstances for a delay.
- Child Find provisions have been changed to add programs with which the lead agency must collaborate.
- Definitions and provisions for evaluation and assessment including family assessment have been revised.
- Required provisions for the “use of informed clinical opinion” have been clarified.
- Natural environment provisions have been revised to reflect the 2004 statutory change.
- Changes in the content of the IFSP have been made including in the “early intervention services” and “other services” components.
- Several changes have been made to procedural safeguards, including provisions related to written prior notice, confidentiality, surrogate parents, and dispute resolution.
- Changes have been made in provisions related to financial responsibility, systems of payment, and ability to pay, as well as to the use of public benefits and insurance and private insurance.
- Provisions related to monitoring, enforcement, reporting, and allocation have been included in a new subpart of the Part C regulations.

The Department has announced plans to publish a Notice of Proposed Rulemaking (NPRM) related to maintenance of effort (MOE) requirements with an opportunity for public comment in the near future.

As you work to implement these new regulations in order to serve infants and toddlers with disabilities and their families, CEC, DEC, and ITCA stand ready to serve as a resource for you.

Subpart A - General

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.1 Purpose of the early intervention program for infants and toddlers with disabilities. The purpose of this part is to provide financial assistance to States to— (a) Maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families; (b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); (c) Enhance the States' 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; and (d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.	**§303.1 Purpose of the early intervention program for infants and toddlers with disabilities.** The purpose of this part is to provide financial assistance to States to-- (a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families; (b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); (c) Enhance State 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; (d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and (e) Encourage States to expand opportunities for children under three years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.	
§303.2 Eligible recipients of an award. Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa,	**§303.2 Eligible recipients of an award and applicability of this part.** (a) Eligible recipients of an award. Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of	

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.2 Eligible recipients of an award. the Virgin Islands, the Commonwealth of the Northern Mariana Islands.	**§303.2 Eligible recipients of an award and applicability of this part.** Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.	
§303.3 Activities that may be supported under this part. Funds under this part may be used for the following activities: (a) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families. (b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources. (c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527. (d) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year. (e) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community based organizations, services, and personnel for the purpose of— (1) Identifying and evaluating at-risk infants and toddlers; (2) Making referrals of the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and (3) Conducting periodic follow-up on each referral	**NOTE: This regulation now appears under Subpart F at §303.501 Permissive use of funds by lead agency.**	

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.3 Activities that may be supported under this part. under paragraph (e)(2) of this section to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.		
§303.4 Limitation on eligible children. This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.	**§303.2 Eligible recipients of an award and applicability of this part.** (b) Applicability of this part. (1) The provisions of this part apply to-- (i) The State lead agency and any EIS provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act; and (ii) All children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in §§303.6 and 303.21, and their families. (2) The provisions of this part do not apply to any child with a disability receiving a free appropriate public education or FAPE under 34 CFR part 300.	The Department explained the placement of "the language from current §303.4 in a new paragraph (b) under §303.2 to clarify that the regulations in Part 303 do not apply to a child with a disability who is receiving FAPE under Part B of the Act." The Department noted changes in "this provision to identify the entities that must comply with Part 303. Part 303 applies to the lead agency and any EIS provider that is part of the Part C statewide system … regardless of whether the EIS provider receives funds under Part C of the Act."
§303.5 Applicable regulations. (a) The following regulations apply to this part: (1) The Education Department General Administrative Regulations (EDGAR), including— (i) Part 76 (State Administered Programs), except for § 76.103; (ii) Part 77 (Definitions that Apply to Department Regulations); (iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities); (iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);	**§303.3 Applicable regulations.** (a) The following regulations apply to this part: (1) The regulations in this part 303. (2) The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.	

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.5 Applicable regulations. (v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act Enforcement); (vi) Part 82 (New Restrictions on Lobbying); and (vii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)). (2) The regulations in this part 303. (3) The following regulations in 34 CFR part 300 (Assistance to States for the Education of Children with Disabilities Program): §§ 300.560–300.577, and §§ 300.580–300.585.		
§303.5 Applicable regulations. (b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to— (1) State educational agency means the lead agency under this part; (2) Special education, related services, free appropriate public education, free public education, or education means ‘‘early intervention services’’ under this part; (3) Participating agency, when used in reference to a local educational agency or an intermediate educational agency, means a local service provider under this part; (4) Section 300.128 means §§ 303.164 and 303.321; and (5) Section 300.129 means § 303.460.	**§303.3 Applicable regulations.** (b) In applying the regulations cited in paragraph (a)(2) of this section, any reference to-- (1) State educational agency means the lead agency under this part; and (2) Education records or records means early intervention records.	The Department indicated, “using multiple terms to refer to early intervention records is confusing and, therefore [the Department] has changed all references to ‘Part C records,’ ‘education records,’ and ‘the records’ in this part to ‘early intervention records.”
§303.6 Act. As used in this part, Act means the Individuals with Disabilities Education Act.	**§303.4 Act.** Act means the Individuals with Disabilities Education Act, as amended.	
	§303.5 At-risk infant or toddler. At-risk infant or toddler means an individual under	The Department noted “For clarity, [the Department] has replaced the phrase ‘such as,’

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1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.5 At-risk infant or toddler. 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 State'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).	which precedes the list of factors, with the word 'including.' The Department notes that the definitions of include and including in §303.18 clarify that the items named in a particular list are not all of the possible items that are covered, whether like or unlike the ones named. This change clarifies that the list of factors is not exhaustive."
§303.7 Children. As used in this part, children means infants and toddlers with disabilities as that term is defined in §. 303.16.	**§303.6 Child.** 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 §303.21.	
§303.401 Definitions of consent, native language, and personally identifiable information. As used in this subpart-- (a) Consent means that— (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;	**§303.7 Consent.** Consent means that— (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, as defined in §303.25; (b) 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; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. (2) If a parent revokes consent, that revocation is	

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.7 Consent. not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).	
§303.8 Council. As used in this part, Council means the State Interagency Coordinating Council.	**§303.8 Council.** Council means the State Interagency Coordinating Council that meets the requirements of subpart G of this part.	
§303.9 Days. As used in this part, days means calendar days.	**§303.9 Day.** Day means calendar day, unless otherwise indicated.	
§303.10 Developmental delay. As used in this part, ''developmental delay,'' when used with respect to an individual residing in a State, has the meaning given to that term under § 303.300.	**§303.10 Developmental delay.** Developmental delay, when used with respect to a child residing in a State, has the meaning given that term by the State under §303.111.	
§303.11 Early intervention program. As used in this part, early intervention program means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.	**§303.11 Early intervention service program.** Early intervention service program or EIS program means an entity designated by the lead agency for reporting under §§303.700 through 303.702.	
§303.12 Early intervention services. (a) General. As used in this part, early intervention services means services that— (1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development; (2) Are selected in collaboration with the parents; (3) Are provided— (i) Under public supervision; (ii) By qualified personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section; (iii) In conformity with an individualized family	**§303.13 Early intervention services.** (a) General. Early intervention services means developmental services that-- (1) Are provided under public supervision; (2) Are selected in collaboration with the parents; (3) Are provided at no cost, except, subject to §§303.520 and 303.521, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees; (4) 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 following areas, including--	The Department notes "inclusion of the language 'as requested by the family' could be interpreted to mean that addressing the needs of a family of an infant or toddler with a disability is not an essential component of early intervention services under Part C of the Act. This was not [the Department's] intention in proposing this language. Therefore, for clarity [the Department] has removed this phrase from §303.13(a)(4).' Further, "Social and emotional development are two distinct developmental areas. Therefore, section 632(4)(C)(iv) of the Act and §303.13(a)(4)(iv) use the term 'or' to make clear

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§303.12 Early intervention services. service plan; and (iv) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and (4) Meet the standards of the State, including the requirements of this part. (b) Natural environments. To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.	**§303.13 Early intervention services.** (i) Physical development; (ii) Cognitive development; (iii) Communication development; (iv) Social or emotional development; or (v) Adaptive development; (5) Meet the standards of the State in which the early intervention services are provided, including the requirements of Part C of the Act; (6) Include services identified under paragraph (b) of this section; (7) Are provided by qualified personnel (as that term is defined in §303.31), including the types of personnel listed in paragraph (c) of this section; (8) To the maximum extent appropriate, are provided in natural environments, as defined in §303.26 and consistent with §§303.126 and 303.344(d); and (9) Are provided in conformity with an IFSP adopted in accordance with section 636 of the Act and §303.20.	that early intervention services may address a child's needs in either developmental area." Further, "If the IFSP Team determines that a child or family needs services to help the child learn when a teacher or therapist is not present, then that outcome, and services to meet that outcome, must be included in the IFSP. This individualized approach, in which appropriate outcomes and services are determined by the IFSP Team in light of each child's unique needs, is appropriate and is addressed sufficiently under this part." The Department also clarified, "Concerning the comment about providing family members with the necessary tools to help an infant or toddler with a disability learn even when a teacher or therapist is not present, [the Department] agrees that EIS providers should work with the parents of an infant or toddler with a disability so that the parents can continue to assist the child whenever a learning opportunity occurs. However, in addition to the reasons stated, adding language to §303.13 as requested is not necessary because the definition of EIS provider in §303.12(b)(3) specifies that such providers are responsible for consulting with and training parents and others concerning the provision of early intervention services described in the IFSP of the infant or toddler with a disability. Additionally, this consultation and training will provide family members with the tools to facilitate a child's development even when a teacher or therapist is not present."

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.12 Early intervention services. (c) General role of service providers. To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for— (1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area; (2) Training parents and others regarding the provision of those services; and (3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.	**§303.12 Early intervention service provider.** (a) 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. (b) An EIS provider is responsible for-- (1) 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; (2) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and (3) 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.	
§303.12 Early intervention services. Types of services; definitions. Following are types of services included under ''early intervention services,'' and, if appropriate, definitions of those services:	**§303.13 Early intervention services.** (b) Types of early intervention services. Subject to paragraph (d) of this section, early intervention services include the following services defined in this paragraph:	
§303.12 Early intervention services. (1) Assistive technology device means any item, piece of equipment, or product system, whether	**§303.13 Early intervention services.** (1) Assistive technology device and service are defined as follows:	The Department notes "Whether a hearing aid or an appropriate related audiological service is considered an assistive technology device or an

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.12 Early intervention services. acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.	**§303.13 Early intervention services.** (i) 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.	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." The Department also noted that, "while Part C lead agencies are not responsible for providing personal devices meant for daily or personal use, such as eyeglasses, hearing aids, or prosthetic limbs, to an infant or toddler with a disability, these devices may be an early intervention service if the device is not surgically implanted (§303.13(b)(1)(i) specifically excludes medical devices that are surgically implanted), and the IFSP Team determines that the infant or toddler with a disability requires such a personal device to meet the unique developmental needs of that infant or toddler." Further, "Section 602(1)(B) of the Act excludes from the definition of an assistive technology device "a medical device that is surgically implanted, or the replacement of such device." …A cochlear implant, as a surgically implanted medical device, is excluded from being an assistive technology device under section 602(1)(B) and, therefore, optimization (e.g., mapping) of a cochlear implant cannot directly assist an infant or toddler with a disability with regard to an assistive technology device that is covered under the Act. Thus, optimization (e.g., mapping) is not an

SUBPART A- GENERAL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
		assistive technology service and excluding optimization from the definition of early intervention service is consistent with the Act." The Department also notes "that the exclusion of mapping does not prevent the appropriate early intervention service provider from checking to ensure the device is working."
§303.12 Early intervention services. Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include— (i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (v) Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and (vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially	**§303.13 Early intervention services.** (ii) 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- (A) 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; (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities; (C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and (F) Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are	

SUBPART A- GENERAL		
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§303.12 Early intervention services. involved in the major life functions of individuals with disabilities.	**§303.13 Early intervention services.** otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.	
§303.12 Early intervention services. (2) Audiology includes— (i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques; (ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; (iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; (iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services; (v) Provision of services for prevention of hearing loss; and (vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.	**§303.13 Early intervention services.** (2) Audiology services include-- (i) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques; (ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; (iii) 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; (iv) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services; (v) Provision of services for prevention of hearing loss; and (vi) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.	
§303.12 Early intervention services. (3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.	**§303.13 Early intervention services.** (3) 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.	The Department clarified "The language in §303.13(b)(3) does not mean that family training must occur in the home or include counseling. Section 303.13(b)(3) merely defines three separate early intervention services –- family training, counseling, and home visits -- that may be provided 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."

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§303.12 Early intervention services. (4) Health services (See § 303.13).	**§303.13 Early intervention services.** (4) Health services has the meaning given the term in §303.16.	
§303.12 Early intervention services. (5) Medical services only for diagnostic or evaluation purposes means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.	**§303.13 Early intervention services.** (5) 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	
§303.12 Early intervention services. (6) Nursing services includes— (i) 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; (ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and (iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.	**§303.13 Early intervention services.** (6) Nursing services include-- (i) 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; (ii) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and (iii) The administration of medications, treatments, and regimens prescribed by a licensed physician.	The Department noted "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."
§303.12 Early intervention services. (7) Nutrition services includes— (i) Conducting individual assessments in— (a) Nutritional history and dietary intake; (b) Anthropometric, biochemical, and clinical variables; (c) Feeding skills and feeding problems; and (d) Food habits and food preferences; (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and (iii) Making referrals to appropriate community resources to carry out nutrition goals.	**§303.13 Early intervention services.** (7) Nutrition services include-- (i) Conducting individual assessments in-- (A) Nutritional history and dietary intake; (B) Anthropometric, biochemical, and clinical variables; (C) Feeding skills and feeding problems; and (D) Food habits and food preferences; (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and (iii) Making referrals to appropriate community resources to carry out nutrition goals.	

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§303.12 Early intervention services. (8) Occupational therapy includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and 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— (i) Identification, assessment, and intervention; (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.	**§303.13 Early intervention services.** (8) Occupational therapy includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and 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— (i) Identification, assessment, and intervention; (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.	
§303.12 Early intervention services. (9) Physical therapy includes 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— (i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional	**§303.13 Early intervention services.** (9) Physical therapy includes 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-- (i) Screening, evaluation, and assessment of children to identify movement dysfunction; (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for, movement dysfunction and related functional problems.	

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§303.12 Early intervention services. problems.		
§303.12 Early intervention services. (10) Psychological services includes— (i) Administering psychological and developmental tests and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and (iv) 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.	**§303.13 Early intervention services.** (10) Psychological services include-- (i) Administering psychological and developmental tests and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and (iv) 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.	
§303.12 Early intervention services. (11) Service coordination services means assistance and services provided by a service coordinator to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.23.	**§303.13 Early intervention services.** (11) Service coordination services has the meaning given the term in §303.34.	
	§303.13 Early intervention services. (12) 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.	The Department clarified "that establishing a separate definition of sign language and cued language services, which includes auditory/oral language and transliteration services, is consistent with section 632(4)(E)(iii) of the Act. Therefore, [the Department] has included in new §303.13(b)(12) a definition of the term that incorporates the language from proposed §303.13(b)(12)(iv). Further, the Department noted "…we determined it was necessary to clarify and distinguish between

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		services that focus on teaching and interpretation. Thus, [the Department] has clarified that 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." In addition, "Transliteration, in new §303.13(b)(12) (proposed §303.13(b)(12)(iv)), refers to the rendering of one language or mode of communication into another by sound such as voicing over difficult-to-understand speech in order to clarify the sounds, not the meaning. We agree that including amplification as an example of transliteration is appropriate and have added amplification as an example in the definition."
§303.12 Early intervention services. (12) Social work services includes— (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction; (ii) Preparing a social or emotional developmental assessment of the child within the family context; (iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; (iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and (v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from	**§303.13 Early intervention services.** (13) Social work services include-- (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction; (ii) Preparing a social or emotional developmental assessment of the infant or toddler within the family context; (iii) 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; (iv) 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 (v) Identifying, mobilizing, and coordinating	

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§303.12 Early intervention services. early intervention services.	**§303.13 Early intervention services.** community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.	
§303.12 Early intervention services. (13) Special instruction includes— (i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction; (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan; (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and (iv) Working with the child to enhance the child's development.	**§303.13 Early intervention services.** (14) Special instruction includes-- (i) 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; (ii) 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; (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and (iv) Working with the infant or toddler with a disability to enhance the child's development.	The Department noted "States may refer to this early intervention service as 'developmental instruction' or use another term, provided that it meets the definition of special instruction in §303.13(b)."
§303.12 Early intervention services. (14) Speech-language pathology includes— (i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and (iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or	**§303.13 Early intervention services.** (15) Speech-language pathology services include-- (i) 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; (ii) 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 (iii) Provision of services for the habilitation, rehabilitation, or prevention of communication or	

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§303.12 Early intervention services. oropharyngeal disorders and delays in development of communication skills.	**§303.13 Early intervention services.** language disorders and delays in development of communication skills.	
§303.12 Early intervention services. (15) Transportation and related costs includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.	**§303.13 Early intervention services.** (16) Transportation and related costs include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.	
§303.12 Early intervention services. (16) Vision services means— (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities; (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and (iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.	**§303.13 Early intervention services.** (17) Vision services mean-- (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development; (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and (iii) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.	The Department "clarified in the definition of vision services in new §303.13(b)(17) that 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…"
§303.12(e) Early intervention services. (e) Qualified personnel. Early intervention services must be provided by qualified personnel, including— (1) Audiologists; (2) Family therapists; (3) Nurses; (4) Nutritionists; (5) Occupational therapists; (6) Orientation and mobility specialists;	**§303.13 Early intervention services.** (c) Qualified personnel. The following are the types of qualified personnel who provide early intervention services under this part: (1) Audiologists. (2) Family therapists. (3) Nurses. (4) Occupational therapists. (5) Orientation and mobility specialists. (6) Pediatricians and other physicians for	The Department notes "the lead agency would be responsible for referring families to ophthalmologists or optometrists and also would be responsible for paying for diagnostic services, as required under §303.13(b)(5)." Further, "The term 'special educators' consists of many distinct professions including teachers of children with hearing impairments and teachers of children with visual impairments. Therefore,

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§303.12(e) Early intervention services. (7) Pediatricians and other physicians; (8) Physical therapists; (9) Psychologists; (10) Social workers; (11) Special educators; and (12) Speech and language pathologists.	**§303.13 Early intervention services.** diagnostic and evaluation purposes. (7) Physical therapists. (8) Psychologists. (9) Registered dieticians. (10) Social workers. (11) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness). (12) Speech and language pathologists. (13) Vision specialists, including ophthalmologists and optometrists.	including teachers of children with hearing impairments and teachers of children with visual impairments as examples of special educators in §303.13(c)(11) is appropriate and listing these terms separately is not necessary."
	§303.13 Early intervention services. (d) Other services. The services and personnel identified and defined in paragraphs (b) and (c) of this section 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 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 in paragraph (a) of this section or of another type of personnel that may provide early intervention services in accordance with this part, provided such personnel meet the requirements in §303.31.	The Department notes "Specifically, §303.13(d) states that "(t)he services and personnel identified and defined in paragraphs (b) and (c) of this section 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." Further, §303.13(d) states that "[n]othing 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 in paragraph (a) of this section." Further, "Section 303.13(d) clearly conveys that the early intervention services identified in §303.13(b) are not an exhaustive list and may include other developmental, corrective, or supportive services that meet the needs of a child as determined by the IFSP Team, provided that the services meet the criteria identified in §303.13(a) and the applicable State's definition of early intervention services. [The Department] added the

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		previous definitions of nursing services and nutritional services to these final regulations because these definitions are defined in the current regulations and relied upon by the field. However, adding new definitions of additional services identified [by those who made comments], such as music therapy and respite care, is not necessary." The Department does "not agree that requiring services identified in an IFSP to be based on proven methods or evidence-based practices is appropriate. Section 636(d)(4) of the Act provides that the IFSP 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 infant or toddler with a disability and the family. Mirroring this standard, §303.344(d)(1) requires that each IFSP 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 for the child and the family to achieve the measurable results or outcomes identified in the IFSP."
§303.12 Early intervention services. NOTE: The lists of services in paragraph (d) and qualified personnel in paragraph (e) of this section are not exhaustive. Early intervention services may include such services as the provision of respite and other family support services. Qualified personnel may include such personnel as vision specialists, paraprofessionals, and parent-to-parent support personnel.		

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	§303.14 Elementary school. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.	
	§303.15 Free appropriate public education. Free appropriate public education or FAPE as used in §§303.211, 303.501, and 303.521, means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency (SEA), including the requirements of Part B of the Act; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.	
§303.13 Health services. (a) As used in this part, health services means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services. (b) The term includes— (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and (2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed	**§303.16 Health services.** (a) 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. (b) The term includes-- (1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and (2) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will	The Department noted "it is the Department's position that the exclusion of services related to the optimization (e.g., mapping) of surgically implanted medical devices, such as cochlear implants, from the definition of health services is consistent with the Act."

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§303.13 Health services. in the course of providing other early intervention services.	**§303.16 Health services.** need to be addressed in the course of providing other early intervention services.	
§303.13 Health services. (c) The term does not include the following: (1) Services that are— (i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or (ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose). (2) Devices necessary to control or treat a medical condition. (3) Medical-health services (such as immunizations and regular ‘‘well-baby’’care) that are routinely recommended for all children.	**§303.16 Health services.** (c) The term does not include-- (1) Services that are-- (i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); (ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or (iii) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant. (A) 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. (B) 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; (2) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and (3) Medical-health services (such as immunizations and regular "well-baby" care) that	

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	§303.16 Health services. are routinely recommended for all children.	
§303.13 Health services. NOTE: The definition in this section distinguishes between the health services that are required under this part and the medical-health services that are not required. The IFSP requirements in subpart D of this part provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e) and the note 3 following that section.)		
	§303.17 Homeless 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.	
§303.14 IFSP. As used in this part, IFSP means the individualized family service plan, as that term is defined in §303.340(b).	**§303.20 Individualized family service plan.** 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-- (a) Is based on the evaluation and assessment described in §303.321; (b) Includes the content specified in §303.344; (c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with §303.420);	

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	§303.20 Individualized family service plan. and (d) Is developed in accordance with the IFSP procedures in §§303.342, 303.343, and 303.345.	
§303.15 Include; including. As used in this part, 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.	**§303.18 Include; including.** 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.	
	§303.19 Indian; Indian tribe. (a) Indian means an individual who is a member of an Indian tribe. (b) 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.). (c) 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.	
§303.16 Infants and toddlers with disabilities. (a) As used in this part, infants and toddlers with disabilities means individuals from birth through age two who need early intervention services because they— (1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:	**§303.21 Infant or toddler with a disability.** (a) Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual-- (1) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: (i) Cognitive development.	The Department noted "that even a mild sensory impairment may result in developmental delay" in explaining the change in the regulation.

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§303.16 Infants and toddlers with disabilities. (i) Cognitive development. (ii) Physical development, including vision and hearing. (iii) Communication development. (iv) Social or emotional development. (v) Adaptive development; or (2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.	**§303.21 Infant or toddler with a disability.** (ii) Physical development, including vision and hearing. (iii) Communication development. (iv) Social or emotional development. (v) Adaptive development; or (2) Has a diagnosed physical or mental condition that-- (i) Has a high probability of resulting in developmental delay; and (ii) 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.	
§303.16 Infants and toddlers with disabilities. (b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.	**§303.21 Infant or toddler with a disability.** (b) Infant or toddler with a disability may include, at a State's discretion, an at-risk infant or toddler (as defined in §303.5).	
	§303.21 Infant or toddler with a disability. (c) Infant or toddler with a disability may include, at a State'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 State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include-- (1) An educational component that promotes school readiness and incorporates pre-literacy,	

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	§303.21 Infant or toddler with a disability. language, and numeracy skills for children ages three and older who receive Part C services pursuant to §303.211; and (2) 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.	
§303.16 Infants and toddlers with disabilities. NOTE 1: The phrase ‘‘a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,’’ as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.		
§303.16 Infants and toddlers with disabilities. NOTE 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled. Under this provision, States have the authority to define who would be ‘‘at risk of having substantial developmental delays if early		

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§303.16 Infants and toddlers with disabilities. intervention services are not provided.'' In defining the ''at risk'' population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers ''at risk'' for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that ''at risk'' factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.		
	§303.22 Lead agency. Lead agency means the agency designated by the State'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 State's responsibilities under Part C of the Act.	
	§303.23 Local educational agency. (a)General. 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.	

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	§303.23 Local educational agency. (b) Educational service agencies and other public institutions or agencies. The term includes the following: (1) Educational service agency, defined as a regional public multiservice agency-- (i) Authorized by State law to develop, manage, and provide services or programs to LEAs; and (ii) 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. (2) 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. (3) 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- (i) Is under the general supervision of a State educational agency; (ii) Is established by State la w for the purpose of providing FAPE on a regional basis; and (iii) Provides special education and related services to children with disabilities within the State.	
	§303.23 Local educational agency. (c) 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	

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	§303.23 Local educational agency. 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.	
§303.17 Multidisciplinary. As used in this part, multidisciplinary means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in Sec. 303.322 and development of the IFSP in Sec. 303.342.	**§303.24 Multidisciplinary.** Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to–- (a) Evaluation of the child in §§303.113 and 303.321(a)(1)(i) and assessments of the child and family in §303.321(a)(1)(ii), may include one individual who is qualified in more than one discipline or profession; and (b) 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)).	The Department notes "With respect to IFSP Team meetings, [the Department] believes it is important for the parent to be able to meet not only with the service coordinator (who may have conducted the evaluation and assessments), but also with another individual (whether that person is the service provider or another evaluator) to obtain input from two or more individuals representing at least two disciplines and have revised §303.24 accordingly. …also have added a reference to multidisciplinary in §303.340, regarding the general provisions that apply to IFSP development, review, and implementation. Thus, with these changes in §§303.24 and 303.340, the term multidisciplinary IFSP Team requires the involvement of two or more individuals from separate disciplines or professions, one of whom must be the service coordinator (consistent with §303.343(a)(1)(iv))." "With respect to evaluation of the child and assessments of the child and family, §303.321(a) requires that all evaluations and assessments be conducted by qualified personnel. …Therefore, if one individual completes an evaluation while representing two or more separate disciplines or professions, that individual would have to meet the definition of qualified personnel in each area in

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		which the individual is conducting the evaluation or assessment. Given these standards and requirements, [the Department] has retained the proposed definition to indicate that multidisciplinary means the involvement of two or more separate disciplines or professions and may include one individual who is qualified in more than one discipline or profession." "Concerning adding a reference to transdisciplinary or interdisciplinary, the term multidisciplinary is consistent with section 635(a)(3) of the Act, regarding the requirement that the Part C statewide system must include a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State. Transdisciplinary and interdisciplinary are specific team models. Multidisciplinary teams could be based on these models as long as the team meets the State's definition of multidisciplinary and the State's definition meets both statutory and regulatory requirements in this part. Thus, referencing specific team models in the regulatory definition of multidisciplinary is not necessary."
<u>§303.401 Definitions of consent, native language, and personally identifiable information.</u> (b) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part; (c) (3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).	**<u>§303.25 Native language.</u>** (a) 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-- (1) 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 (a)(2) of this section; and (2) For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language	The Department notes agreement with those providing comment "that requiring the native language to be used in all direct contact with a child, especially in providing early intervention services to an infant or toddler with a disability, may not be necessary or feasible in all circumstances." "Thus, [the Department] has not included in these final regulations the requirement in proposed §303.25(a)(2) that native language be used in all

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	§303.25 Native language. normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment. (b) 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).	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." The Department added "new §303.25(a)(2) to provide that, for evaluations and assessments of a child, the native language of a child with limited English proficiency is the language normally used by the child if qualified personnel conducting the evaluation or assessment determine that this language is developmentally appropriate for the child given the child's age and communication skills." Further, "These changes do not change the long-standing native language requirements in §303.342, concerning IFSP meetings, §303.420, concerning obtaining parental consent, and §303.421, concerning prior written notice and procedural safeguards. As discussed in the Analysis of Comments and Changes for subpart E of this part, [the Department] has added a native language requirement in §303.404, concerning the general notice of confidentiality procedures provided to parents."
§303.18 Natural environments. As used in this part, natural environments means settings that are natural or normal for the child's age peers who have no disabilities.	**§303.26 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 "added a reference to 'community settings' in §303.26 to ensure greater conformity with the statutory language, … and to clarify that the term natural environments includes not only the home but community settings in which one finds same-aged children who do not have disabilities

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		(diagnosed conditions, developmental delays, or, at the State's option, at-risk children). " Further, "The term "normal" was introduced into the regulations implementing the Individuals with Disabilities Education Act Amendments of 1991 and at that time, "normal" was commonly used and accepted. However, [the Department] agrees with [those who provided comments] that "normal" is less commonly used today and has replaced the word "normal" with the word "typical" in the definition of natural environments in §303.26." "[The Department] appreciates [those who provided comments] request for clarification as to whether clinics, hospitals, or a service provider's office may be considered the natural environment in cases when specialized instrumentation or equipment that cannot be transported to the home is needed. … [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. However, §303.344(d)(1) requires that the identification of the early intervention service needed, as well as the appropriate setting for providing each service to an infant or toddler with a disability, be individualized decisions made by the IFSP Team based on that child's unique needs, family routines, and developmental outcomes. If a determination is made by the IFSP Team that, based on a review of all relevant information regarding the unique needs of the child, the child cannot satisfactorily achieve the identified early

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		intervention outcomes in natural environments, then services could be provided in another environment (e.g. clinic, hospital, service provider's office). In such cases, a justification must be included in the IFSP, pursuant to §303.344(d)(1)(ii)(A)." Further, "Concerning the comment to add a reference to family routines and activities to the definition of natural environments, §303.26 allows for and supports providing services within family routines and activities."
<u>§303.19 Parent.</u> (a) General. As used in this part, ``parent'' means-- (1) A natural or adoptive parent of a child; (2) A guardian; (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or (4) A surrogate parent who has been assigned in accordance with § 303.406. (b) Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part C of the Act if— (1) The natural parents' authority to make the decisions required of parents under the Act has been extinguished under State law; and (2) The foster parent— (i) Has an ongoing, long-term parental relationship with the child; (ii) Is willing to make the decisions required of parents under the Act; and (iii) Has no interest that would conflict with the interests of the child.	**<u>§303.27 Parent.</u>** (a) Parent means-- (1) A biological or adoptive parent of a child; (2) 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; (3) 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); (4) 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 (5) A surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.	

