
Part 303 Part C Finance Regulations

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Subpart A – General

§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.

(Authority: 20 U.S.C. 1400(d)(2), 1431(a)(5), 1431(b))

§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.

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

§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 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").

(Authority: 20 U.S.C. 1404)

§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 §§303.700 through 303.707, and any other activities required by the State under those sections.

(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.

(c) The assignment of financial responsibility in accordance with subpart F of this part.

(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.

(e) The resolution of intra- and interagency disputes in accordance with subpart F of this part.

(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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1416, 1435(a)(10), 1442)

§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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(11))

§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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(12), 1440(a))

Subpart C – State Application and Assurances

§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; and

(b) The assurances required in §§303.221 through 303.227.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(1))

§303.201 Designation of lead agency.

Each application must include the name of the State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part.

§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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(a)(2))

§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;

(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 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); and

(c) The State's rigorous definition of developmental delay as required under §§303.10 and 303.111.

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(Authority: 20 U.S.C. 1432(3), 1432(4)(B), 1432(4)(C), 1435(a)(1), 1435(a)(10)(B), 1437(a)(3), 1440)

§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. 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.

(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.

(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.

(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.

(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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(10)(B), 1435(a)(10)(F), 1437(a)(3), 1437(a)(5))

§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.

(Approved by Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1437(a)(7))

§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 (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.

(b) Requirements. If a State's application for a grant under this part includes the State policy 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 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 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.

(c) Reporting requirement. If a State includes in its application a State policy described in paragraph (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.

(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.

(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 require a provider of services under this part to provide a child served under this part with FAPE.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(c), 1437(a)(11))

§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

(b) Other information and assurances as the Secretary may reasonably require.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1228a(b), 1437(a)(11))

§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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(1))

§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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(2))

§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; and

(b) A public agency will administer the funds and property.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(3))

§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; and

(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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(4))

§303.225 Prohibition against supplanting: indirect costs.

(a) Each application must provide satisfactory assurance that the Federal funds made available 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.

(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.

(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 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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(5))

§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.

(Approved by Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1437(b)(6))

Subpart D – Child Find, Evaluations and Assessments, and Individualized Family Service Plans

§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;

(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.

(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 child and family in securing those other services.

Subpart E – Procedural Safeguards

§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 provided in paragraph (c) of this section.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(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. (Authority: 20 U.S.C. 1417(c), 1432(4)(B), 1439(a)(2), 1439(a)(4), 1442)

§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;

(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.

(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 receive the evaluation, assessment, or early intervention service unless consent is given.

(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.

(d) The parents of an infant or toddler with a disability--

(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.

(Authority: 20 U.S.C. 1436(e), 1439(a)(3))

§303.431 Mediation.

(a) General. Each lead agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

(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 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.

(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 mediator.

(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.

Subpart F – Use of Funds and Payor of Last Resort

§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).

(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 enrolled, that meets the requirements of §§303.520 and 303.521.

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10)-(12), 1437(b), 1438, 1439(a), 1440)

Use of Funds

§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);

(b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;

(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;

(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; and

(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.

(Authority: 20 U.S.C. 1435(a)(10)–(12), 1437(b), 1438)

Payor of Last Resort--General Provisions

§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 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).

(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.

(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.

(Authority: 20 U.S.C. 1435(a)(10)(B), 1437(a)(2), 1440(a), 1440(c))

§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.

(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.

(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--

(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.

(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.

(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.

(Authority: 20 U.S.C. 1435(a)(10), 1437(a)(2), 1440(b))

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

§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

(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 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.

(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 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 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 baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.

(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.

(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.

(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).

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10), 1439(a))

§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 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.

(b) **Functions not subject to fees.** The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

(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.

(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.

(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).

(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--

(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.

(Authority: 20 U.S.C. 1432(4)(B), 1439(a), 1440)

Subpart G – State Interagency Coordinating Council

§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.

(Authority: 20 U.S.C. 1441(d))

§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

(4) Preparation of applications under this part and amendments to those applications.

(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.

(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.

(Authority: 20 U.S.C. 1441(e)(1))

Subpart H – State Monitoring and Enforcement; Federal Monitoring and Enforcement; Reporting; and Allocation of Funds

§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 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.

(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.

(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.

(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.

(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.

(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.

(Authority: 20 U.S.C. 1416(e)(1)-(3), 1416(e)(5), 1442)

§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.

(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.

(c) Nature of withholding. (1) Limitation. If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2) 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).

(Authority: 20 U.S.C. 1416(e)(4), 1416(e)(6), 1442)

§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.

(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.

(Authority: 20 U.S.C. 1443(a))

§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.

(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.

(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.

(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 section.

(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.

(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 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.

(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.

(Authority: 20 U.S.C. 1443(b))

§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.

(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.

(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 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.

(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.

(Authority: 20 U.S.C. 1443(c))

§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 §303.732(c)(2).

(Authority: 20 U.S.C. 1443(d))

§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.

(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.

(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 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.

(Authority: 20 U.S.C. 1443)

§ 300.502 Independent educational evaluation.

(a) *General.*

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) *Parent right to evaluation at public expense.*

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

- (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
- (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

- (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

§ 300.506 Mediation.

(a) *General.* Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior

to the filing of a due process complaint, to resolve disputes through a mediation process.

(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 hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- (2) A public agency may establish procedures to offer to parents and schools 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—
 - (i) 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
 - (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
- (3)(i) The State must 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.

- (ii) The SEA must select mediators on a random, rotational, or other impartial basis.
- (4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.
- (5) 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.
- (6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
 - (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 agency who has the authority to bind such agency.
- (7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) *Impartiality of mediator.*

- (1) An individual who serves as a mediator under this part—
 - (i) May not be an employee of the SEA or the LEA that is involved in the education or care of 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 an LEA or State agency described under § 300.228 solely because he or she is paid by the agency to serve as a mediator.

(Authority: 20 U.S.C. 1415(e))

§ 300.517 Attorneys' fees.

(a) *In general.*

- (1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—
 - (i) The prevailing party who is the parent of a child with a disability;
 - (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
 - (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
- (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) *Prohibition on use of funds.*

(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) *Award of fees.* A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in § 300.506.

(iii) A meeting conducted pursuant to § 300.510 shall not be considered—

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with § 300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

§ 300.800 In general.

The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act—

(a) To children with disabilities aged three through five years; and

(b) At a State’s discretion, to two-year old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))