

OSEP

PART C FINAL REGULATIONS: WHAT DOES IT MEAN FOR FAMILIES?



December 1, 2011

Purpose of Part C of the IDEA

- Reduce educational costs
- Maximize potential for individuals with disabilities to live independently
- Meet the needs of all children
(particularly minority, low-income, inner city and rural children, and children in foster care)

Family Engagement

- 2004 Act: To enhance the capacity of families to meet the special needs of the their infants and toddlers with disabilities.
- Part C currently serves over 348,000 infants and toddlers with disabilities and their families

Family Engagement

- Notice and Consent Requirements
 - Referral
 - Screening
 - Evaluations
 - Disclosure of Personally identifiable Information

Family Engagement

- Transition
 - Transition Plan
 - Transition Conference
- Early Intervention Records
 - Access Rights
 - Copies of Records

Pre-referral, Referral, Post-referral

Pre-referral Procedures

- Requirements regarding the dissemination of child find information at §303.301.
 - Information is to be given especially to parents with premature infants.
 - Infants with risk factors associated with learning or developmental complications.
 - Lead agencies must develop procedures to assist primary referral sources to disseminate child find information.

Pre-referral Procedures

- The lead agency must coordinate its child find efforts with the:

Programs that serve infants and toddlers who are homeless, and wards* of the State

- Children’s Health Insurance Program (CHIP)
- State Early Hearing Detection and Intervention System (EHDI)
- Child Care Programs

(§303.302)

Pre-referral Procedures

- Child Welfare/Child Protection (CAPTA and foster care)
- Family Violence Prevention and Services
- The Home Visiting Program under MCH

*Note: “Ward” of the State is defined at §303.37.

Pre-referral Procedures

- Central Directory - §303.117
 - The lead agency must make the central directory available “through other appropriate means” than the lead agencies website.
 - States may determine the methods it will use to provide access to the general public.
 - Requires accurate and up-to-date information about:
 - Public and private EI services, resources and experts in the State
 - Demonstration projects in the State relating to EI
 - Professional and other groups (e.g. Parent Centers)

Referral Procedures

- Primary referral sources are required to refer a child to the Part C program “as soon as possible but in no case later than seven days” after identification at §303.303(a)(2)(i).
 - Prior requirement was “two working days after identification”.
 - Recommending earlier referral may be reasonable.
 - Maximum timeline of seven days provide more flexibility to primary referral sources.

Post-referral Procedures

- Within 45 days after the lead agency or EIS provider receives a referral, the screening (if applicable), initial evaluation, initial assessments, and the initial IFSP for that child must be completed unless:
 - The child is not available due to family circumstances, or
 - The parent has not provided consent for screening (if applicable), or the child's evaluation or assessment.

(§§303.310(a) and (b))

Post-referral Procedures

- Screening: Using screening_procedures_is an option that a lead agency may choose to include as part of the State's child find system.
- Screening Procedures are defined in §303.320(b) as:
 - Activities carried out by to identify infants and toddlers suspected of having a disability and in need of EI services.
 - Includes the administration of appropriate instruments and personnel trained to administer those instruments.

Post-referral Procedures

- The lead agency must obtain parental consent prior to administering any screening procedures. (§303.320(a)(1)(ii))
- The State must provide notice of the screening results to the parent and, if the screening results indicate the child is suspected of having a disability, an evaluation of the child must be conducted. (§303.320 (a)(2)(ii))

Post-referral Procedures

- If the child is not suspected of having a disability, parents must be provided notice of that determination, and that notice must describe the parent's right to request an evaluation.
- A parent may request an evaluation at any time during the screening process even if the screening suggests that the child is not suspected of having a disability. (§§303.320(a)(2)(ii) and (a)(3))

Post-referral Procedures

- **Evaluation:** Parental consent is required before evaluation.
 - Evaluation means the procedures used by qualified personnel to determine initial and continuing eligibility.
 - Initial Evaluation refers to the child's evaluation to determine eligibility. (§303.321(a)(2)(i))

Post-referral Procedures

- The required evaluation procedures must include:
 - Administering the evaluation procedure;
 - Taking the child's history (including interviewing the parent);
 - Identifying the child's level of functioning in each of the developmental areas;
 - Reviewing medical, educational and other records;
 - and
 - Gathering information from other sources.