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	§303.27 Parent. (b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section 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. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section 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.	The Department noted "when the whereabouts of the biological parent are unknown (e.g., cases in which the parent is concerned about revealing his or her location due to safety concerns) or the biological parent is incarcerated, but the parent is attempting to act as the parent, the biological parent would be presumed to be the parent.. However, when the whereabouts of the biological parent are unknown or the parent is incarcerated, and the biological parent is not attempting to act as the parent, an individual identified in §303.27, including the foster parent would be presumed to be the parent unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent." The Department further noted, "The Act and the regulations are silent on how assertively a State, for purposes of obtaining consent, should seek out the biological parent of an infant or toddler who is undergoing an eligibility determination or who has been determined eligible to receive early intervention services under Part C of the Act. It is the Department's position that these regulations should not prescribe the efforts, including specific procedures or timelines, that a State must make in its attempts to contact the biological parent(s). The procedures and timelines will vary depending on numerous factors, including how judicial orders or decrees are routinely handled in a State or locality, and are best left to the State and local officials to determine in light of State law and policy." The Department also stated "The biological or adoptive parent would be presumed to be the parent

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		under these regulations, unless a question is raised about their legal authority. There is nothing in the Act that requires the biological or adoptive parent to affirmatively assert their rights to be presumed to be the parent….unless a judicial order or decree identifies a specific person or persons to act as the parent of an infant or toddler, the biological or adoptive parent, when attempting to act as a parent, must be determined to be the "parent" for purposes of Part C of the Act and thus retains all the rights and responsibilities of a parent under the Act, including the right to receive written notice and attend meetings." Furthermore, the Department clarified "a judge may appoint a person to make health-related decisions for an eligible infant or toddler without intending to limit the biological parent's or adoptive parent's role in early intervention decision-making. Therefore, [the Department] has revised paragraphs (b)(1) and (b)(2) to remove the reference to "health" decisions." The Department also noted "For clarity and to eliminate redundancy, [the Department] has revised the definition of parent in §303.27(b)(2) to state 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. [The Department] has replaced 'early intervention services or other services' in proposed §303.27(b)(2) with 'any services' in new §303.27(b)(2). This change is necessary to make clear that if a public agency provides services other

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		than early intervention services to a family member of the child, that public agency may not serve as the parent for that child. This change strengthens protections against potential conflicts of interest by providing that a public agency that provides services to a child or any family member of that child cannot act as the parent under these regulations. … which would preclude a public agency that provides child welfare services (including a child welfare case manager) to the child or any family member of the child from acting as the parent for that child."
	§303.28 Parent training and information center. Parent training and information center means a center assisted under section 671 or 672 of the Act. (Authority: 20 U.S.C. 1401(25))	
§303.401 Definitions of consent, native language, and personally identifiable information. (c) Personally identifiable means that information includes-- (1) The name of the child, the child's parent, or other family member; (2) The address of the child; (3) A personal identifier, such as the child's or parent's social security number; or (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.	**§303.29 Personally identifiable information.** 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.	The Department stated "it is important to align the definition of personally identifiable information in these regulations with the definition of that same term in 34 CFR 99.3 under the Family Educational Rights and Privacy Act (FERPA) (in section 444 of the General Education Provisions Act). Examples of data that would be considered personally identifiable information under both the FERPA regulations in 34 CFR 99.3, as well as under Part C of the Act, include the child's or parent's name and social security number, date and place of birth, race, ethnicity, gender, physical description, and disability or level of developmental delay, because some of this information can also indirectly identify an individual depending on the combination of factors and level of detail released."
§303.20 Policies. (a) As used in this part, policies means State statutes, regulations, Governor's orders, directives		

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§303.20 Policies. by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part. (b) State policies include-- (1) A State's commitment to maintain the statewide system (see §. 303.140); (2) A State's eligibility criteria and procedures (see Sec. 303.300); (3) A statement that, consistent with §.303.520(b), provides that services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law. (4) A State's standards for personnel who provide services to children eligible under this part (see §. 303.361); (5) A State's position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and (6) Other positions that the State has adopted related to implementing any of the other requirements under this part.		
§303.21 Public agency. As used in this part, public agency includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.	**§303.30 Public agency.** As used in this part, public agency means the lead agency and any other agency or political subdivision of the State.	The Department clarified the use of "the term public agency in this part to refer to public agencies that provide early intervention services as well as public agencies that provide other services or are sources of funding for early intervention services. Therefore, [the Department] revised the definition of public agency in §303.30 to make clear that the term includes the lead agency and any other agency or political subdivision of the State. … also have clarified, in §303.12, that a public agency that is responsible for providing early intervention services to infants and toddlers with

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		disabilities under this part and their families is an EIS provider under §303.12."
§303.22 Qualified. As used in this part, qualified means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.	**§303.31 Qualified personnel.** Qualified personnel means personnel who have met State 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.	The Department noted "States have the authority to establish standards for licensure or certification and to determine on a case-by-case basis personnel who meet those standards. Therefore, an individual could only provide services in the area of occupational therapy if that individual meets State approved or recognized certification, licensing, registration or other comparable requirements that apply to the area in which the individual is providing early intervention services. Paraprofessionals or assistants could assist in the provision of occupational therapy if they are appropriately trained and supervised in accordance with State law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities pursuant to §303.119(c). The term "area" as used in §303.31 refers to the specific domain in which the individual has qualified through State certification, licensing, registration, or other comparable requirements to provide early intervention services. [The Department] has added in §303.31 a reference to conducting evaluations or assessments to reflect the long-standing requirement … that evaluations and assessments must be conducted by qualified personnel."
§303.22 Qualified. NOTE: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:		

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§303.22 Qualified. 1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services). 2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel. 3. Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.		
	§303.32 Scientifically based research. 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."	The Department noted "that adding a definition for scientifically based research to subpart A would be helpful because the definition will provide clarity and understanding when the term scientifically based research is used in this part."
	§303.33 Secretary. Secretary means the Secretary of Education.	
§303.23 (a) Service coordination (case management). (a) General. (1) As used in this part, except in § 303.12(d)(11), service coordination means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.	**§303.34 Service coordination services (case management).** (a) General. (1) As used in this part, service coordination services 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. (2) Each infant or toddler with a disability and the child's family must be provided with one service	The Department described "several structural and organizational revisions to improve clarity and readability… [the Department] clarified in these final regulations that the service coordinator is responsible for assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP. Additionally, for clarity, [the Department] has provided examples of activities that the service coordinator may engage

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§303.23 (a) Service coordination (case management). (2) Each child eligible under this part and the child's family must be provided with one service coordinator who is responsible for— (i) Coordinating all services across agency lines; and (ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need. (3) Service coordination is an active, ongoing process that involves— (i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan; (ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided; (iii) Facilitating the timely delivery of available services; and (iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.	**§303.34 Service coordination services (case management).** coordinator who is responsible for-- (i) Coordinating all services required under this part across agency lines; and (ii) Serving as the single point of contact for carrying out the activities described in paragraphs (a)(3) and (b) of this section. (3) Service coordination is an active, ongoing process that involves-- (i) 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 (ii) Coordinating the other services identified in the IFSP under §303.344(e) that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.	in when assisting parents in obtaining access to needed early intervention services and other services identified in the IFSP. … [The Department] further clarified that service coordination services 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 Part C of the Act. Such activities include: (1) the coordination of early intervention services and other services that the child needs or is being provided; (2) conducting referral and other activities; (3) ensuring the timely provision of services; and (4) conducting follow-up activities to determine that appropriate Part C services are being provided."
§303.23(b) Service coordination (case management). (b) Specific service coordination activities. Service coordination activities include— (1) Coordinating the performance of evaluations and assessments; (2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;	**§303.34 Service coordination services.** (b) Specific service coordination services. Service coordination services include-- (1) 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 needed services and scheduling appointments for infants and toddlers with disabilities and their	

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§303.23(b) Service coordination (case management). (3) Assisting families in identifying available service providers; (4) Coordinating and monitoring the delivery of available services; (5) Informing families of the availability of advocacy services; (6) Coordinating with medical and health providers; and (7) Facilitating the development of a transition plan to preschool services, if appropriate.	**§303.34 Service coordination services.** families; (2) 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; (3) Coordinating evaluations and assessments; (4) Facilitating and participating in the development, review, and evaluation of IFSPs; (5) Conducting referral and other activities to assist families in identifying available EIS providers; (6) Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner; (7) Conducting follow-up activities to determine that appropriate Part C services are being provided; (8) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources; (9) Coordinating the funding sources for services required under this part; and (10) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.	
§ 303.23(c) Service coordination (case management). (c) Employment and assignment of service coordinators. (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.		

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§303.23(c) Service coordination (case management). (2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that service coordinators are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.		
§303.23(d) Service coordination (case management). (d) Qualifications of service coordinators. Service coordinators must be persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about— (1) Infants and toddlers who are eligible under this part; (2) Part C of the Act and the regulations in this part; and (3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.		
	§303.34 Service coordination services (case management). (c) 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	The Department notes, "The legislative history of the 1991 amendments to the Act indicates that use of the term 'service coordination' is not intended to affect authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to 'case management' services. See H.R. Rep. No. 198, 102d Cong., 1st Sess. 12 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 20 (1991). Accordingly, this paragraph is intended to reflect the intent of Congress."

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	§303.34 Service coordination services (case management). provisions).	
§303.23(d) Service coordination (case management). NOTE 1: If States have existing service coordination systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.		
§303.23(d) Service coordination (case management). NOTE 2: The legislative history of the 1991 amendments to the Act indicates that the use of the term ‘‘service coordination’’ was not intended to affect the authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to ‘‘case management’’ services.		
	§303.36 State educational agency. (a) 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. (b) 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.	
§303.24 State. Except as provided in § 303.200(b)(3), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the	**§303.35 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	

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§303.24 State. jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.	**§303.35 State.** outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.	
	§303.37 Ward of the State. (a) General. Subject to paragraph (b) of this section, 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. (b) 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.	
§303.25 EDGAR definitions that apply. The following terms used in this part are defined in 34 CFR 77.1: Applicant Award Contract Department EDGAR Fiscal year Grant Grantee Grant period Private Public Secretary		

Subpart B – State Application for a Grant and Requirements for a Statewide System

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART B- STATE APPLICATION FOR A GRANT AND REQUIREMENTS FOR A STATEWIDE SYSTEM		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.100 Conditions of assistance. General Requirements (a) In order to receive funds under this part for any fiscal year, a State must have-- (1) An approved application that contains the information required in this part, including-- (i) The information required in §§ 303.140 through 303.148; and (ii) The information required in §§ 303.161 through 303.176; and (2) The statement of assurances required under §§ 303.120 through 303.128, on file with the Secretary. (b) If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part. (c) An application that meets the requirements of this part remains in effect until the State submits to the Secretary modifications of that application. (d) The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if-- (1) An amendment is made to the Act, or to a regulation under this part; (2) A new interpretation is made of the Act by a Federal court or the State's highest court; or (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.	**NOTE: This regulation now appears under Subpart C §303.228 Subsequent State application and modifications of application.**	

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§ 303.101 How the Secretary disapproves a State's application or statement of assurances. The Secretary follows the procedures in 34 CFR 300.581 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.	**NOTE: This regulation now appears under Subpart C §303.230 Standard for disapproval of an application.**	
	§303.102 State conformity with Part C of the Act. Each State that receives funds under Part C of the Act must ensure that any State rules, regulations, and policies relating to this part conform to the purposes and requirements of this part.	
	§303.103 Abrogation of State sovereign immunity. (a) General. A State is not immune under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of Part C of the Act. (b) Remedies. In a suit against a State for a violation of Part C of the Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in a suit against any public entity other than a State. (c) Effective date. Paragraphs (a) and (b) of this section apply with respect to violations that occur in whole or part after October 30, 1990, the date of enactment of the Education of the Handicapped Act Amendments of 1990.	
	§303.104 Acquisition of equipment and construction or alteration of facilities. (a) General. If the Secretary determines that a program authorized under Part C of the Act will be improved by permitting program funds to be used	

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	§303.104 Acquisition of equipment and construction or alteration of facilities. to acquire appropriate equipment or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes. b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of-- (1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities"); or (2) Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").	
	§303.105 Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part C of the Act.	
§ 303.110 General requirements and timelines for public participation. (a)Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall— (1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30	**NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.**	

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§ 303.110 General requirements and timelines for public participation. days during that period; (2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and (3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted. (b) A State may request the Secretary to waive compliance with the timelines in paragraph (a) of this section. The Secretary grants the request if the State demonstrates that— (1) There are circumstances that would warrant such an exception; and (2) The timelines that will be followed provide an adequate opportunity for public participation and comment.		
§ 303.111 Notice of public hearings and opportunity to comment. The notice required in § 303.110(a)(3) must— (a)Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, throughout the State about the hearings and opportunity to comment on the application or policy; and (b) Be in sufficient detail to inform the public about— (1) The purpose and scope of the State application or policy, and its relationship to part C of the Act; (2) The length of the comment period and the date,	**NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.**	

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§ 303.111 Notice of public hearings and opportunity to comment. time, and location of each hearing; and (3) The procedures for providing oral comments or submitting written comments.		
§ 303.112 Public hearings. Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.	**NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.**	
§ 303.113 Reviewing public comments received. (a) Review of comments. Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall— (1) Review and consider all public comments; and (2) Make any modifications it deems necessary in the application or policy. (b) Submission to the Secretary. In submitting the State's application or policy to the Secretary, the lead agency shall include copies of news releases, advertisements, and announcements used to provide notice to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities.	**NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.**	
§ 303.120 General. (a)A State's statement of assurances must contain the information required in §§ 303.121 through 303.128. (b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part. (c) A State may submit a revised statement of	**NOTE: This regulation now appears under Subpart C §303.200 State application and assurances.**	

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§ 303.120 General. assurances if the statement is consistent with the requirements in §§ 303.121 through 303.128.		
§ 303.121 Reports and records. The statement must provide for— (a) Making reports in such form and containing such information as the Secretary may require; and (b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.	**NOTE: This regulation now appears under Subpart C §303.224 Reports and records.**	
§ 303.122 Control of funds and property. The statement must provide assurance satisfactory to the Secretary that— (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and (b) A public agency will administer the funds and property.	**NOTE: This regulation now appears under Subpart C §303.223 Control of funds and property.**	
§ 303.123 Prohibition against commingling. The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.	**NOTE: This regulation now appears under Subpart C §303.225 Prohibition against supplanting; indirect costs.**	
§ 303.123 Prohibition against commingling. NOTE: As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited However, to the extent that the funds from each of		

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§ 303.123 Prohibition against commingling. a series of Federal, State, local, and private funding sources can be identified— with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program. Thus, the assurance in this section is satisfied by the use of an accounting system that includes an ''audit trail'' of the expenditure of funds awarded under this part. Separate bank accounts are not required.		
§ 303.124 Prohibition against supplanting. (a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds. (b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and loca funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for— (1) Decreases in the number of children who are	**NOTE: This regulation now appears under Subpart C §303.225 Prohibition against supplanting; indirect costs.**	

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§ 303.124 Prohibition against supplanting. eligible to receive early intervention services under this part; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.		
§ 303.125 Fiscal control. The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.	**NOTE: This regulation now appears under Subpart C §303.226 Fiscal control.**	
§ 303.126 Payor of last resort. The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on— (a) Nonsubstitution of funds; and (b) Non-reduction of other benefits.	**NOTE: This regulation now appears under Subpart C §303.222 Payor of last resort.**	
§ 303.127 Assurance regarding expenditure of funds. The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.	**NOTE: This regulation now appears under Subpart C §303.221 Expenditure of funds.**	
§ 303.128 Traditionally underserved groups. The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure— (a)That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part;	**NOTE: This regulation now appears under Subpart C §303.227 Traditionally underserved groups.**	

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§ 303.128 Traditionally underserved groups. And (b) That these families have access to culturally competent services within their local geographical areas.		
§ 303.140 General. A State's application under this part must contain information and assurances demonstrating to the satisfaction of the Secretary that— (a) The statewide system of early intervention services required in this part is in effect; and (b) A State policy is in effect that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State.	**§303.101 State eligibility--requirements for a grant under this part.** In order to be eligible for a grant under Part C of the Act for any fiscal year, a State must meet the following conditions: (a) Assurances regarding early intervention services and a statewide system. The State must provide assurances to the Secretary that-- (1) The State has adopted a policy that appropriate early intervention services, as defined in §303.13, are available to all infants and toddlers with disabilities in the State and their families, including-- (i) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; (ii) Infants and toddlers with disabilities who are homeless children and their families; and (iii) Infants and toddlers with disabilities who are wards of the State; and (2) The State has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in §§303.111 through 303.126. (b) State application and assurances. The State must provide information and assurances to the Secretary, in accordance with subpart C of this part, including-- (1) Information that shows that the State meets the	The Department "determined that it is more appropriate to describe in subpart B-- rather than subpart C--of these regulations the State's obligation to obtain prior Secretarial approval of those policies and procedures that are required to be submitted with the State's application. For this reason, we have moved proposed §303.208(b) to new §303.101(c), and further specified in §303.101(c), those policies and procedures that are required to be submitted as part of the State's application."

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	§303.101 State eligibility--requirements for a grant under this part. State application requirements in §§303.200 through 303.212; and (2) Assurances that the State also meets the requirements in §§303.221 through 303.227. (c) Approval before implementation. The State must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the State's application in §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.	
§ 303.141 Information about the Council. Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of subpart G of this part.	**§303.125 State interagency coordinating council.** Each system must include a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of this part.	
§ 303.142 Designation of lead agency. Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.	**NOTE: This regulation now appears under Subpart C §303.201 Designation of lead agency.**	
§ 303.143 Designation regarding financial responsibility. Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.	**NOTE: This regulation now appears under Subpart C §303.202 Certification regarding financial responsibility.**	
§ 303.144 Assurance regarding use of funds. Each application must include an assurance that funds received under this part will be used to assist the State to maintain and implement the statewide system required under subparts D through F of this part.	**NOTE: This regulation now appears under Subpart C §303.220 Assurances satisfactory to the Secretary.**	

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§ 303.145 (a) Description of use of funds. (a) General. Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.	**NOTE: This regulation now appears under Subpart C §303.205 Description of use of funds.**	
§ 303.145 Description of use of funds. (b) Administrative positions. Each application must include— (1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and (2) For each position, the percentage of salary paid with those funds.	**NOTE: This regulation now appears under Subpart C §303.205 Description of use of funds.**	
§ 303.145 Description of use of funds. (c) Maintenance and implementation activities. Each application must include— (1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and (2) The approximate amount of funds to be spent for each activity.	**NOTE: This regulation now appears under Subpart C §303.205 Description of use of funds.**	
§ 303.145 Description of use of funds. (d) Direct services. (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in § 303.16(b), and their families,	**NOTE: This regulation now appears under Subpart C §303.205 Description of use of funds.**	

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§ 303.145 Description of use of funds. consistent with §§ 303.521 and 303.527. (2) The description must include information about each type of service to be provided, including— (i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and (ii) The approximate amount of funds under this part to be used for the service.		
§ 303.145 Description of use of funds. (e) At-risk infants and toddlers. For any State that does not provide direct services for at-risk infants and toddlers described in paragraph (d)(1) of this section, but chooses to use funds as described in § 303.3(e), each application must include a description of how those funds will be used.	**NOTE: This regulation now appears under Subpart C §303.501 Permissive use of funds by the lead agency.**	
§ 303.145 Description of use of funds. (f) Activities by other agencies. If other agencies are to receive funds under this part, the application must include— (1) The name of each agency expected to receive funds; (2) The approximate amount of funds each agency will receive; and (3) A summary of the purposes for which the funds will be used.	**NOTE: This regulation now appears under Subpart C §303.501 Permissive use of funds by lead agency.**	
§ 303.146 Information about public participation. Each application must include the information on public participation that is required in §303.113(b).	**NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.**	
§ 303.147 Services to all geographic areas. Each application must include a description of the procedure used to ensure that resources are made |	**NOTE: This regulation now appears under Subpart C §303.207 Availability of resources.**	

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§ 303.147 Services to all geographic areas. available under this part for all geographic areas within the State.		
§ 303.148 Transition to preschool programs. Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including— (a) A description of how the families will be included in the transition plans; (b) A description of how the lead agency under this part will— (1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law; (2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or (ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive; (3) Review the child's program options for the	**NOTE: This regulation now appears under Subpart C §303.209 Transition to preschool and other programs.**	

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§ 303.148 Transition to preschool programs. period from the child's third birthday through the remainder of the school year; and (4) Establish a transition plan; and (c) If the State educational agency, which is responsible for administering preschool programs under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.		
§ 303.148 Transition to preschool programs. NOTE: Among the matters that should be considered in developing policies and procedures to ensure a smooth transition of children from one program to the other are the following: · The financial responsibilities of all appropriate agencies. · The responsibility for performing evaluations of children. · The development and implementation of an individualized education program (''IEP'') or an individualized family service plan (''IFSP'') for each child, consistent with the requirements of law (see § 303.344(h) and sections 612(a)(9) of the Act). · The coordination of communication between agencies and the child's family. · The mechanisms to ensure the uninterrupted provision of appropriate services to the child.		
§ 303.160 Minimum components of a statewide system. Each application must address the minimum components of a statewide system of coordinated, comprehensive, multidisciplinary, interagency	**§303.110 Minimum components of a statewide system.** Each statewide system (system) must include, at a minimum, the components described in §303.111 through §303.126.	

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§ 303.160 Minimum components of a statewide system. programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State. The minimum components of a statewide system are described in §§303.161 through 303.176.	**§303.112 Availability of early intervention services.** Each system must include a State policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including-- (a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and (b) Infants and toddlers with disabilities who are homeless children and their families.	
§ 303.161 State definition of developmental delay. Each application must include the State's definition of ''developmental delay,'' as described in §303.300.	**§303.111 State definition of developmental delay.** Each system must include the State's rigorous definition of developmental delay, consistent with §§303.10 and 303.203(c), that will be used by the State in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must-- (a) Describe, for each of the areas listed in §303.21(a)(1), the evaluation and assessment procedures, consistent with §303.321, that will be used to measure a child's development; and (b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1).	

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§ 303.162 Central directory. Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.	**§303.117 Central directory.** Each system must include a central directory that is accessible to the general public (i.e., through the lead agency's Web site and other appropriate means) and includes accurate, up-to-date information about-- (a) Public and private early intervention services, resources, and experts available in the State; (b) 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 (c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities.	
§ 303.164 Public awareness program. Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.	**§303.116 Public awareness program.** Each system must include a public awareness program that-- (a) Focuses on the early identification of infants and toddlers with disabilities; and (b) Provides information to parents of infants and toddlers through primary referral sources in accordance with §303.301.	
§ 303.165 Comprehensive child find system. Each application must include— (a) The policies and procedures required in § 303.321(b); (b) Information demonstrating that the requirements on coordination in § 303.321(c) are met; (c) The referral procedures required in § 303.321(d), and either—	**§303.115 Comprehensive child find system.** Each system must include a comprehensive child find system that meets the requirements in §§303.302 and 303.303.	

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§ 303.165 Comprehensive child find system. (1) A description of how the referral sources are informed about the procedures; or (2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and (d) The timelines in § 303.321(e).		
§ 303.166 Evaluation, assessment, and nondiscriminatory procedures. Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.	**§303.113 Evaluation, assessment, and nondiscriminatory procedures.** (a) Subject to paragraph (b) of this section, each system must ensure the performance of-- (1)A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and (2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler. (b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of §303.321.	
§ 303.167 Individualized family service plans. Each application must include— (a) An assurance that a current IFSP is in effect and implemented for each eligible child and the child's family; (b) Information demonstrating that— (1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and (2) The content of IFSPs used in the State is consistent with the requirements in § 303.344; and	**§303.114 Individualized family service plan (IFSP).** Each system must ensure, for each infant or toddler with a disability and his or her family in the State, that an IFSP, as defined in §303.20, is developed and implemented that meets the requirements of §§303.340 through 303.345, and that includes service coordination services, as defined in §303.34.	

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§ 303.167 Individualized family service plans. (c) Policies and procedures to ensure that— (1) To the maximum extent appropriate, early intervention services are provided in natural environments; and (2) The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.	**§303.126 Early intervention services in natural environments.** Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided-- (a) To the maximum extent appropriate, in natural environments; and (b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be achieved satisfactorily in a natural environment.	
§ 303.168 Comprehensive system of personnel development (CSPD). Each application must include information to show that the requirements in § 303.360(b) are met.	**§303.118 Comprehensive system of personnel development (CSPD).** Each system must include a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State. A comprehensive system of personnel development-- (a) Must include-- (1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers; (2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and (3) 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	

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	§303.118 Comprehensive system of personnel development (CSPD). preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program. (b) May include-- (1) Training personnel to work in rural and inner-city areas; (2) Training personnel in the emotional and social development of young children; and (3) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and (4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable.	
§ 303.169 Personnel standards. (a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.	**§303.119 Personnel standards.** General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained. (b) Qualification standards. The policies and procedures required in paragraph (a) of this section must provide for the establishment and maintenance of qualification standards that are consistent with any State approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which	

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	§303.119 Personnel standards. personnel are providing early intervention services. (c) Use of paraprofessionals and assistants. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities. (d) Policy to address shortage of personnel. A State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State 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 standards described in paragraphs (a) and (b) of this section.	
§ 303.170 Procedural safeguards. Each application must include procedural safeguards that— (a) Are consistent with §§ 303.400 through 303.406, 303.419 through 303.425 and 303.460; and (b) Incorporate either— (1) The due process procedures in 34 CFR 300.506 through 300.512; or (2) The procedures that the State has developed to meet the requirements in §§ 303.419, 303.420(b) and 303.421 through 303.425.	**§303.123 Procedural safeguards.** Each system must include procedural safeguards that meet the requirements of subpart E of this part.	

