

| Former Regulations | Draft Regulations | 2011 Regulations |
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| <p>§ 303.401 Definitions of consent, native language, and personally identifiable information. As used in this subpart— (a) <i>Consent</i> means that— (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language or other mode of communication; (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;</p> | <p>§303.7 Consent. <i>Consent</i> means that-- (a) <i>The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, or other mode of communication;</i> (b) <i>The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</i> (c)(1) <i>The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.</i> (2) <i>If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that has occurred before the consent was revoked).</i></p> | <p>§303.7 Consent. <i>Consent</i> means that-- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in §303.25; (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).</p> |
| <p>§ 303.401 Definitions of consent, native language, and personally identifiable information. (b) <i>Native language</i>, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;</p> | <p>§303.25 Native language. (a) <u>Native language</u>, when used with respect to an individual who is limited English proficient, means the following: (1) The language or mode of communication normally used by that individual, or, in the case of a child, the language or mode of communication normally used by the parents of the child, except as provided in paragraph (a)(2) of this section. (2) In all direct contact with a child (including evaluation of the child), the language or mode of communication normally used by the child</p> | <p>§303.25 Native language. (a) <u>Native language</u>, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means-- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section; and (2) For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the</p> |

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| | <p>in the home or learning environment.</p> <p>(b) For an individual with deafness or blindness, or for an individual with no written language, the term <u>native language</u> means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).</p> | <p>child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.</p> <p>(b) <u>Native language</u>, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).</p> |
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Native language (§303.25)

Comment: We received a number of comments on proposed §303.25(a)(2). Most commenters opposed the proposed requirement that the native language be used in all direct contact with the child. The commenters stated that such a requirement would be nearly impossible to implement in States where many different languages are spoken and would impose undue fiscal and personnel burdens on States where implementation is feasible.

Additionally, these commenters indicated that the proposed requirement would be inconsistent with section 602(20) of the Act, regarding the definition of native language, and section 607 of the Act, regarding requirements for prescribing regulations. One commenter expressed concern that proposed §303.25(a)(2) would prohibit the delivery of services in English in situations where the child is in either a multilingual living or learning environment, even if the parent wanted the services delivered in English, or would prohibit the parent from serving as a translator for the EIS provider.

Several other commenters requested clarification regarding the applicability of proposed §303.25(a)(2) in rural areas or areas that suffer from shortages of EIS providers. Other commenters asked what language should be used when conducting evaluations of newborns or young infants. Commenters also requested clarification as to whether and in what manner interpreters could be used when providing services.

A number of commenters supported proposed §303.25(a)(2) stating that the provision would allow EIS providers to better communicate with families and infants and toddlers with disabilities, and would be consistent with 34 CFR 300.29 of the Part B regulations, regarding the definition of native language, and section 607(a) of the Act.

Discussion: We agree with commenters that requiring the native language to be used in all direct contact with a child, especially in providing early intervention services to an infant or toddler with a disability, may not be necessary or feasible in all circumstances. For example, a child may not require the use of native language when Part C services are directly provided to the child when the child’s receptive or expressive language has not yet developed to indicate a clear spoken language preference. Thus, we have not included in these final regulations the requirement in proposed §303.25(a)(2) that native language be used in all direct contact with the child. However, as recipients of Federal financial assistance,

Part C lead agencies must comply with the requirements in Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance.

Changes: We have removed proposed §303.25(a)(2).

Comment: None.

Discussion: To better align the definition of native language in these Part C regulations with the definition of this term in section 602(2) of the Act and in 34 CFR 300.29 of the Part B regulations and to ensure internal consistency between the native language definition in §303.25(b) and the requirement in §303.321 to use native language when conducting evaluations and assessments, we have made the following changes.

First, we added to §303.25(a) the definition of native language for individuals with limited English proficiency (LEP) that is in 34 CFR 300.29(a) of the Part B regulations and we cross-referenced the statutory definition of LEP that is in section 602(18) of the Act. With this revision, §303.25(a)(1) provides that the native language of an individual with limited English proficiency is the language normally used by that individual, or in the case of a child, the language normally used by the parents of the child, except as provided in §303.25(a)(2). We added new §303.25(a)(2) to provide that, for evaluations and assessments of a child, the native language of a child with limited English proficiency is the language normally used by the child if qualified personnel conducting the evaluation or assessment determine that this language is developmentally appropriate for the child given the child’s age and communication skills.

These changes do not change the long-standing native language requirements in §303.342, concerning IFSP meetings, §303.420, concerning obtaining parental consent, and §303.421, concerning prior written notice and procedural safeguards. As discussed in the Analysis of Comments and Changes for subpart E of this part, we have added a native language requirement in §303.404, concerning the general notice of confidentiality procedures provided to parents.

Changes: We have revised §303.25(a)(1) to state that, when used with respect to an individual who is limited English proficient (LEP) as that term is defined in section 602(18) of IDEA, the term native language means-- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in §303.25(a)(2). We also added a new paragraph (a)(2) to this section to provide that the native language for an individual who is limited English proficient means, for evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the child if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

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| <p>§ 303.401 Definitions of consent, native language, and personally identifiable information. (c) <i>Personally identifiable</i> means that information includes— (1) The name of the child, the child’s parent, or other family member; (2) The address of the child; (3) A personal identifier, such as the child’s or</p> | <p><u>§303.29 Personally identifiable.</u> Personally identifiable means information that contains-- (a) The name of the child, the child's parent, or other family member; (b) The address of the child or child’s family; (c) A personal identifier, such as the child's or</p> | <p><u>§303.29 Personally identifiable information.</u> Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term “student” in the definition of personally identifiable information in 34 CFR 99.3 means “child” as used in this part and any reference to “school” means “EIS provider” as used in this part.</p> |
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| <p>parent’s social security number; or (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</p> | <p>parent’s social security number or student number; or (d) A list of personal characteristics or other information that would make the child’s or parent’s identity easily traceable.</p> | |
| <p><u>Personally identifiable information (§303.29)</u> <u>Comment:</u> Some commenters requested clarification of the confidentiality provisions. One commenter requested that the information protected under the Part C confidentiality provisions align with the information that is protected under FERPA. <u>Discussion:</u> We agree it is important to align the definition of personally identifiable information in these regulations with the definition of that same term in 34 CFR 99.3 under the Family Educational Rights and Privacy Act (FERPA) (in section 444 of the General Education Provisions Act). Examples of data that would be considered personally identifiable information under both the FERPA regulations in 34 CFR 99.3, as well as under Part C of the Act, include the child’s or parent’s name and social security number, date and place of birth, race, ethnicity, gender, physical description, and disability or level of developmental delay, because some of this information can also indirectly identify an individual depending on the combination of factors and level of detail released. The definition of personally identifiable information in 34 CFR 99.3 was the subject of the Department’s December 9, 2008 Final Regulations under FERPA in the <u>Federal Register</u> (73 FR 74805). Given that the confidentiality provisions in §§303.401 through 303.417 reference other specific FERPA provisions, we believe it is appropriate to add in §303.29 a cross-reference to the FERPA definition, as amended, rather than separately revising the definition in these regulations. Thus, we adopt by reference in §303.29, with appropriate modifications, the FERPA definition in §99.3, as amended. <u>Changes:</u> We have revised the definition of personally identifiable information in §303.29 to cross-reference the definition in 34 CFR 99.3, as amended, except that the terms “student” and “school” mean “child” and “EIS providers” respectively as used in this part.</p> | | |
| <p><u>§ 303.400 General responsibility of lead agency for procedural safeguards.</u> Each lead agency shall be responsible for— (a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and</p> | <p><u>§303.400 General responsibility of lead agency for procedural safeguards.</u> Each lead agency must-- (a) Establish or adopt the procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality, parental consent and notice, surrogate parents, and dispute resolution; and</p> | <p><u>§303.400 General responsibility of lead agency for procedural safeguards.</u> Subject to paragraph (c) of this section, each lead agency must-- (a) Establish or adopt the procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality in §§303.401 through 303.417, parental consent and notice in §§303.420 and 303.421, surrogate parents in §303.422, and dispute resolution procedures in §303.430;</p> |

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| <p>(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.</p> | <p>(b) Ensure the effective implementation of the safeguards by each EIS provider in the State that is involved in the provision of early intervention services under this part.</p> | <p>(b) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part; and</p> <p>(c) Make available to parents an initial copy of the child’s early intervention record, at no cost to the parents.</p> |
| <p><u>§303.402 Opportunity to examine records.</u> In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child’s family.</p> | <p><u>§303.401 Confidentiality and opportunity to examine records.</u> (a) <u>General.</u> Each State must ensure that the parent of a child referred under this part is afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.</p> <p>(b) <u>Confidentiality procedures.</u> Each State must have procedures in effect to ensure that--</p> <p>(1) EIS providers comply with the Part C confidentiality procedures in §§303.402 through 303.417 (which contain confidentiality provisions that are consistent with, but broader than those under, the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and its regulations in 34 CFR part 99, and include additional Part C requirements); and</p> <p>(2) The parents of infants or toddlers who are referred to, or receive services under, this part are afforded the opportunity to inspect and</p> | <p><u>§303.401 Confidentiality and opportunity to examine records.</u> (a) <u>General.</u> Each State must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.</p> <p>(b) <u>Confidentiality procedures.</u> As required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in effect to ensure that--</p> <p>(1) Participating agencies (including the lead agency and EIS providers) comply with the</p> |

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| | <p>review all Part C records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.</p> <p>(c) <u>Applicability and timeframe of procedures.</u> The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that--</p> <p>(1) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and</p> <p>(2) Applies from the point in time when the child is referred for early intervention services under this part until the later of when the lead agency or EIS provider is no longer required to maintain or maintains that information under applicable Federal and State laws.</p> <p>(d) <u>Disclosure of information.</u> (1) Subject to paragraph (e) of this section and §303.209(b)(3), the lead agency must disclose</p> | <p>Part C confidentiality procedures in §§303.401 through 303.417; and</p> <p>(2) The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.</p> <p>(c) <u>Applicability and timeframe of procedures.</u> The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that--</p> <p>(1) Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and</p> <p>(2) Applies from the point in time when the child is referred for early intervention services under this part until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.</p> <p>(d) <u>Disclosure of information.</u> (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA where the child resides, in accordance with</p> |
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| | <p>to the LEA where the child resides or to the SEA, in accordance with §303.209(b)(2), the following limited information that would otherwise be determined to be personally identifiable information under the Act:</p> <ul style="list-style-type: none"> (i) A child’s name. (ii) A child’s date of birth. (iii) Parent contact information (including parents’ names, addresses, and telephone numbers). <p>(2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under Part B of the Act, to identify all children potentially eligible for services under this part and Part B of the Act.</p> <p>(e) <u>Option to inform a parent about intended disclosure.</u> (1) A State lead agency, through its policies and procedures, may require public agencies and EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform the parent of the intended disclosure and allow the parent a specified time period to object to the disclosure in writing.</p> <p>(2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency is not permitted to make such a disclosure under paragraph (d) of this section and §303.209(b)(2).</p> | <p>§303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:</p> <ul style="list-style-type: none"> (i) A child’s name. (ii) A child’s date of birth. (iii) Parent contact information (including parents’ names, addresses, and telephone numbers). <p>(2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under Part B of the Act, to identify all children potentially eligible for services under §303.211 and Part B of the Act.</p> <p>(e) <u>Option to inform a parent about intended disclosure.</u> (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing.</p> <p>(2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and §303.209(b)(1)(i) and (b)(1)(ii).</p> |
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Confidentiality and opportunity to examine records (§303.401)
Comment: A few commenters recommended retaining as much of current §303.402, concerning the opportunity to examine records, and §303.460, concerning confidentiality of information, as is consistent with the Act.