(§303.321(b))

Post-referral Procedures

- The evaluation must be conducted in the native language of the child.
 - Native language is defined at §303.25.
 - 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:
 - For purposes of evaluation and assessment, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

Post-referral Procedures

- If the child is not eligible, the lead agency must:
 - Provide the parent with prior written notice and include the parent's right to dispute the eligibility determination through the dispute resolution mechanisms (due process hearing, mediation or filing a State complaint). (§303.322)

Post-referral Procedures

- A child's medical records and other records may be used to establish eligibility (without conducting an evaluation of the child), if the records indicate that functioning in one or more of the developmental areas:
 - Constitutes a developmental delay (as defined by the State), or
 - The child meets the criteria of an infant or toddler with a disability. (§303.321(a)(3)(i))

Post-referral Procedures

- A condition that has a high probability of resulting in developmental delay as listed at §303.21(a)(2), and includes as examples:
 - Chromosomal abnormalities
 - Congenital infections
 - Sensory impairments
 - Severe attachment disorders
 - Secondary exposure to toxic substances (fetal alcohol syndrome)

Post-referral Procedures

- Assessment means the ongoing procedures used by qualified personnel to identify a child's unique strengths and needs and the appropriate EI services.
 - Initial Assessment refers to the assessment of the child and the family conducted prior to the child's first IFSP meeting.

(§303.321 (a)(2)(ii) and (iii))

Post-referral Procedures

- The lead agency must ensure the development of an IFSP developed by a multidisciplinary team.
 - The multidisciplinary team with respect to the IFSP team in §303.24(b) means the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator.

Post-referral Procedures

- The specific service coordination services under §303.34 include:
 - Making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities. (§303.34(b)(1)).
 - Conducting follow-up activities to determine that appropriate Part C services are being provided. (§303.34(b)(7)).
 - Coordinating funding sources for Part C services ONLY. (§303.34(b)(9)).

Model IFSP Form

- Statute under IDEA section 617 requires modes to be published.
- Includes all of the regulatory content-related requirements.
- Can be found on line at www.idea.ed.gov

Transition

Transition Notification

- Prior to a toddler exiting the Part C early intervention program, if that toddler is potentially eligible for services under Part B of the IDEA, the lead agency must notify the SEA and the LEA where the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B.
(§303.209(b)(1))

Transition Notification

- The SEA/LEA notification must be consistent with any opt-out policy that the State has adopted. (§303.209(b)(2))
- States can adopt an opt-out policy that permits a parent to object to the disclosure of the child find personally identifiable information (PII). (§§303.209(b)(2) and 303.401(e))
- The opt-out policy includes notifying the parent of the limited disclosure of PII for child find purposes and allowing a specified period of time for the parent to object. (§§303.209(b)(2) and 303.401(e))

Transition Notification (§303.209(b)(1))

Status of Toddler Who is Potentially Eligible for Part B	Lead Agency Notifies LEA / SEA
Exiting Part C by age three (§303.209(b)(1)(i))	At least 90 days prior to toddler's third birthday.
Determined eligible for Part C 45 – 90 days prior to turning age three (§303.209(b)(1)(ii))	As soon as possible after the eligibility determination.
Referred to lead agency less than 45 days prior to turning age three (§303.209(b)(1)(iii))	No evaluation / assessment / IFSP required, but MUST notify the SEA & LEA if the child may be eligible for Part B (with parental consent, if applicable, under §303.414).