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§ 303.171 Supervision and monitoring of programs. Each application must include information to show that the requirements in § 303.501 are met.	**§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.** Each system must include a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following: (a)(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 State 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 State complies with Part C of the Act, including-- (i)Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out Part C of the Act; (ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these regulations; (iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers; (iv) 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 (v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with	

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	§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. §§303.700 through 303.707, and any other activities required by the State under those sections.	
	§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. (b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of this part.	
	§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. (c) The assignment of financial responsibility in accordance with Subpart F of this part.	
	§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. (d) The development of procedures in accordance with subpart F of this part 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.	
	§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. (e) The resolution of intra- and interagency disputes in accordance with subpart F of this part.	

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	§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. (f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State 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 this part.	
§ 303.172 Lead agency procedures for resolving complaints. Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.	**NOTE: This regulation now appears under Subpart E §§§ 303.432 Adoption of State complaint procedures, 303.433 Minimum State complaint procedures, and 303.434 Filing a complaint.**	
§ 303.173 Policies and procedures related to financial matters. Each application must include— (a)Funding policies that meet the requirements in §§ 303.520 and 303.521; (b) Information about funding sources, as required in § 303.522; (c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and (d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.	**§303.122 Reimbursement procedures.** Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of this part.	
§ 303.174 Interagency agreements; resolution of individual disputes. Each application must include— (a) A copy of each interagency agreement that has been developed under § 303.523; and	**§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.** (e) The resolution of intra- and interagency disputes in accordance with subpart F of this part.	

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§ 303.174 Interagency agreements; resolution of individual disputes. (b) Information to show that the requirements in § 303.524 are met.	**§303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.** (f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State 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 this part.	
§ 303.175 Policy for contracting or otherwise arranging for services. Each application must include a policy that meets the requirements in § 303.526.	**§303.121 Policy for contracting or otherwise arranging for services.** Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, 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. The policy must-- (a) Include a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part; and (b) Be consistent with the Education Department General Administrative Regulations in 34 CFR part 80.	
§ 303.176 Data collection. Each application must include procedures that meet the requirements in § 303.540.	**§303.124 Data collection.** (a) Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in paragraph (b) of this section and §§303.700 through 303.702 and 303.720 through 303.724.	

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	§303.124 Data collection. (b) The data system required in paragraph (a) of this section must include a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this part, including a description of the State'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.	
§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations. (a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. (b)(1) The Secretary of the Interior shall distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act. (2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (''BIA''). (c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed	**NOTE: This regulation now appears under Subpart C §303.731 Payments to Indians.**	

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§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations. under this section. (2) The report must include— (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year; (ii) The amount of each payment; and (iii) The date of each payment.		

Subpart C – Procedures for Making Grants to States

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART C—PROCEDURES FOR MAKING GRANTS TO STATES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.200 Formula for State allocations. (a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.	**NOTE: This regulation now appears under Subpart H §303.732 (a) Formula for state allocations.**	
§303.200 Formula for State allocations. (b) For the purpose of allotting funds to the States under paragraph (a) of this section— (1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204; (2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and (3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.	**NOTE: This regulation now appears under Subpart H §303.732 (d) Formula for state allocations.**	
§303.201 Distribution of allotments from non participating States. If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).	**NOTE: This regulation now appears under Subpart H §303.733 Reallotment of funds.**	
§303.202 Minimum grant that a State may receive. No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or $500,000, whichever is greater.	**NOTE: This regulation now appears under Subpart H §303.732(b) State allotments.**	

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§ 303.203 Payments to the Secretary of the Interior. The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.	**NOTE: This regulation now appears under Subpart H §303.731 Payment to Indians.**	
§303.204 Payments to the jurisdictions. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.	**NOTE: This regulation now appears under Subpart H §303.730 Formula for state allocations.**	
§303.204 Payments to the jurisdictions. (b) The provisions of Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.	**NOTE: This regulation now appears under Subpart H §303.730 Formula for state allocations.**	
§ 303.100 Conditions of assistance. General Requirements (a) In order to receive funds under this part for any fiscal year, a State must have-- (1) An approved application that contains the information required in this part, including-- (i) The information required in §§ 303.140 through 303.148; and (ii) The information required in §§ 303.161 through 303.176.	**§303.200 State application and assurances.** Each application must contain-- (a) The specific State application requirements (including certifications, descriptions, methods, and policies and procedures) required in §§303.201 through 303.212;	
§ 303.100 Conditions of assistance. (2) The statement of assurance required under §§ 303.120 through 303.128 on file with the Secretary.	**§303.200 State application and assurances.** (b) The assurances required in §§303.221 through 303.227.	
§303.142 Designation of lead agency. Each application must include a designation of the	**§303.201 Designation of lead agency.** Each application must include the name of the	

SUBPART C—PROCEDURES FOR MAKING GRANTS TO STATES		
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§303.142 Designation of lead agency. lead agency in the State that will be responsible for the administration of funds provided under this part.	**§303.201 Designation of lead agency.** State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part.	
§303.143 Designation regarding financial responsibility. Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.	**§303.202 Certification regarding 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.	
§303.140 General. A State's application under this part must contain information and assurances demonstrating to the satisfaction of the Secretary that— (a) The statewide system of early intervention services required in this part is in effect; and (b) A State policy is in effect that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State.	**§303.203 Statewide system and description of services.** Each application must include -- (a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State's system;	
§303.173 Policies and procedures related to financial matters. Each application must include— (a) Funding policies that meet the requirements in §§ 303.520 and 303.521; (b) Information about funding sources, as required	**§303.203 Statewide system and description of services.** (b) The State's policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart	The Department added an additional requirement for the application regarding "Policies or procedures adopted by the State as its system of payments that meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family

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§303.173 Policies and procedures related to financial matters. in § 303.522; (c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and (d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.	**§303.203 Statewide system and description of services.** F of this part and including-- (1) Policies or procedures adopted by the State as its system of payments that meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees); and (2) Methods used by the State to implement the requirements in §303.511(b)(2) and (b)(3);	costs or fees)".
§303.161 State definition of developmental delay. Each application must include the State's definition of ''developmental delay,'' as described in § 303.300.	**§303.203 Statewide system and description of services.** (c) The State's rigorous definition of developmental delay as required under §§303.10 and 303.111.	
§303.300 State eligibility criteria and procedures. (c) If the State elects to include in its system children who are at risk under § 303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.	**§303.204 Application's definition of at-risk infants and toddlers and description of services.** If the State provides services under this part to at-risk infants and toddlers through the statewide system, the application must include- (a) The State's definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under Part C of the Act (consistent with §§303.5 and 303.21(b));	
	§303.204 Application's definition of at-risk infants and toddlers and description of services. (b) A description of the early intervention services provided under this part to at-risk infants and toddlers with disabilities who meet the State's definition described in paragraph (a) of this section.	
§303.145 Description of use of funds. (a)General. Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered	**§303.205 Description of use of funds.** (a) General. Each State application must include a description of the uses for funds under this part for the fiscal year or years covered by the application.	

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§303.145 Description of use of funds. by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.	**§303.205 Description of use of funds.** The description must be presented separately for the lead agency and the Council and include the information required in paragraphs (b) through (e) of this section.	
§303.145 Description of use of funds. (b) Administrative positions. Each application must include— (1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and (2) For each position, the percentage of salary paid with those funds.	**§303.205 Description of use of funds.** (b) State administration funds including administrative positions. For lead agencies other than State educational agencies (SEAs), each application must include the total-- (1) Amount of funds retained by the lead agency for administration purposes, including the amount in paragraph (b)(2) of this section; and (2) Number of full-time equivalent administrative positions to be used to implement Part C of the Act, and the total amount of salaries (including benefits) for those positions.	
§303.145 Description of use of funds. (c) Maintenance and implementation activities. Each application must include— (1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and (2) The approximate amount of funds to be spent for each activity.	**§303.205 Description of use of funds.** (c) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.	
§303.145 Description of use of funds. (d) Direct services. (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in § 303.16(b), and their families, consistent with §§ 303.521 and 303.527.	**§303.205 Description of use of funds.** (d) Direct services. Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.	

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§303.145 Description of use of funds. (2) The description must include information about each type of service to be provided, including— (i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); And (ii) The approximate amount of funds under this part to be used for the service.		
§303.145 Description of use of funds. (f) Activities by other agencies. If other agencies are to receive funds under this part, the application must include— (1) The name of each agency expected to receive funds; (2) The approximate amount of funds each agency will receive; and (3) A summary of the purposes for which the funds will be used.	**§303.205 Description of use of funds.** (e) Activities by other public agencies. If other public agencies are to receive funds under this part, the application must include-- (1) The name of each agency expected to receive funds; (2) The approximate amount of funds each agency will receive; and (3) A summary of the purposes for which the funds will be used.	
	§303.206 Referral policies for specific children. Each application must include the State's policies and procedures that require the referral for early intervention services under this part of specific children under the age of three, as described in §303.303(b).	
§303.147 Services to all geographic areas. Each application must include a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State.	**§303.207 Availability of resources.** Each application must include a description of the procedure used by the State to ensure that resources are made available under this part for all geographic areas within the State.	The Department clarified that ""resources" to include not only services but also funding, personnel, and other materials. This regulatory provision ensures that resources--not just services--are available in all geographic areas within a State."
§303.110 General requirements and timelines for public participation. (a) Before submitting to the Secretary its	**§303.208 Public participation policies and procedures.** (a)Application. At least 60 days prior to being	The Department included language that requires the state to ensure public participation for any new or revised policy or procedure.

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§303.110 General requirements and timelines for public participation. application under this part, and before adopting a new or revised policy that is not in its current application, a State shall— (1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;	**§303.208 Public participation policies and procedures.** submitted to the Department, each application for funds under this part (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.	
§303.110 General requirements and timelines for public participation. (2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and (3) Provide adequate notice of the hearings required in paragraph (a) (2) of this section at least 30 days before the dates that the hearings are conducted.	**§303.208 Public participation policies and procedures.** (b) State Policies and Procedures. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations, the lead agency-- (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure); (2) Provides notice of the hearings held in accordance with paragraph (b)(1) of this section at least 30 days before the hearings are conducted to enable public participation; and (3) 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.	

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§303.111 Notice of public hearings and opportunity to comment. The notice required in § 303.110(a)(3) must— (a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, throughout the State about the hearings and opportunity to comment on the application or policy; and (b) Be in sufficient detail to inform the public about— (1) The purpose and scope of the State application or policy, and its relationship to part C of the Act; (2) The length of the comment period and the date, time, and location of each hearing; and (3) The procedures for providing oral comments or submitting written comments.	**NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.**	
§303.148 Transition to preschool programs. Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including— (a) A description of how the families will be included in the transition plans;	**§303.209 Transition to preschool and other programs.** (a) Application requirements. Each State must include the following in its application: (1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to-- (i) Preschool or other appropriate services (for toddlers with disabilities); or (ii) Exiting the program for infants and toddlers with disabilities. (2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section. (3)(i)(A) If the lead agency is not the SEA, an	The Department clarified that "the transition requirements in §303.209 apply to all infants and toddlers under the age of three who are transitioning from the Part C program (as described in §303.211(b) (6) (i)) and that the transition requirements described in §303.211(b) (6) (ii) apply to children age three and older who are transitioning from services provided pursuant to §303.211.." The Department also identified the need for intra-agency agreements in order "…to have clearly defined transition coordination policies and procedures between the early intervention program under Part C of the Act and the preschool program under Part B of the Act, requiring an intra-agency agreement will be a useful tool to enhance

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	§303.209 Transition to preschool and other programs. interagency agreement between the lead agency and the SEA; or (B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act. (ii) To ensure a seamless transition between services under this part and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f), and 300.323(b). (4) Any policy the lead agency has adopted under §303.401(d) and (e).	coordination and communication between the Part C and Part B preschool programs."
§303.148 Transition to preschool programs. (b) A description of how the lead agency under this part will— (1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law; (2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at	**§303.209 Transition to preschool and other programs.** (b) Notification to the SEA and appropriate LEA. (1) The State lead agency must ensure that-- (i) Subject to paragraph (b)(2) of this section, 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 lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;	The Department revised this section to "…require that LEA notification occur no fewer than 90 days prior to the toddler with a disability's third birthday. This "not fewer than 90 days" timeline for LEA notification aligns with the date by which: (1) a transition conference must be conducted for a toddler with a disability who may be eligible for services under Part B of the Act (as required in section 637(a)(9)(A)(ii)(II) of the Act and §303.209(c)(1)); and (2) a transition plan must be in place for all toddlers with disabilities (as required in §303.209(d)(2)).". The Department clarified that "…the LEA

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§303.148 Transition to preschool programs. the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or (ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive; (3) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and	**§303.209 Transition to preschool and other programs.** (ii) Subject to paragraph (b)(2) of this section, if the lead agency 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 lead agency, as soon as possible after determining the child's eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or (iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency 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 lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances. (2) The State must ensure that the notification required under paragraphs (b) (1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.	notification requirement applies only to toddlers with disabilities who may be eligible for preschool services under Part B of the Act and not to all toddlers with disabilities." The Department clarified that "…if a child is referred to the lead agency fewer than 45 days before that child's third birthday, the lead agency is not required to conduct an evaluation, assessment or an initial IFSP meeting."
§303.148 Transition to preschool programs. (c) If the State educational agency, which is responsible for administering preschool programs	**§303.209 Transition to preschool and other programs.** (c) Conference to discuss services. The State lead	The Department clarified "…that the transition conference conducted under paragraph (c) of this section or the meeting to develop the transition

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§303.148 Transition to preschool programs. under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.	**§303.209 Transition to preschool and other programs.** agency must ensure that-- (1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA 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; and. (2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.	plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the IFSP meeting and participant requirements in §§303.342(d) and (e) and 303.343(a).
§303.148 Transition to preschool programs. (b)(2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or (ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other	**§303.209 Transition to preschool and other programs.** (d) Transition plan. The State lead agency must ensure that for all toddlers with disabilities-- (1)(i) It 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; and (ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and §303.344(h); (2) It establishes a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all	The Department clarified "that if transition planning occurs more than nine months prior to a toddler's third birthday, this planning may not accurately reflect the needs of the child at the time of transition. For this reason, the regulations only allow the parties to establish a transition plan for a child not earlier than nine months prior to the child's third birthday." Additionally, the Department indicated "that a transition plan referred to in this section is actually a part of an IFSP and not a separate document. Consistent with section 636(a) of the Act, the IFSP

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§303.148 Transition to preschool programs. appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive; (3) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and (4) Establish a transition plan;	**§303.209 Transition to preschool and other programs.** parties, not more than 9 months--before the toddler's third birthday; and (3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate-- (i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and (ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.	must include a description of the appropriate transition services for the infant or toddler."
	§303.209 Transition to preschool and other programs. e) Transition conference and meeting to develop transition plan. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).	The Department clarified that "transition conferences conducted under §303.209(c) must meet the accessibility and parental consent requirements in §303.342(d) and (e) and the meeting participant requirements in §303.343(a)."
	§303.209 Transition to preschool and other programs. (f) Applicability of transition requirements. (1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under §303.211. (2) In a State that offers services under §303.211, for toddlers with disabilities identified in §303.209(b)(1)(i), the parent must be provided at the transition conference conducted under	The Department indicated that at the transition conference, "the parents of a toddler with a disability must receive: (1) an explanation, consistent with §303.211(b)(1)(ii), of the toddler's options to continue to receive early intervention services under this part or preschool services under section 619 of the Act; and (2) the initial annual notice referenced in §303.211(b)(1)"

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	§303.209 Transition to preschool and other programs. paragraph (c)(1) of this section: (i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler's options to continue to receive early intervention services under this part or preschool services under section 619 of the Act. (ii) The initial annual notice referenced in §303.211(b)(1). (3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).	
	§303.210 Coordination with Head Start and Early Head Start, early education, and child care programs. (a) 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.	
	§303.210 Coordination with Head Start and Early Head Start, early education, and child care programs. (b) 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.	The Department has added "that the State lead agency must participate as a representative on the State Advisory Council, if applicable."
	§303.211 State option to make services under this part available to children ages three and older. (a) General. (1) Subject to paragraphs (a)(2) and	The Department reaffirmed that "providing Part C services to children who (a) are three years of age and older, (b) are eligible for services under section 619 of the Act, and (c) previously received early

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	§303.211 State option to make services under this part available to children ages three and older. (b) of this section, a State may elect to include in its application for a grant under this part a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under this part, may choose the continuation of early intervention services under this part for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school. (2) A State that adopts the policy described in paragraph (a)(1) of this section may determine whether it applies to children with disabilities-- (i) From age three until the beginning of the school year following the child's third birthday; (ii) From age three until the beginning of the school year following the child's fourth birthday; or (iii) From age three until the beginning of the school year following the child's fifth birthday. (3) In no case may a State provide services under this section beyond the age at which the child actually enters, or is eligible under State law to enter, kindergarten or elementary school in the State.	intervention services is an option each State can consider." The Department clarified "the subsets of age ranges States can select to provide services under the option in §303.211 … and added new (a)(3) to highlight the statutory requirement from section 635(c)(1) of the Act that a State may provide services under §303.211 only until the child enters, or is eligible under State law to enter, kindergarten or elementary school in the State."
	§303.211 State option to make services under this part available to children ages three and older. (b) Requirements. If a State's application for a grant under this part includes the State policy	The Departed indicated that "States choosing to offer early intervention services under §303.211 must provide parents of these children with disabilities with an annual notice that includes, among other things, an explanation of the

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	§303.211 State option to make services under this part available to children ages three and older. described in paragraph (a) of this section, the system must ensure the following: (1) Parents of children with disabilities who are eligible for services under section 619 of the Act and who previously received early intervention services under this part will be provided an annual notice that contains -- (i) A description of the rights of the parents to elect to receive services pursuant to this section or under Part B of the Act; and (ii) An explanation of the differences between services provided pursuant to this section and services provided under Part B of the Act, including-- (A) The types of services and the locations at which the services are provided; (B) The procedural safeguards that apply; and (C) Possible costs (including the costs or fees to be charged to families as described in §§303.520 and 303.521), if any, to parents of children eligible under this part. (2) Consistent with §303.344(d), services provided pursuant to this section will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills. (3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as that term is defined at §303.15) under Part B of the Act instead of early intervention services under Part C of the Act. (4) The lead agency must continue to provide all	differences between early intervention services provided under Part C of the Act and preschool services provided under Part B of the Act." The department clarified that "parents whose child is receiving services under Part C of the Act past the age of three pursuant to §303.211 retain the right, at any time, to opt out of these early intervention services pursuant to §303.211 and, instead, to obtain FAPE under Part B of the Act for their child."

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	§303.211 State option to make services under this part available to children ages three and older. early intervention services identified in the toddler with a disability's IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR 300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under 34 CFR 300.300(a) and the parent has not provided that consent. (5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable. (6)(i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition requirements in §303.209(b)(1)(i) and (b)(1)(ii), (c)(1), and (d) are met. (ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by-- (A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or will no longer receive, early intervention services under this	

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	§303.211 State option to make services under this part available to children ages three and older. section; (B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section, to discuss any services that the child may receive under Part B of the Act; and (C) Establishing 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 child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section. (7) In States that adopt the option to make services under this part available to children ages three and older pursuant to this section, there will be a referral to the Part C system, 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.	
	§303.211 State option to make services under this part available to children ages three and older. (c) Reporting requirement. If a State includes in its application a State policy described in paragraph	

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	§303.211 State option to make services under this part available to children ages three and older. (a) of this section, the State must submit to the Secretary, in the State's report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under this part.	
	§303.211 State option to make services under this part available to children ages three and older. (d) Available funds. The State policy described in paragraph (a) of this section must describe the funds--including an identification as Federal, State, or local funds--that will be used to ensure that the option described in paragraph (a) of this section is available to eligible children and families who provide the consent described in paragraph (b)(5) of this section, including fees, if any, to be charged to families as described in §§303.520 and 303.521.	
	§303.211 State option to make services under this part available to children ages three and older. (e) Rules of construction. (1) If a statewide system includes a State policy described in paragraph (a) of this section, a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under Part B of the Act for the period of time in which the child is receiving services under this part. (2) Nothing in this section may be construed to	

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	§303.211 State option to make services under this part available to children ages three and older. require a provider of services under this part to provide a child served under this part with FAPE.	
	§303.212 Additional information and assurances. Each application must contain – (a) 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; and	
	§303.212 Additional information and assurances. (b) Other information and assurances as the Secretary may reasonably require.	
§303.120 General. (a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.128. (b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part. (c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.128.	**§303.220 Assurances satisfactory to the Secretary.** Each application must contain assurances satisfactory to the Secretary that the State has met the requirements in §§303.221 through 303.227.	
§303.127 Assurance regarding expenditure of funds. The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.	**§303.221 Expenditure of funds.** The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§303.500 and 303.501.	

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§303.126 Payor of last resort. The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on— (a) Nonsubstitution of funds; and (b) Non-reduction of other benefits.	**§303.222 Payor of last resort.** The State must ensure that it will comply with the requirements in §§303.510 and 303.511 in subpart F of this part.	
§303.122 Control of funds and property. The statement must provide assurance satisfactory to the Secretary that— (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part;	**§303.223 Control of funds and property.** The State must ensure that-- (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part;	
§303.122 Control of funds and property. (b) A public agency will administer the funds and property.	**§303.223 Control of funds and property.** (b) A public agency will administer the funds and property.	
§303.121 Reports and records. The statement must provide for— (a) Making reports in such form and containing such information as the Secretary may require;	**§303.224 Reports and records.** The State must ensure that it will-- (a) Make reports in the form and containing the information that the Secretary may require;	
§303.121 Reports and records. (b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.	**§303.224 Reports and records.** (b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.	
§303.124 Prohibition against supplanting. (a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to	**§303.225 Prohibition against supplanting; indirect costs.** (a) Each application must provide satisfactory assurance that the Federal funds made available	

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§303.124 Prohibition against supplanting. supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.	**§303.225 Prohibition against supplanting; indirect costs.** under section 643 of the Act to the State: (1) Will not be commingled with State funds; and (2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.	
§303.124 Prohibition against supplanting. (b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for— (1) Decreases in the number of children who are eligible to receive early intervention services under this part; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.	**§303.225 Prohibition against supplanting; indirect costs.** (b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for— (1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.	The Department indicated it will issue a new NPRM related to MOE.
§303.123 Prohibition against commingling. The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.	**§303.225 Prohibition against supplanting; indirect costs.** (c) Requirement regarding indirect costs. (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant. (2) If approved by the lead agency's cognizant	

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	§303.225 Prohibition against supplanting; indirect costs. Federal agency or by the Secretary, the lead agency must charge indirect costs through either-- (i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or (ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR. (3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.	
§303.123 Prohibition against commingling. NOTE: As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified— with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program. Thus, the assurance in this section is satisfied by the use of an accounting system that includes an ''audit trail'' of the expenditure of funds awarded under this part.		

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§303.123 Prohibition against commingling. Separate bank accounts are not required.		
§303.125 Fiscal control. The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.	**§303.226 Fiscal control.** The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.	
§303.128 Traditionally underserved groups. The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure— (a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part;	**§303.227 Traditionally underserved groups.** The State must ensure that policies and practices have been adopted to ensure-- (a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of this part;	
§303.128 Traditionally underserved groups. (b) That these families have access to culturally competent services within their local geographical areas.	**§303.227 Traditionally underserved groups.** (b) That these families have access to culturally competent services within their local geographical areas.	
§ 303.100 Conditions of assistance. (b) If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.	**§303.228 Subsequent State application and modifications of application.** (a)Subsequent State application. If a State has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the State meets an application requirement in this part, including any policy, procedure, method, or assurance filed under this part (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.	

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§ 303.100 Conditions of assistance. (c) An application that meets the requirements of this part remains in effect until the State submits to the Secretary modifications of that application.	**§303.228 Subsequent State application and modifications of application.** (b) Modification of application. An application submitted by a State that meets the requirements of this part remains in effect until the State submits to the Secretary such modifications as the State determines necessary. This section applies to a modification of an application to the same extent and in the same manner as this paragraph applies to the original application.	
§ 303.100 Conditions of assistance. (d) The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if-- (1) An amendment is made to the Act, or to a regulation under this part; (2) A new interpretation is made of the Act by a Federal court or the State's highest court; or (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.	**§303.228 Subsequent State application and modifications of application.** (c) Modifications required by the Secretary. The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if—- (1) An amendment is made to the Act or to a Federal regulation issued under the Act; (2) A new interpretation of the Act is made by a Federal court or the State's highest court; or (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.	
	§303.229 Determination by the Secretary that a State is eligible. If the Secretary determines that a State is eligible to receive a grant under Part C of the Act, the Secretary notifies the State of that determination.	
	§303.230 Standard for disapproval of an application. The Secretary does not disapprove an application under this part unless the Secretary determines, after notice and opportunity for a hearing in accordance with the procedures in §§303.231	

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	§303.230 Standard for disapproval of an application. through 303.236, that the application fails to comply with the requirements of this part.	
	§303.231 Notice and hearing before determining that a State is not eligible. (a) General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part C of the Act until providing the State-- (i) Reasonable notice; and (ii) An opportunity for a hearing. (2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the lead agency by certified mail with a return receipt requested.	
	§303.231 Notice and hearing before determining that a State is not eligible. (b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary-- (1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible; (2) May describe possible options for resolving the issues; (3) Advises the lead agency that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and (4) Provides the lead agency with information about the hearing procedures that will be followed.	
	§303.232 Hearing Official or Panel. (a) If the lead agency requests a hearing, the	

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	§303.232 Hearing Official or Panel. Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.	
	§303.232 Hearing Official or Panel. (b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.	
	§303.233 Hearing procedures. (a) As used in §§303.231 through 303.235, the term party or parties means any of the following: (1) A lead agency that requests a hearing regarding the proposed disapproval of the State's eligibility under this part. (2) The Department official who administers the program of financial assistance under this part. (3) A person, group, or agency with an interest in, and having relevant information about, the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.	
	§303.233 Hearing procedures. (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.	
	§303.233 Hearing procedures. (c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid	

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	§303.233 Hearing procedures. delay, and to maintain order, including the following: (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case. (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties. (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties. (4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as-- (i) Narrowing and clarifying issues; (ii) Assisting the parties in reaching agreements and stipulations; (iii) Clarifying the positions of the parties; (iv) Determining whether an evidentiary hearing or oral argument should be held; and (v) Setting dates for-- (A) The exchange of written documents; (B) The receipt of comments from the parties on the need for oral argument or an evidentiary hearing; (C) Further proceedings before the Hearing Official or Hearing Panel, including an evidentiary hearing or oral argument, if either is scheduled; (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and an	

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	§303.233 Hearing procedures. estimation of time for each presentation; and (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel. (5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call. (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (c)(4) of this section. (7) Following a prehearing or other conference, the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.	
	§303.233 Hearing procedures. (d) The Hearing Official or Hearing Panel may require the parties to state their positions and to provide all or part of their evidence in writing.	
	§303.233 Hearing procedures. (e) The Hearing Official or Hearing Panel may require the parties to present testimony through affidavits and to conduct cross-examination through interrogatories.	
	§303.233 Hearing procedures. (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents, information, and lists of witnesses, and to send copies to the Hearing Official or Hearing Panel.	
	§303.233 Hearing procedures. (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.	

