



## The Arc of the United States

*People First, Visionary Leadership,  
Community Participation, Diversity, Integrity and Excellence*

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July 23, 2007

Acting Director  
Office of Special Education Programs  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Room 4109  
Potomac Center Plaza  
Washington, DC 20202-2600.

RE: Docket ID # ED-2007-OSERS-131

Dear Sir/Madam:

The Arc of the United States is pleased to comment on the proposed regulations to implement the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA) related to the Part C Early Intervention Program for Infants and Toddlers. The Arc is a national organization composed of over 850 state and local chapters that advocate for children and adults with intellectual and developmental disabilities. A significant number of our chapters provide Part C services and some of our member families receive Part C services. For over five decades, UCP has advocated for the development and expansion of early childhood services. Early intervention works but resources are still wanting in order to assure that every infant and toddler with a disability or developmental delay gets the services he or she deserves. It is critical that the Part C system maximize the few resources available through sound regulatory principles that meet the promise given to families by this vital law.

In general, The Arc applauds the Department for the major overhaul of the regulations. We are particularly supportive of the new rules that will positively impact on infants and toddlers with disabilities and their families. We are concerned, however, that the failure of the Congress and the Administration to increase the funding for the Part C program will make it difficult for the states and the Part C provider agencies to implement some of the changes without jeopardizing the quality of the services provided.

In addition to the attached comments provided on specific provisions in the proposed rules, The Arc strongly suggests that the Department, after the final regulations are promulgated, develop and make broadly available to families who participate in the Part C program a "For Parents Only" version of the rules. We initially made this suggestion at the public comment forum held in Washington. Given the nature of this program, most families of infants and toddlers, facing numerous challenges with their child with a disability, are unlikely to become instant experts on the Part C rules. Further, the Part C program is of such short duration that families will often find themselves out of the program before they fully acclimate themselves to the rules. Numerous components of the rules (e.g. equipment and construction, data collection, fiscal control) are less relevant than key provisions of the rules such as evaluations and assessments, IFSPs, parental consent and due process. A "For Parents Only" version

of the regulations, written in simple language, would go a long way to enable families to maximize their participation in the Part C program.

The Arc also wishes to endorse the comprehensive comments developed by the Education Task Force of the Consortium for Citizens with Disabilities. We thank the Department for considering these comments.

Sincerely,

Sue Swenson  
Executive Director  
The Arc of the United States

# ED- 2007-0SERS-131

## PART C EARLY INTERVENTION NPRM COMMENTS

### SUBPART A

303.1 PURPOSE OF THE EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES.
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Recommendation: Modify heading and section as follows:

303.1 Purpose of the early intervention ~~system program~~ for infants and toddlers with disabilities **and their families.**

The purpose of this part is to provide financial assistance to States to—

- a) **maintain** ~~develop~~ and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system ~~that provides of~~ early intervention services **focused on enhancing the development of** for infants and toddlers with disabilities and ~~their~~ **enhancing the capacity of** families **to meet the developmental needs of their children;**

Rationale: We recommend several changes in this section. The term “*system*” and not “*program*” should be used as it is consistent with the statute and with other regulatory changes made in recent years. It is also consistent with the intent of an interagency coordinated effort. In addition, the phrase “*and their families*” should be added to Sec. 303.1 following “*infants and toddlers with disabilities*” to clarify that the intent of Part C relates to infants and toddlers *and* their families.

CURRENT REGULATION 303.4 LIMITATION ON ELIGIBLE CHILDREN.
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Recommendation: Restore the language in current 303.4.

**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.**

Rationale: This provision allows states to follow Part B and not Part C regulations with children who transition to preschool special education before their third birthday. This regulation is consistent with IDEA section 619(a) (2) and (h), long-standing provisions in the statute. This regulation should be maintained. This provision is necessary as an important component of many state transition systems as part of ensuring a seamless transition for children and families from Part C to preschool special education.

CURRENT REGULATION 303.7 - CONSENT
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Recommendation: Inclusion of consent definition is useful and should be in the final regulations.

Rationale: The definition of consent from the current 303.401(a) should be retained and added to the definitions in 303.7

303.13 (b)(11) SPECIAL INSTRUCTION

Recommendation: Modify as follows:

(b)(11) Special instruction includes –

...

(iii) Providing families with information, skills, and support related to enhancing the **physical, cognitive, communication, social or emotional, and adaptive** skill development of the child;

Rationale: This clarification would provide guidance as to the skill areas that must be addressed through early intervention services.