Discussion: The confidentiality rights and protections contained in current §§303.402 and 303.460 have been retained in §303.401(b) and have been explicitly referenced in both §§303.401(b) and 303.402 of these regulations, consistent with sections 617(c), 639(a)(2), and 642 of the Act. Provisions concerning parents’ rights to inspect and review their children’s records in current §303.402 are incorporated in §303.401(b)(2). The substance of the note following current §303.460, which concerns the applicable confidentiality rights and protections afforded under sections 617(c) and 642 of the Act, is now in §§303.401(b) and 303.402.

We have added language in §303.401(b) clarifying that, as required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99.

Changes: We have deleted in §303.401(b) the parenthetical “(which contain confidentiality provisions under FERPA in 20 U.S.C. 1232g and its regulations in 34 CFR part 99)” and added in §§303.401(b) and 303.402 language regarding the implementation of the regulations in §§303.401 through 303.417 under sections 617(c) and 642 of the Act to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part, in accordance with FERPA in 20 U.S.C. 1232g and 34 CFR part 99.

Comment: A few commenters recommended that the rights and protections afforded to parents concerning confidentiality and access to records be extended to foster families and agencies responsible for infants and toddlers who reside in out-of-home care.

Discussion: The confidentiality rights and protections in §§303.401 through 303.417 are available to an individual who meets the definition of a parent in §303.27, which expressly includes foster parents, and any individual appointed as a surrogate parent under §303.422. However, §303.422(d)(2) excludes from serving as a surrogate parent for a child, an employee of the lead agency or any other public agency or EIS provider that provides any services to the child or a family member of that child. Thus, the confidentiality rights and protections available to parents under §§303.401 through 303.417 would not be available to agencies responsible for the care of infants and toddlers not residing at home or to the employees of such agencies.

Changes: None.

Comment: One commenter requested that we clarify the word “broader” as used in proposed §303.401(b)(1), regarding confidentiality procedures.

Discussion: Proposed §303.401(b)(1) stated that the Part C confidentiality procedures are consistent with, but broader than, those under FERPA. In some instances the Part C confidentiality procedures differ from the requirements under FERPA (for example, Part C uses the term “participating agency” and permits States to adopt an opt-out policy in §303.401(e)). We agree that the phrase “that are consistent with, but broader than those under” is not clear; therefore, we have removed the phrase. Additionally, we have removed the last phrase of the parenthetical “and include additional Part C requirements” because it is redundant.

Changes: The phrase “that are consistent with, but broader than those under” and the last phrase of the parenthetical “and include additional Part C requirements” have been removed.

Comment: One commenter requested that the Department clarify whether it violates Part C confidentiality regulations to accept a referral without parental consent.

Discussion: Section 303.401(c)(2) provides that the Part C confidentiality procedures apply from the point in time when the child is referred for early intervention services, and thus, do not apply prior to a referral. Under §303.401(c)(2), the confidentiality provisions under Part C of the Act

do not apply to primary referral sources. Thus, Part C does not prohibit the lead agency or an EIS provider from accepting a referral of a child to the State Part C system from a primary referral source. However, the primary referral source may be required to obtain parental consent prior to making a referral under other applicable laws (such as HIPAA, CAPTA, or State laws).

Changes: None.

Comment: None.

Discussion: Given that we reference “participating agencies” in §§303.405 through 303.417, we have changed the reference in §303.401(c)(2) from “lead agency and EIS provider” to “participating agency.” We also have clarified that the confidentiality procedures apply until the later of when the participating agency is no longer required to maintain or no longer maintains, under applicable Federal and State laws, the personally identifiable information of a child and the child’s family that is contained in early intervention records collected, used, or maintained under this part by the lead agency.

Changes: We have replaced the phrase “lead agency or EIS provider” with the phrase “participating agency” in §303.401(c)(2). We also have replaced the phrase “required to maintain or maintains” with the phrase “required to maintain or no longer maintains” in §303.401(c)(2).

Disclosure of information (§303.401(d))

Comment: One commenter stated that it is unnecessary for the lead agency to disclose the information identified in §303.401(d) to the LEA where the child resides or to the SEA and that such disclosure may potentially breach the right to confidentiality of personally identifiable information.

Discussion: Section 637(a)(9)(A)(ii)(I) of the Act, concerning preschool transition, requires the lead agency to notify the LEA where the toddler resides that the toddler will shortly reach the age of eligibility for preschool services under Part B of the Act. We believe that notifying the LEA where the child resides and the SEA of the toddler’s name, date of birth, and the parent contact information (including parents’ names, addresses, and telephone numbers) is necessary to implement the requirements in section 637(a)(9)(A)(ii)(I) of the Act and to ensure that children exiting Part C services experience a smooth and seamless transition to Part B services.

Changes: None.

Comment: One commenter stated that the terms “State Lead Agency (SLA)” and “Local Lead Agency (LLA)” should be used in the regulations instead of the terms “SEA” and “LEA” because SEAs and LEAs are only two of the many types of lead agencies. The commenter also stated that using the terms “SEA” and “LEA” in the Part C regulations is confusing.

Discussion: Part C of the Act uses the term “lead agency” to refer to the State agency designated by the State’s Governor under section 635(a)(10) of the Act to administer the Federal Part C funds the State receives under section 643 of the Act and to be responsible for implementing the statewide early intervention system. We recognize that while a few States have Part C statewide systems that refer to EIS providers as “local lead agencies” this is not the general practice among most States. Additionally, many EIS providers are not public agencies and, therefore, we decline to revise these regulations to include that term and have continued to use the term “EIS provider” when referring to entities other than the lead agency who are responsible for assisting the State in implementing the Part C statewide early intervention system.

Regarding use of the terms participating agency, LEA, and SEA in these regulations, these terms are defined in §§303.404(c), 303.23, and 303.36, respectively, and are terms used throughout these regulations and specifically in §303.401(b) through (d)(1). Thus, we decline to make the change requested by the commenter.

Changes: None.

Comment: Several commenters supported §303.401(e) while many other commenters opposed it stating that it diminishes a family’s right to

confidentiality and decision-making about their child. These commenters urged the Department to require a lead agency to obtain parental consent prior to disclosing to an LEA or SEA the information identified in §303.401(d)(1) as it is personally identifiable information. Similarly, one commenter requested that the opt-out requirement in §303.401(e) be changed to an “opt-in” policy.

Discussion: Section 303.401(e) permits a lead agency to adopt an opt-out policy under section 637(a)(9) of the Act and §303.209(b)(1)(ii). An opt-out policy requires the lead agency and EIS providers, prior to disclosing the limited information identified in §303.401(d)(1) to the LEA where the child resides or to the SEA, to inform the child’s parent about the impending disclosure and provide the parent with a specific time period in which the parent may confirm his or her decision to decline, or opt-out of, the disclosure of such information about his or her child.

Permitting States to adopt an opt-out policy, rather than opt-in policy, which would require the lead agency to obtain affirmative parental consent before disclosure of the limited information identified in §303.401(d)(1) to the LEA or SEA, allows States the flexibility to balance the privacy interests of parents of children receiving Part C services and the lead agency’s, SEA’s, and LEA’s respective responsibilities to identify children potentially eligible for services under Part B of the Act, and to ensure a smooth transition from the State’s Part C program to its Part B program. Parents as well as other stakeholders and members of the public have an opportunity to provide input when the State circulates its LEA notification policies for public participation as required in §303.208(b).

Changes: None.

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| <p>Part B Regulations §300.610 Confidentiality. The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627.</p> | <p>§303.402 Confidentiality. The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and consistent with §§303.403 through 303.417.</p> | <p>§303.402 Confidentiality. The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and consistent with §§303.401 through 303.417. The regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.</p> |
| <p>Part B Regulations §300.611 Definitions. As used in §§300.611 through 300.625--</p> | <p>§303.403 Definitions. The following definitions apply to §§303.402 through 303.417:</p> | <p>§303.403 Definitions. The following definitions apply to §§303.402 through 303.417 in addition to the definition of</p> |

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| <p>As used in §§300.611 through 300.625--</p> <p>(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> <p>(b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).</p> <p>(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.</p> | <p>(a) <u>Destruction</u> means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.</p> <p>(b) <u>Education records</u> includes all early intervention records required to be collected, maintained, or used under Part C of the Act and the regulations in this part.</p> <p>(c) <u>Participating agency</u> means any individual, agency, or institution that collects, maintains, or uses personally identifiable information and includes the lead agency and EIS providers.</p> | <p>personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:</p> <p>(a) <u>Destruction</u> means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.</p> <p>(b) <u>Early intervention records</u> mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.</p> <p>(c) <u>Participating agency</u> means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.</p> |
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Definitions (§303.403)

Comment: Two commenters requested that the term education records be changed to the term early intervention records because use of the term “education” is not consistent with Part C of the Act and could be interpreted incorrectly by insurance companies and Medicaid concerning payment for services. One commenter also expressed concern that the term education records is used inconsistently throughout the regulations (see §§303.405(a) and (b), 303.406, 303.407, 303.408, 303.410, and 303.411).

Discussion: We agree that the term early intervention records should replace the term education records in §303.403 and have revised references to education records to read early intervention records in these regulations. Changes: We have revised §303.403(b) to define early intervention

records instead of education records and clarified that the term includes all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.

Comment: One commenter expressed concerns that the definitions in §303.403, while applicable to programs under Part B of the Act, may not be appropriate for programs under Part C of the Act.

Discussion: We agree that the definitions of education records and participating agency in §303.403 could be amended to more appropriately apply to Part C of the Act. As noted previously, we have removed the term education records in §303.403(b) and replaced it with the term early intervention records.

Additionally, we have amended the definition of participating agency in §303.403(c) to mean any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. Participating agency specifically includes the lead agency and EIS providers that provide any Part C services, including service coordination, evaluations and assessments, and other Part C services. We are adding this provision to distinguish between those primary referral sources that perform primarily a child find function and those entities that serve as funding sources only. We have clarified that this term does not include primary referral sources (unless they are also EIS providers), or public agencies (such as the State Medicaid or CHIP program), or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

Changes: We have revised the definition of participating agency in §303.403(c) to provide that this term also includes an entity that collects, maintains, or uses personally identifiable information and that this information is collected, maintained, or used “to implement the requirements in Part C of the Act and the regulations in this part.” We have added a provision that an EIS provider includes a provider of Part C services, including service coordination, evaluations, and assessments, and other Part C services. Additionally, we have added a provision specifically stating that primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services are not considered a participating agency.

Part B Regulations

§300.612 Notice to parents.

- (a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.123, including--
- (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
 - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures

§303.404 Notice to parents.

- The lead agency must give notice that is adequate to fully inform parents about the requirements of §303.402, including--
- (a) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (b) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties,

§303.404 Notice to parents.

- The lead agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in §303.402, including--
- (a) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (b) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties,

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| <p>that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.</p> | <p>retention, and destruction of personally identifiable information; and (c) A description of all of the rights of parents and children regarding this information, including the rights under the Part C confidentiality provisions in §§303.401 through 303.417.</p> | <p>retention, and destruction of personally identifiable information; (c) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§303.401 through 303.417; and (d) A description of the extent that the notice is provided in the native languages of the various population groups in the State.</p> |
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Notice to parents (§303.404)

Comment: Some commenters requested that the confidentiality requirements in these regulations reflect the parallel requirements in the Part B regulations, where appropriate. One commenter requested clarification as to when the general notice and confidentiality requirements under Part C of the Act apply. One commenter recommended adding a requirement that the notice to parents in §303.404 be provided in the native language of the parent.