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	§303.233 Hearing procedures. (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.	
	§303.233 Hearing procedures. (i) The Hearing Official or Hearing Panel may examine witnesses.	
	§303.233 Hearing procedures. (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.	
	§303.233 Hearing procedures. (k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.	
	§303.233 Hearing procedures. (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.	
	§303.233 Hearing procedures. (m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel must determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties. (2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.	
	§303.233 Hearing procedures. (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the	

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	§303.233 Hearing procedures. Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel-- (1) An opportunity to present witnesses on the party's behalf; and (2) An opportunity to cross-examine witnesses either orally or with written questions.	
	§303.233 Hearing procedures. (o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.	
	§303.233 Hearing procedures. (p)(1) The Hearing Official or Hearing Panel-- (i) Arranges for the preparation of a transcript of each hearing; (ii) Retains the original transcript as part of the record of the hearing; and (iii) Provides one copy of the transcript to each party. (2) Additional copies of the transcript are available on request and with payment of the reproduction fee.	
	§303.233 Hearing procedures. (q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.	
	§303.234 Initial decision; final decision. (a)The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the lead agency under §303.231, including any amendments to or further clarification of the issues under	

SUBPART C—PROCEDURES FOR MAKING GRANTS TO STATES		
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	§303.234 Initial decision; final decision. §303.233(c).	
	§303.234 Initial decision; final decision. (b) The initial decision of a Hearing Panel is made by a majority of Hearing Panel members.	
	§303.234 Initial decision; final decision. (c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.	
	§303.234 Initial decision; final decision. (d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel's decision.	
	§303.234 Initial decision; final decision. (e) The Hearing Official or Hearing Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations.	
	§303.234 Initial decision; final decision. (f) The Hearing Official or Hearing Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.	

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	§303.234 Initial decision; final decision. (g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.	
	§303.234 Initial decision; final decision. (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous.	
	§303.234 Initial decision; final decision. (i) The Secretary conducts the review based on the initial decision, the written record, the transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.	
	§303.234 Initial decision; final decision. (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings	
	§303.234 Initial decision; final decision. (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.	
	§303.235 Filing requirements. (a)Any written submission by a party under §§303.230 through 303.236 must be filed with the Secretary by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents	

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	§303.235 Filing requirements. longer than five pages.	
	§303.235 Filing requirements. (b) The filing date under paragraph (a) of this section is the date the document is-- (1) Hand-delivered; (2) Mailed; or (3) Sent by facsimile transmission.	
	§303.235 Filing requirements. (c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.	
	§303.235 Filing requirements. (d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.	
	§303.235 Filing requirements. (e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.	
	§303.236 Judicial review. If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under Part C of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the	

SUBPART C—PROCEDURES FOR MAKING GRANTS TO STATES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.236 Judicial review. Secretary's action was based, as provided in 28 U.S.C. 2112.	

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

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.300 General. The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in §303.100 must include the following components: (a) Pre-referral policies and procedures that include-- (1) A public awareness program as described in §303.301; and (2) A comprehensive child find system as described in §303.302. (b) Referral policies and procedures as described in §303.303. (c) Post-referral policies and procedures that ensure compliance with the timeline requirements in §303.310 and include-- (1) Screening, if applicable, as described in §303.320; (2) Evaluations and assessments as described in §§303.321 and 303.322; and (3) Development, review, and implementation of IFSPs as described in §§303.340 through 303.346.	The Department explained that it added the new §303.300 "to identify and distinguish between the pre-referral, referral, and postreferral components of a statewide early intervention system. Section 303.300 states that the statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families required in §303.1 must include the following components: (a) Prereferral policies and procedures that include a public awareness program as described in new §303.301 (proposed §303.300) and a comprehensive child find system as described in new §303.302 (proposed §303.301); (b) Referral policies and procedures as described in new §303.303 (proposed §303.302); and (c) Post-referral policies and procedures to ensure compliance with the timeline requirements in new §303.310 and that include screening, if applicable, as described in new §303.320 (proposed §303.303); evaluations and assessments as described in new §303.321 (proposed §303.320); and development, review, and implementation of IFSPs as described in §§303.342 through 303.346."
§ 303.300 State eligibility criteria and procedures. Each statewide system of early intervention services must include the eligibility criteria and procedures, consistent with § 303.16, that will be used by the State in carrying out programs under this part. (a) The State shall define developmental delay by— (1) Describing, for each of the areas listed in	**NOTE: This regulation now appears under Subpart B in §303.111 State definition of developmental delay.**	

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.300 State eligibility criteria and procedures. § 303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and (2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas. (b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under § 303.16(a)(2). (c) If the State elects to include in its system children who are at risk under § 303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.		
§ 303.300 State eligibility criteria and procedures. NOTE: Under this section and § 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.		

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.301 Central directory. (a)Each system must include a central directory of information about-- (1) Public and private early intervention services, resources, and experts available in the State; (2) Research and demonstration projects being conducted in the State; and (3) Professional and other groups that provide assistance to children eligible under this part and their families. (b) The information required in paragraph (a) of this section must be in sufficient detail to-- (1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and (2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory. (c) The central directory must be-- (1) Updated at least annually; and (2) Accessible to the general public. (d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available-- (1) In each geographic region of the State, including rural areas; and (2) In places and a manner that ensure accessibility by persons with disabilities. Note: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.	**NOTE: This regulation now appears under Subpart B in §303.117 Central directory.**	

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.320 Public awareness program. Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part and includes the preparation and dissemination by the lead agency to all primary referral sources, especially hospitals and physicians, of materials for parents on the availability of early intervention services. The public awareness program must provide for informing the public about— (a) The State's early intervention program; (b) The child find system, including— (1) The purpose and scope of the system; (2) How to make referrals; and (3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and (c) The central directory.	**§303.301 Public awareness program--information for parents.** (a) Preparation and dissemination. In accordance with §303.116, each system must include a public awareness program that requires the lead agency to-- (1)(i) Prepare information on the availability of early intervention services under this part, and other services, as described in paragraph (b) of this section; and (ii) Disseminate to all primary referral sources (especially hospitals and physicians) the information to be 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; and (2) Adopt procedures for assisting the primary referral sources described in §303.303(c) in disseminating the information described in paragraph (b) of this section to parents of infants and toddlers with disabilities. (b) Information to be provided. The information required to be prepared and disseminated under paragraph (a) of this section must include-- (1) A description of the availability of early intervention services under this part; (2) A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and	The Department explained that new "§303.301 (proposed §303.300) is consistent with section 635(a)(6) of the Act, which describes the requirements of a public awareness program. Notes 1 and 2 following current §303.320 describe the components of an effective public awareness program and provide examples of methods for informing the general public about the provisions of this part." The Department further clarified that it did not "wish to make the substance of these notes regulatory requirements because [it does] not want to limit State flexibility to create a public awareness program that meets State-specific needs." But the Department further clarified that while it did not incorporate the notes as requirements in the regulations, it continues "to believe that an effective public awareness system is one that involves an ongoing effort that is in effect throughout a State, including rural areas; provides for the involvement of, and communication with, major organizations throughout a State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations; has coverage broad enough to reach the general public, including those who have disabilities; and includes a variety of methods for informing the public about the provisions of this part." Importantly, it further clarified that, "methods for informing the public continue to include the use of printed materials, television, radio, and the Internet, but may also include other appropriate methods in a particular

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
		State." Finally, the Department stated that it didn't "want to limit State flexibility to create a public awareness program that meets State-specific needs."
	§ 303.301 Public awareness program. (3) A central directory, as described in §303.117. (c) Information specific to toddlers with disabilities. Each public awareness program also must include a requirement that the lead agency provide for informing parents of toddlers with disabilities of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.	
§ 303.320 Public awareness program. NOTE 1: An effective public awareness program is one that does the following: 1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas; 2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations; 3.Has coverage broad enough to reach the general public, including those who have disabilities; and 4. Includes a variety of methods for informing the public about the provisions of this part.		
§ 303.320 Public awareness program. NOTE 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in		

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.320 Public awareness program. doctors' offices, hospitals, and other appropriate locations, and (3) The use of a toll-free telephone service.		
§ 303.321 Comprehensive child find system. (a) General. (1) Each system must include a comprehensive child find system that is consistent with part B of the Act (see 34 CFR 300.128), and meets the requirements of paragraphs (b) through (e) of this section (2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system. (b) Procedures. The child find system must include the policies and procedures that the State will follow to ensure that— (1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and (2) An effective method is developed and implemented to determine which children are receiving needed early intervention services. (c) Coordination. (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the— (i) Program authorized under part B of the Act;	**§303.302 Comprehensive child find system.** (a) General. Each system must include a comprehensive child find system that-- (1) Is consistent with Part B of the Act (see 34 CFR 300.111); (2) Includes a system for making referrals to lead agencies or EIS providers under this part that-- (i) Includes timelines; and (ii) Provides for participation by the primary referral sources described in §303.303(c); (3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this part that will reduce the need for future services; and (4) Meets the requirements in paragraphs (b) and (c) of this section and §§303.303, 303.310, 303.320, and 303.321. (b) Scope of child find. The lead agency, as part of the child find system, must ensure that-- (1) All infants and toddlers with disabilities in the State who are eligible for early intervention services under this part are identified, located, and evaluated, including— (i) Indian infants and toddlers with disabilities residing on a reservation geographically located in the State (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the State based, in part, on the information provided by them to the lead agency under §303.731(e)(1)); and	In general, the Department explained that to fully "reflect the varied administrative structures of different Part C child find systems and the revised definitions of public agency and EIS provider in §§303.30 and 303.12, respectively, [it] replaced the reference to ―public agencies - with ―lead agencies or EIS provider in new §303.302(a)(2) (proposed §303.301(a)(2))." The Department also declined to define the term "rigorous" in the regulations but explained its' interpretation of the term to mean that the new procedures require "each State's Part C child find system [to] include rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services that reduce the need for future services." In addition, although the Department did not define the term rigorous in the regulations, it clarified that it "interpret[s] the term ―rigorous‖ in this section to mean that the State has obtained public (including stakeholder) input on its child find system policies and procedures that are required in §303.101(a)(2), 303.115, and 303.116. Requiring public input ensures that stakeholders who have an interest in the development of a State's child find system, including parents of infants and toddlers with disabilities, EIS providers, Council members, and other stakeholders, have adequate opportunity

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.321 Comprehensive child find system. (ii) Maternal and Child Health program under title V of the Social Security Act; (iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under title XIX of the Social Security Act; (iv) Developmental Disabilities Assistance and Bill of Rights Act; (v) Head Start Act; and (vi) Supplemental Security Income program under title XVI of the Social Security Act. (2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that— (i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and (ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.	**§303.302 Comprehensive child find system.** (ii) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and (iii) Infants and toddlers with disabilities that are referenced in §303.303(b); and (2) An effective method is developed and implemented to identify children who are in need of early intervention services. (c) Coordination. (1) The lead agency, with the assistance of the Council, as defined in §303.8, must ensure that the child find system under this part-- (i) Is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including Indian tribes that receive payments under this part, and other Indian tribes, as appropriate; and (ii) Is coordinated with the efforts of the— (ii) Is coordinated with the efforts of the-— (A) Program authorized under Part B of the Act; (B) 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)); (C) 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)); (D) Programs under the Developmental Disabilities	to comment on, and inform, the decision-making process regarding a State's child find policies and procedures." The Department also stated that it removed the phrase "and which children are not in need of those services" in new §303.302(b)(2) to recognize that "efforts under Part C of the Act should focus on identifying infants and toddlers with disabilities who are potentially eligible for, or in need of, early intervention services and not those who are not potentially eligible for such services." The Department further explained that it added, new paragraphs (J) and (K) "to include EHDI and CHIP among the programs with which the lead agency must coordinate its child find activities.

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.302 Comprehensive child find system. Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001et seq.); (E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.); (F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381); (G) Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a)); (H) Child care programs in the State; (I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C.10401 et seq.); (J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and (K) Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.). (2) The lead agency, with the advice and assistance of the Council, must take steps to ensure that-- (i) There will not be unnecessary duplication of effort by the programs identified in paragraph (c)(1)(ii) of this section; and (ii) The State will make use of the resources available through each public agency and EIS provider in the State to implement the child find system in an effective manner.	

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
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§303.321 Comprehensive child find system. NOTE: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.		
§303.302 Referral procedures. (d) Referral procedures. (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for— (i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or (ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345. (2) The procedures required in paragraph (b)(1) of this section must— (i) Provide for an effective method of making referrals by primary referral sources; (ii) Ensure that referrals are made no more than two working days after a child has been identified; and (iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities. (3) As used in paragraph (d)(1) of this section, primary referral sources includes— (i) Hospitals, including prenatal and postnatal care facilities; (ii) Physicians;	**§303.303 Referral procedures.** (a) General. (1) The lead agency's child find system described in §303.302 must include the State's procedures for use by primary referral sources for referring a child under the age of three to the Part C program. (2) The procedures required in paragraph (a)(1) of this section must-- (i) Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and (ii) Meet the requirements in paragraphs (b) and (c) of this section. (b) Referral of specific at-risk infants and toddlers. The procedures required in paragraph (a) of this section must provide for requiring the referral of a child under the age of three who-- (1) Is the subject of a substantiated case of child abuse or neglect; or (2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. (c) Primary referral sources. As used in this subpart, primary referral sources include-- (1) Hospitals, including prenatal and postnatal care facilities; (2) Physicians; (3) Parents, including parents of infants and toddlers;	The Department clarified its position on maintaining the phrase, as soon as possible by stating, "we believe it is appropriate to retain the phrase … because it conveys a sense of urgency that referrals be made to the Part C program in a timely manner." While the Department retained this language, to address concerns about delay, it added a maximum timeline of seven calendar days stating it, "we realize that in some cases an earlier referral may be reasonable, but establishing a maximum timeline of seven days provides more flexibility for primary referral sources making referrals than the current timeline." Further, the Department clarified that it "revised the language in new §303.303(b)(1) (proposed §303.302(b)(1)) to refer to a child under the age of three who is the subject of a substantiated case of child abuse or neglect." In addition, the Department explained that it does not "interpret the statutory language or new §303.303(b)(1) (proposed §303.302(b)(1)) to require a sibling (under the age of three) to be referred or screened unless that sibling is a child under the age of three who also has been the subject of a substantiated case of child abuse or

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§303.302 Referral procedures. (iii) Parents; (iv) Day care programs; (v) Local educational agencies; (vi) Public health facilities; (vii) Other social service agencies; and (viii) Other health care providers.	**§303.303 Referral procedures.** (4) Child care programs and early learning programs; (5) LEAs and schools; (6) Public health facilities; (7) Other public health or social service agencies; (8) Other clinics and health care providers; (9) Public agencies and staff in the child welfare system, including child protective service and foster care; (10) Homeless family shelters; and (11) Domestic violence shelters and agencies.	neglect." The Department elaborated that this was meant to decrease burden on states because, it "narrowed the scope of children to be referred to the Part C program under new §303.303(b)(1) (proposed §303.302(b)), [and as such] the potential burden is decreased to States, which may currently receive referrals of all children (such as a sibling or step-sibling) who are involved in a substantiated case of child abuse or neglect." The Department also emphasized that the list of potential referral sources is meant to be "a non-exhaustive list of primary referral sources and that a lead agency may include other primary referral sources in its child find system. The term include, as defined in §303.18 and used in the introductory text in new §303.303(c) (proposed §303.302(c)), means that the items named are not all of the possible items that are covered, whether like or unlike the ones named."
§303.302 Referral procedures. (e) Timelines for public agencies to act on referrals. (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible. (2) Within 45 days after it receives a referral, the public agency shall— (i) Complete the evaluation and assessment activities in § 303.322; and (ii) Hold an IFSP meeting, in accordance with § 303.342.	**§303.310 Post-referral timeline (45 days).** (a) Except as provided in paragraph (b) of this section, any screening under §303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child); the initial evaluation and the initial assessments of the child and family under §303.321; and the initial IFSP meeting under §303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child. (b) Subject to paragraph (c) of this section, the 45-day timeline described in paragraph (a) of this section does not apply for any period when— (1) The child or parent is unavailable to complete	The Department stated, "We believe that having the 45-day timeline in new §303.310(a) commence on the date of referral, rather than on the date the lead agency or EIS provider obtains parental consent for the initial evaluation, ensures accountability, consistency, and predictability, and it is easier for States and parents to implement and track. More importantly, we are persuaded that this timeline will result in fewer delays in infants and toddlers with disabilities receiving early intervention services as quickly as possible after being referred. The Department further clarified that there are two

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	§303.310 Post-referral timeline (45 days). the screening (if applicable), 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 (2) The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent. (c) The lead agency must develop procedures to ensure that in the event the circumstances described in (b)(1) or (b)(2) of this section exist, the lead agency or EIS provider must-- (1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the lead agency or EIS provider to obtain parental consent; (2) Complete the screening (if applicable), 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 described in paragraph (b)(1) of this section no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and (3) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345. (d) The initial family assessment must be conducted within the 45-day timeline in paragraph (a) of this section if the parent concurs and even if other family members are unavailable.	specific circumstances when the 45-day timeline would not apply. The Department stated, "First, as noted in new §303.310(b)(1), there may be periods of time when the child or parent is unavailable to complete the screening, if applicable; the initial evaluation; the initial assessment of the child; the initial assessment of the family; or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records. To clarify that it is only the unavailability of the child or parent (and not other family members) that determines the availability of this exception, we have added new §303.310(d) to ensure that the family assessment is completed within the 45-day timeline, if the parent concurs, as long as the parent is available. The second exception to the 45-day timeline is set forth in new §303.310(b)(2), which provides that if the parent has not provided consent for the screening (if the State has adopted a policy to conduct screenings and elects to conduct a screening of that child), initial evaluation, or initial assessment of the child despite documented, repeated attempts by the lead agency or EIS provider to obtain parental consent, then the 45-day timeline would not apply. The Department did not include the family assessment or the initial IFSP meeting in this second exception because, as the Department explained, while the family assessment is voluntary on the part of any family member who participates in it and the initial IFSP meeting must be scheduled at a time convenient to the family, there are no express written consent requirements

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		for conducting the family assessment and initial IFSP meeting. To ensure that these exceptions are not absolute, the Department added a new requirement in §303.310(c) to clarify that the lead agency or EIS provider must complete the screening, if applicable; initial evaluation; initial assessments; and initial IFSP meeting as soon as possible after the circumstances described in new §303.310(b) no longer exist or parental consent is obtained. The Department stated that it, "believe[s] that the availability of the two limited exceptions to the 45-day timeline in new §303.310(b) creates flexibility and reduces burdens for lead agencies and EIS providers. Coupling these exceptions with a 45-day timeline commencing on the date of the child's referral to the Part C program in new §303.310(a) creates a clear and enforceable timeline that ensures accountability for timely identification, evaluations, assessments, and IFSP meetings for infants and toddlers with disabilities."
	§303.320 Screening procedures (optional). (a) General. (1) The lead agency may adopt procedures, consistent with the requirements of this section, 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 this part. If the lead agency or EIS provider proposes to screen a child, it must-- (i) Provide the parent notice under §303.421 of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to	The Department commented that it added new language to the proposed regulations to clarify that parents have an ongoing right to request an evaluation before, during, or after their child is screened. Specifically, the Department added a new §303.320(a)(1)(i) and (a)(1)(ii), stating, "if the lead agency or EIS provider proposes to screen a child, it must (i) provide the parent notice under §303.421 of its intent to screen the child to identify whether the child is suspected of having a disability (and include in the notice a description of the parent's right to request an evaluation under §303.321 at

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	§303.320 Screening procedures (optional). request an evaluation under §303.321 at any time during the screening process; and (ii) Obtain parental consent as required in §303.420(a)(1) before conducting the screening procedures. (2) If the parent consents to the screening and the screening or other available information indicates that the child is-- (i) Suspected of having a disability, after notice is provided under §303.421 and once parental consent is obtained as required in §303.420, an evaluation and assessment of the child must be conducted under §303.321; or (ii) Not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent under §303.421, and that the notice describes the parent's right to request an evaluation. (3) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under §303.321, even if the lead agency or EIS provider has determined under paragraph(a)(2)(ii) of this section that the child is not suspected of having a disability. (b) Definition of screening procedures. Screening procedures-- (1) Means activities under paragraphs (a)(1) and (a)(2) of this section that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention	any time during the screening process) and (ii) obtain parental consent as required in §303.420(a)(1) before administering the screening". Additionally, the Department revised new §303.320(a)(2)(ii) to specify, "when the lead agency provides notice to a parent under §303.421 that, based on the screening or other available information, a child is not suspected of having a disability, the notice must describe the parent's right to request an evaluation." Lastly, the Department added new language to new §303.320(a)(3) a provision clarifying that parents may request an evaluation at any time during the screening process.

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	§303.320 Screening procedures (optional). services; and (2) Includes the administration of appropriate instruments by personnel trained to administer those instruments. (c) Condition for evaluation or early intervention services. For every child under the age of three who is referred to the Part C program or screened in accordance with paragraph (a) of this section, the lead agency is not required to-- (1) Provide an evaluation of the child under §303.321 unless the child is suspected of having a disability or the parent requests an evaluation under paragraph (a)(3) of this section; or (2) Make early intervention services available under this part to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under §303.21.	
§ 303.322 Evaluation and assessment. (a) General. (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, and a family-directed identification of the needs of each child's family to appropriately assist in the development of the child. (2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.	**§303.321 Evaluation of the child and assessment of the child and family.** (a) General. (1) The lead agency must ensure that, subject to obtaining parental consent in accordance with §303.420(a)(2), each child under the age of three who is referred for evaluation or early intervention services under this part and suspected of having a disability, receives— (i) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with paragraph (b) of this section unless eligibility is established under paragraph (a)(3)(i) of this section; and (ii) If the child is determined eligible as an infant or toddler with a disability as defined in §303.21— (A) A multidisciplinary assessment of the unique	

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	§303.321 Evaluation of the child and assessment of the child and family. strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs; (B) 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. The assessments of the child and family are described in paragraph (c) of this section and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (b) of this section are met.	
§ 303.322 Evaluation and assessment. (b) Definitions of evaluation and assessment .As used in this part— (1) Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of ''infants and toddlers with disabilities'' in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.	**§303.321 Evaluation of the child and assessment of the child and family.** (2) As used in this part-- (i) 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;	The Department clarified, "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." The Department further clarified in §303.321(a)(2)(i) that the term, "initial evaluation refers to the child's evaluation to determine his or her initial eligibility under this part."
§ 303.322 Evaluation and assessment. (2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify— (i) The child's unique strengths and needs and the services appropriate to meet those needs; and (ii) The resources, priorities, and concerns of the	**§303.321 Evaluation of the child and assessment of the child and family.** (ii) 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	The Department clarified, "the definition of assessments incorporate the language from section 636(a)(1) and (a)(2) of the [Individuals with Disabilities Education] Act, which requires each statewide system to provide for each eligible child: (1) A multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet those

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§ 303.322 Evaluation and assessment. family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability. (c) Evaluation and assessment of the child. The evaluation and assessment of each child must— (1) Be conducted by personnel trained to utilize appropriate methods and procedures; (2) Be based on informed clinical opinion; and (3) Include the following: (i) A review of pertinent records related to the child's current health status and medical history. (ii) An evaluation of the child's level of functioning in each of the following developmental areas: (A) Cognitive development. (B) Physical development, including vision and hearing. (C) Communication development. (D) Social or emotional development. (E) Adaptive development. (iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.	**§303.321 Evaluation of the child and assessment of the child and family.** assessment of the child, consistent with paragraph (c)(1) of this section and the assessment of the child's family, consistent with paragraph (c)(2) of this section; and (iii) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting. (3)(i) A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this part if those records indicate that the child's level of functioning in one or more of the developmental areas identified in §303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under §303.21. If the child's Part C eligibility is established under this paragraph, the lead agency or EIS provider must conduct assessments of the child and family in accordance with paragraph (c) of this section. (ii) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the lead agency must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this part 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 under paragraph (b) of this section. (4) All evaluations and assessments of the child	needs; and (2) 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 the infant or toddler." Additionally, the Department clarified that the term "initial assessment refers to assessments of the child and the family conducted prior to the child's initial IFSP meeting, both of which must be conducted within the 45-day timeline described in §303.310, even if family members other than the parent agree to participate but are unavailable to complete the family assessment."

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	§303.321 Evaluation of the child and assessment of the child and family. and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory. (5) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in §303.25. (6) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed, in accordance with the definition of native language in §303.25. (b) Procedures for evaluation of the child. In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this part. Procedures must include-- (1) Administering an evaluation instrument; (2) Taking the child's history (including interviewing the parent); (3) Identifying the child's level of functioning in each of the developmental areas in §303.21(a)(1); (4) Gathering 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 the child's unique strengths and needs; and (5) Reviewing medical, educational, or other records.	

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§ 303.322 Evaluation and assessment. (d) Family assessment. (1) Family assessments under this part must be family-directed and designed to determine 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 the child. (2) Any assessment that is conducted must be voluntary on the part of the family. (3) If an assessment of the family is carried out, the assessment must— (i) Be conducted by personnel trained to utilize appropriate methods and procedures; (ii) Be based on information provided by the family through a personal interview; and (iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.	**§303.321 Evaluation of the child and assessment of the child and family.** (c) Procedures for assessment of the child and family. (1) An assessment of each infant or toddler with a disability must be conducted by qualified personnel 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 must include the following-- (i) A review of the results of the evaluation conducted under paragraph (b) of this section; (ii) Personal observations of the child; and (iii) The identification of the child's needs in each of the developmental areas in §303.21(a)(1). (2) A family-directed assessment must be conducted by qualified personnel 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 must-- (i) Be voluntary on the part of each family member participating in the assessment; (ii) Be 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 (iii) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.	

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	§303.322 Determination that a child is not eligible. If, based on the evaluation conducted under §303.321, 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.	
§ 303.322 Evaluation and assessment. (e) Timelines. (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e). (2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will— (i) Document those circumstances; and (ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).	**NOTE: This regulation now appears under Subpart D in §303.310 Post-referral timeline (45 days).**	
§ 303.323 Nondiscriminatory procedures. Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of	**NOTE: This regulation now appears under Subpart D in §303.321 Evaluation of the child and assessment of the child and family.**	

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§ 303.323 Nondiscriminatory procedures. children and families under this part shall ensure, at a minimum, that— (a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so; (b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory; (c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and (d) Evaluations and assessments are conducted by qualified personnel.		
§ 303.340 Individualized Family Service Plans General. (a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.	**§303.340 Individualized Family Service Plan (IFSP) General.** For each infant or toddler with a disability, the lead agency must ensure the development, review, and implementation of an individualized family service plan or IFSP developed by a multidisciplinary team, which includes the parent, that-- (a) Is consistent with the definition of that term in §303.20; and (b) Meets the requirements in §§303.342 through 303.346 of this subpart.	
§ 303.340 Individualized Family Service Plans General. (b) As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must—	**NOTE: This regulation now appears under Subpart A in §303.20 Individualized Family Service Plan.**	

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§ 303.340 Individualized Family Service Plans General. (1) Be developed in accordance with §§ 303.342 and 303.343; (2) Be based on the evaluation and assessment described in § 303.322; and (3) Include the matters specified in § 303.344. (c) Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility.		
§ 303.340 Individualized Family Service Plans General. NOTE: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.		
§ 303.342 Procedures for IFSP development, review, and evaluation. (a) Meeting to develop initial IFSP—timelines. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in § 303.321(e)	**§303.342 Procedures for IFSP development, review, and evaluation.** (a) Meeting to develop initial IFSP--timelines. For a child referred to the Part C program and determined to be eligible under this part as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in §303.310.	