Transition Conference

§303.209(c)

- Must be conducted with family's approval.
- For a child exiting Part C and potentially eligible for Part B services, the transition conference must be held, with family approval, at least 90 days and not more than 9 months prior to the toddler's third birthday. Required participants include the lead agency, the LEA and the family. (§303.209(c)(1))

Transition Plan

- Service coordination services includes facilitating the development of a transition plan. (§303.34(b)(10))
- The IFSP must include a transition plan for **all** infants and toddlers with a disability who are exiting from Part C. (§303.209(d))



Procedures for Transition Plans

§303.209(d)

- Must be in the IFSP.
- Must be established not fewer than 90 days and, at the discretion of all parties, not more than 9 months before the toddler turns age three.
- Review of program options.
- Each family is included in development of the transition plan.
- Must include steps and services.

Part C Subpart E

Procedural Safeguards

- Consent & Notice
- Confidentiality
- Dispute Resolution



Definition of Parent

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

(34 CFR § 303.27)



- Fully informed
- Agrees in writing
- Voluntary

What is consent?

When is parental consent required?

- Administering screening procedures under § 303.320 that are used to determine whether a child is suspected of having a disability;
- All evaluations and assessments of a child are conducted under § 303.321;
- Early intervention services are provided to the child under this part;
- Public benefits or insurance or private insurance is used if such consent is required under § 303.520; and
- Disclosure of personally identifiable information consistent with § 303.414. (§ 303.420)



What is Notice?

Right to receive information in writing.

When must Prior Written Notice be provided to parents?

Parents must be provided notice a reasonable time before the lead agency or 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 child's family.

(§303.421(a))

Notices for Screening

If the State has adopted screening procedures, the lead agency or EIS provider must provide the parent notice:

- Prior to screening the child, of the intent to screen the child, and
- After screening the child, of the determination that the child is:
 - Suspected of having a disability, or
 - Not suspected of having a disability.

(§303.320(a)(1)(i) and (a)(2))

What is the Part C right of confidentiality?

A lead agency or other participating agency **may not disclose personally identifiable information** (as defined in §303.29), to any party except participating agencies that are part of the State's Part C system **without parental consent unless there is a specific exception** under § 303.414(b).

(§ 303.414(a))

Definition of “Participating Agency”

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

(§303.403(c))

For what records?

Early intervention records

- Defined as -- All records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and the implementing regulations.

(§303.403(b))

When Does Part C Confidentiality Apply?

- **From the time the child is referred** for early intervention services under IDEA Part C
- **Until the later of when the participating agency is no longer required to maintain or no longer maintains** personally identifiable information regarding that child under applicable Federal and State laws. (§303.401(c)(2))

Access to Records

- The lead agency is required to make available to parents **an initial copy** of the child's early intervention record, **at no cost** to the parents.

(§303.400(c))

- A participating agency is required to provide, at no cost to the parent, a copy of **each evaluation, assessment of the child, family assessment, and IFSP** as soon as possible after each IFSP meeting.

(§303.409(c))

Requesting Access to Records

A participating agency is required to comply with a parent's request to inspect and review the early intervention records of his/her child **in no more than 10 days after the parent makes the request.**

(§303.405(a))

Dispute Resolution Options

The Final Regulations continue to require lead agencies to have written procedures for the timely resolution of complaints through three mechanisms:

- Mediation,
- Minimum State complaint procedures,
and
- Due process hearing procedures.

Mediation

- Mediation must be available at any time, not just when a due process hearing is requested.
- If the parties resolve a dispute through the mediation process, they must sign a legally binding written agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(§303.431(a))

State Complaints

- The complainant must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time it is filed with the lead agency.
- The lead agency, public agency, or EIS provider must be given the opportunity to respond to the complaint, including:
 - At the discretion of the lead agency, providing a proposal to resolve the complaint.
 - An opportunity for the parties to voluntarily engage in mediation.

(§§ 303.403(c) 303.403(c) 303.433 and 303.434)

What must be in the Complaint?

The complaint must include—

- (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C;
- (2) The facts on which the statement is based;
- (3) Signature & contact information for complainant; and
- (4) If alleging violations with respect to a specific child—
 - (i) Name & address of the residence of the child;
 - (ii) Name of the EIS provider serving the child;
 - (iii) Description of the problem, including facts; &
 - (iv) A proposed resolution of the problem to the extent known.