303.13 (b)(12)(iv) SPEECH-LANGUAGE PATHOLOGY SERVICES

Recommendation #1: Separate out the services related to provision of sign language and cued language and the interpreting services, currently included in the proposed definition of speech-language pathology services into two different types of services: 1) Services for infants and toddlers who are deaf or hard of hearing and 2) Interpreting and transliteration services, as follows. This section will replace 303.13(b)(12)(iv). In addition, this section will be separated into two parts: (b)(12)(iv)(1) and (2).

(b)(12)(iv)(1) Provision of sign language **(including American Sign Language)**, cued language, and auditory/oral language services, which, as used with respect to infants and toddlers **who are deaf or hard of hearing**, ~~with disabilities who are hearing impaired~~, includes services to the infant or toddler with a disability and the family ~~to teach~~ **to facilitate their interactions with their children in** sign language, cued language, and auditory/oral language ~~as well as to provide oral transliteration services, sign language, and cued language interpreting services~~ **as appropriate. Such services are not limited to children who are deaf or hard of hearing and may also benefit children with other disabilities.**

Rationale: This modification clarifies what we believe the Department intended: that children and families should receive appropriate services to help the child acquire language and to help the family support the child's language acquisition.

In addition, the proposed regulation seems to limit certain services in this provision to infant and toddlers who are hearing impaired. However, many infants and toddlers with Down syndrome and other disabilities use these communication strategies even if they are not hearing impaired. These children and their families should be able to receive any of the services listed in this provision if they are appropriate for the child.

303.13(b) TYPES OF EARLY INTERVENTION SERVICES

Recommendation: Restore language from current regulation 303.12(d)(6) and (7) and renumber as proposed section 303.13 (b)(6) and (7). Renumber remaining sections accordingly.

**(b)(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.**

**(b)(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.**

Rationale: Nursing and nutritional services are essential components of early intervention for many infants and toddlers. If these needs are not addressed the child may not be able to benefit from other early intervention services. The fact that the Act does not specifically list these services does not mean they cannot be put into the regulations. As pointed out in the preamble of the regulations, the statutory list was not intended to be exhaustive: “Nursing services or nutrition services could be deemed early intervention services if they are provided by qualified personnel and otherwise meet the definition of

early intervention services.” The regulations should retain these provisions because of their importance and to clarify that they are permissible under Part C.

303.13 (b) TYPES OF EARLY INTERVENTION SERVICES (6) OCCUPATIONAL THERAPY
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Recommendation: Modify by adding the following statement at the beginning of the proposed definition:

**(b)(6) Occupational therapy means services provided by a qualified occupational therapist and** 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--

Rationale: Making this change ensures that occupational therapy services provided to infants and toddlers under Part C are consistent with state licensure and practice act implemented to ensure quality and consistency of professional services. The language is also consistent with the definition of occupational therapy in Part B of IDEA which will increase the alignment of Part B and C while clarifying and streamlining regulations guiding service provisions under both regulations. The

statute requires this section be consistent with state standards for service provision and the suggested change would more accurately reflect the majority of state laws governing qualification standards for licensure and regulation of the professions in general. In addition, corresponding changes to other services that are delivered by distinct professionals, such as speech-language pathologists to deliver speech language services, should be incorporated throughout the definitions section.

303.13 EARLY INTERVENTION SERVICES (b)(12)(v)

**Recommendation:** Add auditory habilitation or rehabilitation to the list of speech-language pathology services as indicated by the bolded language below and changing the numbering to §303.13 (b)(12)(v):

**(b)(12)(v) Provision of auditory habilitation or rehabilitation services for infants or toddlers who are deaf or hard of hearing.**

**Rationale:** The provision of auditory habilitation and rehabilitation services is considered a speech-language pathology service and should be recognized as such within this section. Although speech-language pathologists typically do not teach sign language or cued language, they provide auditory habilitation or rehabilitation for infants or toddlers who are deaf or hard of hearing.

303.13 (b)(13)TRANSPORTATION

**Recommendation:** Restore reference to taxi services from current regulation 303.12(b)(15).

(b)(13)Transportation and related costs includes the cost of travel (e.g. mileage, or travel **by taxi**, common carrier or other means) that are necessary to enable the infant or toddler with a disability and the child’s family to receive early intervention services.