Discussion: We agree that it would be helpful for lead agencies under Part C of the Act to know when the general notice requirement applies. Requiring the lead agency to provide parents with notice of its general confidentiality policies and procedures, including document retention and destruction procedures, when a child is referred under Part C of the Act ensures that parents are aware of the nature and scope of their rights under these policies and procedures. States may choose to provide this general notice at additional appropriate times, such as annual IFSP meetings, but we have not required that it be provided at each such meeting because of the burden this would place on the State and because the prior written notice requirements in §303.421 already require a summary of each of the procedural safeguards.

Additionally, the content of the notice should include a description of the extent that the notice is available in the native languages of the various population groups in a State. We have added language to §303.404 that reflects that requirement, which is also in 34 CFR 300.612 of the Part B regulations. The prior written notice and procedural safeguards notice requirements in §303.421(c)(1)(ii) require that the child-specific notice be in the parent’s native language or other mode of communication used by the parent, unless it is clearly not feasible to do so, and that the notice include a description of the procedural safeguards, including confidentiality requirements under subpart C of this part.

Changes: We have added the phrase “when a child is referred under Part C of the Act” in the introductory text in §303.404. We also have added a new paragraph (d) to §303.404 requiring that the notice to parents include a description of the extent that the notice is given in the native languages of the various population groups in the State.

Comment: A few commenters recommended revising §303.404(a) to require the notice to parents, concerning the confidentiality provisions under the Act, to be more applicable to Part C of the Act.

Discussion: Section 303.404(a) provides that the notice include a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from which

the information is gathered), and the uses to be made of the information. For example, children on whom personally identifiable information is maintained include children with developmental delays or diagnosed conditions, or, if applicable, children at risk for developmental delays. The types of information sought include developmental, medical, educational, and other information. The specific sources from which information is gathered would include primary referral sources in the State, and the uses to be made of the information would include the identification, evaluation, and provision of early intervention services to infants and toddlers with disabilities. Thus, §303.404(a) sufficiently relates to the personally identifiable information maintained, collected, and used under Part C of the Act.

Changes: None.

Part B Regulations

§300.613 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes--
 (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 (3) The right to have a representative of the parent inspect and review the records.

§303.405 Access rights.

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§303.430(d) and 303.435 through 303.439, and in no case more than 20 days after the request has been made.

(b) The right to inspect and review education records under this section includes--
 (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 (2) The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 (3) The right to have a representative of the parent inspect and review the records.

§303.405 Access rights.

(a) Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.

(b) The right to inspect and review early intervention records under this section includes--
 (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
 (2) The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 (3) The right to have a representative of the parent inspect and review the early intervention records.

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| <p>(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.</p> | <p>(c) An agency shall presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.</p> | <p>(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.</p> |
| <p><u>Access rights (§303.405)</u> <u>Comment:</u> Commenters from several lead agencies recommended requiring lead agencies to respond to parents’ requests to inspect and review their child’s early intervention records within 10 calendar days of the request, instead of 20 days, because it is important for parents to have these records available in the event there is a pending due process hearing (that must be resolved within a 30-day timeline as required in §303.430(d)(1)). <u>Discussion:</u> We agree that a 10-day deadline would be more appropriate to ensure access to early intervention records when parents have filed a request for a due process hearing. We have changed the timeline for agency compliance with a parent’s request to inspect and review records to 10 calendar days after the parent makes the request. (The term <u>day</u> is defined as “calendar day unless otherwise indicated” in §303.9.) <u>Changes:</u> We have changed §303.405(a) to reflect that an agency must comply with a parent’s request to inspect and review records in no case more than 10 days after the request has been made. <u>Comment:</u> One commenter recommended that the “shall presume” language in §303.405(c) be revised to align with the analogous Part B requirement in 34 CFR 300.613(c), which provides that an agency “may presume” that a parent has the authority to inspect and review his or her child’s records. <u>Discussion:</u> We agree with the commenter and have changed §303.405(c) to be consistent with 34 CFR 300.613(c) in the Part B regulations. <u>Changes:</u> The word “shall” has been removed and replaced with the word “may” in §303.405(c).</p> | | |
| <p><u>Part B Regulations</u> <u>§300.614 Record of access.</u> Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.</p> | <p><u>§303.406 Record of access.</u> Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.</p> | <p><u>§303.406 Record of access.</u> Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.</p> |

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| <p><u>Part B Regulations</u> <u>§300.615 Records on more than one child.</u> If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.</p> | <p><u>§303.407 Records on more than one child.</u> If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.</p> | <p><u>§303.407 Records on more than one child.</u> If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.</p> |
| <p><u>Part B Regulations</u> <u>§300.616 List of types and locations of information.</u> Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.</p> | <p><u>§303.408 List of types and locations of information.</u> Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.</p> | <p><u>§303.408 List of types and locations of information.</u> Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.</p> |
| <p><u>Part B Regulations</u> <u>§300.617 Fees.</u> (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. (b) A participating agency may not charge a fee to search for or to retrieve information under this part.</p> | <p><u>§303.409 Fees.</u> (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. (b) A participating agency may not charge a fee to search for or to retrieve information under this part.</p> | <p><u>§303.409 Fees for records.</u> (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.</p> |
| <p><u>Fees for records (§303.409)</u> <u>Comment:</u> One commenter recommended including in §303.409 a provision to allow parents to receive a copy of their child’s records upon request, thereby facilitating the role of parents as full and equal participants in the IFSP process. Another commenter expressed concern about the length of time that may lapse between a child’s IFSP meeting and the time that the parent actually receives a copy of the child’s IFSP. This</p> | | |

commenter requested that the regulations require that the parent be given a copy of his or her child’s IFSP at the conclusion of every IFSP meeting.

Discussion: We agree with commenters that in order to help parents to be full and equal participants in the IFSP process parents must receive a copy of their child’s evaluation, assessments, and IFSP. Thus, we have added in new §303.409(c) that each evaluation, assessment, and IFSP must be provided to the parent.

Additionally, under §303.521(b), the lead agency must ensure that specific activities, including conducting evaluations and assessments, developing and reviewing IFSPs, and implementing procedural safeguards, are provided at no cost to parents. Thus, we have added in new §303.409(c) the requirement that these records be provided to parents at no cost. Requiring States to provide a copy of evaluations, assessments, and IFSPs to parents, from the child’s early intervention record, should not be a burden to States. As a standard practice, most States already provide these documents at no cost to parents. The requirement in new §303.409(c) is comparable to the evaluation and IEP documents that must be provided to parents at no cost under the provisions in 34 CFR 300.306(a)(2) and 300.322(f) of the Part B regulations.

Concerning the request that the IFSP be provided at the conclusion of the IFSP meeting, we decline to add this specific timeline but agree that it is important to specify when these documents must be provided. Thus, we also have added in new §303.409(c) that a copy of each evaluation, assessment of the child, family assessment, and IFSP must be provided to the parent as soon as possible after each IFSP meeting.

Changes: We have added new §303.409(c), which requires that a participating agency must provide at no cost to the parent, a copy of each evaluation and assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting. We also have revised the heading of §303.409 to add “for records” after “Fees”, and added a clause to §303.409(a) explaining that the right to charge fees does not apply to documents that must be provided and are mentioned in §303.409(c).

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| <p>Part B Regulations <u>§300.618 Amendment of records at parent's request.</u> (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.</p> | <p><u>§303.410 Amendment of records at parent's request.</u> (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child may request that the participating agency that maintains the information amend the information. (b) The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.</p> | <p><u>§303.410 Amendment of records at a parent's request.</u> (a) A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information. (b) The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.</p> |
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| <p>(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.</p> | <p>(c) If the participating agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.</p> | <p>(c) If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.</p> |
| <p><u>Amendment of early intervention records under §§303.410, 303.411, and 303.412</u> <u>Comment:</u> One commenter recommended adding references to the family, in addition to the child, in §§303.410 and 303.412(a), regarding a parent’s right to amend information in a child’s early intervention record if it is inaccurate, misleading, or violates the privacy or other rights of the child. <u>Discussion:</u> We agree that the protections in §§303.410(a) and 303.412(a) and (b) should apply to information about the parent as well as the child, but do not agree that the right to amend a record extends to information about other family members. This is because the definition of <u>personally identifiable information</u> in §303.29(d) includes a list of personal characteristics or other information that would make the child’s or parent’s identity easily traceable. Therefore, we have added the reference to the parent, but not to the family. For the same reasons, we have added this reference to the parent in §303.411. <u>Changes:</u> We have added a reference to the parent in §§303.410(a), 303.411, and 303.412(a) and (b).</p> | | |
| <p><u>Part B Regulations</u> <u>§300.619 Opportunity for a hearing.</u> The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.</p> | <p><u>§303.411 Opportunity for a hearing.</u> The participating agency must, on request, provide a parent with an opportunity for a hearing under §303.430(d) to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.</p> | <p><u>§303.411 Opportunity for a hearing.</u> The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child’s early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in §303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the State’s procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).</p> |
| <p><u>Opportunity for a hearing (§303.411)</u> <u>Comment:</u> A few commenters stated that the requirements in §303.411 are inconsistent with both the hearing procedures in §303.413 and the relevant Part B requirements in 34 CFR 300.619, which require a hearing to challenge information in a child’s record to be conducted in accordance with the procedures under FERPA. <u>Discussion:</u> We have clarified §303.411 by providing that the parent may request a due process hearing if a State has adopted the Part C due</p> | | |

process hearing procedures that are referenced in §303.430(d)(1), provided that such procedures meet the requirements of the hearing procedures in §303.413 that comply with the FERPA regulations in 34 CFR 99.22. Thus, as suggested by the commenter, the procedural options available to parents would be consistent with 34 CFR 300.619 of the Part B regulations. We believe permitting this option to parents provides parents with the benefits of the 30-day timeline if the State has adopted Part C due process hearings under §303.430(d) without imposing an additional burden on States that already have such procedures in place.

Changes: We have added to §303.411 a reference to §303.413 and a parenthetical regarding the hearing requirements under the FERPA regulations in 34 CFR 99.22.