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§ 303.342 Procedures for IFSP development, review, and evaluation. (b) Periodic review. (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine— (i) The degree to which progress toward achieving the outcomes is being made; and (ii) Whether modification or revision of the outcomes or services is necessary. (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.	**§303.342 Procedures for IFSP development, review, and evaluation.** (b) Periodic review. (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine- (i) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and (ii) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary. (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.	
§ 303.342 Procedures for IFSP development, review, and evaluation. (c) Annual meeting to evaluate the IFSP. A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.	**§303.342 Procedures for IFSP development, review, and evaluation.** (c) Annual meeting to evaluate the IFSP. A meeting must be 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 under §303.321 must be used in determining the early intervention services that are needed and will be provided.	
§ 303.342 Procedures for IFSP development, review, and evaluation. (d) Accessibility and convenience of meetings. (1)IFSP meetings must be conducted—	**§303.342 Procedures for IFSP development, review, and evaluation.** (d) Accessibility and convenience of meetings. (1) IFSP meetings must be conducted-- (i) In settings and at times that are convenient for	

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§ 303.342 Procedures for IFSP development, review, and evaluation. (i) In settings and at times that are convenient to families; and (ii) 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. (2) 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.	**§303.342 Procedures for IFSP development, review, and evaluation.** the family; and (ii) 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. (2) 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.	
§ 303.342 Procedures for IFSP development, review, and evaluation. (e) Parental consent. The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.	**§303.342 Procedures for IFSP development, review, and evaluation.** (e) Parental consent. The contents of the IFSP must be fully explained to the parents and informed written consent, as described in §303.7, must be obtained, as required in §303.420(a)(3), 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, as required in §303.344(f)(1).	The Department clarified in §303.342(e) and 303.344(f)(1) that, "early intervention services must be provided as soon as possible after obtaining parental consent. [The Department] believe[s] that it is important for the timeline to run from the date of parental consent and not from the initiation date identified at the IFSP meeting. A State may only provide a service identified in the IFSP if a parent provides consent under §303.420. In some instances, even if the IFSP is developed with a service initiation date, a parent may not have provided consent to the service and, therefore, the service may not be provided. Thus, [the Department] revised the time period to commence from the date of parental consent", rather than as soon as possible after the IFSP meeting. The Department further clarified in §303.342(e) and 303.344(f)(1) that "early intervention services must be provided as soon as possible after parental consent is obtained." The Department stated, it is not appropriate to "adopt a time period more specific than —as soon as possible -- for the

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		provision of all early intervention services identified in an IFSP. While each State must ensure that services in an IFSP are provided as soon as possible after receiving parental consent, [the Department] believe[s] that — as soon as possible -- may vary depending on a number of factors, such as the availability of qualified personnel in a State, the number of children to be served, and the location of those children." The Department further explained that while States have some flexibility in implementing this provision, the Department monitors, through the SPP/APR, data on when each State initiates services for each child.
§ 303.342 Procedures for IFSP development, review, and evaluation. NOTE: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise. Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.		
§ 303.343 Participants in IFSP meetings and periodic reviews. (a) Initial and annual IFSP meetings. (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants: (i) The parent or parents of the child.	**§303.343 IFSP Team meeting and periodic review.** (a) Initial and annual IFSP Team meeting. (1) Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP must include the following participants: (i) The parent or parents of the child.	The Department stated that 303.343(a)(iv) now allows for the service coordinator designated by the public agency to be responsible for implementing the IFSP needn't be the service coordinator who has been working with the family since the initial referral of the child for an evaluation.

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§ 303.343 Participants in IFSP meetings and periodic reviews. (ii) Other family members, as requested by the parent, if feasible to do so; (iii) An advocate or person outside of the family, if the parent requests that the person participate. (iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP. (v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322. (vi) As appropriate, persons who will be providing services to the child or family. (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including— (i) Participating in a telephone conference call; (ii) Having a knowledgeable authorized representative attend the meeting; or (iii) Making pertinent records available at the meeting.	**§303.343 IFSP Team meeting and periodic review.** (ii) Other family members, as requested by the parent, if feasible to do so. (iii) An advocate or person outside of the family, if the parent requests that the person participate. (iv) The service coordinator designated by the public agency to be responsible for implementing the IFSP. (v) A person or persons directly involved in conducting the evaluations and assessments in §303.321. (vi) As appropriate, persons who will be providing early intervention services under this part to the child or family. (2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following: (i) Participating in a telephone conference call. (ii) Having a knowledgeable authorized representative attend the meeting. (iii) Making pertinent records available at the meeting.	
§ 303.343 Participants in IFSP meetings and periodic reviews. (b) Periodic review. Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.	**§303.343 IFSP Team meeting and periodic review.** (b) Periodic review. Each periodic review under §303.342(b) must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.	

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§ 303.344 Content of an IFSP. (a) Information about the child's status. (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development. (2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.	**§303.344 Content of an IFSP.** (a) Information about the child's status. The IFSP must include 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 conducted under §303.321.	
§ 303.344 Content of an IFSP. (b) Family information. With the concurrence of the family, the IFS must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.	**§303.344 Content of an IFSP.** (b) Family information. With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under §303.321(c)(2).	
§ 303.344 Content of an IFSP. (c) Outcomes. The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness used to determine— (1) The degree to which progress toward achieving the outcomes is being made; and (2) Whether modifications or revisions of the outcomes or services are necessary.	**§303.344 Content of an IFSP.** (c) Results or outcomes. The IFSP must include 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-- (1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and (2) Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.	

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§ 303.344 Content of an IFSP. (d) Early intervention services. (1) The IFSP must include a statement of the specific early intervention services the child and the family to achieve the outcomes identified in paragraph (c) of this section, including— (i)The frequency, intensity, and method of delivering the services; (ii) The natural environments, as described in § 303.12(b), and § 303.18 in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment;	**§303.344 Content of an IFSP.** (d) Early intervention services. (1) 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 in paragraph (c) of this section, including-- (i) The length, duration, frequency, intensity, and method of delivering the early intervention services; (ii)(A) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment. (B) 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 by the IFSP Team in paragraph (c) of this section;	The Department explained that early intervention services be based on peer-reviewed research, to the extent practicable, aligned to the statutory language of the Individuals with Disabilities Education Act of 2004. The Department further clarified that using early intervention services based on peer-reviewed research, to the extent practicable, means that, “specific early intervention services should be based on peer-reviewed research to the extent that it is feasible or possible, given the availability of peer-reviewed research on the early intervention services determined to be most appropriate to respond to the child’s needs and strengths identified pursuant to information from the child’s evaluations an assessments under 303.321.” The Department clarified that the regulations, “require the IFSP to include (i) a statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to §303.344(d)(1)(ii)(B), and (ii) a justification as to why an early intervention service will not be provided in the natural environment.” This clarification was made in response to some questioning language in the proposed regulations which included the phrase “if applicable” regarding the justification needed if a service was not provided in the natural environment.

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§ 303.344 Content of an IFSP. (iii) The location of the services; and (iv) The payment arrangements, if any. (2) As used in paragraph (d)(1)(i) of this section— (i) Frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and (ii) Method means how a service is provided. (3) As used in paragraph (d)(1)(iii) of this section, location means the actual place or places where a service will be provided.	**§303.344 Content of an IFSP.** (iii) The location of the early intervention services; and (iv) The payment arrangements, if any. (2) As used in paragraph (d)(1)(i) of this section— (i) Frequency and intensity mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis; (ii) Method means how a service is provided; (iii) 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 (iv) 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). (3) As used in paragraph (d)(1)(iii) of this section, location means the actual place or places where a service will be provided. (4) 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.	The Department stated that the IFSP must include an education component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills, and that this language is aligned with the IDEA statute and Part B regulations (34 CFR 300.323(b)).
§ 303.344 Content of an IFSP. (e) Other services. (1) To the extent appropriate, the IFSP must include— (i) Medical and other services that the child needs, but that are not required under this part; and (ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.	**§303.344 Content of an IFSP.** (e) Other services. To the extent appropriate, the IFSP also must-- (1) 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 (2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the	The Department explained that the new Part C regulations, "no longer require the IFSP Team to identify, and service coordinators to coordinate, funding sources for these services (those not required under Part C). [The Department] believe[s] that §303.344(e)(2), with this change, will help families receive additional services, without unduly burdening IFSP Teams and service coordinators who may have limited knowledge about funding for services provided by other

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§ 303.344 Content of an IFSP. (2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and ''well-baby'' care), unless a child needs those services and the services are not otherwise available or being provided.	**§303.344 Content of an IFSP.** child and family in securing those other services.	programs."
§ 303.344 Content of an IFSP. (f) Dates; duration of services. The IFSP must include— (1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and (2) The anticipated duration of those services.	**§303.344 Content of an IFSP.** (f) Dates and duration of services. The IFSP must include-- (1) The projected date for the initiation of each early intervention service in paragraph (d)(1) of this section, which date must be as soon as possible after the parent consents to the service, as required in §§303.342(e) and 303.420(a)(3); and (2) The anticipated duration of each service.	The Department clarified, similar to revisions in 303.342(e), that the timeline of services begin "as soon as possible" after parental consent (instead of "a soon as possible" after the IFSP meeting, as is in the 1999 Part C Regulations)
§ 303.344 Content of an IFSP. (g) Service coordinator. (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.	**§303.344 Content of an IFSP.** (g) Service coordinator. (1) The IFSP must include 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 this part), 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.	
§ 303.344 Content of an IFSP. (2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may— (i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or	**§303.344 Content of an IFSP.** (2) In meeting the requirements in paragraph (g)(1) of this section, the term "profession" includes "service coordination."	

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§ 303.344 Content of an IFSP. (ii) Appoint a new service coordinator. (3) As used in paragraph (g)(1) of this section, the term profession includes ''service coordination.''		
§ 303.344 Content of an IFSP. (h) Transition from Part C services. (1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with § 303.148, to— (i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or (ii) Other services that may be available, if appropriate. (2) The steps required in paragraph (h)(1) of this section include— (i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition; (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and	**§303.344 Content of an IFSP.** (h) Transition from Part C services. (1) The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with §§303.209 and 303.211(b)(6), from Part C services to— (i) Preschool services under Part B of the Act, to the extent that those services are appropriate; (ii) Part C services under §303.211; or (iii) Other appropriate services. (2) The steps required in paragraph (h)(1) of this section must include-- (i) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition; (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;	The Department clarified that to be consistent with the statutory language of IDEA 2004, "the IFSP must include not only transition steps but transition services needed to support the smooth transition of a child who is exiting the Part C program." To demonstrate this change, the Department added the phrase "and services" after the word "steps" to §303.344(h)(1).
§ 303.344 Content of an IFSP. (iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.	**§303.344 Content of an IFSP.** (iii) Confirmation that child find information about the child has been transmitted to the LEA or other relevant agency, in accordance with §303.209(b) (and any policy adopted by the State under §303.401(e)) and, with parental consent if required under §303.414, 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 developed in	The Department clarified that, "transition steps and services in the IFSP must include confirmation that child find information was transmitted to the LEA or other relevant agency." Additionally, the Department clarified that, "parental consent must be obtained if personally identifiable information is disclosed as required under §303.414. Given that personally identifiable information is discussed at the IFSP meeting to develop a transition plan, if the LEA representative is from an LEA that is not a participating agency under §303.403(c) or if attendance is required of other individuals who are

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	§303.344 Content of an IFSP. accordance with §§303.340 through 303.345; and (iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.	not employees or representatives of participating agencies, parental consent is required under §303.414 for the lead agency to be able to disclose personally identifiable information to these individuals at the meeting." Lastly, the Department also clarified that the, "additional information to be provided to the LEA to ensure continuity of services includes a copy of the most recent evaluation and assessments of the child and family and the most recent IFSP."
§ 303.344 Content of an IFSP. NOTE 1: With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting— during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.		
§ 303.344 Content of an IFSP. NOTE 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other		

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§ 303.344 Content of an IFSP. family members will accept or decline services under this part.		
§ 303.344 Content of an IFSP. NOTE 3: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12. The ''other services'' in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services). Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when,		

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§ 303.344 Content of an IFSP. where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).		
§ 303.344 Content of an IFSP. NOTE 4: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the service coordinator in initiating those services, and (c) what actions will be taken by the parents.		
§ 303.345 Provision of services before evaluation and assessment are completed. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met: (a) Parental consent is obtained. (b) An interim IFSP is developed that includes— (1) The name of the service coordinator who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and (2) The early intervention services that have been determined to be needed immediately by the child and the child's family.	**§303.345 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 §303.321, if the following conditions are met: (a) Parental consent is obtained. (b) An interim IFSP is developed that includes-- (1) The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementing the interim IFSP and coordinating with other agencies and persons; and (2) The early intervention services that have been determined to be needed immediately by the child	

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§ 303.345 Provision of services before evaluation and assessment are completed. (c) The evaluation and assessment are completed within the time period required in § 303.322(e).	**§303.345 Interim IFSPs--Provision of Services Before Evaluations and Assessments are Completed.** and the child's family. (c) Evaluations and assessments are completed within the 45-day timeline in §303.310.	
§ 303.345 Provision of services before evaluation and assessment are completed. NOTE: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.		
§ 303.346 Responsibility and accountability. Each agency or person 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 agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.	**§303.346 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.	
§ 303.360 Comprehensive system of personnel development. (a) Each system must include a comprehensive system of personnel development. (b) The personnel development system under this part must— (1) Be consistent with the comprehensive system of	**NOTE: This regulation now appears under Subpart B in §303.118 Comprehensive system of personnel development (CSPD).**	

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§ 303.360 Comprehensive system of personnel development. personnel development required under part B of the Act (34 CFR 300.380 through 300.387); (2) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate; (3) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and (4) Ensure that the training provided relates specifically to— (i) Understanding the basic components of early intervention services available in the State; (ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and (iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.		
§ 303.360 Comprehensive system of personnel development. (c) A personnel development system under this part may include— (1) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers; (2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;	**NOTE: This regulation now appears under Subpart B in §303.118 Comprehensive system of personnel development (CSPD).**	

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§ 303.360 Comprehensive system of personnel development. (3) Training personnel to work in rural and inner-city areas; and (4) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under part B of the Act or to other preschool or other appropriate services.		
§ 303.361 Personnel standards. (a) As used in this part— (1) Appropriate professional requirements in the State means entry level requirements that— (i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and (ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies. (2) Highest requirements in the State applicable to a specific profession or discipline means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. (3) Profession or discipline means a specific occupational category that— (i) Provides early intervention services to children eligible under this part and their families; (ii) Has been established or designated by the State; and	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	

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§ 303.361 Personnel standards. (iii) Has a required scope of responsibility and degree of supervision. (4) State approved or recognized certification, licensing, registration, or other comparable requirements means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.		
§ 303.361 Personnel standards. (b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained. (2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	
§ 303.361 Personnel standards. (c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.361 Personnel standards. the retraining or hiring of personnel that meet appropriate professional requirements in the State.		
§ 303.361 Personnel standards. (d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline. (2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	
§ 303.361 Personnel standards. (e) In identifying the ''highest requirements in the State'' for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	
§ 303.361 Personnel standards. (f) A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to eligible children under this part.	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	
§ 303.361 Personnel standards. (g) In implementing this section, a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	

SUBPART D- PROGRAM AND SERVICE COMPONENTS OF A STATEWIDE SYSTEM OF EARLY INTERVENTION SERVICES		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.361 Personnel standards. adequately trained personnel to provide early intervention services to eligible children, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law, within 3 years.		
§ 303.361 Personnel standards. NOTE: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part. The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.	**NOTE: This regulation now appears under Subpart B in §303.119 Personnel Standards.**	

Subpart E – Procedural Safeguards

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.400 General responsibility of lead agency for procedural safeguards. Each lead agency shall be responsible for— (a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and	**§303.400 General responsibility of lead agency for procedural safeguards.** Subject to paragraph (c) of this section, each lead agency must-- (a) Establish or adopt the 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;	
§303.400 General responsibility of lead agency for procedural safeguards. (b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.	**§303.400 General responsibility of lead agency for procedural safeguards.** (b) Ensure 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	
	§303.400 General responsibility of lead agency for procedural safeguards. (c) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.	
§303.401 (a) Definitions of consent, native language, and personally identifiable information. As used in this subpart— (a) Consent means that— (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; (2) The parent understands and agrees in writing to	**NOTE: This regulation now appears under Subpart A at §303.7 Consent.**	

Council for Exceptional Children | Division for Early Childhood
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SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.401 (a) Definitions of consent, native language, and personally identifiable information. the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;		
§303.401 Definitions of consent, native language, and personally identifiable information. (b) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;	**NOTE: This regulation now appears under Subpart A at §303.25 Native Language.**	
§303.401 Definitions of consent, native language, and personally identifiable information. (c) Personally identifiable means that information includes— (1) The name of the child, the child's parent, or other family member; (2) The address of the child; (3) A personal identifier, such as the child's or parent's social security number; or (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.	**NOTE: This regulation now appears under Subpart A at § 303.29 Personally identifiable information.**	
§303.402 Opportunity to examine records. In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility	**§303.401 Confidentiality and opportunity to examine records.** (b)(2) 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,	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.402 Opportunity to examine records. determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.	**§303.401 Confidentiality and opportunity to examine records.** 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.	
§303.403 Prior notice; native language. (a) General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.	**§303.421 Prior written notice and procedural safeguards notice.** (a) General. Prior written notice must be provided to parents a reasonable time before the lead agency 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.	The Department clarified that "Quantifying the phrase 'reasonable time' in §303.421(a) would be inappropriate because what constitutes a reasonable time may vary based on the individual circumstances of each case. However, we would expect a lead agency to provide notice under §303.421 within a timeframe that allows the parent time to respond to the notice before the lead agency takes, or refuses to take, the actions listed in §303.421(a)."
§303.403 Prior notice; native language. (b) Content of notice. The notice must be in sufficient detail to inform the parents about— (1) The action that is being proposed or refused; (2) The reasons for taking the action; (3) All procedural safeguards that are available under §§ 303.401–303.460 of this part; and (4) The State complaint procedures under §§ 303.510–303.512, including a description of how to file a complaint and the timelines under those procedures.	**§303.421 Prior written notice and procedural safeguards notice.** (b) Content of notice. The notice must be in sufficient detail to inform parents about-- (1) The action that is being proposed or refused; (2) The reasons for taking the action; and (3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.	
§303.403 Prior notice; native language. (c) Native language. (1) The notice must be—	**§303.421 Prior written notice and procedural safeguards notice.** (c) Native language.	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.403 Prior notice; native language. (i) Written in language understandable to the general public; and (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that— (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication; (ii) The parent understands the notice; and (iii) There is written evidence that the requirements of this paragraph have been met.	**§303.421 Prior written notice and procedural safeguards notice.** (1) The notice must be-- (i) Written in language understandable to the general public; and (ii) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) 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-- (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication; (ii) The parent understands the notice; and (iii) There is written evidence that the requirements of this paragraph have been met.	
§303.403 Prior notice; native language. (3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).	**NOTE: This regulation now appears under Subpart A at §303.25 Native Language.**	
§303.404 Parent consent. (a) Written parental consent must be obtained before— (1) Conducting the initial evaluation and assessment of a child under § 303.322; and (2) Initiating the provision of early intervention services (see § 303.342(e)).	**§303.420 Parental consent and ability to decline services.** (a) The lead agency must ensure parental consent is obtained before-- (1) Administering screening procedures under §303.320 that are used to determine whether a child is suspected of having a disability; (2) All evaluations and assessments of a child are conducted under §303.321; (3) Early intervention services are provided to the child under this part;	The Department clarified "if the lead agency collects, uses, or maintains information about an eligible child to meet the SPP/APR reporting requirements of the Department under Part C of the Act, including the required reporting on child outcomes (which information is reported based on aggregate numbers of children, and not by individual child), generally, the information is not personally identifiable provided that the State has addressed any confidentiality constraints as a result of small data cells and, thus, prior written parental

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.420 Parental consent and ability to decline services. (4) Public benefits or insurance or private insurance is used if such consent is required under §303.520; and (5) Disclosure of personally identifiable information consistent with §303.414.	consent would not be required. However, as noted in the FAQ document referenced by the commenter, prior written parental consent is required under §303.420 if the collection of outcome information is a part of the lead agency's evaluation to determine initial or continuing eligibility of a child in the Part C program. In this circumstance, States must provide prior written notice to the parents under §303.421 and, if applicable, obtain parental consent for evaluation as required in §303.420." The Department further stated "It is important for parents to be able to determine whether their child should receive a developmental screening." The Department clarified the position that "parental consent is required for all evaluations, including an initial evaluation and assessment of a child and all subsequent evaluations and assessments of a child." The Department "revised §303.420(a)(4) to clarify that the lead agency must ensure that parental consent is obtained before public benefits or insurance or private insurance is used if such consent is required under §303.520."
§303.404 Parent consent. (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent— (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.	**§303.420 Parental consent and ability to decline services.** (b) 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-- (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and (2) Understands that the child will not be able to	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.420 Parental consent and ability to decline services. receive the evaluation, assessment, or early intervention service unless consent is given.	
	§303.420 Parental consent and ability to decline services. (c) 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 Department noted that "the participation of infants and toddlers with disabilities and their families in the Part C program is voluntary and a parent may refuse an initial evaluation or assessment without the lead agency being able to use the due process hearing procedures under this part or under the regulations under Part B of the Act to challenge the parent's refusal.
§303.404 Parent consent. NOTE 1: In addition to the consent requirements in this section, other consent requirements are included in (1) § 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part. NOTE 2: Under § 300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.		
§303.405 Parent right to decline service. The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early	**§303.420 Parental consent and ability to decline services.** (d) The parents of an infant or toddler with a disability--	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.405 Parent right to decline service. intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part	**§303.420 Parental consent and ability to decline services.** (1) 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 (2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.	
§303.406 Surrogate parents. (a) General. Each lead agency shall ensure that the rights of children eligible under this part are protected if— (1) No parent (as defined in § 303.18) can be identified; (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The child is a ward of the State under the laws of that State.	**§303.422 Surrogate parents.** (a) General. Each lead agency or other public agency must ensure that the rights of a child are protected when-- (1) No parent (as defined in §303.27) can be identified; (2) The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or (3) The child is a ward of the State under the laws of that State.	The Department clarified that "Although [the Department] used the simpler term 'locate a parent' in place of the term 'discover the whereabouts of a parent,' [the Department] has not changed the meaning of the regulations…"
§303.406 Surrogate parents. (b) Duty of lead agency and other public agencies. The duty of the lead agency, 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 must include a method for— (1) Determining whether a child needs a surrogate parent; and (2) Assigning a surrogate parent to the child.	**§303.422 Surrogate parents.** (b) Duty of lead agency and other public agencies. (1) The duty of the lead agency, 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-- (i) Determining whether a child needs a surrogate parent; and (ii) Assigning a surrogate parent to the child. (2) 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.	The Department explained the addition of Section 303.422(b)(2) to require "the lead agency, when determining whether and who to appoint as a surrogate parent for children who are wards of the State or placed in foster care, to consult with the public agency with whom care of the child has been assigned. The individuals involved in implementing the provisions in §303.422 for children who are wards of the State or placed in foster care will vary on a case-by-case basis. The regulations as written provide the flexibility necessary for a lead agency and the public agency, as part of the consultation process in §303.422, to decide who should be involved in implementing the requirements of this section."

SUBPART E- PROCEDURAL SAFEGUARDS		
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	§303.422 Surrogate parents. (c) 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.	
§303.406 Surrogate parents. (c) Criteria for selecting surrogates. (1)The lead agency or other public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies shall ensure that a person selected as a surrogate parent— (i) Has no interest that conflicts with the interests of the child he or she represents; and (ii) Has knowledge and skills that ensure adequate representation of the child. (d) Non-employee requirement; compensation. (1) A person assigned as a surrogate parent may not be— (i) An employee of any State agency; or (ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.	**§303.422 Surrogate parents.** (d) Criteria for selection of surrogate parents. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies must ensure that a person selected as a surrogate parent-- (i) 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; (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and (iii) Has knowledge and skills that ensure adequate representation of the child.	The Department has "amended §303.422(d)(2)(i) to expressly prohibit any employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to a child or any family member of the child from serving as a surrogate parent for that child." The Department provides additional clarification on the decision not to include language about removing a surrogate parent, stating "The Act is silent on when or how a surrogate parent can be removed. However, a lead agency has a responsibility to ensure that a surrogate parent is carrying out his or her responsibilities; therefore, there are some circumstances when removal may be appropriate. A mere disagreement with the decisions of a surrogate parent about appropriate services or placements for a child, however, generally would not be sufficient to give rise to a removal, as the role of a surrogate parent is to represent the interests of the child, which may not be the same as the interests of the public agency. We do not think a regulation is necessary because these circumstances may be resolved under State law. Additionally, the rights of an infant or toddler with a disability are adequately

SUBPART E- PROCEDURAL SAFEGUARDS		
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		protected by Titles II and VI of the ADA, which prohibit retaliation or coercion against any individual who exercises their rights under Federal law for the purpose of assisting children with disabilities, to protect the child's rights under this statute."
§303.406 Surrogate parents. (d)(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.	**§303.422 Surrogate parents.** (e) 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.	
§303.406 Surrogate parents. (e) Responsibilities. A surrogate parent may represent a child in all matters related to— (1) The evaluation and assessment of the child; (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews; (3) The ongoing provision of early intervention services to the child; and (4) Any other rights established under this part.	**§303.422 Surrogate parents.** (f) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes under this part.	
	§303.422 Surrogate parents. (g) Lead agency 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.	The Department notes, "Given that the development of infants and toddlers quickly changes, identifying a surrogate parent in a timely manner is important to a child, prevents undue delays, and aids the effective implementation of the requirements of this part. Additionally, a 30-day time frame to identify a surrogate parent is consistent with 34 CFR 300.519(h) of the Part B regulations and establishes a timeframe in which a surrogate parent must be appointed, thus preventing undue delays."
§303.419 Mediation. (a) General. Each State shall ensure that procedures	**§303.431 Mediation.** (a) General. Each lead agency must ensure that	The Department clarifies that "parties to disputes may request mediation at any time to resolve any

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.419 Mediation. are established and implemented to allow parties to disputes involving any matter described in § 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under § 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.	**§303.431 Mediation.** 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.	matter arising under this part, regardless of whether a due process complaint or a State complaint is filed. [The Department] has amended §303.431 to expressly provide that mediation may be used 'at any time.'"
§303.419 Mediation. (b) Requirements. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process— (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing under § 303.420, or to deny any other rights afforded under Part C of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section. (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. (5) An agreement reached by the parties to the dispute in the mediation process must be set forth	**§303.431 Mediation.** (b) Requirements. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process-- (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (2)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. (ii) The lead agency must select mediators on a random, rotational, or other impartial basis. (3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section. (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. (5) If the parties resolve a dispute through the	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.419 Mediation. in a written mediation agreement. (6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.	**§303.431 Mediation.** mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that-- (i) 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 (ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency. (6) 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. (7) 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.	
	§303.431 Mediation. (c) Impartiality of mediator. (1) An individual who serves as a mediator under this part-- (i) 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 (ii) Must not have a personal or professional interest that conflicts with the person's objectivity. (2) 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	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.431 Mediation. mediator.	
§303.419 Mediation. (c) Meeting to encourage mediation. A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party— (1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and (2) Who would explain the benefits of the mediation process and encourage the parents to use the process.	**§303.431 Mediation.** (d) Meeting to encourage mediation. A lead agency 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-- (1) 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 (2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.	
§303.510 Adopting complaint procedures. (a) General. Each lead agency shall adopt written procedures for-- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this Part by— (i) Providing for the filing of a complaint with the lead agency; and (ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate	**§303.432 Adoption of State complaint procedures.** (a) General. Each lead agency must adopt written procedures for-- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the filing of a complaint with the lead agency; and (2) 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 §§303.432 through 303.434.	