**Rationale:** The regulations should be clear that taxi service is an appropriate mode of transportation.

303.24 MULTIDISCIPLINARY

**Recommendation:** Modify the definition of multidisciplinary as follows:

Multidisciplinary, with respect to evaluation and assessment of a child, an IFSP team, or IFSP development under subpart D of this part, means the involvement of two or more individuals from separate disciplines or professions ~~or one individual who is qualified in more than one discipline or profession.~~

**Rationale:** We strongly disagree with the proposed change in §303.24 regarding the definition of “multidisciplinary”. Permitting one individual to represent a multidisciplinary perspective is not consistent with recommended practice.

303.25 NATIVE LANGUAGE.

Recommendation: Support this section. Delete (b)(2).

Rationale: The proposed regulation exceeds the statute by requiring all direct contact with a child to be conducted in the child's native language. We wholeheartedly support the concept of this provisions but are concerned that it creates a standard that can never be achieved.

303.26 NATURAL ENVIRONMENTS
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Recommendation: Modify the definition of "natural environments" by using the statute language from 632(4)(G).

Natural environments means settings **in which** ~~that are natural or normal for~~ an infant or toddler without a disability **typically spends time**, ~~may include~~ **including** the home **and inclusive community settings in which children without disabilities participate;** and must be consistent with the provisions of section 303.126.

Rationale: The concept of natural environments is to help families with young children with disabilities facilitate the development of their child in the context of each child's family's unique needs. For some families, their non-disabled child would be at home until his/her third birthday when the child would typically participate in a pre-school program. For the majority of families with a child under the age of 6, the child would spend his/her day in a family or center-based child care program. Unfortunately, implementation of this requirement in some places is narrowly interpreted to mean ONLY the child's home, and not inclusive center-based child care programs. The landmark report *From Neurons to Neighborhoods* found that nearly 45 percent of mothers with an infant with a disability do not return to work because they cannot find a child care program that will accept their child. If the Part C regulations were clear that inclusive child care or Head Start programs are appropriate settings, this dynamic could be changed, thus transforming the economic circumstances of many families to the benefit of all family members.

In addition, certain public funding sources, such as Medicaid, do not always reimburse services delivered at a child's home. Rather, in some states Medicaid will only provide services in a Medicaid approved facility. Part C regulation should not be a barrier to a significant financial resource that is available to the Part C system.

303.33 (a) SERVICE COORDINATION SERVICES (CASE MANAGEMENT)
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Recommendation: Replace the language in proposed regulation §303.33(a)(2) with language from current regulation §303.23(a)(3)(i) and (ii) as follows.

(2) Assisting parents of infants and toddlers in gaining access to the early intervention services and other services identified in the individualized family service plan and coordinating for parents 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;

Rationale: Case managers should continue to coordinate these services, instead of merely assisting the parents in accessing and coordinating the services, in order to ensure that the services provided to the child are not dependent on the parents' ability to handle this task.

### 303.33 SERVICE COORDINATION

Recommendation: Restore language from current regulation §303.23(d) and add the section as 303.33(d).

**(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.**

Rationale: The coordination and timely delivery of appropriate services under the early intervention program depends on the competence of the service coordinators. Therefore, it is critically important to have clearly established qualifications for this position. The competencies of service coordinators can make the difference between a family falling into a crisis situation and a family getting the supports it needs to facilitate the healthy development of the child.

## SUBPART B

### 303.105 POSITIVE EFFORTS TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES.

Recommendation: Encourage states to report their efforts to employ qualified individuals with disabilities.

Rationale: The regulations should encourage, but not require, states to demonstrate the steps taken to employ qualified individuals with disabilities. .

### 303.112 AVAILABILITY OF EARLY INTERVENTION SERVICES

Recommendation: Modify as follows:

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 **and accessible** to all infants and toddlers with disabilities and their families...

Rationale: A policy that states that services are available to all eligible children is insufficient. States must demonstrate that eligible families can actually access such services. In many rural areas, in practical terms, services are not available to individuals who have no means of transportation. Such services might be available in a larger city, several hours away. These services are not truly available to a family without transportation.

### 303.126 EARLY INTERVENTION SERVICES IN NATURAL ENVIRONMENTS

Recommendation: Modify 303.12 as follows:

Recommendation: Modify 303.126 (a) and (b) as follows:

Each system must include policies and procedures to ensure, consistent with Section Section 303.13(a)(8) (early intervention services), 303.26 (natural environments), and 300.344(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 **that includes the parent**, only when early intervention services necessary to meet the unique needs of the infant or toddler and the family cannot be provided satisfactorily in a natural environment.