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| <p>Part B Regulations</p> <p>§300.620 Result of hearing.</p> <p>(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.</p> <p>(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent’s right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.</p> <p>(c) Any explanation placed in the records of the child under this section must--</p> <p>(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and</p> <p>(2) If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.</p> | <p>§303.412 Result of hearing.</p> <p>(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.</p> <p>(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.</p> <p>(c) Any explanation placed in the records of the child under this section must--</p> <p>(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and</p> <p>(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.</p> | <p>§303.412 Result of hearing.</p> <p>(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.</p> <p>(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.</p> <p>(c) Any explanation placed in the early intervention records of the child under this section must--</p> <p>(1) Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and</p> <p>(2) If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must</p> |
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| <p>Part B Regulations §300.621 Hearing procedures. A hearing held under §300.619 must be conducted according to the procedures in 34 CFR 99.22.</p> | <p>§303.413 Hearing procedures. A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.</p> | <p>also be disclosed to the party. 303.413 Hearing procedures. A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.</p> |
| <p>Part B Regulations §300.622 Consent. (a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.</p> | <p>§303.414 Consent prior to disclosure or use. (a) Prior parental consent must be obtained before personally identifiable information is-- (1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or (2) Used for any purpose other than meeting a requirement of this part. (b) A lead agency or participating agency may not disclose personally identifiable information, as defined in §303.29, to any party except the lead agency and EIS providers that are part of the State’s Part C system without parental consent unless authorized to do so under paragraphs (c) and (d) of this section, §303.401, or the exceptions enumerated in 34 CFR Part 99, which are adopted to apply to Part C through this reference.</p> | <p>§303.414 Consent prior to disclosure or use. (a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is-- (1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or (2) Used for any purpose other than meeting a requirement of this part. (b) A lead agency or other participating agency may not disclose personally identifiable information, as defined in §303.29, to any party except participating agencies (including the lead agency and EIS providers) that are part of the State’s Part C system without parental consent unless authorized to do so under-- (1) Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or (2) One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32,</p> |

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| | <p>(c) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent’s right to refuse consent under §303.420.</p> <p>(d) The lead agency or participating agency may disclose to a protection and advocacy (P&A) system authorized under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act)—</p> <p>(1) Contact information (including name, address, and telephone number) for the parent or legal guardian or representative of an infant</p> | <p>99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to--</p> <p>(i) 34 CFR 99.30 means §303.414(a);</p> <p>(ii) “Education records” means early intervention records under §303.403(b);</p> <p>(iii) “Educational” means early intervention under this part;</p> <p>(iv) “Educational agency or institution” means the participating agency under §303.404(c);</p> <p>(v) “School officials and officials of another school or school system” means qualified personnel or service coordinators under this part;</p> <p>(vi) “State and local educational authorities” means the lead agency under §303.22; and</p> <p>(vii) “Student” means child under this part.</p> <p>(c) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent’s right to refuse consent under §303.420.</p> |
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| | <p>or toddler with a disability when the P&A system requests this information under section 143(a)(2)(I)(iii)(III) of the DD Act when requested by the P&A system; or</p> <p>(2) Personally identifiable information in the early intervention records of an infant or toddler with a disability in order to provide the P&A system access to the early intervention records when the P&A system requests access under either section 143(a)(2)(I)(iii) or section 143(a)(2)(J) of the DD Act.</p> | |
| <p>Consent prior to disclosure or use (§303.414)</p> <p><u>Comment:</u> A few commenters recommended retaining as much of current §303.460, regarding confidentiality of information, as is consistent with the Act.</p> <p><u>Discussion:</u> Current §303.460 references the confidentiality provisions in the Part B regulations that were in effect prior to the publication of the amended Part B regulations published in August 14, 2006; the Note following current §303.460 indicates that because the Part B regulations incorporate the FERPA regulations, FERPA also applies to the Part C regulations. Consistent with the commenters’ requests, we have removed the general citation to the Part B regulations and FERPA and added in §303.414(b)(2) the exceptions to the FERPA consent requirement in 34 CFR 99.31(a) as specific exceptions (where applicable to Part C) to the parental consent requirement in these Part C regulations. We have also added a provision requiring compliance with the additional pertinent conditions in 34 CFR 99.32 through 99.39.</p> <p><u>Changes:</u> We have incorporated as specific exceptions to the parental consent requirement in §303.414(b)(2) of these Part C regulations the specific exceptions to the written parental consent requirement in 34 CFR 99.31(a) of the FERPA regulations (where applicable to Part C), reference to the pertinent conditions in 34 CFR 99.32 through 99.39, and added appropriate modification provisions in §303.414(b)(2)(i) through (b)(2)(vii).</p> <p><u>Comment:</u> One commenter expressed concern that sometimes service providers do not disclose information that parents have given consent to disclose, and suggested that service providers should be required to disclose documents or information when parents have consented to the disclosure.</p> <p><u>Discussion:</u> It is unclear what types of documents or information the commenter is referencing or the circumstances under which an EIS provider might not disclose the information for which a parent has given consent. However, there may be circumstances when the lead agency or an EIS provider may not have the authority to provide documents in the child’s early intervention record to a third party, even after receiving parental consent for disclosure of personally identifiable information. For example, a lead agency or EIS provider may not have the authority to disclose third-party medical records. In these cases, the lead agency or EIS provider would instruct the parent to make such a request to the third party for the document or information.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters recommended that the regulations clarify the exception that applies to Protection and Advocacy (P&A) agencies</p> | | |

seeking access to information pursuant to their authority under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801, et seq.). Other commenters opposed disclosing information to P&A agencies and questioned why only this requirement is included in these regulations when other statutory authorities also may apply to Part C records and why this provision is not in the Part B regulations. One commenter stated that this requirement conflicts with the FERPA and HIPAA confidentiality provisions.

Discussion: We agree with the commenters that it would not be appropriate to include language in the Part C regulations concerning the issue of limited disclosures of personally identifiable information in early intervention records that may be sought by P&A agencies and have removed §303.414(d).

As the commenters stated, there are a number of statutory authorities that may apply to Part C records. Given the variety of factual circumstances to be considered--including the uncertainty as to what personally identifiable information will be sought about infants and toddlers with disabilities and the varying context and purposes under which the information may be sought-- regulating could not address the specific circumstances in each particular case.

Changes: We have removed §303.414(d).

Comment: A commenter requested that the Department define in §303.414 the term participating agency.

Discussion: The term participating agency as used in §303.414 is defined in §303.403(c).

Changes: None.

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| <p>Part B Regulations §300.623 Safeguards. (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the</p> | <p>§303.415 Safeguards. (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, maintenance, use, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§303.401 through 303.417 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within</p> | <p>§303.415 Safeguards. (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§303.401 through 303.417 and 34 CFR part 99. (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within</p> |
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| names and positions of those employees within the agency who may have access to personally identifiable information. | the agency who may have access to personally identifiable information. | the agency who may have access to personally identifiable information. |
| <p>Safeguards (§303.415) <u>Comment:</u> One commenter agreed with the provisions in §303.415(a) (regarding the protection of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages), (b) (requiring an official to be responsible for ensuring the confidentiality of personally identifiable information), and (c) (training for persons collecting and using personally identifiable information), but suggested that the requirements in these paragraphs may be inconsistent with §303.415(d). <u>Discussion:</u> Section 303.415(d) requires that each participating agency maintain a current listing of the names and positions of agency employees who may have access to personally identifiable information and reflects current, long-standing Department policy and regulations. Paragraphs (a) through (c) of this section are consistent with paragraph (d) because paragraph (d) applies to the individuals listed in paragraph (c) of this section. Paragraph (d) of this section further safeguards the confidentiality of these records by preventing access to the records by those individuals not listed. <u>Changes:</u> None. <u>Comment:</u> One commenter suggested that §303.415(d) is unnecessary because records are generally maintained electronically in order to be consistent with the FERPA and HIPAA requirements. <u>Discussion:</u> This requirement is necessary because the public has a right to know who may have access to personally identifiable information about their child and family. The method a participating agency uses to implement the provisions in §303.415(d) is best left to the participating agency to determine. The agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information, regardless of whether such information is maintained electronically or as a written record. <u>Changes:</u> None.</p> | | |
| <p>Part B Regulations §300.624 Destruction of information. (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without</p> | <p>§303.416 Destruction of information. (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C, GEPA, 20 U.S.C. 1230 through 1234i, and EDGAR, 34 CFR parts 76 and 80. (b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address, and phone</p> | <p>§303.416 Destruction of information. (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80. (b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone</p> |

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| <p>time limitation.</p> | <p>number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.</p> | <p>number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.</p> |
| <p><u>Destruction of information (§303.416)</u> <u>Comment:</u> None. <u>Discussion:</u> For consistency within the confidentiality regulations that apply to participating agencies in §§303.402 through 303.417, we have replaced the reference to “public agency” in §303.416(a) with the term “participating agency.” <u>Changes:</u> We have replaced the reference to “public agency” with “participating agency” in §303.416(a). <u>Comment:</u> A few commenters expressed concern that we have included statutory references to GEPA in §303.416(a), but these references are not included in the corresponding Part B provisions in 34 CFR 300.624. The commenters requested that for consistency these citations be removed from §303.416(a) or be added to the regulations under Part B of the Act. <u>Discussion:</u> SEAs are aware of the applicability of GEPA to the Part B program. Therefore, it is not necessary to add these references to the Part B regulations. However, there may be lead agencies that are unaware of the applicability of GEPA to the Part C program; accordingly, it is important that §303.416(a) identify the specific citations to those GEPA and EDGAR provisions concerning the maintenance, use, disclosure, and destruction of records. Thus, we have revised the citation to GEPA provisions to refer to 20 U.S.C. 1232f, which contains fiscal recordkeeping requirements. Lead agencies that are not SEAs may be similarly unfamiliar with the provisions in parts 76 and 80 of EDGAR that apply to the early intervention records, including, for example, the recordkeeping requirements in 34 CFR 80.42(b). <u>Changes:</u> We have revised the citation to GEPA provisions in §303.416 to refer to 20 U.S.C. 1232f.</p> | | |
| <p><u>Part B Regulations</u> <u>§300.626 Enforcement.</u> The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.</p> | <p><u>§303.417 Enforcement.</u> The lead agency must have in effect policies and procedures that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met including the sanctions and right to file a State complaint under §§303.432 through 303.434 for failure to comply with §§303.401 through 303.417.</p> | <p><u>§303.417 Enforcement.</u> The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.</p> |
| <p><u>Enforcement (§303.417)</u> <u>Comment:</u> One commenter recommended revising the language in §303.417 because the proposed phrasing was awkward. <u>Discussion:</u> We agree that §303.417 should be clarified. We have amended §303.417 to clarify that the enforcement policies and procedures that a State must have in effect are consistent with §§303.401 through 303.417, and include sanctions and the right to file a State complaint under §§303.432 through 303.434. <u>Changes:</u> We have amended §303.417 to indicate that the lead agency must have in effect the policies and procedures, including sanctions and the</p> | | |

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| <p>right to file a complaint under §§303.432 through 303.434, that a State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.</p> | | |
| <p>§303.404 Parent consent. (a) Written parental consent must be obtained before— (1) Conducting the initial evaluation and assessment of a child under § 303.322; and (2) Initiating the provision of early intervention services (see § 303.342(e)). (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent— (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given. NOTE 1: In addition to the consent requirements in this section, other consent requirements are included in (1) § 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part. NOTE 2: Under § 300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent’s refusal to consent to the initial evaluation of the parent’s child and, if successful, obtain the evaluation.</p> | <p>§303.420 Parental consent and ability to decline service. (a) The lead agency must ensure parental consent is obtained before-- (1) Administering screening procedures that are used either to determine: (i) Whether a child is suspected of having a disability; or (ii) A child's eligibility under this part; (2) An evaluation and assessment of a child is conducted under §303.320; (3) Early intervention services are provided to the child under this part; (4) Public or private insurance is used consistent with §303.520; and (5) Exchange of personally identifiable information among agencies consistent with §303.401. (b) If the parent does not give consent, the lead agency must make reasonable efforts to ensure that the parent-- (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given. (c)(1) Subject to paragraph (c)(2) of this section, the lead agency may, but is not required to, use the due process hearing procedures under this part to challenge the parent’s refusal to consent to an evaluation and</p> | <p>§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</p> |

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| <p>This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.</p> <p><u>§303.405 Parent right to decline service.</u> The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part</p> | <p>assessment of the child for early intervention services.</p> <p>(2) The lead agency may not use the procedures described in paragraph (c)(1) of this section to challenge the parent’s refusal to consent to the provision of an early intervention service or the use of insurance.</p> <p>(d) The parents of an infant or toddler with a disability--</p> <p>(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</p> <p>(2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.</p> | <p>under paragraph (a) of this section.</p> <p>(d) The parents of an infant or toddler with a disability--</p> <p>(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</p> <p>(2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.</p> |
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Parental consent and ability to decline services (§303.420)

Comment: Some commenters requested that the Office of Special Education and Rehabilitative Services (OSERS) provide clarification regarding parental consent for the assessments used to report on child outcomes in the SPP/APR. One commenter requested that the OSERS September 2006 (revised October 2007) frequently asked questions (FAQ) document located at <http://www.rrfcnetwork.org/content/view/409/47/#cfiscal> be used as a reference point for clarification regarding parental consent for the assessments used to report child outcomes.