(§ 303.434(b))

What is the Timeline for Filing a Complaint?

The complaint must **allege a violation that occurred not more than one year** prior to the date that the complaint is received...

§303.434(c)

Complaint Timeline

- The lead agency must provide the complainant a written decision within 60 days after the complaint is filed.
- That timeline may be extended if the complainant and the lead agency, public agency or EIS provider agree to engage in mediation.
- Extensions of the 60-day timeline may still also be granted due to exceptional circumstances that exist with respect to a particular complaint.

(§ 303.433)

Due Process Hearings

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

Transcripts, Findings of Facts, and Decisions

Under the Part B and C procedures, parents have the right to receive,

- A transcript of the hearing; and
- A copy of the findings of fact and decisions,
- **at no cost to the parent.**

(§§ 303.436(b)(4)-(5) and 303.444)

Part C Due Process Hearing Timeline

If a State adopts Part C procedures, the due process hearing must be completed no later than 30 days after receipt of the complaint.

A hearing officer may now grant specific extensions of time... **at the request of either party.**

(§303.437(c))

Part B Due Process Hearing Timeline

- The State is allowed to adopt either a 30- or 45-day timeline for resolution of due process complaints (Under the Part B procedures, hearing officers may still grant extensions at the request of either party).
- The State is required to specify which timeline it has adopted in the State's written policies and procedures under §303.123 and in the State's prior written notice under §303.421

(§303.440(c))

Use of Public Insurance

Three major changes to the use of public insurance:

- Parents not yet enrolled in public insurance or benefits program (§303.520(a)(2)(ii))
- The use of public benefits or insurance result in specific costs to the parent (§303.520(a)(2)(ii)(A)-(D))
- Written notification (§303.520(a)(3))

Use of Private Insurance

- Parental consent is required for the use of a parent's private insurance to pay for Part C services unless a State has enacted a State statute regarding private health insurance coverage for Part C services that expressly includes all of the provisions in §303.520(b)(2).
- Parental consent must be obtained:
 - When the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and
 - Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP. (§303.520(b)(1)(i))

Use of Insurance Guidance

- Nonregulatory guidance:
 - Section B of the document addresses the use of public insurance or benefits or private insurance to pay for Part C services.
 - <http://osep-part-c.tadnet.org/materials>

Effective Date

- Part C regulations published September 28, 2011 and regulations became “effective” 30 days after publication date.
 - States will be held to previous regulations for full FFY 2011 grant award period (July 1, 2011 – June 30, 2012) unless they adopt new provisions earlier.
 - States will be held to the new Part C regulations when they accept their FFY 2012 grant award (July 1, 2012).

FFY 2010 SPP/APR (due February 1, 2012)

- Because the prior regulations were in effect during the FFY 2010 reporting period, the new regulations do not effect the FFY 2010 APR due Feb. 1, 2012.
- For the APR due February 1, 2012, States will report using the same Indicators 8, 10 & 11 data required by the previous measurement table.

For FFY 2011 SPP/APR (due February 1, 2013)

- For this APR, States will be reporting on data collected between July 1, 2011 and June 30, 2012.
- At time regulations were published, FFY 2011 report year had already begun.
- Therefore, States are not required to report on the new Indicators 8, 10 & 11 for the FFY 2011 APR.

For FFY 2012 SPP/APR (due February 1, 2014)

- For this APR, States will be reporting on data collected between July 1, 2012 and June 30, 2013.
- All new Part C requirements will have been in effect for the full reporting year.
- Therefore, all States will be required to report on the new Indicators 8, 10 & 11 for the FFY 2012 APR.

Application for FFY 2012 Funds

- Application due April 16, 2012.
- Combination of assurances and required submission of policies, procedures, methods and descriptions.
- OSEP encourages States to revise their policies and procedures prior to submitting them with FFY 2012 grant application but recognizes that not all States will be able to complete revisions prior to April 16, 2012.

Questions?

Go to <http://idea.ed.gov>

- Select “Part C”
- Select “Q&A Corner”

Or contact the ND Pathfinder Parent Center