Rationale: In both Part B and Part C of IDEA, there is a presumption that most children will benefit from services delivered in settings in which children without disabilities typically participate. However, if the child’s IFSP team that includes the child’s parents determines that the child’s and family’s unique needs cannot be met when early intervention services are delivered in the natural environment, the law and the regulation permit other placements.

## SUBPART C

303.208(a)(2) PUBLIC PARTICIPATION POLICIES AND PROCEDURES
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Recommendation: Modify 303.208(a)(2) as follows.

(a)(2) Before submitting a State application under this part (including any policies, procedures, descriptions, methods, certifications and assurances required in subparts B and C of this part), the State **shall--**

- (i) **Comply** ~~complies~~ with the public participation requirements in paragraph (a) of this section; and
- (ii) **Publish** ~~publishes~~ each proposed application, policy or procedure to--
  - (A) Ensure circulation throughout the State, at least 60 days before the date on which the application, policy or procedure is submitted to the Secretary; and
  - (B) Provide an opportunity for public comment for at least 30 days during that 60-day period.
  - (C) **Provide adequate notice of the hearings required in paragraph (a)(1) of this section at least 30 days before the dates that the hearings are conducted.**

Rationale: The first few edits are to add the word “shall” and to match the subject with the verbs. The addition of (C) is to maintain the requirement for 30 days notice before hearings are held. This provision is found in current regulation §303.110(a)(3). The proposed regulations do not provide states with any guidance on “adequate notice.” Parents need 30 days to ensure that they can meaningfully participate in the hearings.

## SUBPART D

### 303.300 PUBLIC AWARENESS PROGRAM—INFORMATION FOR PARENTS

The draft regulations do not specifically include a wide and variety amount of places/coordination for disseminating child find information.

Recommendation: Include the requirements of Note 1 and 2 of the current regulation at 303.320. Specifically, note 1 # 2 from the current regulations that says “An effective public awareness program is one that 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 association, parent groups advocate associations **(including protection and advocacy systems)** and other organizations.

Also, include note 1 #3 and 4 of the current regulations which states that the program should have broad coverage that reaches the general public, including those with disabilities, and includes a variety of methods for informing the public about he provisions of this part. Note 2 explains that information methods include use of t.v., radio, newspapers, pamphlets and posters displayed in doctors’ offices, hospitals and other appropriate places, and the use of a toll-free telephone service.

Rationale: Locating children to determine who need services is the critical first step to a successful early intervention program. The U.S. Department of Education should be setting standards that require states to set up an aggressive campaign to reach all as many families as possible.

### 303.301(c) COMPREHENSIVE CHILD FIND SYSTEM

Recommendation: Add the State Children’s Health Insurance Program under Title XXI of the Social Security Act and the Early Hearing Detection and Intervention (EHDI) systems to the list of programs with which Part C should coordinate child find activities.

Rationale: Many children with disabilities participate in SCHIP programs and most states now have early hearing detection programs that can identify hearing impairments in infants. One of the biggest challenges these programs are facing is ensuring that deaf and hard of hearing children are enrolled in early intervention programs. EHDI and early intervention systems should collaborate more effectively in order to serve children and families better.

### 303.302(a)(2)(i) REFERRAL PROCEDURES

Recommendation: Modify section 303.302(a)(2)(i) as follows:

(a)(2) The procedures required in paragraph (a)(1) of this section must –  
(i) Provide for referring a child **within 2 working days to the extent practicable or** as soon as possible after the child has been identified; and

Rationale: It is understandable that the Part C system has no meaningful authority over the actions taken primary referral sources. However, we are concerned that the elimination of any specific time frame dilutes the concept of urgency that should be a key component of referring an infant or toddler who is possibly in need of early intervention services.

### 303.320 (e) TIMELINES

Recommendation: Modify the timeline to clarify that the initial IFSP must be completed 45 days after referral to the Part C agency.

(e)Timelines. (1)(i) Except as provided in paragraph (e)(2) of this section, the evaluation of the child (including any assessments of the child and family) and assessment of service needs, as well as the initial IFSP meeting, must be completed within 45 days ~~from the date the lead agency obtains parental consent to conduct an evaluation of the child~~ **after the public agency receives a referral.**

Rationale: There continues to be a need for urgency in the development of the initial IFSP. Six weeks should be sufficient time to secure parental consent and to develop this initial plan. If the public agency can demonstrate why additional time is necessary, then the public agency should be afforded additional time.

A specific provision should be added to 303.320 (e) to allow the lead agency to document family requested delays (e.g. child or family illness, work or family vacation scheduling needs or other family requested considerations) that would interfere with the ability of the lead agency to meet the 45 day timeline.