Discussion: If the lead agency collects, uses, or maintains information about an eligible child to meet the SPP/APR reporting requirements of the Department under Part C of the Act, including the required reporting on child outcomes (which information is reported based on aggregate numbers of children, and not by individual child), generally, the information is not personally identifiable provided that the State has addressed any confidentiality constraints as a result of small data cells and, thus, prior written parental consent would not be required. However, as noted in the FAQ document referenced by the commenter, prior written parental consent is required under §303.420 if the collection of outcome information is a part of the lead agency's evaluation to determine initial or continuing eligibility of a child in the Part C program. In this circumstance, States must provide prior written notice to the parents under §303.421 and, if applicable, obtain parental consent for evaluation as required in §303.420.

Changes: None.

Comment: One commenter stated that requiring parental consent in §303.420 to administer screening procedures in §303.320 may dissuade some parents from allowing a developmental screening to be conducted.

Discussion: It is important for parents to be able to determine whether their child should receive a developmental screening. We have added in §303.420(a)(1), regarding parental consent for screening, a reference to the screening provisions in §303.320.

Changes: We added, in §303.420(a)(1), a reference to §303.320.

Comment: A few commenters requested that the word "initial" in current §303.404 be reinserted into §303.420(a)(2) before the words "evaluation and assessment."

Discussion: Consistent with section 639(a)(3) of the Act and the current policies and practice in the vast majority of States, the Department's position is that parental consent is required for all evaluations, including an initial evaluation and assessment of a child and all subsequent evaluations and assessments of a child. To clarify this point, we have amended the regulations to indicate that the consent provisions in §303.420(a)(2) apply to all evaluations and assessments of a child.

Changes: We have added the word "all" to §303.420(a)(2).

Comment: None.

Discussion: The Department received a large number of comments on proposed §303.420(a)(4) as it relates to the lead agency obtaining parental consent prior to accessing public benefits or insurance. We have addressed those comments in the Analysis of Comments and Changes for subpart F of this part.

Changes: We have revised §303.420(a)(4) to clarify that the lead agency must ensure that parental consent is obtained before public benefits or insurance or private insurance is used if such consent is required under §303.520.

Comment: One commenter recommended that §303.420, regarding parental consent and declining services, be amended to specifically reflect the language in Part C of the Act. The commenter stated that there are inherent differences between Part C and Part B of the Act and that the Part B requirements in 34 CFR 300.300(a)(3)(i) should not be adopted without revision. Specifically, the commenter pointed out that §303.420(c)(1), which permits a lead agency to use the due process hearing procedures to challenge a parent's refusal to consent to an initial evaluation and

assessments of a child for early intervention services, should not apply to Part C because participation in early intervention services is voluntary. The commenter recommended removing this paragraph.

Discussion: We agree with the commenter that the participation of infants and toddlers with disabilities and their families in the Part C program is voluntary and a parent may refuse an initial evaluation or assessment without the lead agency being able to use the due process hearing procedures under this part or under the regulations under Part B of the Act to challenge the parent’s refusal.

Additionally, because the lead agency may not use due process hearing procedures to challenge a parent’s refusal to provide consent required under this part, we have added in new §303.420(c) that such due process hearing procedures may not be used to challenge the parent’s refusal to provide any consent that is required under paragraph (a) of this section. Therefore, we have amended §303.420(c) accordingly.

Changes: We have amended §303.420(c) to indicate that a 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.

Comment: None.

Discussion: For consistency with §303.414 and internal consistency within §303.420, we refer to the confidentiality exceptions in §303.414 instead of referring to the exchange of personally identifiable information in §303.401.

Changes: We have revised §303.420(a)(5) to read “Disclosure of personally identifiable information consistent with §303.414.”

§303.403 Prior notice; native language.

(a) General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child’s family.

(b) Content of notice. The notice must be in sufficient detail to inform the parents about—

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action;
- (3) All procedural safeguards that are available under §§ 303.401–303.460 of this part; and
- (4) The State complaint procedures under §§ 303.510–303.512, including a description of how to file a complaint and the timelines under those procedures.

§303.421 Prior written notice and procedural safeguards notice.

(a) General. Prior written notice must be given to the parents of a child a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of early intervention services to the infant or toddler with a disability and that infant’s or toddler’s family.

(b) Content of notice. The notice must be in sufficient detail to inform the parents about--

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action; and
- (3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through

§303.421 Prior written notice and procedural safeguards notice.

(a) General. Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant’s or toddler’s family.

(b) Content of notice. The notice must be in sufficient detail to inform parents about--

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action; and
- (3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through

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| <p>(c) Native language. (1) The notice must be— (i) Written in language understandable to the general public; and (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that— (i) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication; (ii) The parent understands the notice; and (iii) There is written evidence that the requirements of this paragraph have been met.</p> | <p>303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.</p> <p>(c) <u>Native language</u>. (1) The notice must be-- (i) Written in language understandable to the general public; and (ii) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider shall take steps to ensure that-- (i) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication; (ii) The parent understands the notice; and (iii) There is written evidence that the requirements of this paragraph have been met.</p> | <p>303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.</p> <p>(c) <u>Native language</u>. (1) The notice must be-- (i) Written in language understandable to the general public; and (ii) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that-- (i) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication; (ii) The parent understands the notice; and (iii) There is written evidence that the requirements of this paragraph have been met.</p> |
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Prior written notice and procedural safeguards notice (§303.421)
Comment: A few commenters objected to the phrase “reasonable time” in §303.421, which requires that prior written notice be given to parents a reasonable time before the lead agency under Part C of the Act or an EIS provider proposes, or refuses, to take certain actions concerning their child. One commenter requested that “reasonable time” be replaced with a specific timeframe, for example, five days.
Discussion: Quantifying the phrase “reasonable time” in §303.421(a) would be inappropriate because what constitutes a reasonable time may vary based on the individual circumstances of each case. However, we would expect a lead agency to provide notice under §303.421 within a timeframe that allows the parent time to respond to the notice before the lead agency takes, or refuses to take, the actions listed in §303.421(a).
Changes: None.
Comment: One commenter recommended adding language to §303.421(c) to require that the prior written notice and procedural safeguards notice be provided in braille to individuals who are blind or visually impaired.
Discussion: The commenter’s concerns are addressed in §303.421(c)(1)(ii), which requires that the notice be provided in the native language of the parent as the term native language is defined in §303.25. Section 303.25(b) requires that for an individual who is blind or visually impaired the term native language means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication). Therefore, we decline to revise the regulation as requested by the commenter.
Changes: None.

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| <p>§ 303.406 Surrogate parents.</p> <p>(a) <u>General.</u> Each lead agency shall ensure that the rights of children eligible under this part are protected if—</p> <p>(1) No parent (as defined in § 303.18) can be identified;</p> <p>(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or</p> <p>(3) The child is a ward of the State under the laws of that State.</p> <p>(b) <u>Duty of lead agency and other public agencies.</u> The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—</p> <p>(1) Determining whether a child needs a surrogate parent; and</p> <p>(2) Assigning a surrogate parent to the child.</p> <p>(c) <u>Criteria for selecting surrogates.</u></p> <p>(1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.</p> <p>(2) Public agencies shall ensure that a person selected as a surrogate parent—</p> | <p>§303.422 Surrogate parents.</p> <p>(a) <u>General.</u> Each lead agency or other public agency must ensure that the rights of a child are protected when--</p> <p>(1) No parent (as defined in §303.27) can be identified;</p> <p>(2) The lead agency, or other public agency, after reasonable efforts, cannot locate a parent; or</p> <p>(3) The child is a ward of the State under the laws of that State.</p> <p>(b) <u>Duty of lead agency and other public agencies.</u></p> <p>(1) The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parents. This assignment process must include a method for--</p> <p>(i) Determining whether a child needs a surrogate parent; and</p> <p>(ii) Assigning a surrogate parent to the child.</p> <p>(2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency with whom care of the child has been assigned.</p> <p>(c) <u>Criteria for selection of surrogate parents.</u></p> <p>(1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.</p> <p>(2) Public agencies must ensure that a person selected as a surrogate parent--</p> | <p>§303.422 Surrogate parents.</p> <p>(a) <u>General.</u> Each lead agency or other public agency must ensure that the rights of a child are protected when--</p> <p>(1) No parent (as defined in §303.27) can be identified;</p> <p>(2) The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or</p> <p>(3) The child is a ward of the State under the laws of that State.</p> <p>(b) <u>Duty of lead agency and other public agencies.</u> (1) The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for--</p> <p>(i) Determining whether a child needs a surrogate parent; and</p> <p>(ii) Assigning a surrogate parent to the child.</p> <p>(2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.</p> <p>(c) <u>Wards of the State.</u> In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler’s case provided that the surrogate parent meets the requirements in</p> |
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| <p>(i) Has no interest that conflicts with the interests of the child he or she represents; and (ii) Has knowledge and skills that ensure adequate representation of the child.</p> <p><u>(d) Non-employee requirement; compensation.</u> (1) A person assigned as a surrogate parent may not be— (i) An employee of any State agency; or (ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child. (2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.</p> <p><u>(e) Responsibilities.</u> A surrogate parent may represent a child in all matters related to— (1) The evaluation and assessment of the child; (2) Development and implementation of the child’s IFSPs, including annual evaluations and periodic reviews; (3) The ongoing provision of early intervention services to the child; and (4) Any other rights established under this part.</p> | <p>(i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services or other services to the child or any family member of the child; (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and (iii) Has knowledge and skills that ensure adequate representation of the child.</p> <p><u>(d) Non-employee requirement; compensation.</u> A person who is otherwise qualified to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p> <p><u>(e) Surrogate parent responsibilities.</u> The surrogate parent has the same rights as a parent for all purposes under this part.</p> | <p>paragraphs (d)(2)(i) and (e) of this section.</p> <p><u>(d) Criteria for selection of surrogate parents.</u> (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies must ensure that a person selected as a surrogate parent-- (i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child; (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and (iii) Has knowledge and skills that ensure adequate representation of the child.</p> <p><u>(e) Non-employee requirement; compensation.</u> A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p> <p><u>(f) Surrogate parent responsibilities.</u> The surrogate parent has the same rights as a parent for all purposes under this part.</p> <p><u>(g) Lead agency responsibility.</u> The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.</p> |
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Surrogate parents (§303.422)

Comment: A few commenters recommended amending the language in §303.422, concerning surrogate parents, to align the language with the parallel provisions in 34 CFR 300.519 of the Part B regulations.