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§303.510 Adopting complaint procedures. entities, the State's procedures under Secs. 303.510-303.512.		
§303.510 Adopting complaint procedures. (b) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address: (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.	**§303.432 Adoption of State complaint procedures** (b) Remedies for denial of appropriate services. In resolving a complaint in which the lead agency 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-- (1) 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 (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.	The Department notes "the lead agency is responsible for ensuring that all public agencies within its jurisdiction meet the requirements of the Act and its implementing regulations. In light of the lead agency's general supervisory authority … the lead agency should have the flexibility to determine the appropriate remedies or corrective actions necessary to resolve a complaint in which it has determined that a public agency has failed to provide appropriate services to an infant or toddler with a disability, including the award of compensatory services or monetary reimbursement. To make this clear, [the Department] has changed §303.432(b)(1) to include compensatory services and monetary reimbursement as examples of corrective actions that may be appropriate to address the needs of an infant or toddler with a disability who is the subject of a complaint and the infant's or toddler's family."
§303.511 An organization or individual may file a complaint. (a) General. An individual or organization may file a written signed complaint under Sec. 303.510. The complaint must include-- (1) A statement that the State has violated a requirement of part C of the Act or the regulations in this part; and (2) The facts on which the complaint is based.	**§303.434 Filing a complaint.** (a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433. (b) The complaint must include-- (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child--	

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	§303.434 Filing a complaint. (i) The name and address of the residence of the child; (ii) The name of the EIS provider serving the child; (iii) A description of the nature of the problem of the child, including facts relating to the problem; and (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.	
§303.511 An organization or individual may file a complaint. (b) Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because-- (1) The alleged violation continues for that child or other children; or (2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.	**§303.434 Filing a complaint.** (c) 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 §303.432.	The Department clarifies, "A one-year timeline is reasonable and will assist lead agencies in ensuring the effective implementation of State complaint procedures and State Part C programs. Limiting a State complaint to an allegation of a violation that occurred not more than one year prior to the date the lead agency receives the complaint will ensure that problems regarding a State's Part C program are raised and addressed promptly."
	§303.434 Filing a complaint. (d) 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.	The Department required "the complaint to be forwarded to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency enables the public agency or EIS provider to be informed of the issues in the State complaint in order to provide an opportunity for the voluntary resolution of the complaint … providing the public agency or EIS provider with information about the complaint enables the parties to have the opportunity to resolve disputes directly at the earliest possible time and that this benefit outweighs the minimal burden

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		placed on the complainant. …the information that is provided by the complainant generally is information that should already be available to the public agency or EIS provider who is responsible for providing services to a particular child. In addition, the public agency or EIS provider needs to know the identity of the complainant and relevant allegations in the complaint (consistent with §303.434) in order to propose a resolution of the issues."
§303.512 Minimum State complaint procedures. (a) Time limit, minimum procedures. Each lead agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under Sec. 303.510(a) to-- (1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and (4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains-- (i) Findings of fact and conclusions; and (ii) The reasons for the lead agency's final decision.	**§303.433 Minimum State complaint procedures.** (a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to-- (1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum-- (i) At the discretion of the lead agency, a proposal to resolve the complaint; and (ii) 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; (4) 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	

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	§303.433 Minimum State complaint procedures. this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains-- (i) Findings of fact and conclusions; and (ii) The reasons for the lead agency's final decision.	
§303.512 Minimum State complaint procedures. (b) Time extension; final decisions; implementation. The lead agency's procedures described in paragraph (a) of this section also must— (1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including-- (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance.	**§303.433 Minimum State complaint procedures.** (b) Time extension; final decision; implementation. The lead agency's procedures described in paragraph (a) of this section also must-- (1) Permit an extension of the time limit under paragraph (a) of this section only if-- (i) Exceptional circumstances exist with respect to a particular complaint; or (ii) 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 (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including-- (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance.	The Department clarifies "The lead agency determines when there are exceptional circumstances with respect to a particular complaint that would justify an extension of the 60-day time limit in that complaint. A lead agency may extend the 60-day time limit due to exceptional circumstances, such as a governmentwide shutdown, if the lead agency needs additional information under §303.433(a)(2) or (a)(3) and the relevant party is unavailable due to hospitalization, or if a parent complainant is unavailable due to illness and cannot provide the additional information under §303.433(a)(2)."
§303.512 Minimum State complaint procedures. (c) Complaints filed under this section, and due process hearings under Sec. 303.420. (1) If a	**§303.433 Minimum State complaint procedures.** (c) Complaints filed under this section and due process hearings under §303.430(d). (1) If a	The Department clarified in response to a comment received that "Nothing in the Act prohibits the lead agency from contracting with a third party for State dispute resolution services and §303.433(c)(3)

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§303.512 Minimum State complaint procedures. written complaint is received that is also the subject of a due process hearing under Sec. 303.420, or contains multiple issues, of which one or more are part of that hearing, the State 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 action must be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section. (2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties-- (i) The hearing decision is binding; and (ii) The lead agency must inform the complainant to that effect. (3) A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.	**§303.433 Minimum State complaint procedures.** written complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of that hearing, the State 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 paragraphs (a) and (b) of this section. (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties-- (i) The due process hearing decision is binding on that issue; and (ii) The lead agency must inform the complainant to that effect. (3) 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.	would not interfere with a lead agency's ability to enter into such contracts. [The Department] notes, however, in accepting funds under this part, the lead agency is responsible for the administration of Part C in the State and the use of Part C funds under sections 635(a)(10) and 637(a)(1) of the Act. Therefore, the lead agency retains the responsibility for full implementation of the requirements of this part, including the ultimate responsibility for the implementation of State dispute resolution decisions even if the services are being carried out by a third party under contract with the lead agency."
§303.420 Due process procedures. Each system must include written procedures including procedures for mediation as described in § 303.419, for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by— (a) Adopting the mediation and due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of § 303.425; or	**§303.430 State dispute resolution options.** (a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section. (b) Mediation. Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in	The Department explains that "providing States the option of adopting the Part B due process procedures in lieu of using the Part C due process hearing procedures is consistent with the Act. States were provided this option under the original Part C regulations promulgated in 1989 to implement the Education of the Handicapped Act amendments of 1986 (Pub. L. 99-457), which established the early intervention program for infants and toddlers with disabilities."

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§303.420 Due process procedures. (b) Developing procedures that— (1) Meet the requirements in § 303.419 and §§ 303.421 through 303.425; and (2) Provide parents a means of filing a complaint.	**§303.430 State dispute resolution options.** §303.431. (c) State complaint procedures. Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434. (d) Due process hearing procedures. Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting-- (1) The Part C due process hearing procedures under section 639 of the Act that-- (i) Meet the requirements in §§303.435 through 303.438; and (ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or (2) The Part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in §303.440(c)).	The Department notes "there are advantages and disadvantages for particular States to use the due process procedures under Part C as opposed to Part B of the Act. The vast majority of States use, and will likely continue to use, the Part C due process procedures in §§303.435 through 303.438 instead of exercising the option to use the Part B due process procedures to resolve disputes under Part C of the Act. This is in part because the Part B due process procedures in §§303.440 through 303.447 contain additional steps and procedures. … In FFY 2006, approximately 15 States reported exercising the option to adopt the Part B due process procedures while the remaining 41 States (which include the territories and outlying areas) reported adopting the Part C due process procedures. In some of the 15 States that reported using the Part B due process procedures, the lead agency is the SEA and administers both Parts B and C of the Act. In a few other States that reported adopting the Part B due process procedures, children receiving services under Part C of the Act are also entitled to receive, under State law, FAPE, and thus, these States must provide parents with procedural protections under both Parts B and C of the Act."
§303.420 Due process procedures. NOTE 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of a decision-maker who is impartial, as defined in § 303.421(b), to resolve a dispute concerning any of the matters		

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§303.420 Due process procedures. in § 303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal. A different type of administrative procedure is included in §§ 303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.		
§303.420 Due process procedures. NOTE 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.		
§303.421 Appointment of an impartial person. (a) Qualifications and duties. An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must— (1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and (2) Perform the following duties: (i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint. (ii) Provide a record of the proceedings, including a written decision.	**§303.435 Appointment of an impartial due process hearing officer.** (a) Qualifications and duties. Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must-- (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and (2) Perform the following duties: (i)(A) Listen to the presentation of relevant viewpoints about the due process complaint. (B) Examine all information relevant to the issues. (C) Seek to reach a timely resolution of the due	

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	§303.435 Appointment of an impartial due process hearing officer. process complaint. (ii) Provide a record of the proceedings, including a written decision.	
§303.421 Appointment of an impartial person. (b) Definition of impartial. (1) As used in this section, impartial means that the person appointed to implement the complaint resolution process— (i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.	**§303.435 Appointment of an impartial due process hearing officer.** (b) Definition of impartial. (1) Impartial means that the due process hearing officer appointed to implement the due process hearing under this part— (i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.	
§303.422 Parent rights in administrative proceedings. (a) General. Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.	**§303.436 Parental rights in due process hearing proceedings.** (a) General. Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).	
§303.422 Parent rights in administrative proceedings. (b) Rights. Any parent involved in an administrative proceeding has the right to— (1) Be accompanied and advised by counsel and by	**§303.436 Parental rights in due process hearing proceedings.** (b) Rights. Any parent involved in a due process hearing has the right to-- (1) Be accompanied and advised by counsel and	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.422 Parent rights in administrative proceedings. individuals with special knowledge or training with respect to early intervention services for children eligible under this part; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding; (4) Obtain a written or electronic verbatim transcription of the proceeding; and (5) Obtain written findings of fact and decisions.	**§303.436 Parental rights in due process hearing proceedings.** by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing; (4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and (5) Receive a written copy of the findings of fact and decisions at no cost to the parent.	
§303.423 Convenience of proceedings; timelines. (a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents. (b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.	**§303.437 Convenience of hearings and timelines.** (a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents. (b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.	
	§303.437 Convenience of hearings and timelines. (c) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.	The Department noted "that extensions to the 30-day timeline in §303.437(b) may be necessary under certain circumstances (such as, unavailability of witnesses, exceptional child and family circumstances, and pending evaluations and assessments)."
§303.423 Convenience of proceedings; timelines. NOTE: Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a		

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§303.423 Convenience of proceedings; timelines. request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through- two-age range change so rapidly, quick resolution of complaints is important.		
§303.424 Civil action. Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.	**§303.438 Civil action.** Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.	
§303.425 Status of a child during proceedings. (a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided. (b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.	**§303.430 State dispute resolution options.** (e) Status of a child during the pendency of a due process complaint. (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency 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. (2) If the due process complaint under paragraph (d) of this section involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.507 Filing a due process complaint.** (a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency 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 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 §300.511(f) apply to the timeline in this section.	**§303.440 Filing a due process complaint.** (a) General. (1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in §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. (2) 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 State 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 §303.443(f) apply to the timeline in this section.	
Part B Regulations **§300.507 Filing a due process complaint.** (b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if-- (1) The parent requests the information; or (2) The parent or the agency files a due process complaint under this section.	**§303.440 Filing a due process complaint.** (b) Information for parents. The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if-- (1) The parent requests the information; or (2) The parent or EIS provider files a due process complaint under this section.	
	§303.440 Filing a due process complaint. (c) Timeline for Resolution. The lead agency may adopt a 30- or 45-day timeline, subject to §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 §303.421, the specific timeline it has adopted.	The Department clarifies the "option in §303.440(c) that allows lead agencies to adopt either a 30- or 45-day timeline to resolve a due process complaint is specific to States that choose to adopt Part B due process procedures under section 615 of the Act. … This gives States that choose to adopt the Part B due process procedures the flexibility to put in place a timeline shorter than that required under the Part B due process procedures."

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Part B Regulations **§300.508 Due process complaint.** (a) General. (1) The public agency must have 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). (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.	**§303.441 Due process complaint.** (a) General. (1) The lead agency must have 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). (2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.	
Part B Regulations **§300.508 Due process complaint.** (b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include-- (1) The name of the child; (2) The address of the residence of the child; (3) The name of the school the child is attending; (4) In the case of a homeless child or youth (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 school the child is attending; (5) 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 (6) A proposed resolution of the problem to the extent known and available to the party at the time.	**§303.441 Due process complaint.** (b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include-- (1) The name of the child; (2) The address of the residence of the child; (3) The name of the EIS provider serving the child; (4) 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; (5) 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 (6) A proposed resolution of the problem to the extent known and available to the party at the time.	
Part B Regulations **§300.508 Due process complaint.** (c) Notice required before a hearing on a due process complaint. A party may not have a hearing	**§303.441 Due process complaint.** (c) 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,	

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Part B Regulations **§300.508 Due process complaint.** 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.	**§303.441 Due process complaint.** or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.	
Part B Regulations **§300.508 Due process complaint.** (d) Sufficiency of complaint. (1) 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 paragraph (b) of this section. (2) Within five days of receipt of notification under paragraph (d)(1) of this section, 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 paragraph (b) of this section, and must immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if-- (i) 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 §300.510; or (ii) 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. (4) If a party files an amended due process complaint, the timelines for the resolution meeting	**§303.441 Due process complaint.** (d) Sufficiency of complaint. (1) 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 paragraph (b) of this section. (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if-- (i) 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 (ii) 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. (4) If a party files an amended due process	

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Part B Regulations **§300.508 Due process complaint.** in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.	**§303.441 Due process complaint.** 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.	
Part B Regulations **§300.508 Due process complaint.** (e) LEA response to a due process complaint. (1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes-- (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) A description of the other factors that are relevant to the agency's proposed or refused action. (2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.	**§303.441 Due process complaint.** (e) Lead agency response to a due process complaint. (1) If the lead agency has not sent a prior written notice under §303.421 to the parent regarding the subject matter contained in the parent's due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes-- (i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected; (iii) 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 (iv) A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action. (2) 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.	
Part B Regulations **§300.508 Due process complaint.** (f) Other party response to a due process	**§303.441 Due process complaint.** (f) Other party response to a due process complaint. Except as provided in paragraph (e) of	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.508 Due process complaint.** complaint. Except as provided in paragraph (e) of this section, 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.	**§303.441 Due process complaint.** this section, 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.	
Part B Regulations **§300.510 Resolution process.** (a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that-- (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney. (2) The purpose of the 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 LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if-- (i) The parent and the LEA agree in writing to waive the meeting; or (ii) The parent and the LEA agree to use the mediation process described in §300.506.	**§303.442 Resolution process.** (a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §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-- (i) Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney. (2) 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. (3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if-- (i) The parent and lead agency agree in writing to waive the meeting; or (ii) The parent and lead agency agree to use the mediation process described in §303.431.	

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Part B Regulations **§300.510 Resolution process.** (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.	**§303.442 Resolution process.** (4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.	
Part B Regulations **§300.510 Resolution process.** (b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) 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. (4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. (5) If the LEA 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	**§303.442 Resolution process.** (b) Resolution period. (1) If the lead agency 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. (2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section. (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) 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. (4) 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. (5) 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	The Department explains, "Although this section provides the lead agency with the option to request dismissal, the lead agency is not required to request a dismissal and may agree instead to an extension of the time to conduct a resolution meeting in order for the parties to continue mediation efforts. Additionally, it is the due process hearing officer who determines whether dismissal of the due process complaint is warranted, based not only on the lead agency's request, if one is made, but also based on any parent's response. The availability of both the lead agency's option to request dismissal and the impartial hearing officer's determination ensures that dismissal of a due process complaint is based on case-specific circumstances."

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.510 Resolution process.** meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.	**§303.442 Resolution process.** intervention of a hearing officer to begin the due process hearing timeline.	
Part B Regulations **§300.510 Resolution process.** (c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) 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; (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.	**§303.442 Resolution process.** (c) Adjustments to 30-day resolution period. The 30- or 45-day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting. (2) 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. (3) 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.	
Part B Regulations **§300.510 Resolution process.** (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is-- (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements,	**§303.442 Resolution process.** (d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is-- (1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and (2) 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	

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Part B Regulations **§300.510 Resolution process.** pursuant to §300.537.	**§303.442 Resolution process.** agreements pursuant to this section.	
Part B Regulations **§300.510 Resolution process.** (e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.	**§303.442 Resolution process.** (e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement's execution.	
Part B Regulations **§300.511 Impartial due process hearing.** (a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.	**§303.443 Impartial due process hearing.** (a) General. Whenever a due process complaint is received consistent with §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.	
Part B Regulations **§300.511 Impartial due process hearing.** (b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.	**§303.443 Impartial due process hearing.** (b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.	The Department "removed in §303.446(b) the authority for a public agency (other than the lead agency) to conduct due process hearings when a State adopts under §303.430(d) the Part B due process procedures."
Part B Regulations **§300.511 Impartial due process hearing.** (c) Impartial hearing officer. (1) At a minimum, a hearing officer-- (i) Must not be— (A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal or professional	**§303.443 Impartial due process hearing.** (c) Impartial hearing officer. (1) At a minimum, a hearing officer-- (i) Must not be-- (A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or (B) A person having a personal or professional	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.511 Impartial due process hearing**. interest that conflicts with the person's objectivity in the hearing; (ii) 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; (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (2) 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. (3) Each public 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.	**§303.443 Impartial due process hearing.** interest that conflicts with the person's objectivity in the hearing; (ii) 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; (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (2) 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. (3) 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.	
Part B Regulations **§300.511 Impartial due process hearing**. (d) 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 §300.508(b), unless the other party agrees otherwise.	**§303.443 Impartial due process hearing.** (d) 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.	
Part B Regulations **§300.511 Impartial due process hearing**. (e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their	**§303.443 Impartial due process hearing.** (e) Timeline for requesting a hearing. A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.511 Impartial due process hearing**. due process complaint within two years of the date the parent or agency 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.	**§303.443 Impartial due process hearing.** 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.	
Part B Regulations **§300.511 Impartial due process hearing**. (f) 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-- (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.	**§303.443 Impartial due process hearing.** (f) 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-- (1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or (2) 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.	
Part B Regulations **§300.512 Hearing rights.** (a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to-- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at	**§303.444 Hearing rights.** (a) General. Any party to a hearing conducted pursuant to §§303.440 through 303.445, or an appeal conducted pursuant to §303.446, has the right to-- (1) 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; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.512 Hearing rights.** least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.	**§303.444 Hearing rights.** hearing; (4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.	
Part B Regulations **§300.512 Hearing rights.** (b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to §300.511(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. (2) 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.	**§303.444 Hearing rights.** b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to §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. (2) 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.	
Part B Regulations **§300.512 Hearing rights.** (c) Parental rights at hearings. Parents involved in hearings must be given the right to-- (1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.	**§303.444 Hearing rights.** c) Parental rights at hearings. Parents involved in hearings must (1) Be given the right to open the hearing to the public; and (2) 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.	The Department clarified that "While parents always have the right to determine whether their infant or toddler is present at a hearing, we do not believe it is necessary to specify this right in §303.444(c)(1) because, in general, infants and toddlers with disabilities do not need to be present to either serve as witnesses at, or required participants in, a due process hearing. However, [the Department] notes that under either the Part B or Part C due process hearing procedures, a parent is in the best position to decide whether an infant or toddler will attend the due process hearing."

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.513 Hearing decisions.** (a) Decision of hearing officer on the provision of FAPE. (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds. (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-- (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.	**§303.445 Hearing decisions.** (a) Decision of hearing officer. (1) Subject to paragraph (a)(2) of this section, 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. (2) 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-- (i) 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; (ii) 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 (iii) Caused a deprivation of educational or developmental benefit. (3) 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 §§303.400 through 303.449.	
Part B Regulations **§300.513 Hearing decisions.** (b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process	**§303.445 Hearing decisions.** (b) Construction clause. Nothing in §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if the lead	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.513 Hearing decisions.** hearing decision with the SEA under §300.514(b), if a State level appeal is available.	**§303.445 Hearing decisions.** agency level appeal is available.	
Part B Regulations **§300.513 Hearing decisions.** (c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.	**§303.445 Hearing decisions.** (c) Separate due process complaint. Nothing in §§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.	
Part B Regulations **§300.513 Hearing decisions.** (d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must-- (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and (2) Make those findings and decisions available to the public.	**§303.445 Hearing decisions.** (d) Findings and decisions to general public. The lead agency, after deleting any personally identifiable information, must make the findings and decisions available to the public.	
Part B Regulations **§300.514 Finality of decision; appeal; impartial review.** (a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.	**§303.446 Finality of decision; appeal; impartial review.** (a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§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 §303.448.	
Part B Regulations **§300.514 Finality of decision; appeal; impartial review.** (b) Appeal of decisions; impartial review. (1) If the hearing required by §300.511 is conducted by a	**§303.446 Finality of decision; appeal; impartial review.** (b) Appeal of decisions; impartial review. (1) The lead agency may provide for procedures to allow any party aggrieved by the findings and	The Department "retained the authority for the lead agency to establish procedures that would allow any party aggrieved by the findings and decision in the due process hearing to appeal to, or request reconsideration of the decision by, the lead agency.

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Part B Regulations **§300.514 Finality of decision; appeal; impartial review.** public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must- (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.	**§303.446 Finality of decision; appeal; impartial review.** decision in the hearing to appeal to the lead agency. (2) 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-- (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.	If the lead agency establishes such procedures, those procedures must meet the same requirements in §303.446(b), (c), and (d)."
Part B Regulations **§300.514 Finality of decision; appeal; impartial review.** (c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must-- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and (2) Make those findings and decisions available to the public.	**§303.446 Finality of decision; appeal; impartial review** (c) Findings of fact and decision to the general public. The lead agency, 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.	

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Part B Regulations **§300.514 Finality of decision; appeal; impartial review.** (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.	**§303.446 Finality of decision; appeal; impartial review.** (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §303.448.	
Part B Regulations **§300.515 Timelines and convenience of hearings and reviews.** (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)-- (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.	**§303.447 Timelines and convenience of hearings and reviews.** (a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency's written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c))-- (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.	
Part B Regulations **§300.515 Timelines and convenience of hearings and reviews.** (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review-- (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties.	**§303.447 Timelines and convenience of hearings and reviews.** (b) The lead agency must ensure that not later than 30 days after the receipt of a request for a review-- (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties.	
Part B Regulations **§300.515 Timelines and convenience of hearings and reviews.** (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.	**§303.447 Timelines and convenience of hearings and reviews.** (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.515 Timelines and convenience of hearings and reviews**. (d) 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.	**§303.447 Timelines and convenience of hearings and reviews.** (d) 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.	
Part B Regulations **§300.516 Civil action.** (a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.	**§303.448 Civil action.** (a) General. Any party aggrieved by the findings and decision made under §§303.440 through 303.445 who does not have the right to an appeal under §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 State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.	
Part B Regulations **§300.516 Civil action.** (b) Time limitation. The party bringing the action shall have 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 B of the Act, in the time allowed by that State law.	**§303.448 Civil action.** (b) 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.	
Part B Regulations **§300.516 Civil action.** (c) Additional requirements. In any action brought under paragraph (a) of this section, the court--	**§303.448 Civil action.** (c) Additional requirements. In any action brought under paragraph (a) of this section, the court--	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.516 Civil action.** (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.	**§303.448 Civil action.** (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.	
Part B Regulations **§300.516 Civil action.** (d) 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.	**§303.448 Civil action.** (d) 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.	
Part B Regulations **§300.516 Civil action.** (e) 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 §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.	**§303.448 Civil action.** (e) 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 §§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.	
Part B Regulations **§300.537 State enforcement mechanisms.** Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a	**§303.449 State enforcement mechanisms.** Notwithstanding §§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	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.537 State enforcement mechanisms.** result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA 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 of competent jurisdiction or in a district court of the United States.	**§303.449 State enforcement mechanisms.** is nothing in this part that would prevent the State 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.	
§303.460 Confidentiality of information. (a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.	**§303.401 Confidentiality and opportunity to examine records.** (a) General. Each State must ensure 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.	
	§303.401 Confidentiality and opportunity to examine records. (b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act, the regulations in §§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 State lead agency 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. Each State must have procedures in effect to ensure that--	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.401 Confidentiality and opportunity to examine records. (1) Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in §§303.401 through 303.417; and (2) 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.	
	§303.401 Confidentiality and opportunity to examine records. (c) Applicability and timeframe of procedures. The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that-- (1) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and (2) Applies from the point in time when the child is referred for early intervention services under this part 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.	The Department clarified "that the Part C confidentiality procedures apply from the point in time when the child is referred for early intervention services, and thus, do not apply prior to a referral. …the confidentiality provisions under Part C of the Act do not apply to primary referral sources. Thus, Part C does not prohibit the lead agency or an EIS provider from accepting a referral of a child to the State Part C system from a primary referral source. However, the 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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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.401 Confidentiality and opportunity to examine records. (d) Disclosure of information. (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA where the child resides, in accordance with §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act: (i) A child's name. (ii) A child's date of birth. (iii) Parent contact information (including parents' names, addresses, and telephone numbers). (2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under Part B of the Act, to identify all children potentially eligible for services under §303.211 and Part B of the Act.	
	§303.401 Confidentiality and opportunity to examine records. (e) Option to inform a parent about intended disclosure. (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing. (2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and §303.209(b)(1)(i)	The Department explained that "Permitting States to adopt an opt-out policy, rather than opt-in policy, which would require the lead agency to obtain affirmative parental consent before disclosure of the limited information identified in §303.401(d)(1) to the LEA or SEA, allows States the flexibility to balance the privacy interests of parents of children receiving Part C services and the lead agency's, SEA's, and LEA's respective responsibilities to identify children potentially eligible for services under Part B of the Act, and to ensure a smooth transition from the State's Part C program to its Part B program. Parents as well as other stakeholders and members of the public have an opportunity to provide input when the State circulates its LEA notification policies for public participation as required in §303.208(b)."

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	§303.401 Confidentiality and opportunity to examine records. and (b)(1)(ii).	
§303.460 Confidentiality of information. (b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in § 303.5(b).		
§303.460 Confidentiality of information. NOTE: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under part C of the Act and this section (§ 303.460). The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.		
Part B Regulations **§300.610 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 or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.	**§303.402 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 lead agencies and EIS providers pursuant to Part C of the Act, and consistent with §§303.401 through 303.417. The regulations in §§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 State lead agency and EIS providers, in accordance with the Family Educational Rights	

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	§303.402 Confidentiality. and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.	
Part B Regulations **§300.611 Definitions.** As used in §§300.611 through 300.625-- (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.	**§303.403 Definitions.** The following definitions apply to §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3: (a) 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.	
Part B Regulations **§300.611 Definitions.** As used in §§300.611 through 300.625-- (b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).	**§303.403 Definitions.** (b) 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.	
Part B Regulations **§300.611 Definitions.** As used in §§300.611 through 300.625-- (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.	**§303.403 Definitions.** (c) 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	The Department added "this provision to distinguish between those primary referral sources that perform primarily a child find function and those entities that serve as funding sources only. We have clarified that this term does not include primary referral sources (unless they are also EIS providers), 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."