### 303.342 PROCEDURES FOR IFSP DEVELOPMENT, REVIEW, AND EVALUATION

The draft regulations do not incorporate consideration of the “special factors” of 34 C.F.R. §300.324(a)(2) (if behavior impedes child’s learning, communication needs, assistive technology, etc.).

Recommendation: Add in the language of 34 C.F.R. § 300.324 (a)(2) Consideration of special factors into 34 C.F.R. 303.342.

Rationale: It would be beneficial to children to remind agencies to consider all facets of a child’s needs. Because these areas are emphasized in Part B, agencies may incorrectly assume that consideration of these factors are not as critical under Part C.

### 303.343(b) IFSP TEAM MEETINGS AND PERIODIC REVIEWS

Recommendation: Modify as follows to permit parents to request the participation of others in the IFSP review.

(b)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 **or if the parents request**, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

Rationale: Parents must always have the ability to have anyone they choose to attend any IFSP meeting.

### 303.344(e) CONTENT OF THE IFSP

Recommendation: Modify proposed regulation as follows:

(e) To the extent appropriate, the IFSP also must –

- (1) Identify medical, **child care, respite** and other services that a 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 public funding sources if available for those services and** the steps the service coordinator or family may take to assist the child and family in securing those other services.

Rationale: The IFSP should be the central resource of information about existing resources for families, regardless of whether the services needed are early intervention services. The IFSP process should assist families in learning about health insurance for their child through public programs such as Medicaid and the State Children’s Health Insurance Program and for child care supports through the Child Care and Development Block Grant. How to access mental health services and supports should also be discussed.

## SUBPART E

303.401(e) CONFIDENTIALITY
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This section permits a state lead agency to develop policies and procedures that require public agencies to inform the parent about the disclosure and permit a timeframe for the parent to object to the disclosure. The requirement to inform parents about the disclosure and the subsequent time period to object should be mandatory and state discretionary.

Recommendation: Change (e) to state that: *(1) A state lead agency, through its policies and procedures, must require public agencies and EIS providers, prior to making the limited disclosure ...*

Rationale: It is a basic right that parents should have the right to know who has access to their child’s information. The option will still permit agencies to share information as long as a parent does not object and at the same time keeps parents informed about what agencies have information about his or her child.

303.436 PARENTAL RIGHTS IN DUE PROCESS
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This section should include the right for a parent to make the hearing public and for a parent to receive a record of the hearing and the findings of fact and decision at no cost.

Recommendation: Add the language of 34 C.F.R. §300.511(c)(2) and (3) to 303.436.

Rationale: In order for parents to have proper due process and engage in the process fully (including appeals if necessary) parents are entitled to a copy of the hearing and a copy of the findings of fact and decision. The ability to obtain these copies cannot be based on the ability to pay for them, so not only must they be provided, but they must be provided at no cost to the parent.

### 303.440(c) TIMELINE FOR RESOLUTION

Recommendation #1: Retain the note to current regulation 303.423.

Rationale: The draft regulations do not include language to address the need for a quick hearing because of the young age and rapidly developing needs of infants and toddlers.

States should be encouraged to resolve issues regarding young children as quickly as possible because as the Department noted in 1999, “[b]ecause the needs of children in the birth through-two-age range change so rapidly, quick resolution of complaints is important.”

Recommendation #2: Retain the 30-day timeline for due process hearings under Part C.

Rationale: The draft regulation permits states to set a timeline of 30 days or 45 days to complete the due process complaint procedure. In the current regulations at 303.423 the regulations provided for a 30-day timeline unless the state followed the Part B due process procedures. If states followed the Part B standards then a 45-day timeline was permitted; however, the note to the section stated that states were encouraged to accelerate the 45-day timeline to 30 days. As the Department recognized in 1999, “the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.” Therefore, the Department should keep the language of current 303.423 to ensure due process is completed as quickly as possible for the young children under Part C.

### 303.442(b)(1) RESOLUTION PERIOD

The regulations state that the due process complaint must be resolved to the satisfaction of the parties, instead of to the satisfaction of the parents.

Recommendation: Change the language of proposed regulation 303.442(b)(1) to state the following: If the lead agency has not resolved the due process complaint to the satisfaction of the *parents* within 30 days of the receipt...