Discussion: Section 303.422, concerning surrogate parents, is primarily aligned with the requirements in sections 639(a)(5) of the Act and reflects many of the parallel provisions regarding surrogate parents in section 615(b)(2) of the Act and 34 CFR 300.519 of the Part B regulations. Section 303.422 does not include the language from 34 CFR 300.519(a)(4) and (f) of the Part B regulations because these provisions are not applicable to the Part C program. Specifically, the language in the Part B regulations references an unaccompanied homeless youth under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). The language from 34 CFR 300.519(c) of the Part B regulations, although slightly modified for clarity, is applicable to the Part C program. We have amended §303.422 to add a new paragraph (c) to state that “in the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler’s case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.”

Changes: We have added new paragraph (c) and renumbered the subsequent paragraphs accordingly.

Comment: A few commenters requested that the Department clarify the phrase “cannot locate a parent” in §303.422(a)(2), which requires each lead agency or other public agency to ensure that the rights of a child are protected when no parent can be located. One commenter pointed out that the language in §303.422(a)(2) is different from the language in current §303.406(a)(2), which states that each lead agency must ensure that the rights of a child are protected when the public agency cannot discover the whereabouts of a parent. The commenter asked whether there is a distinction between the current requirements and those in §303.422(a)(2) and whether the Department is changing its position.

Discussion: Section 303.422(a)(2) is substantively unchanged from current §303.406(a)(2). Although we used the simpler term “locate a parent” in place of the term “discover the whereabouts of a parent,” we have not changed the meaning of the regulations, and the regulations continue to require that the lead agency make reasonable efforts to discover the whereabouts of a parent before assigning a surrogate parent, consistent with sections 615(b)(2)(A) and 639(a)(5) of the Act.

Changes: None.

Comment: A few commenters recommended expanding the requirement in §303.422(b)(2) to require that for children who are wards of the State or placed in foster care, a lead agency must consult with all individuals involved with the care of the child, including but not limited to, the child’s care giver, appointed guardian, social worker, and attorney, when appointing a surrogate parent. The commenters stated this would ensure a fully informed decision when appointing a surrogate parent for children who are wards of the State or placed in foster care.

Discussion: Section 303.422(b)(2) requires the lead agency, when determining whether and who to appoint as a surrogate parent for children who are wards of the State or placed in foster care, to consult with the public agency with whom care of the child has been assigned. The individuals involved in implementing the provisions in §303.422 for children who are wards of the State or placed in foster care will vary on a case-by-case basis. The regulations as written provide the flexibility necessary for a lead agency and the public agency, as part of the consultation process in §303.422, to decide who should be involved in implementing the requirements of this section.

Changes: None.

Comment: One commenter stated that a lead agency should not consult with a child welfare agency with regard to assigning a surrogate parent, as required in §303.422(b)(2), because the foster parent is the parent and can make decisions.

Discussion: The surrogate parent provisions in §303.422 are only relevant if a parent is unavailable. If a foster parent meets the definition of

parent in §303.27 there would be no need for a surrogate parent to be assigned and the consultation provision in §303.422(b)(2) would not apply.

Changes: None.

Comment: A few commenters recommended adding language specifying that a surrogate parent cannot be a person involved in the education or care of the child.

Discussion: We agree that this additional language would provide useful clarification and have amended the regulations to add language to §303.422(d)(2)(i) clarifying that an employee of a public agency that provides education or care to a child or any family member of the child cannot be a surrogate parent.

Changes: We have amended §303.422(d)(2)(i) to expressly prohibit any employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to a child or any family member of the child from serving as a surrogate parent for that child.

Comment: One commenter recommended adding language to §303.422 to indicate that a lead agency may not remove a surrogate parent based upon a disagreement with a surrogate parent or because a surrogate parent refuses to consent to the provision of early intervention services.

Discussion: The Act is silent on when or how a surrogate parent can be removed. However, a lead agency has a responsibility to ensure that a surrogate parent is carrying out his or her responsibilities; therefore, there are some circumstances when removal may be appropriate. A mere disagreement with the decisions of a surrogate parent about appropriate services or placements for a child, however, generally would not be sufficient to give rise to a removal, as the role of a surrogate parent is to represent the interests of the child, which may not be the same as the interests of the public agency. We do not think a regulation is necessary because these circumstances may be resolved under State law.

Additionally, the rights of an infant or toddler with a disability are adequately protected by Titles II and VI of the ADA, which prohibit retaliation or coercion against any individual who exercises their rights under Federal law for the purpose of assisting children with disabilities, to protect the child's rights under this statute.

Changes: None.

Comment: A few commenters recommended that we establish a timeline, such as 30 days, for the lead agency or other public agency to identify and assign a surrogate parent. Other commenters expressed concern that significant delays will result in cases where a surrogate parent must be appointed in order to provide consent.

Discussion: We agree that a timeline to assign a surrogate parent should be included in these regulations and have changed §303.422 to require a lead agency to make reasonable efforts to ensure that a surrogate parent is assigned not more than 30 days after the public agency determines that a child needs a surrogate parent. Given that the development of infants and toddlers quickly changes, identifying a surrogate parent in a timely manner is important to a child, prevents undue delays, and aids the effective implementation of the requirements of this part. Additionally, a 30-day time frame to identify a surrogate parent is consistent with 34 CFR 300.519(h) of the Part B regulations and establishes a timeframe in which a surrogate parent must be appointed, thus preventing undue delays. We have revised §303.422 accordingly.

Changes: We have added paragraph §303.422(g) to require that the lead agency make reasonable efforts to ensure that a surrogate parent is assigned not more than 30 days after a public agency determines that the child needs a surrogate parent.

§303.420 Due process procedures.

Each system must include written procedures including procedures for mediation as described in § 303.419, for the timely

§303.430 State dispute resolution options.

(a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints

§303.430 State dispute resolution options.

(a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints

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| <p>administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by—</p> <p>(a) Adopting the mediation and due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of § 303.425; or</p> <p>(b) Developing procedures that—</p> <p>(1) Meet the requirements in § 303.419 and §§ 303.421 through 303.425; and</p> <p>(2) Provide parents a means of filing a complaint.</p> <p>NOTE 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child’s family). These procedures require the appointment of a decision-maker who is impartial, as defined in § 303.421(b), to resolve a dispute concerning any of the matters in § 303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal. A different type of administrative procedure is included in §§ 303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.</p> | <p>through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.</p> <p>(b) <u>Mediation</u>. Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements of §303.431.</p> <p>(c) <u>State complaint procedures</u>. Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434.</p> <p>(d) <u>Due process hearing procedures</u>. In addition to adopting the procedures in paragraphs (b) and (c) of this section, the lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting--</p> <p>(1) The Part C due process hearing procedures under section 639 of the Act that--</p> <p>(i) Meet the requirements in §§303.435 through 303.438; and</p> <p>(ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or</p> <p>(2) The Part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process</p> | <p>through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.</p> <p>(b) <u>Mediation</u>. Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in §303.431.</p> <p>(c) <u>State complaint procedures</u>. Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434.</p> <p>(d) <u>Due process hearing procedures</u>. Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting--</p> <p>(1) The Part C due process hearing procedures under section 639 of the Act that--</p> <p>(i) Meet the requirements in §§303.435 through 303.438; and</p> <p>(ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or</p> <p>(2) The Part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in §303.440(c)).</p> |
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| <p>NOTE 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.</p> | <p>complaints, as provided in §303.440(c)).</p> <p>(e) <u>Status of a child during the pendency of a due process complaint.</u> (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.</p> <p>(2) If the due process complaint under paragraph (d) of this section involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.</p> <p>(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, if a child turns three and the child's eligibility under §303.211 has not yet been determined, then the child must continue to receive Part C services under §303.211(b)(4).</p> <p>(ii) Once a child turns three and has been determined ineligible for services under Part B and §303.211, the provisions of paragraph (e)(1) of this section do not apply and the lead agency is not required to provide Part C services to that child during the pendency of any due process complaint proceeding challenging the determination of ineligibility.</p> | <p>(e) <u>Status of a child during the pendency of a due process complaint.</u> (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.</p> <p>(2) If the due process complaint under paragraph (d) of this section involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.</p> |
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State dispute resolution options (§303.430)
Comment: One commenter requested that we retain Note 2 from current §303.420, concerning the importance of establishing State administrative procedures that result in speedy resolution of complaints because an infant's or toddler's development is so rapid that undue delay could be potentially harmful.
Discussion: We agree with the commenter that Note 2, following current §303.420, is important and have included the substance of that note in

the timelines in these regulations. For States that choose to adopt Part C due process procedures, §303.437(b) requires each lead agency to ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing is completed and a written decision is mailed to each of the parties. For States that choose to adopt Part B due process procedures, §303.440(c) requires the lead agency to adopt either a 30- or 45-day timeline, subject to §303.447(a), for the resolution of due process complaints. Additionally, the requirements for State complaint procedures in §303.433(a), provide that, within 60 days after a complaint is filed, the lead agency must resolve the complaint. Therefore, it is not necessary to retain in §303.430 verbatim the language of note 2 in current §303.420.

Changes: None.

Comment: Several commenters expressed concerns with the dispute resolution options in §303.430. A few commenters stated that the options do not fit into the Part C program because the child’s time in the program is limited. The commenters stated that the 30-day timeline for the resolution period and the 45-day timeline for the due process hearing in States that choose to adopt Part B due process procedures under section 615 of the Act are too long.

Discussion: Section 303.430 requires each statewide system to include procedures to resolve complaints through mediation, State complaint procedures, and due process procedures. The concerns about the timelines for the resolution period and the due process hearing in States that choose to adopt Part B due process procedures under section 615 of the Act, are more fully addressed in the Analysis of Comments and Changes in response to the comments received on §303.440.

Changes: None.

Comment: None.

Discussion: We have revised the introductory text of §303.430(d) to remove the phrase “in addition to adopting the procedures in paragraphs (b) and (c) of this section” because these requirements do not need to be referenced in paragraph (d) and to do so would be redundant with the requirements already cited in paragraphs (b) and (c) of §303.430.

Changes: We have removed from §303.430(d) the phrase “in addition to adopting the procedures in paragraphs (b) and (c) of this section.”

Comment: Many commenters expressed concern that the language in proposed §303.430(e)(3) relates not to pendency, but to the requirement in section 635(c)(2)(D) of the Act and §303.211(b)(4) that IFSP services continue to be provided to a toddler with a disability until a Part B eligibility determination is made for that child in a State that elects to make Part C services available beyond age three under §303.211. A few other commenters indicated that proposed §303.430(e)(3) conflicts with sections 607(a) and (b) and 615(j) of the Act and the Third Circuit decision in Pardini v. Allegheny Intermediate Unit, 420 F.3d 181 (3d Cir. 2005), cert. denied, 126 S.Ct. 1646 (2006). One commenter, recommended referencing Part B eligibility as well as ineligibility in proposed §303.430(e)(1).

Discussion: We agree with commenters who noted that the requirement in proposed §303.430(e)(3) applies only to those States that elect to offer services under §303.211 and is not a pendency provision and, thus, we have moved the substance of proposed §303.430(e)(3) to §303.211(b)(4). These comments and the resulting changes are fully addressed in the Analysis of Comments and Changes for §303.211(b)(4) in subpart C of this part.

Changes: We have moved the substance in §303.430(e)(3) to §303.211(b)(4).