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.403 Definitions. entities (such as private insurance companies) that act solely as funding sources for Part C services.	
Part B Regulations **§300.612 Notice to parents.** (a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including-- (1) A description of the extent that the notice is given in the native languages of the various population groups in the State; (2) 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; (3) 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; and (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.	**§303.404 Notice to parents.** The lead agency 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 §303.402, including-- (a) 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; (b) 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; (c) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§303.401 through 303.417; and (d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.	The Department noted "it would be helpful for lead agencies under Part C of the Act to know when the general notice requirement applies. Requiring the lead agency to provide parents with notice of its general confidentiality policies and procedures, including document retention and destruction procedures, when a child is referred under Part C of the Act ensures that parents are aware of the nature and scope of their rights under these policies and procedures. States may choose to provide this general notice at additional appropriate times, such as annual IFSP meetings, but we have not required that it be provided at each such meeting because of the burden this would place on the State and because the prior written notice requirements in §303.421 already require a summary of each of the procedural safeguards. …[The Department] has added language to §303.404 that reflects that requirement, which is also in 34 CFR 300.612 of the Part B regulations. The prior written notice and procedural safeguards notice requirements in §303.421(c)(1)(ii) require that the child-specific notice be in the parent's native language or other mode of communication used by the parent, unless it is clearly not feasible to do so, and that the notice include a description of the procedural safeguards, including confidentiality requirements under subpart C of this part."
§300.612 Notice to parents. (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both,		

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§300.612 Notice to parents. with circulation adequate to notify parents throughout the State of the activity.		
Part B Regulations **§300.613 Access rights.** (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.	**§303.405 Access rights.** (a) 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 §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.	The Department agreed with those who submitted comments "that a 10-day deadline would be more appropriate to ensure access to early intervention records when parents have filed a request for a due process hearing. [The Department] has changed the timeline for agency compliance with a parent's request to inspect and review records to 10 calendar days after the parent makes the request.
§300.613 Access rights. (b) The right to inspect and review education records under this section includes-- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the 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 (3) The right to have a representative of the parent inspect and review the records.	**§303.405 Access rights.** (b) The right to inspect and review early intervention records under this section includes-- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records; (2) 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 (3) The right to have a representative of the parent inspect and review the early intervention records.	
§300.613 Access rights. (c) 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 advised	**§303.405 Access rights.** (c) 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	

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1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§300.613 Access rights. that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.	**§303.405 Access rights.** 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.	
Part B Regulations **§300.614 Record of access.** Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized 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 records.	**§303.406 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.	
Part B Regulations **§300.615 Records on more than one child.** If any education 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.	**§303.407 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.	
Part B Regulations **§300.616 List of types and locations of information.** Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.	**§303.408 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.	
Part B Regulations **§300.617 Fees.** (a) 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	**§303.409 Fees for records.** (a)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	

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Part B Regulations **§300.617 Fees.** review those records.	**§303.409 Fees for records.** provided in paragraph (c) of this section.	
Part B Regulations **§300.617 Fees.** (b) A participating agency may not charge a fee to search for or to retrieve information under this part.	**§303.409 Fees for records.** (b) A participating agency may not charge a fee to search for or to retrieve information under this part.	
	§303.409 Fees for records. (c) 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.	The Department agreed with those who submitted comments "in order to help parents to be full and equal participants in the IFSP process parents must receive a copy of their child's evaluation, assessments, and IFSP. Thus, [the Department] has added in new §303.409(c) that each evaluation, assessment, and IFSP must be provided to the parent. …the lead agency must ensure that specific activities, including conducting evaluations and assessments, developing and reviewing IFSPs, and implementing procedural safeguards, are provided at no cost to parents. Thus, [the Department] has added in new §303.409(c) the requirement that these records be provided to parents at no cost. Requiring States to provide a copy of evaluations, assessments, and IFSPs to parents, from the child's early intervention record, should not be a burden to States. As a standard practice, most States already provide these documents at no cost to parents. …Concerning the request that the IFSP be provided at the conclusion of the IFSP meeting, [the Department] declines to add this specific timeline but agree that it is important to specify when these documents must be provided. …a copy of each evaluation, assessment of the child, family assessment, and IFSP must be provided to the parent as soon as possible after each IFSP meeting. "

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Part B Regulations **§300.618 Amendment of records at parent's request.** (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.	**§303.410 Amendment of records at a parent's request.** (a) 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 Department agrees that the protections ...should apply to information about the parent as well as the child, but do not agree that the right to amend a record extends to information about other family members. ….because the definition of personally identifiable information …includes a list of personal characteristics or other information that would make the child's or parent's identity easily traceable. Therefore, [the Department] has added the reference to the parent, but not to the family."
Part B Regulations **§300.618 Amendment of records at parent's request.** (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.	**§303.410 Amendment of records at a parent's request.** (b) 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.	
Part B Regulations **§300.618 Amendment of records at parent's request.** (c) If the agency decides to refuse 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 §300.619.	**§303.410 Amendment of records at a parent's request.** (c) 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.	
Part B Regulations **§300.619 Opportunity for a hearing.** The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.	**§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 §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 Department notes that "permitting this option to parents provides parents with the benefits of the 30-day timeline if the State has adopted Part C due process hearings under §303.430(d) without imposing an additional burden on States that already have such procedures in place."

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	§303.411 Opportunity for a hearing. the State's procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).	
Part B Regulations **§300.620 Result of hearing.** (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.	**§303.412 Result of hearing.** (a) 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 so inform the parent in writing.	
Part B Regulations **§300.620 Result of hearing.** (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.	**§303.412 Result of hearing.** (b) 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.	
Part B Regulations **§300.620 Result of hearing.** (c) Any explanation placed in the records of the child under this section must-- (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.	**§303.412 Result of hearing.** (c) Any explanation placed in the early intervention records of the child under this section must-- (1) 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 (2) 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.	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.621 Hearing procedures**. A hearing held under §300.619 must be conducted according to the procedures in 34 CFR 99.22.	**§303.413 Hearing procedures.** A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.	
Part B Regulations **§300.622 Consent.** (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.	**§303.414 Consent prior to disclosure or use.** (a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is-- (1) 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 (2) Used for any purpose other than meeting a requirement of this part.	
	§303.414 Consent prior to disclosure or use. (b) A lead agency or other participating agency may not disclose personally identifiable information, as defined in §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 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 §303.414(a);	The department has "incorporated as specific exceptions to the parental consent requirement in §303.414(b)(2) of these Part C regulations the specific exceptions to the written parental consent requirement in 34 CFR 99.31(a) of the FERPA regulations (where applicable to Part C), reference to the pertinent conditions in 34 CFR 99.32 through 99.39, and added appropriate modification provisions in §303.414(b)(2)(i) through (b)(2)(vii)." The Department notes "there may be circumstances when the lead agency or an EIS provider may not have the authority to provide documents in the child's early intervention record to a third party, even after receiving parental consent for disclosure of personally identifiable information. For example, a lead agency or EIS provider may not have the authority to disclose third-party medical records. In these cases, the lead agency or EIS provider would instruct the parent to make such a request to the

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.414 Consent prior to disclosure or use. (ii) "Education records" means early intervention records under §303.403(b); (iii) "Educational" means early intervention under this part; (iv) "Educational agency or institution" means the participating agency under §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 §303.22; and (vii) "Student" means child under this part.	third party for the document or information.'
	§303.414 Consent prior to disclosure or use. (c) 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.	
Part B Regulations **§300.623 Safeguards.** (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.	**§303.415 Safeguards.** (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.	
Part B Regulations **§300.623 Safeguards.** (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.	**§303.415 Safeguards.** (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
Part B Regulations **§300.623 Safeguards.** (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99.	**§303.415 Safeguards.** (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§303.401 through 303.417 and 34 CFR part 99.	
Part B Regulations **§300.623 Safeguards.** (d) 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.	**§303.415 Safeguards.** (d) 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.	The Department indicates "This requirement is necessary because the public has a right to know who may have access to personally identifiable information about their child and family. The method a participating agency uses to implement the provisions in §303.415(d) is best left to the participating agency to determine. The 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, regardless of whether such information is maintained electronically or as a written record."
Part B Regulations **§300.624 Destruction of information.** (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.	**§303.416 Destruction of information.** (a) 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 Department notes "there may be lead agencies that are unaware of the applicability of GEPA to the Part C program; accordingly, it is important that §303.416(a) identify the specific citations to those GEPA and EDGAR provisions concerning the maintenance, use, disclosure, and destruction of records. Thus, we have revised the citation to GEPA provisions to refer to 20 U.S.C. 1232f, which contains fiscal recordkeeping requirements. Lead agencies that are not SEAs may be similarly unfamiliar with the provisions in parts 76 and 80 of EDGAR that apply to the early intervention records, including, for example, the recordkeeping requirements in 34 CFR 80.42(b)."
§300.624 Destruction of information. (b) The information must be destroyed at the	**§303.416 Destruction of information.** (b) Subject to paragraph (a) of this section, the	

SUBPART E- PROCEDURAL SAFEGUARDS		
1999 Part C or 2006 Part B Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§300.624 Destruction of information. request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.	**§303.416 Destruction of information.** 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.	
Part B Regulations **§300.626 Enforcement.** The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.	**§303.417 Enforcement.** The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.	The Department has "amended §303.417 to indicate that the lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that a State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met."

Subpart F – State Administration

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.500 Lead agency establishment or designation. Each system must include a single line of responsibility in a lead agency that— (a) Is established or designated by the Governor; and (b) Is responsible for the administration of the system, in accordance with the requirements of this part.	**NOTE: This regulation now appears under Subpart B §303.201 Designation of lead agency.**	
§303.501 Supervision and monitoring of programs. (a) General. Each lead agency is responsible for— (1) The general administration and supervision of programs and activities receiving assistance under this part; and (2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part. (b) Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including— (1) Monitoring agencies, institutions, and organizations used by the State to carry out this part; (2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations; (3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and (4) Correcting deficiencies that are identified through monitoring.	**NOTE: This regulation now appears under Subpart B §303.120 Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities.**	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.510 Adopting complaint procedures. (a) General. Each lead agency shall adopt written procedures for— (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this Part by— (i) Providing for the filing of a complaint with the lead agency; and (ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510–303.512. (b) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address: (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.	**NOTE: This regulation now appears under Subpart E §303.432 Adoption of State complaint procedures.**	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.511 An organization or individual may file a complaint. (a) General. An individual or organization may file a written signed complaint under § 303.510. The complaint must include— (1) A statement that the State has violated a requirement of part C of the Act or the regulations in this part; and (2) The facts on which the complaint is based. (b) Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because— (1) The alleged violation continues for that child or other children; or (2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.	**NOTE: This regulation now appears under Subpart E §303.434 (a) Adoption of State complaint procedures.**	
§303.512 Minimum State complaint procedures. (a) Time limit, minimum procedures. Each lead agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under § 303.510(a) to— (1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Actor of this Part; and	**NOTE: This regulation now appears under Subpart E §303.433 Minimum State complaint procedures.**	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.512 Minimum State complaint procedures. (4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains— (i) Findings of fact and conclusions; and (ii) The reasons for the lead agency's final decision. (b) Time extension; final decisions; implementation. The lead agency's procedures described in paragraph (a) of this section also must— (1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including— (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance. (c) Complaints filed under this section, and due process hearings under § 303.420. (1) If a written complaint is received that is also the subject of a due process hearing under § 303.420, or contains multiple issues, of which one or more are part of that hearing, the State 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 action must be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs		

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.512 Minimum State complaint procedures. (a) and (b) of this section. (2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties— (i) The hearing decision is binding; and (ii) The lead agency must inform the complainant to that effect. (3) A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.		
§303.126 Payor of last resort. The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on— (a) Nonsubstitution of funds; and (b) Non-reduction of other benefits.	**§303.500 Use of funds, payor of last resort, and system of payments.** (a) Statewide system. Each statewide system must include written policies and procedures that meet the requirements of the-- (1) Use of funds provisions in §303.501; and (2) Payor of last resort provisions in §§303.510 through 303.521 (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the State).	
	§303.500 Use of funds, payor of last resort, and system of payments. (b) System of Payments. 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	The Department added the word "premiums" to cost participation fees.

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.500 Use of funds, payor of last resort, and system of payments. enrolled, that meets the requirements of §§303.520 and 303.521.	
§303.560 Use of funds by the lead agency. A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with disabilities.	**§303.501 Permissive use of funds by the lead agency.** Consistent with §§303.120 through 303.122 and §§303.220 through 303.226, a lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State's early intervention program for infants and toddlers with disabilities including funds-- (a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§303.510 through 303.521);	The Department clarified "The purpose of §303.501(a) is to ensure that Federal funds are used to supplement or increase the level of resources available in a State for the provision of early intervention services and are not used to replace existing resources." "In a State that uses Part C funds to pay for direct early intervention services, the State must ensure implementation of the payor of last resort provisions…"
	§303.501 Permissive use of funds by the lead agency. (b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;	
	§303.501 Permissive use of funds by the lead agency. (c)(1) To provide FAPE as that term is defined in §303.15, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year; (2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and §303.211;	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.501 Permissive use of funds by the lead agency. (d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with Part B of the Act, to children with disabilities from their third birthday (pursuant to §303.211) until those children enter, or are eligible under State law to enter, kindergarten;	The Department indicated that "…States have the option, but are not required, to make Part C services available to eligible children over the age of three."
	§303.501 Permissive use of funds by the lead agency. (e) In any State that does not provide services under §303.204 for at-risk infants and toddlers, as defined in §303.5, 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-- (1) Identifying and evaluating at-risk infants and toddlers; (2) Making referrals for the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and (3) 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.	
§303.527 Payor of last resort. (a) Nonsubstitution of funds. Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source,	**§303.510 Payor of last resort.** (a) Nonsubstitution of funds. Except as provided in paragraph (b) of this section, funds under this part may 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	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.527 Payor of last resort. including any medical program administered by the Secretary of Defense, but for the enactment of part C of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.	**§303.510 Payor of last resort.** medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this part may 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 (subject to §§303.520 and 303.521).	
§303.527 Payor of last resort. (b) Interim payments—reimbursement. (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment. (2) Payments under paragraph (b)(1) of this section may be made for— (i) Early intervention services, as described in § 303.12; (ii) Eligible health services (see § 303.13); and (iii) Other functions and services authorized under this part, including child find and evaluation and assessment. (3) The provisions of paragraph (b)(1) of this section do not apply to medical services or ''well-baby'' health care (see § 303.13(c)(1)).	**§303.510 Payor of last resort.** (b) 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, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in §303.16 (but not medical services), functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.	
§ 303.527 Payor of last resort. NOTE: The Congress intended that the enactment of part C not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made		

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.527 Payor of last resort. available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs. The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to part C of the Act.		
	§303.510 Payor of last resort. (c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State 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.	In response to several commenters that requested the note in § 303.527 Payor of last resort be incorporated into this citation, the Department's indicated "The substance of the note that follows current §303.527 is included in §303.510(c) as a rule of construction."

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.520 Policies related to payment for services. (a) General. Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must— (1) Meet the requirements in paragraph (b) of this section; and (2) Be reflected in the interagency agreements required in § 303.523.	**§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.** (a) General. 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-- (1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and (2) 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 State agencies.	The Department indicated that "New §303.511(a) has been added to track the language of section 640(b)(1)(A) of the Act, requiring each State to ensure that has in place methods for State interagency coordination such that the Chief Executive Officer of a State or designee of the Chief Executive Officer shall ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency."
§303.520 Policies related to payment for services. (b) Specific funding policies. A State's policies must— (1) Specify which functions and services will be provided at no cost to all parents; (2) Specify which functions or services, if any, will be subject to a system of payments, and include— (i) Information about the payment system and schedule of sliding fees that will be used; and (ii) The basis and amount of payments; and (3) Include an assurance that— (i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and (ii) The inability of the parents of an eligible child	**§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.** (b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following: (1) State law or regulation; (2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or (3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.520 Policies related to payment for services. to pay for services will not result in the denial of services to the child or the child's family; and (4) Set out any fees that will be charged for early intervention services and the basis for those fees.		
§ 303.520 Policies related to payment for services. (c) Procedures to ensure the timely provision of services. No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.	**§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.** (c) Procedures for resolving disputes. (1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention service program. Those procedures must 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. (2) The method must-- (i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and (ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner. (3) If, during the lead agency's resolution of the dispute, the Governor, Governor's designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made--	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services. (i) The Governor, Governor's designee, or lead agency must reassign the financial responsibility to the appropriate agency; and (ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.	
§ 303.520 Policies related to payment for services. (d) Proceeds from public or private insurance. (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25. (2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in § 303.124.	**§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.** (d) Delivery of services in a timely manner. The methods adopted by the State under this section must— (1) Include a mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and (2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under §303.520 regarding the use of insurance to pay for Part C services.	
	§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services. (e) Additional components. Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. (a) Use of public benefits or public insurance to pay for Part C services. (1) A State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State provides written notification, consistent with §303.520(a)(3), to the child's parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section. (2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State-- (i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program; (ii) Must obtain consent, consistent with §§303.7 and 303.420(a)(4), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would-- (A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program; (B) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program; (C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or	The Department indicated that "a consent requirement for enrollment protects parents' financial interests by allowing them to consider the costs they may incur by enrolling in a public benefits or insurance program. Additionally, a consent requirement for enrollment protects parents' rights regarding the disclosure of personally identifiable information." The Department added explicit language "stating that the State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State both provides parents with written notification about the IDEA Part C no-cost protections and applicable confidentiality provisions…" The Department also added language "… stating that parental consent must be obtained if use of a child's or parent's public benefits or insurance would result in …specified costs…"

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. (D) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures. (iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those Part C services on the IFSP to which the parent has provided consent. (3) Prior to using a child's or parent's public benefits or insurance to pay for Part C services, the State must provide written notification to the child's parents. The notification must include-- (i) A statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid); (ii) A statement of the no-cost protection provisions in §303.520(a)(2) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services on the IFSP for which the parent has provided consent; (iii) A statement that the parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and (iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance). (4) If a State requires a parent to pay any costs that the parent would incur as a result of the State's using a child's or parent's public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State's system of payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.	
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. (b) Use of private insurance to pay for Part C services. (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for Part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public	The Department indicated "that parental consent must be required when the lead agency or EIS provider seeks to use private insurance to pay for the initial provision of any early intervention service in the IFSP and each time consent for services is required due to an increase in the provision of services in the child's IFSP." The Department identified that "The exceptions to parental consent identified in proposed §303.520(b)(2) apply only to the extent that the State statute provides the protections in that

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. benefits or insurance. Parental consent must be obtained-- (A) When the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and (B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP. (ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State's use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State's system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent (iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the	section for private insurance policies in the State." The Department stated "The exception in proposed §303.520(b)(2) ensures that parents are afforded needed protections while providing the lead agency with the ability to use private insurance to pay for Part C services in those States, maximize funding sources, and use Part C funds as a payor of last resort."

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. insurance policy. (2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under Part C of the Act, that expressly provides that - (i) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy; (ii) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and (iii) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy. (3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish a new	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. baseline of State and local expenditures under §303.225 (b) in the next Federal fiscal year following the effective date of the statute.	
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. (c) Inability to pay. If a parent or family of an infant or toddler with a disability is determined unable to pay under the State's definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.	The Department clarified that the addition of this section reflects …"the requirement that the inability to pay provisions in this section apply to both the use of public insurance and benefits and private insurance."
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. (d) Proceeds or funds from public insurance or benefits or from private insurance. (1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25. (2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under §303.225(b). (3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under §303.225.	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services. (e) Funds received from a parent or family member under a State's system of payments. Funds received by the State from a parent or family member under the State's system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds-- (1) Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1)); (2) Must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and (3) Are considered neither State nor local funds under §303.225(b).	
§303.521 Fees. (a)consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.	**§303.521 System of payments and fees.** (a) General. If a State elects to adopt a system of payments in §303.500(b), the State's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include-- (1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part; (2) The basis and amount of payments or fees; (3) The State's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the State makes	The Department stated that "Under a State's system of payments, the State may not charge a family an amount that exceeds the actual cost of providing a particular Part C service. Nor may the State charge a family for amounts received by the State from other funding sources for that service." The Department indicated that "… if a State requires that a lead agency's determination of a parent's ability or inability to pay be reevaluated on an annual or other basis, the State must include such a provision in its system of payments policies that is provided to parents under §303.521(e) in order for parents to be informed of when and how they may be required to provide financial information."

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.521 System of payments and fees. its determination of the ability or inability to pay; (4) An assurance that-- (i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section); (ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost. (iii) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and (iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance; (5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and (6) Provisions that permit, but do not require, the lead agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.	The Department clarified "that in defining a parent's ability to pay, the State must include consideration of family expenses such as extraordinary medical expenses as many families with infants and toddlers with disabilities have unusually high medical expenses."
§ 303.521 Fees. (b) Functions not subject to fees. The following are required functions that must be carried out at public	**§303.521 System of payments and fees.** (b) Functions not subject to fees. The following are required functions that must be carried out at public	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§303.521 Fees. expense by a State, and for which no fees may be charged to parents: (1) Implementing the child find requirements in § 303.321. (2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12. (3) Service coordination, as included in §§ 303.22 and 303.344(g). (4) Administrative and coordinative activities related to— (i) The development, review, and evaluation of IFSPs in §§303.340 through 303.346; and (ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.	**§303.521 System of payments and fees.** expense, and for which no fees may be charged to parents: (1) Implementing the child find requirements in §§303.301 through 303.303. (2) Evaluation and assessment, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b). (3) Service coordination services, as defined in §§303.13(b)(11) and 303.33. (4) Administrative and coordinative activities related to-- (i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and (ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.	
§303.521 Fees. (c) States with mandates to serve children from birth. If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.	**§303.521 System of payments and fees.** (c) States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three. If a State has 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), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.521 System of payments and fees. (d) Family fees. (1) Fees or costs collected from a parent or the child's family to pay for early intervention services under a State's system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act. (2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).	
	§303.521 System of payments and fees. (e) Procedural Safeguards. (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following: (i) Participate in mediation in accordance with §303.431. (ii) Request a due process hearing under §303.436 or 303.441, whichever is applicable. (iii) File a State complaint under §303.434. (iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section. (2) A State must inform parents of these procedural safeguard options by either--	The Department indicated "that a State may inform parents of these procedural safeguard options by either providing parents with a copy of the State's system of payments policies when obtaining consent for the provision of early intervention services under §303.420(a)(3) or including this information with the notice provided to parents in §303.421." The Department also indicated that "…if a State requires that a lead agency's determination of a parent's ability or inability to pay be reevaluated on an annual or other basis, the State must include such a provision in its system of payments policies that is provided to parents under §303.521(e) in order for parents to be informed of when and how they may be required to provide financial information."

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
	§303.521 System of payments and fees. (i) Providing parents with a copy of the State's system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or (ii) Including this information with the notice provided to parents under §303.421.	
§ 303.523 Interagency agreements. (a)General. Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section. (b)Financial responsibility. Each agreement must define the financial responsibility, in accordance with § 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part). (c) Procedures for resolving disputes. (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved. (2) The agreement with each agency must— (i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and (d) Additional components. Each agreement must	**NOTE: This regulation has been incorporated into Subpart B §303.120(f) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities and Subpart F §303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.**	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.523 Interagency agreements. include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.		
§ 303.523 Interagency agreements. NOTE: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.		
§ 303.524 Resolution of disputes. (a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii). (b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 (''financial designee'') shall assign financial responsibility to— (i) An agency, subject to the provisions in paragraph (b)(2) of this section; or (ii) The lead agency, in accordance with the ''payor of last resort'' provisions in § 303.527 (2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made— (i) The financial designee shall reassign the responsibility to the appropriate agency; and	**NOTE: This regulation has been incorporated into Subpart B §303.120(e) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities and Subpart F §303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.**	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.524 Resolution of disputes. (ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility. (c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall— (1) Refer the dispute to the Council or the Governor; and (2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with §303.525.		
§ 303.525 Delivery of services in a timely manner. Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.	**NOTE: This regulation has been incorporated into Subpart F §303.511(d) Methods to ensure the provision of, and financial responsibility for, Part C services.**	
§ 303.526 Policy for contracting or otherwise arranging for services. Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include— (a) A requirement that all earl intervention services must meet State standards and be consistent with the provisions of this part; (b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and (c) The basic requirements that must be met by any	**NOTE: This regulation now appears under Subpart B §303.121 Policy for contracting or otherwise arranging for services.**	

SUBPART F- STATE ADMINISTRATION		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.526 Policy for contracting or otherwise arranging for services. individual or organization seeking to provide these services for the lead agency.		
§ 303.526 Policy for contracting or otherwise arranging for services. NOTE: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.		
§ 303.528 Reimbursement procedure. Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).	**NOTE: This regulation has been incorporated into Subpart B §303.122 Reimbursement procedures and Subpart F §303.510(b) Payor of last resort.**	
§ 303.540 Data collection. (a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must— (1) Include a process for— (i) Collecting data from various agencies and service providers in the State; (ii) Making use of appropriate sampling methods, if sampling is permitted; and (iii) Describing the sampling methods used, if reporting to the Secretary; and (2) Provide for reporting data required under section 618 of the Act that relates to this part. (b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.	**NOTE: This regulation now appears under Subpart B §303.124 Data collection.**	

Subpart G – State Interagency Coordinating Council

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

SUBPART G- STATE INTERAGENCY COORDINATING COUNCIL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.600 Establishment of Council. (a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council. (b) The Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State. (c) The Governor shall designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under § 303.500 may not serve as the chairperson of the Council.	**§303.600 Establishment of Council.** (a) A State that desires to receive financial assistance under Part C of the Act must establish a State Interagency Coordinating Council (Council) as defined in §303.8. (b) The Council must be appointed by the Governor. The Governor must ensure that the membership of the Council reasonably represents the population of the State. (c) The Governor must designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under §303.201 may not serve as the chairperson of the Council.	The Department indicated "that the appointment to the Council of parents of children with disabilities who are also employed by EIS providers could bring a unique perspective to the work of the Council. For this reason, we have removed proposed §303.601(a)(1)(iii), which would have prohibited an employee of a public or private agency involved in providing early intervention services from being appointed and serving as a parent member of the Council. The language in proposed §303.601(a)(1)(iii) reflected the Department's recommendation in the note to current §303.600 that parents selected to serve on the Council not be employees of any agency involved in providing early intervention services. With the removal of proposed §303.601(a)(1)(iii), parents who are employees of a public or private agency involved in providing early intervention services could serve as parent members of the Council in accordance with the requirements that at least 20 percent of the Council be comprised of parent members of children with disabilities aged 12 or younger and at least one parent member be the parent of an infant or toddler with a disability or a child with a disability aged six years or younger. Finally, like all Council members, pursuant to §303.601(d), a parent member of the Council who is an employee of a public or private agency involved in providing early intervention services may not 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."

SUBPART G- STATE INTERAGENCY COORDINATING COUNCIL		
1999 Part C Regulations	**2011 Part C Regulations**	**U.S. Department of Education Selected Analysis of Comments and Changes**
§ 303.600 Establishment of Council. NOTE: To avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services. It is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.		
§ 303.601 Composition. (a)The Council must be composed as follows: (1)(i) 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 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. (ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six or younger. (2) At least 20 percent of the members must be public or private providers of early intervention services. (3) At least one member must be from the State legislature. (4) At least one member must be involved in personnel preparation. (5) At least one member must— (i) Be from each of the State agencies involved in the provisions of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and (ii) Have sufficient authority to engage in policy planning and implementation on behalf of these	**§303.601 Composition.** (a) The Council must be composed as follows: (1)(i) 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. (ii) 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. (2) At least 20 percent of the members must be public or private providers of early intervention services. (3) At least one member must be from the State legislature. (4) At least one member must be involved in personnel preparation. (5) At least one member must-- (i) 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 (ii) Have sufficient authority to engage in policy planning and implementation on behalf of these	

SUBPART G- STATE INTERAGENCY COORDINATING COUNCIL		
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§ 303.601 Composition. agencies. (6) At least one member must— (i) Be from the State educational agency responsible for preschool services to children with disabilities; and (ii) Have sufficient authority to engage in policy planning and implementation on behalf of that agency. (7) At least one member must be from the agency responsible for the State governance of health insurance. (8) At least one member must be from a Head Start agency or program in the State. (9) At least one member must be from a State agency responsible for child care. (b) The Council may include other members selected by the Governor, including a representative from the BIA or, where there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council	**§303.601 Composition.** agencies. (6) At least one member must-- (i) Be from the SEA responsible for preschool services to children with disabilities; and (ii) Have sufficient authority to engage in policy planning and implementation on behalf of the SEA. (7) At least one member must be from the agency responsible for the State Medicaid and CHIP program. (8) At least one member must be from a Head Start or Early Head Start agency or program in the State. (9) At least one member must be from a State agency responsible for child care. (10) At least one member must be from the agency responsible for the State regulation of private health insurance. (11) At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth. (12) At least one member must be a representative from the State child welfare agency responsible for foster care. (13) At least one member must be from the State agency responsible for children‘s mental health. (b) The Governor may appoint one member to represent more than one program or agency listed in paragraphs (a)(7) through (a)(13) of this section. (c) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the State, from the Indian Health Service or the tribe or tribal council.	