Rationale: Resolution sessions are required once the agency receives a due process request from a parent; therefore it is the parent who must be satisfied with the resolution of the complaint. Further, section 303.442 pertains to due process under Part B of the Act 20 U.S.C. § 1415 and that section states that the resolution session must be resolved to the satisfaction of the parents, not the parties. Therefore, the Part C regulations should follow the Part B requirement.

### 303.442(b)(3) RESOLUTION PERIOD

Recommendation: Delete regulation 303.442(b)(3) which establishes a day in the hearing when a parent does not engage in a resolution session for Part C due process cases.

Rationale: The draft regulations create a delay in the hearing process through the resolution session. Specifically the draft regulations delay the timelines for the due process hearing if a parent does not timely engage in a resolution session. Although parents should be encouraged to engage in the process, delaying the hearing for failure to attend the resolution session, is likely to be harmful to children. As the Department noted in the current regulations, Sec. 303.420, 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.” The additional days added to the due process procedures, one that is already wrought with difficulty for parents who are just learning about the special needs for their young child, is not only un-necessary, but not could be potentially harmful to children. Further, the IDEA specifically states that the Department “shall issue regulations under this title only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this title.” Contravention to the 20 U.S.C. §1407(a). This additional requirement is not needed and only causes un-necessary delay in the process.

303.440 – 303.449 STATES THAT CHOOSE TO ADOPT THE PART C DUE PROCESS HEARING PROCEDURES

Recommendation: Clarify that these sections only apply to those states that choose to adopt the Part B due process procedures under section 615 of the Act. For example, write the statement: “This section only applies to those states that choose to adopt the Part B due process procedures under section 615 of the Act” under every section from 303.440-303.449.

Rationale: As currently drafted, this section of the NPRM is confusing. It is easy for the reader to miss the heading and think that all Part C agencies must offer a resolution session, when in fact, only those agencies in states that adopt the Part B due process procedures are required to do so.

## SUPBART F

303.510(c) NON-REDUCTION OF BENEFITS

Recommendation: Add a reference to the State Children’s Health Insurance Program (SCHIP) under Title XXI of the Social Security Act.

(c)Nothing in this part may be construed to permit a State to reduce medical or other assistance available 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), **or Title XXI of the SSA (relating to the State Children’s Health Insurance Program)** within the State.

Rationale: SCHIP is another federal program that provides medical assistance to children who may receive early intervention programs.

303.520(a)(1)(i) POLICIES RELATED TO USE OF INSURANCE OR PUBLIC BENEFITS FOR PAYMENT FOR SERVICES

Recommendation: Modify as follows:

(a)(1)The State may use the public insurance or benefits program of a parent or infant or toddler with a disability under this part (consistent with the program requirements of the public insurance or benefits program if), –

(i) The parent or the infant or toddler with a disability is already enrolled or participating in a public insurance or benefits program, ~~provided that the parent provides consent as defined in section 303.7 to disclose personally identifiable information if required under section 303.414.~~

Rationale: Parental consent should not be required to access public insurance or benefits programs. If a service is provided in a child's IFSP and the family agrees to the service, then the Part C agency should be able to access any public insurance or benefits program as part of the comprehensive early intervention system. In addition, the proposed regulations in 303.520(b)(2) make clear that if parents incur co-pays or other costs associated with the Part C system accessing their public insurance, these costs are part of the state's system of payment otherwise they may not be charged to the parent.

303.520(b)(1)(i) POLICIES RELATED TO USE OF INSURANCE OR PUBLIC BENEFITS FOR PAYMENT FOR SERVICES.

Recommendation: Eliminate first part of the sentence in 303.520 (b) (1) (i) which reads:

(b) Private insurance. ~~(1)(i) Except as provided in paragraph (b)(2) of this section,~~ the State may use the private insurance of a parent to pay for services under this part only if the parent provides consent to do so in accordance with Sec. Sec. 303.7, 303.414, and 303.420(a)(3).

Rationale: The public system should not be permitted to access a parent's private benefit without their consent regardless of state legislation in this area. Even with state legislation available, many families are covered under insurance plans governed by ERISA rules. These plans are not required to follow state insurance rules. Local providers are not in a position to know which insurance policies in the state are covered under state requirements and which are not under ERISA.

303.520(c)(2) PROCEEDS OR FUNDS FROM PUBLIC INSURANCE OR BENEFITS OR FROM PRIVATE INSURANCE.

Recommendation: Any Medicaid reimbursement should return to the Part C system.

(c)(2) If the State receives reimbursement 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 section 303.225(b).

Rationale: Medicaid is an essential funding source for Part C services. Any reimbursements realized from Medicaid should go back to the Part C system.