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| <p>303.419 Mediation. (a) <u>General.</u> Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter</p> | <p>§303.431 Mediation. (a) <u>General.</u> Each lead agency must ensure that procedures are established and implemented to allow parties to disputes</p> | <p>§303.431 Mediation. (a) <u>General.</u> Each lead agency must ensure that procedures are established and implemented to allow parties to disputes</p> |
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| <p>described in § 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under § 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.</p> <p>(b) <u>Requirements</u>. The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process—</p> <p>(i) Is voluntary on the part of the parties;</p> <p>(ii) Is not used to deny or delay a parent’s right to a due process hearing under § 303.420, or to deny any other rights afforded under Part C of the Act; and</p> <p>(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p>(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.</p> <p>(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section.</p> <p>(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.</p> <p>(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.</p> | <p>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.</p> <p>(b) <u>Requirements</u>. The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process--</p> <p>(i) Is voluntary on the part of the parties;</p> <p>(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 C of the Act; and</p> <p>(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p>(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.</p> <p>(ii) The lead agency must select mediators on a random, rotational, or other impartial basis.</p> <p>(3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.</p> <p>(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.</p> <p>(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--</p> <p>(i) States that all discussions that occurred</p> | <p>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.</p> <p>(b) <u>Requirements</u>. The procedures must meet the following requirements:</p> <p>(1) The procedures must ensure that the mediation process--</p> <p>(i) Is voluntary on the part of the parties;</p> <p>(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</p> <p>(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p>(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.</p> <p>(ii) The lead agency must select mediators on a random, rotational, or other impartial basis.</p> <p>(3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.</p> <p>(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.</p> <p>(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--</p> <p>(i) States that all discussions that occurred during the mediation process will remain</p> |
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| <p>(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.</p> <p>(c) Meeting to encourage mediation. A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—</p> <p>(1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and</p> <p>(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.</p> | <p>during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and</p> <p>(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.</p> <p>(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.</p> <p>(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.</p> <p>(c) <u>Impartiality of mediator.</u> (1) An individual who serves as a mediator under this part--</p> <p>(i) May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention or other services to the child; and</p> <p>(ii) Must not have a personal or professional interest that conflicts with the person’s objectivity.</p> <p>(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.</p> <p>(d) <u>Meeting to encourage mediation.</u> A lead</p> | <p>confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and</p> <p>(ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.</p> <p>(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.</p> <p>(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.</p> <p>(c) <u>Impartiality of mediator.</u> (1) An individual who serves as a mediator under this part--</p> <p>(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</p> <p>(ii) Must not have a personal or professional interest that conflicts with the person’s objectivity.</p> <p>(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.</p> <p>(d) <u>Meeting to encourage mediation.</u> A lead agency may establish procedures to offer to parents and EIS providers that choose not to</p> |
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| | <p>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--</p> <p>(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</p> <p>(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.</p> | <p>use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--</p> <p>(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</p> <p>(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.</p> |
| <p><u>Mediation (§303.431)</u></p> <p><u>Comment:</u> One commenter requested that the Department clarify the phrase “including matters arising prior to the filing of a due process complaint” as used in §303.431(a) to make clear when mediation may be used by parties.</p> <p><u>Discussion:</u> We agree that §303.431(a) needs clarification regarding when mediation is available. Section 303.431 incorporates sections 639(a)(8) and 615(e)(1) of the Act, and requires lead agencies to ensure that procedures are established and implemented to allow parties to resolve disputes involving any matter under Part C of the Act through a mediation process, including matters arising prior to the filing of a due process complaint. Thus, under §303.431 parties to disputes may request mediation at any time to resolve any matter arising under this part, regardless of whether a due process complaint or a State complaint is filed. We have amended §303.431 to expressly provide that mediation may be used “at any time.”</p> <p><u>Changes:</u> We have added the phrase “at any time” to the end of §303.431(a).</p> <p><u>Comment:</u> One commenter requested that the phrase “parent’s right to a due process hearing” in current §303.419(b)(1)(ii) be maintained in §303.431(b)(1)(ii).</p> <p><u>Discussion:</u> We agree with the commenter; the language “parent’s right to a due process hearing” aligns with section 615(e)(2)(A)(ii) of the Act and should be used in these regulations.</p> <p><u>Changes:</u> We have replaced the phrase “hearing on the parent’s due process complaint” with the phrase “due process hearing” in §303.431(b)(1)(ii).</p> | | |
| <p><u>§303.510 Adopting complaint procedures.</u></p> <p>(a) <u>General.</u> Each lead agency shall adopt written procedures for--</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this Part</p> | <p><u>§303.432 Adoption of State complaint procedures.</u></p> <p>(a) <u>General.</u> Each lead agency must adopt written procedures for--</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §303.434 by providing for the</p> | <p><u>§303.432 Adoption of State complaint procedures.</u></p> <p>(a) <u>General.</u> Each lead agency must adopt written procedures for--</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the</p> |

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| <p>by—</p> <p>(i) Providing for the filing of a complaint with the lead agency; and</p> <p>(ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under Secs. 303.510-303.512.</p> <p>(b) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address:</p> <p>(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and</p> <p>(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.</p> | <p>filing of a complaint with the lead agency; and</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies and other appropriate entities, the State procedures under §§303.432 through 303.434.</p> <p>(b) <u>Remedies for denial of appropriate services</u>. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, a lead agency pursuant to its general supervisory authority under Part C of the Act, must address--</p> <p>(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the infant or toddler with a disability and the infant's or toddler's family who is the subject of the complaint; and</p> <p>(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.</p> | <p>filing of a complaint with the lead agency; and</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under §§303.432 through 303.434.</p> <p>(b) <u>Remedies for denial of appropriate services</u>. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under Part C of the Act, must address--</p> <p>(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and</p> <p>(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.</p> |
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Adoption of State complaint procedures (§303.432)
Comment: None.
Discussion: We have moved in §303.432(b)(1) the modifying phrase “who is the subject of the complaint” to follow the phrase “the infant or toddler with a disability” to clarify that it is the infant or toddler with the disability who is the subject of the complaint.
Changes: We have moved in §303.432(b)(1) the phrase “who is the subject of the complaint” to follow the phrase “the infant or toddler with a disability.”
Comment: A few commenters requested that §303.432 explicitly state that monetary reimbursement and compensatory education are potential

remedies for State complaints.

Discussion: The lead agency is responsible for ensuring that all public agencies within its jurisdiction meet the requirements of the Act and its implementing regulations. In light of the lead agency’s general supervisory authority under sections 634 and 635 of the Act, the lead agency should have the flexibility to determine the appropriate remedies or corrective actions necessary to resolve a complaint in which it has determined that a public agency has failed to provide appropriate services to an infant or toddler with a disability, including the award of compensatory services or monetary reimbursement. To make this clear, we have changed §303.432(b)(1) to include compensatory services and monetary reimbursement as examples of corrective actions that may be appropriate to address the needs of an infant or toddler with a disability who is the subject of a complaint and the infant’s or toddler’s family.

Changes: We have added in §303.432(b)(1) the parenthetical “(such as compensatory services or monetary reimbursement).”

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| <p><u>§303.512 Minimum State complaint procedures.</u></p> <p>(a) Time limit, minimum procedures. Each lead agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under Sec. 303.510(a) to--</p> <p>(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and</p> <p>(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the lead agency's final decision.</p> <p>(b) Time extension; final decisions;</p> | <p><u>§303.433 Minimum State complaint procedures.</u></p> <p>(a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to--</p> <p>(1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Provide the lead agency, public agency, or EIS provider with the opportunity to respond to the complaint, including, at a minimum--</p> <p>(i) At the discretion of the lead agency, a proposal to resolve the complaint; and</p> <p>(ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;</p> <p>(4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or</p> | <p><u>§303.433 Minimum State complaint procedures.</u></p> <p>(a) Time limit; minimum procedures. Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to--</p> <p>(1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum--</p> <p>(i) At the discretion of the lead agency, a proposal to resolve the complaint; and</p> <p>(ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;</p> <p>(4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or</p> |
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| <p>implementation. The lead agency's procedures described in paragraph (a) of this section also must--</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and</p> <p>(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including--</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) Complaints filed under this section, and due process hearings under Sec. 303.420. (1) If a written complaint is received that is also the subject of a due process hearing under Sec. 303.420, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties--</p> <p>(i) The hearing decision is binding; and</p> <p>(ii) The lead agency must inform the complainant to that effect.</p> <p>(3) A complaint alleging a public agency's or</p> | <p>of this part; and</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the lead agency's final decision.</p> <p>(b) <u>Time extension; final decision; implementation.</u> The lead agency's procedures described in paragraph (a) of this section also must--</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if--</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and</p> <p>(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including--</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) <u>Complaints filed under this section and due process hearings under §303.430(d).</u> (1) If a written complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of</p> | <p>of this part; and</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the lead agency's final decision.</p> <p>(b) <u>Time extension; final decision; implementation.</u> The lead agency's procedures described in paragraph (a) of this section also must--</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if--</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and</p> <p>(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including--</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p>(iii) Corrective actions to achieve compliance.</p> <p>(c) <u>Complaints filed under this section and due process hearings under §303.430(d).</u> (1) If a written complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of that hearing, the</p> |
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| <p>private service provider's failure to implement a due process decision must be resolved by the lead agency.</p> | <p>which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The lead agency must inform the complainant to that effect.</p> <p>(3) A complaint alleging a lead agency or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.</p> | <p>State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The lead agency must inform the complainant to that effect.</p> <p>(3) A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.</p> |
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Minimum State complaint procedures (§303.433)

Comment: One commenter requested that §303.433 be amended to indicate that either party may request an extension of the 60-day time limit in §303.433 when there are legitimate reasons for such a request.

Discussion: Section 303.433 provides that each lead agency must include in its State complaint procedures a time limit of 60 days after a State complaint is filed to complete its review of the complaint and issue a written decision to the complainant that addresses each allegation in the complaint and that contains findings of fact and conclusions and the reasons for the lead agency's final decision. Section 303.433(b)(1) further provides that State complaint procedures must permit an extension of the 60-day time limit only if exceptional circumstances exist with respect to a particular complaint or the parties to the complaint agree to extend the time in order to engage in mediation pursuant to §303.433(a)(3)(ii).

The lead agency determines when there are exceptional circumstances with respect to a particular complaint that would justify an extension of the 60-day time limit in that complaint. A lead agency may extend the 60-day time limit due to exceptional circumstances, such as a governmentwide shutdown, if the lead agency needs additional information under §303.433(a)(2) or (a)(3) and the relevant party is unavailable due to hospitalization, or if a parent complainant is unavailable due to illness and cannot provide the additional information under §303.433(a)(2). Thus, we decline to add the provision suggested by the commenter.

Changes: None.

Comment: One commenter stated that setting aside any part of a State complaint as provided in §303.433(c) may not be possible because the information that was set aside may be needed to complete the fact finding in that complaint.

Discussion: Section 303.433(c) provides that if a State complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of a due process hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of that hearing. Although §303.433(c) requires that matters raised in both a State complaint and a due process hearing be resolved only through the due process hearing procedures, that does not preclude fact finding in relation to an issue in a State complaint that is different from the matters covered by the due process hearing, even though the facts may be related to the subject of, or another issue in, a due process proceeding, because §303.433(c) also provides that any issue in the State complaint that is not a part of the due process hearing must be resolved through the State complaint procedures.

Changes: None.