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§ 303.602 Use of funds by the Council. (a) General. Subject to the approval of the Governor, the Council may use funds under this part— (1) To conduct hearings and forums; (2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives); (3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business; (4) To hire staff; and (5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part. (b) Compensation and expenses of Council members. Except as provided in paragraph (a) of this section, Council members shall serve without compensation from funds available under this part.	**§303.603 Use of funds by the Council.** (a) Subject to the approval by the Governor, the Council may use funds under this part to-- (1) Conduct hearings and forums; (2) Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives); (3) Pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business; (4) Hire staff; and (5) 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. (b) Except as provided in paragraph (a) of this section, Council members must serve without compensation from funds available under Part C of the Act.	
§ 303.603 Meetings. (a) The Council shall meet at least quarterly and in such places as it deems necessary. (b) The meetings must— (1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and (2) To the extent appropriate, be open and accessible to the general public. (c) Interpreters for persons who are deaf and other necessary services must be provided at Council	**§303.602 Meetings.** (a) The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary. (b) The meetings must-- (1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; (2) To the extent appropriate, be open and accessible to the general public; and (3) As needed, provide for interpreters for persons who are deaf and other necessary services for	

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§ 303.603 Meetings. meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.	**§303.602 Meetings.** Council members and participants. The Council may use funds under this part to pay for those services.	
§ 303.604 Conflict of interest. No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.	**§303.601 Composition.** (d) 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.	
§ 303.650 General. (a) Each Council shall— (1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system; (2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State; (3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes— (i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and (ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and (4) To the extent appropriate, assist the lead agency in the resolution of disputes.		
§ 303.650 General. (b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.	**§303.605 Authorized activities by the Council.** The Council may carry out the following activities: (a) Advise and assist the lead agency and the SEA regarding the provision of appropriate services for children with disabilities from birth through age	

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	§303.605 Authorized activities by the Council. five.	
§ 303.650 General. (c) Each Council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.	**§303.605 Authorized activities by the Council.** The Council may carry out the following activities: (b) Advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.	
§ 303.651 Advising and assisting the lead agency in its administrative duties. Each Council shall advise and assist the lead agency in the— (a) Identification of sources of fiscal and other support for services for early intervention programs under this part; (b) Assignment of financial responsibility to the appropriate agency; and (c) Promotion of the interagency agreements under § 303.523.	**§303.604 Functions of the Council--required duties.** (a) Advising and assisting the lead agency. The Council must advise and assist the lead agency in the performance of its responsibilities in section 635(a)(10) of the Act, including-- (1) Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act; (2) Assignment of financial responsibility to the appropriate agency; (3) Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under §§303.115 and 303.302, monitoring under §303.120 and §§303.700 through 303.708, financial responsibility and provision of early intervention services under §§303.202 and 303.511, and transition under §303.209; and	
§ 303.652 Applications. Each Council shall advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.	**§303.604 Functions of the Council--required duties.** (a) Advising and assisting the lead agency. (4) Preparation of applications under this part and amendments to those applications.	

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§ 303.653 Transitional services. Each Council shall advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under part B of the Act, to preschool and other appropriate services.	**§303.604 Functions of the Council--required duties.** (b) Advising and assisting on transition. The Council must advise and assist the SEA and the lead agency regarding the transition of toddlers with disabilities to preschool and other appropriate services.	
§ 303.654 Annual report to the Secretary. (a) Each Council shall— (1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and (2) Submit the report to the Secretary by a date that the Secretary establishes. (b) Each annual report must contain the information required by the Secretary for the year for which the report is made.	**§303.604 Functions of the Council--required duties.** (c) Annual report to the Governor and to the Secretary. (1) The Council must-- (i) 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 State; and (ii) Submit the report to the Secretary by a date that the Secretary establishes. (2) Each annual report must contain the information required by the Secretary for the year for which the report is made.	
	§303.605 Authorized activities by the Council. The Council may carry out the following activities: (c) Coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other State interagency early learning initiatives, as appropriate.	

Subpart H- Monitoring and Enforcement; Reporting; and Allocation of Funds

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA

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§303.501 Supervision and monitoring of programs. (a) General. Each lead agency is responsible for-- (1) The general administration and supervision of programs and activities receiving assistance under this part; and (2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part. (b) Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including-- (1) Monitoring agencies, institutions, and organizations used by the State to carry out this part; (2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations; (3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and (4) Correcting deficiencies that are identified through monitoring.	**§303.700 State monitoring and enforcement.** (a) The lead agency must-- (1) Monitor the implementation of this part; (2) Make determinations annually about the performance of each EIS program using the categories identified in §303.703(b); (3) Enforce this part consistent with §303.704, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §303.704(a)(1) (technical assistance) and §303.704(a)(2) (imposing conditions on the lead agency's funding of an EIS program or, if the lead agency does not provide Part C funds to the EIS program, an EIS provider), §303.704(b)(2)(i) (corrective action or improvement plan) and §303.704(b)(2)(iv) (withholding of funds, in whole or in part by the lead agency), and §303.704(c)(2) (withholding of funds, in whole or in part by the lead agency); and (4) Report annually on the performance of the State and of each EIS program under this part as provided in §303.702.	The Department indicates that "Sections 616(a)(1)(C) and 642 of the Act require the Secretary to require States (and the designated lead agencies charged with implementing Part C of the Act in the State under section 635(a)(10) of the Act) to monitor and enforce Part C of the Act in accordance with the monitoring priorities established by the Secretary under section 616(a)(3) of the Act (as modified by section 642 of the Act) and the statutory enforcement options identified in section 616(e) of the Act." The Department further states that "These statutory provisions must be read in conjunction with sections 616(b)(2)(C) and 642 of the Act, which require State lead agencies to: (1) publicly report on the performance of each EIS program using the State's targets established in its SPP under the priority areas described in section 616(a)(3) of the Act, and (2) report annually to the Secretary through the APR on the performance of the State in meeting the State's targets in the SPP. Thus, lead agencies must make annual determinations about the performance of each EIS program using the categories in section 616(d)(2) and (e) of the Act and §303.703(b). This requirement stems from the statutory requirement that lead agencies must monitor EIS providers located in the State using quantifiable and qualitative indicators as specified in section 616(a)(3) of the Act (as modified by section 642 of the Act), enforce Part C of the Act in accordance with section 616(e) of the Act (which refers to the requirement that the Secretary make annual determinations about the performance of each State using these same determination

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		categories), and from sections 616(b)(2)(C)(i) and (b)(2)(C)(ii)(I) and 642 of the Act, which require lead agencies to analyze and publicly report on the performance of each EIS program on an annual basis."
	§303.700 State monitoring and enforcement. (b) The primary focus of the State's monitoring activities must be on-- (1) Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and (2) Ensuring that EIS programs 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.	The Department clarifies "Section 303.700(b) incorporates the language from section 616(a)(2) of the Act (as modified by section 642 of the Act), regarding the primary focus of Federal and State monitoring. State monitoring requirements are addressed in more detail, including the areas mentioned by the commenter, through the SPP/APR process. For example, as part of the SPP/APR process, the Secretary has established monitoring priorities and indicators for States that reflect the goals of improving early intervention results and functional outcomes for infants and toddlers with disabilities while ensuring that EIS programs comply with key Part C requirements, including those relating to the timely provision of early intervention services, child outcomes, family capacity, timely evaluations, assessments, initial IFSP development, and transition."
	§303.700 State monitoring and enforcement. (c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.	
	§303.700 State monitoring and enforcement. (d) The lead agency must monitor each EIS program located in the State, using quantifiable	The Department notes "Section 616(a) of the Act (as modified by section 642 of the Act) requires States to focus their monitoring activities on

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	§303.700 State monitoring and enforcement. indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas: (1) Early intervention services in natural environments. (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution sessions (if the State adopts Part B due process hearing procedures under §303.430(d)(2)), mediation, and a system of transition services as defined in section 637(a)(9) of the Act.	improving early intervention results and functional outcomes for infants and toddlers with disabilities and meeting the program requirements in Part C of the Act. Section 616 of the Act further requires that the Secretary establish indicators to adequately measure performance in several priority areas. The Secretary has established 14 such indicators under Part C of the Act for State reporting in the SPP/APR, and, through the OMB public review process for information collections, has solicited public comments on these indicators several times since the 2004 amendments to the Act. These indicators address critical, substantive requirements of Part C of the Act, including those relating to child find for children ages birth to one year and birth to three years; provision of early intervention services in natural environments; early intervention child outcomes; family capacity; timely initial evaluations, assessments and IFSP development; timely service provision; and transition services. While not specifically included as an SPP/APR indicator, the Department's position is that public awareness is covered under the two child find indicators. For example, a State must have an effective public awareness program to ensure that eligible infants and toddlers are identified for early intervention services. Finally, issues related to family outcomes are adequately addressed by the SPP/APR indicator that measures family capacity because that indicator is designed to evaluate whether families know their rights, can effectively communicate their needs, and can assist their children to develop

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		and learn. Moreover, we believe that it is not appropriate to include in these regulations any specific SPP/APR indicator because the Secretary must retain flexibility to revise indicators as necessary. "
	§303.700 State monitoring and enforcement. (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance.	The Department indicates "Correcting noncompliance as soon as possible is a critical responsibility of lead agencies and EIS providers, and, as discussed in the preamble of subpart B of these regulations, the Department's position is that correction as soon as possible but no later than one year is a reasonable timeframe for an EIS provider to correct noncompliant policies, procedures, or practices and for the lead agency to verify that the EIS program or EIS provider is complying with the requirements of Part C of the Act. Through [the Department's] monitoring experience, [the Department] has observed that, in most cases, when a lead agency makes a good faith effort, the needed corrective actions can be accomplished and their effectiveness verified within one year from identification of the noncompliance. Timely correction of noncompliance is critical to ensure proper and effective implementation of Part C of the Act. Therefore, it is the Department's position that correction as soon as possible, but not later than one year from identification, is appropriate."
	§303.701 State performance plans and data collection. (a)General. Each State must have in place a performance plan that meets the requirements described in section 616 of the Act; is approved by the Secretary; and includes an evaluation of the	The Department noted "the Secretary has established 14 indicators in the SPP for Part C of the Act. One of these indicators (Indicator 14) requires each State to demonstrate that it reports timely and accurate data under the reporting requirements in section 618 of the Act and in the

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	§303.701 State performance plans and data collection. State's efforts to implement the requirements and purposes of Part C of the Act, a description of how the State will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).	SPP and APR. Further, to ensure valid and reliable data for each SPP/APR indicator, States must report data in their SPP/APR submissions according to required measurements and from specified data sources. In addition to the percentages required in the indicators, lead agencies are required to provide the actual numbers used in their calculations."
	§303.701 State performance plans and data collection. (b) Review of State performance plan. Each State must review its State performance plan at least once every six years and submit any amendments to the Secretary.	
	§303.701 State performance plans and data collection. (c) Data collection. (1) Each State must collect valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State performance plans. (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects data for a particular indicator through State monitoring or sampling, the State must collect and report data on those indicators for each EIS program at least once during the six-year period of a State performance plan. (3) Nothing in Part C of the Act or these regulations 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.	

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	§303.702 State use of targets and reporting. (a)General. Each State must use the targets established in the State's performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of the Act.	The Department expects, "in most cases, that the lead agency will designate its EIS programs on a geographic basis (e.g., counties, parishes, and health or school districts), it is not always feasible to do so. Therefore, it is the Department's position that it is not necessary to require States to make EIS program designations by geographic areas. States currently administer their Part C programs through a variety of administrative structures. For example, multiple EIS providers may provide services in one or more overlapping geographic areas. Therefore, States cannot be expected to revise their existing administrative structures for the sole purpose of reporting performance data by geographic areas within a State."
	§303.702 State use of targets and reporting. (b) Public reporting and privacy. (1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must-- (A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and (B) Make the State's performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State's annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.	The Department notes that "it is important for the public to be informed in a timely manner regarding the performance of each EIS program in meeting the targets in the State's SPP. … [The Department] considers 120 days to be an appropriate timeframe for States to develop and make public the reports on the performance of EIS programs on the targets in the SPP and have made this change in the regulations. With this change, a State will have four months before the State reports its APR data by EIS program to the public."

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	§303.702 State use of targets and reporting. (ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each EIS program and the date the data were collected. (2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan. (3) Privacy. The State must 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.	
	§303.703 Secretary's review and determination regarding State performance. (a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §303.702(b)(2).	
	§303.703 Secretary's review and determination regarding State performance. (b) Determination. (1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State-- (i) Meets the requirements and purposes of Part C of the Act; (ii) Needs assistance in implementing the requirements of Part C of the Act;	

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	§303.703 Secretary's review and determination regarding State performance. (iii) Needs intervention in implementing the requirements of Part C of the Act; or (iv) Needs substantial intervention in implementing the requirements of Part C of the Act. (2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations. (ii) The hearing described in paragraph (b)(2)(i) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Secretary should not make the determination described in paragraph (b)(1)(iii) or (b)(1)(iv) of this section.	
	§303.704 Enforcement. (a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §303.703(b)(1)(ii) in implementing the requirements of Part C of the Act, the Secretary takes one or more of the following actions: (1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work	

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	§303.704 Enforcement. with appropriate entities. This technical assistance may include— (i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the areas of concern within a specified period of time; (ii) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research; (iii) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance. (2) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part C of the Act.	
	§303.704 Enforcement. (b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §303.703(b)(1)(iii) in implementing the requirements of Part C of the Act, the following apply: (1) The Secretary may take any of the actions described in paragraph (a) of this section.	The Department noted "In instances where the determinations for a State are different in consecutive years (e.g., "needs assistance" in year one and "needs intervention" in the following year), the Department may use the enforcement mechanisms under GEPA and EDGAR in addition to those identified in the Act and §303.707. Whether the Department will need to use additional enforcement mechanisms will depend on the

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	§303.704 Enforcement. (2) The Secretary takes one or more of the following actions: (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year. (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended (GEPA), 20 U.S.C. 1234f, if the Secretary has reason to believe that the State cannot correct the problem within one year. (iii) Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a. (iv) Withholds, in whole or in part, any further payments to the State under Part C of the Act. (v) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.	unique facts of the situation. Thus, it is not possible for the Department to identify in these regulations all situations in which the use of those enforcement mechanisms may be appropriate."
	§303.704 Enforcement. (c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by the lead agency or an EIS program in the State, the Secretary takes one or more of the following actions: (1) Recovers funds under section 452 of GEPA, 20 U.S.C. 1234a. (2) Withholds, in whole or in part, any further payments to the State under Part C of the Act.	

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	§303.704 Enforcement. (3) Refers the case to the Office of Inspector General of the Department of Education. (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.	
	§303.704 Enforcement. (d) Report to Congress. The Secretary reports to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.	
	§303.705 Withholding funds. (a)Opportunity for hearing. Prior to withholding any funds under Part C of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the lead agency involved, pursuant to the procedures in §§303.231 through 303.236.	
	§303.705 Withholding funds. (b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part C of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part C of the Act should not be suspended.	
	§303.705 Withholding funds. (c) Nature of withholding. (1) Limitation. If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2)	The Department noted "Under §303.12, EIS providers are entities or individuals that provide early intervention services under Part C of the Act, regardless of whether they receive Part C Federal

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	§303.705 Withholding funds. or (e)(3) of the Act, the Secretary may determine-- (i) That such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under §303.703(b)(1); or (ii) That the lead agency must not make further payments of funds under Part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide Part C funds to the EIS program, EIS providers that caused or were involved in the Secretary's determination under §303.703(b)(1). (2) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified-- (i) Payments to the State under Part C of the Act must be withheld in whole or in part; and (ii) Payments by the lead agency under Part C of the Act must be limited to State agencies and EIS providers whose actions did not cause or were not involved in the Secretary's determination under §303.703(b)(1).	funds, and may include, where appropriate, the lead agency and other public agencies responsible for providing early intervention services to infants and toddlers with disabilities in the State. EIS programs are different; under §303.11, an EIS program is an entity designated by the lead agency for reporting under sections 616 and 642 of the Act and §§303.700 through 303.702. Lead agencies do not always provide Part C funds directly to an EIS provider, but instead may provide Part C funds to an EIS program. Thus, it would be appropriate to clarify in §303.705(c)(1)(ii) that the lead agency must not make further payments of funds under Part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide Part C funds to the EIS program, EIS providers that caused or were involved in the Secretary's determination under §303.703(b)(1)."
	§303.706 Public attention. Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §303.704, the State must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act and §303.704 of the regulations to the attention of the public within the State, including by posting the notice on the Web site of the lead agency and distributing the notice to the media and to EIS programs.	

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	§303.707 Rule of construction. Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 et seq., and its regulations in 34 CFR parts 76, 77, 80, and 81, including the imposition of special conditions under 34 CFR 80.12, to monitor and enforce the requirements of the Act.	
	§303.708 State enforcement. Nothing in this subpart may be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of the Act.	
§303.540 Data collection. (a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must-- (1) Include a process for— (i) Collecting data from various agencies and service providers in the State; (ii) Making use of appropriate sampling methods, if sampling is permitted; and (iii) Describing the sampling methods used, if reporting to the Secretary; and (2) Provide for reporting data required under section 618 of the Act that relates to this part.	**§303.720 Data requirements--general.** (a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.	
§303.540 Data collection. (b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.	**§303.720 Data requirements--general.** (b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.	
	§303.721 Annual report of children served--report requirement. (a)For the purposes of the annual report required by section 618 of the Act and §303.720, the lead	The Department indicated "States must choose a date between October 1st and December 1st of each year and collect point-in-time child count and settings data on that date. To ensure consistency,

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	§303.721 Annual report of children served--report requirement. agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include-- (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 under §303.731(e)(1)); (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.	States are encouraged to use the same date from year to year. [The Department] believes it is appropriate to continue to require States to report point-in-time data on child count and settings because the Department has required point-in-time data under Part C of the Act since 1992. Revising this standard would impose burdens on States as they would need to redesign their data collection systems, and it also would affect the Department's ability to compare data from multiple years and develop trend data. While States are not required to submit cumulative child count data, they may provide such additional information in the child count data information collection form (Table 1 -- Report of Children Receiving Early Intervention Services in Accordance with Part C)."
	§303.721 Annual report of children served--report requirement. (b) If a State adopts the option under section 635(c) of the Act and §303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.	
	§303.721 Annual report of children served--report requirement. (c) The number of due process complaints filed	

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	§303.721 Annual report of children served--report requirement. 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.	
	§303.722 Data reporting. (a) Protection of identifiable data. The data described in section 618(a) of the Act and in §303.721 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.	
	§303.722 Data reporting. (b) Sampling. The Secretary may permit States and outlying areas to obtain data in section 618(a) of the Act through sampling.	
	§303.723 Annual report of children served--certification. 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.	The Department noted "It is critical that data reported by States be accurate. One way to ensure accuracy of that data is to require lead agency officials to submit a certification attesting to the data's accuracy, as is required by §303.723. Concerning the accuracy of data collected through sampling, when a State uses sampling as a methodology to obtain its child count data, the State must first, in accordance with OMB-approved information collection requirements, have its sampling plan approved by the Department. Prior to receiving approval of a sampling plan, the State must demonstrate that its proposed sampling plan will result in the collection of valid, reliable, and accurate data. Currently no State has elected to use sampling when collecting the data required under section 618 of the Act and §303.721."

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	§303.724 Annual report of children served--other responsibilities of the lead agency. In addition to meeting the requirements of §§303.721 through 303.723, 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-- (a) Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;	The Department clarified, "Collection of accurate, unduplicated data begins at the EIS provider level. Therefore, requiring the lead agency to establish procedures that must be implemented by EIS providers, including certifications about the accuracy of the data and the dates by which EIS providers must report that data to the lead agency, is reasonable and necessary."
	§303.724 Annual report of children served--other responsibilities of the lead agency. (b) Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);	
	§303.724 Annual report of children served--other responsibilities of the lead agency. (c) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;	The Department noted "in some States with electronic systems for collecting and maintaining data, the State lead agency does not use EIS providers to collect State child count data. However, in those States where EIS providers still play a key role in collecting State child count data, it is appropriate for each EIS provider to certify that the data it reports to the lead agency are unduplicated and accurate. Therefore, [the Department) has revised §303.724 to only require that, as one of the commenters suggested, the EIS provider certify the accuracy and nonduplication of data that the EIS provider is required to collect and report to the lead agency."
	§303.724 Annual report of children served--other responsibilities of the lead agency. (d) Aggregate the data from the count obtained from each EIS provider and prepare the report required under §§303.721 through 303.723; and	

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	§303.724 Annual report of children served--other responsibilities of the lead agency. (e) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count.	
§303.204 Payments to the jurisdictions. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in Sec. 303.2 in accordance with their respective needs.	**§303.730 Formula for State allocations.** (a) Reservation of funds for outlying areas. From the sums appropriated to carry out Part C of the Act for any fiscal year, the Secretary may reserve not more than one percent for payments to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands in accordance with their respective needs for assistance under Part C of the Act.	
§303.204 Payments to the jurisdictions. (b) The provisions of Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.	**§303.730 Formula for State allocations.** (b) Consolidation of funds. The provisions of the Omnibus Territories Act of 1977, Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to the funds provided under Part C of the Act.	
§303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations. (a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. (b)(1) The Secretary of the Interior shall distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and	**§303.731 Payments to Indians.** (a) General. (1) The Secretary makes payments to the Secretary of the Interior under Part C of the Act, which the Secretary of the Interior must distribute to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450b), or consortia of those entities, for the coordination of assistance in the provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.	The Department notes "section 643(b) of the Act requires the Secretary of the Interior to distribute the entirety of Part C funds received from the Secretary of Education to tribes, tribal organizations, or consortia of those entities for the coordination of assistance and provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior."

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Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act. (2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (``BIA").	**§303.731 Payments to Indians.** (2) A tribe, tribal organization, or consortium of those entities is eligible to receive a payment under this section if the tribe, tribal organization, or consortium of those entities is on a reservation that is served by an elementary or secondary school operated or funded by the Secretary of the Interior. (3) The amount of the payment to the Secretary of the Interior under this section for any fiscal year is 1.25 percent of the aggregate amount available to all States under Part C of the Act.	
§303.203 Payments to the Secretary of the Interior. The amount of the payment to the Secretary of the Interior under Sec. 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under Sec. 303.204.		
	§303.731 Payments to Indians. (b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.	
	§303.731 Payments to Indians. (c)Information. To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this	

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	§303.731 Payments to Indians. section.	
	§303.731 Payments to Indians. (d) Use of funds. (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with Part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. (2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.	The Department noted "Under section 634(1), the lead agency is responsible for ensuring that early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers residing on a reservation geographically located in the State. Under section 643(b)(4), Indian tribes, tribal organizations, and consortia that receive funds from the Secretary of the Interior must coordinate with the State, through the lead agency responsible for providing early intervention services under Part C of the Act in that State. This coordination is to ensure that eligible Indian infants and toddlers with disabilities under the age of three in the State are identified, evaluated, and provided early intervention services."
§303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations. (c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed under this section. (2) The report must include-- (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year; (ii) The amount of each payment;	**§303.731 Payments to Indians.** (e) Reports. (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years	The Department indicates, "the Secretary of the Interior, in accordance with section 643(b)(5) of the Act, must submit to the Secretary of Education on a biennial basis a report that includes a summary of the information that tribes, tribal organizations, or consortia that receive Part C funds must submit to the Secretary of the Interior under this section."

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§303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations. (iii) The date of each payment.	**§303.731 Payments to Indians.** following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act. (2) The Secretary of the Interior must provide a summary of this information (including confirmation that each tribe, tribal organization, or consortium has provided to the Secretary of the Interior the assurance required under paragraph (e)(1) of this section) on a biennial basis to the Secretary along with such other information as required of the Secretary of the Interior under Part C of the Act. The Secretary may require additional information from the Secretary of the Interior. (3) Within 90 days after the end of each fiscal year the Secretary of the Interior must provide the Secretary with a report on the payments distributed under this section. The report must include-- (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year; (ii) The amount of each payment; and (iii) The date of each payment.	
	§303.731 Payments to Indians. (f) Prohibited uses of funds. None of the funds under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.	

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§303.200 Formula for State allocations. (a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States. (b) For the purpose of allotting funds to the States under paragraph (a) of this section-- (1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under Sec. 303.203 and to the jurisdictions under Sec. 303.204; (2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and (3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.	**§303.732 State allotments.** (a) General. Except as provided in paragraphs (b) and (c) of this section, for each fiscal year, from the aggregate amount of funds available under Part C of the Act for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.	
§ 303.202 Minimum grant that a State may receive. No State receives less than 0.5 percent of the aggregate amount available under Sec. 303.200 or $500,000, whichever is greater.	**§303.732 State allotments.** (b) Minimum allocations. Except as provided in paragraph (c) of this section, no State may receive less than 0.5 percent of the aggregate amount available under this section or $500,000, whichever is greater.	
	§303.732 State allotments. (c) Ratable reduction. (1) If the sums made available under Part C of the Act for any fiscal year are insufficient to pay the full amount that all States are eligible to receive under this section for that year, the Secretary ratably reduces the allotments	

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	§303.732 State allotments. to those States for such year. (2) If additional funds become available for making payments under this section, allotments that were reduced under paragraph (c)(1) of this section will be increased on the same basis the allotments were reduced.	
§303.200 Formula for State allocations. (b) For the purpose of allotting funds to the States under paragraph (a) of this section-- (1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under Sec. 303.203 and to the jurisdictions under Sec. 303.204; (2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and (3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.	**§303.732 State allotments.** (d) Definitions. For the purpose of allotting funds to the States under this section-- (1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under §303.731, to the outlying areas under §303.730, and any amount to be reserved for State incentive grants under §303.734; (2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and (3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.	The Department notes "it is not necessary to define 'most recent satisfactory data' because this phrase also has a plain meaning--that is, it refers to the most recent population data on the number of infants and toddlers in States that are available to the Department at the time the Department calculates State allocations under Part C of the Act. For the purpose of these allocations, the Department uses the most recent data provided by the United States Bureau of the Census (U.S. Census Bureau) as the 'most recent satisfactory data.' It is the Department's position that the regulations should not require the Secretary to inform States of their allocations 120 days prior to making the funds available to the States because the Department believes that the final allocations should be based on the most recent U.S. Census Bureau data available at the time the Department issues Part C grants, and that data could, in some years, result in changes in the estimated allocations within 120 days of making awards."
§303.201 Distribution of allotments from non-participating States. If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with	**§303.733 Reallotment of funds.** If a State (as defined in §303.35) elects not to receive its allotment, the Secretary reallots those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with	

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§303.201 Distribution of allotments from non-participating States. Sec. 303.200(a).	**§303.733 Reallotment of funds.** §303.732(c)(2).	
	§303.734 Reservation for State incentive grants. (a) General. For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 of the Act exceeds $460,000,000, the Secretary reserves 15 percent of the appropriated amount exceeding $460,000,000 to provide grants to States that are carrying out the policy described in section 635(c) of the Act and in §303.211 (including a State that makes Part C services available under §303.211(a)(2)), in order to facilitate the implementation of that policy.	
	§303.734 Reservation for State incentive grants. (b) Amount of grant. (1) General. Notwithstanding section 643(c)(2) and (c)(3) of the Act, the Secretary provides a grant to each State under this section in an amount that bears the same ratio to the amount reserved under paragraph (a) of this section as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under paragraph (a) of this section. (2) Maximum amount. No State may receive a grant under paragraph (a) of this section for any fiscal year in an amount that is greater than 20 percent of the amount reserved under that paragraph for the fiscal year.	The Department reported "In FY 2009, the appropriation exceeded $460,000,000 due to the enactment of ARRA and the Department reserved funding for SIG grants under section 643(c) of the Act. The Department received applications from, and made SIG grants to, two States that submitted policies under section 635(c) of the Act to serve children beyond age three and four. No States applied to implement section 635(c) of the Act in FY 2005 through FY 2008 or FY 2010, which the Department believes can be explained by the lack of funding in those years for the SIG grants."
	§303.734 Reservation for State incentive grants. (c) Carryover of amounts pursuant to section 643(e)(3) of the Act. (1) First succeeding fiscal year. Pursuant to section 421(b) of GEPA, 20 U.S.C. 1221 et seq., amounts under a grant	

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	§303.734 Reservation for State incentive grants. provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which those amounts were appropriated must remain available for obligation and expenditure during the first succeeding fiscal year. (2) Second succeeding fiscal year. Amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which those amounts were appropriated must be returned to the Secretary and used to make grants to States under section 633 of the Act (from their allotments identified in §§303.731 through 303.733) during the second succeeding fiscal year.	