Comment: One commenter recommended that we not adopt §303.433(c)(3), which requires that the lead agency resolve a complaint alleging that a lead agency or EIS provider failed to implement a due process hearing. The commenter stated that this requirement could limit a lead agency’s ability to contract with a third party for State dispute resolution services because third party contractors are often given the authority to enforce due process hearing decisions.

Discussion: Nothing in the Act prohibits the lead agency from contracting with a third party for State dispute resolution services and §303.433(c)(3) would not interfere with a lead agency’s ability to enter into such contracts. We note, however, in accepting funds under this part, the lead agency is responsible for the administration of Part C in the State and the use of Part C funds under sections 635(a)(10) and 637(a)(1) of the Act. Therefore, the lead agency retains the responsibility for full implementation of the requirements of this part, including the ultimate responsibility for the implementation of State dispute resolution decisions even if the services are being carried out by a third party under contract with the lead agency.

Changes: None.

Comment: None.

Discussion: To be consistent within §303.433, we have added the term “public agency” to §303.433(b)(1)(ii) and (c)(3).

Changes: We have added the term “public agency” to §303.433(b)(1)(ii) and (c)(3).

§303.511 An organization or individual may file a complaint.

(a) General. An individual or organization may file a written signed complaint under Sec. 303.510.

The complaint must include--

- (1) A statement that the State has violated a requirement of part C of the Act or the regulations in this part; and
- (2) The facts on which the complaint is based.

§303.434 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.

(b) The complaint must include--

- (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act or of this part;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for

§303.434 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.

(b) The complaint must include--

- (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for

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| <p>(b) Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because--</p> <p>(1) The alleged violation continues for that child or other children; or</p> <p>(2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.</p> | <p>the complainant; and</p> <p>(4) If alleging violations with respect to a specific child--</p> <p>(i) The name and address of the residence of the child;</p> <p>(ii) The name of the EIS provider serving the child;</p> <p>(iii) A description of the nature of the problem of the child, including facts relating to the problem; and</p> <p>(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p> <p>(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §303.432.</p> <p>(d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.</p> | <p>the complainant; and</p> <p>(4) If alleging violations with respect to a specific child--</p> <p>(i) The name and address of the residence of the child;</p> <p>(ii) The name of the EIS provider serving the child;</p> <p>(iii) A description of the nature of the problem of the child, including facts relating to the problem; and</p> <p>(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p> <p>(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §303.432.</p> <p>(d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.</p> |
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Filing a complaint (§303.434)

Comment: Several commenters supported the requirement in §303.434(c) that a State complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. However, one commenter recommended retaining the requirement in current §303.511(b)(1) providing that the one-year timeline for filing a State complaint may be extended if the allegation that forms the basis of the complaint is continuing or recurring.

Discussion: A one-year timeline is reasonable and will assist lead agencies in ensuring the effective implementation of State complaint procedures and State Part C programs. Limiting a State complaint to an allegation of a violation that occurred not more than one year prior to the date the lead agency receives the complaint will ensure that problems regarding a State’s Part C program are raised and addressed promptly. For these reasons, we decline to revise §303.434(c) as requested by the commenter.

Changes: None.

Comment: Several commenters expressed concern that §303.434(d), which requires the party filing the complaint to forward a copy of the

complaint to the public agency or EIS provider, breaches parent confidentiality, may deter parents from filing complaints and, at a minimum, creates an additional barrier to filing a State complaint. One commenter recommended that §303.434 specify the action that would be taken if a complainant sends its State complaint only to the lead agency.

Discussion: Section 303.434(d) provides that the party filing the State complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency. Requiring the complaint to be forwarded to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency enables the public agency or EIS provider to be informed of the issues in the State complaint in order to provide an opportunity for the voluntary resolution of the complaint as set forth in §303.433(a)(3).

We believe that providing the public agency or EIS provider with information about the complaint enables the parties to have the opportunity to resolve disputes directly at the earliest possible time and that this benefit outweighs the minimal burden placed on the complainant. Concerning the commenters' confidentiality concerns, the information that is provided by the complainant generally is information that should already be available to the public agency or EIS provider who is responsible for providing services to a particular child. In addition, the public agency or EIS provider needs to know the identity of the complainant and relevant allegations in the complaint (consistent with §303.434) in order to propose a resolution of the issues.

Regarding the commenter's request that §303.434(d) specify the consequences for failure by the complainant to forward a copy of the complaint to the public agency or EIS provider, we do not believe we need to require specific consequences for complainants for two reasons. First, parents file few State complaints under Part C of the Act. States reported an average of fewer than two State complaints received by each lead agency in FFY 2006. Second, under §303.433(a)(3), the lead agency must provide the public agency or EIS provider an opportunity to respond to the complaint, thereby implicitly requiring the lead agency to inform the public agency or EIS provider of the relevant allegations in the complaint. Thus, we decline to regulate as requested by the commenter.

Changes: None.

States that Choose to Adopt the Part C Due Process Hearing Procedures under Section 639 of the Act

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| <p><u>§303.421 Appointment of an impartial person.</u> (a) <u>Qualifications and duties.</u> An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must— (1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and (2) Perform the following duties: (i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to</p> | <p><u>§303.435 Appointment of an impartial due process hearing officer.</u> (a) <u>Qualifications and duties.</u> Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must-- (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and (2) Perform the following duties:</p> | <p><u>§303.435 Appointment of an impartial due process hearing officer.</u> (a) <u>Qualifications and duties.</u> Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must-- (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and (2) Perform the following duties:</p> |
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| <p>reach a timely resolution of the complaint. (ii) Provide a record of the proceedings, including a written decision.</p> <p>(b) Definition of impartial. (1) As used in this section, impartial means that the person appointed to implement the complaint resolution process— (i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.</p> | <p>(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint. (B) Examine all information relevant to the issues. (C) Seek to reach a timely resolution of the due process complaint. (ii) Provide a record of the proceedings, including a written decision.</p> <p>(b) <u>Definition of impartial.</u> (1) <u>Impartial</u> means that the due process hearing officer appointed to implement the due process hearing under this part-- (i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.</p> | <p>(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint. (B) Examine all information relevant to the issues. (C) Seek to reach a timely resolution of the due process complaint. (ii) Provide a record of the proceedings, including a written decision.</p> <p>(b) <u>Definition of impartial.</u> (1) <u>Impartial</u> means that the due process hearing officer appointed to implement the due process hearing under this part-- (i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.</p> |
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Appointment of an impartial due process hearing officer (§303.435)
Comment: One commenter requested that §303.435 include the relevant Part B requirements in 34 CFR 300.511(c), concerning the specific qualifications required for due process hearing officers.
Discussion: Section 303.435 addresses the qualifications for due process hearing officers in States that choose to adopt the Part C due process procedures under section 639 of the Act. These qualifications are substantively the same as those in 34 CFR 300.511(c) of the Part B regulations and the qualifications in §303.443(c) for States that choose to adopt the Part B due process procedures under section 615 of the Act. While the language in §303.435 and 34 CFR 300.511(c) is not identical, both sections require a due process hearing officer to have specific knowledge about the Act and the proper conduct of legal proceedings. Additionally, §303.435 and 34 CFR 300.511(c) both require that the due process hearing officer be impartial using similar criteria regarding personal and professional conflicts of interest and employment status. Since there is no substantive difference between §303.435 and 34 CFR 300.511(c), it is not necessary to amend §303.435 as requested.
Changes: None.

Comment: One commenter requested that the Department clarify §303.435(b)(2). Specifically, the commenter asked whether §303.435(b)(2) would permit an employee of a lead agency who is an administrative law judge, to act as a hearing officer if that employee’s job is to adjudicate disputes such as presiding over due process hearings under the Act and that employee is operating under a system of mandates pursuant to a State executive order designed to ensure his or her independence and impartiality.

Discussion: Section 303.435(b)(1) provides that a hearing officer may not be an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child, and the hearing officer may not have a personal or professional interest that would conflict with his or her objectivity in implementing due process hearing procedures. Section 303.435(b)(2) provides that a person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency for purposes of the prohibition in §303.435(b)(1) solely because the person is paid by the agency to implement the due process hearing procedures. Under §303.435(b)(2), the sole fact that an administrative law judge is an employee does not trigger the prohibition in §303.435(b)(1) if that employee’s job as an administrative law judge is to preside over due process hearings under the Act and is operating under a system of mandates pursuant to a State executive order designed to ensure his or her independence and impartiality.

Changes: None.

§303.422 Parent rights in administrative proceedings.

(a) General. Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) Rights. Any parent involved in an administrative proceeding has the right to—
 (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;
 (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
 (4) Obtain a written or electronic verbatim transcription of the proceeding; and

§303.436 Parental rights in due process hearing proceedings.

(a) General. Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).

(b) Rights. Any parent involved in a due process hearing has the right to--
 (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
 (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
 (4) Obtain a written or electronic verbatim transcription of the hearing; and

§303.436 Parental rights in due process hearing proceedings.

(a) General. Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).

(b) Rights. Any parent involved in a due process hearing has the right to--
 (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
 (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
 (4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the

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| (5) Obtain written findings of fact and decisions. | (5) Obtain written findings of fact and decisions. | parent; and (5) Receive a written copy of the findings of fact and decisions at no cost to the parent. |
| <p><u>Parental rights in due process hearing proceedings (§303.436)</u> <u>Comment:</u> A few commenters requested that §303.436 stipulate that parents who pursue a due process hearing are entitled to due process hearing records, findings, and conclusions at no cost to the parent. <u>Discussion:</u> We agree that a parent involved in a due process hearing should receive a copy of the transcription of the hearing (i.e., a record of the hearing), the findings of fact, and the decisions at no cost. <u>Changes:</u> Section 303.436(b)(4) and (b)(5) has been changed to specify that a parent involved in a due process hearing has the right to receive a written or electronic verbatim transcription of the hearing and a copy of the written findings of fact and decisions at no cost to the parent.</p> | | |
| <p><u>§303.423 Convenience of proceedings; timelines.</u> (a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents. (b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent’s complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.</p> | <p><u>§303.437 Convenience of hearings and timelines.</u> (a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents. (b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.</p> | <p><u>§303.437 Convenience of hearings and timelines.</u> (a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents. (b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties. (c) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.</p> |
| <p><u>Convenience of hearings and timelines (§303.437)</u> <u>Comment:</u> Several commenters recommended that §303.437, like 34 CFR 300.515(c) of the Part B regulations, allow hearing officers to grant specific extensions of time beyond the period set out in 34 CFR 300.515 of the Part B regulations at the request of either party. <u>Discussion:</u> Sections 303.435 through 303.438 are substantively unchanged from current §§303.420 through 303.423, which prescribe a 30-day timeline for due process proceedings in States that adopt Part C due process procedures under section 639 of the Act. However, we agree with the commenters that extensions to the 30-day timeline in §303.437(b) may be necessary under certain circumstances (such as, unavailability of witnesses, exceptional child and family circumstances, and pending evaluations and assessments). Therefore, we have added a new paragraph (c) to this section providing that a hearing officer may grant specific extensions of time beyond the periods set out in paragraph (b) of this section at the request of either party.</p> | | |

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| <p><u>Changes:</u> We have added a new §303.437(c), which provides that a hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.</p> | | |
| <p>§303.424 Civil action. Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.</p> | <p>§303.438 Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.</p> | <p>§303.438 Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.</p> |
| <p>States that Choose to Adopt the Part B Due Process Hearing Procedures under Section 615 of the Act</p> | | |
| <p>Part B Regulations §300.507 Filing a due process complaint. (a) <u>General.</u> (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section. (b) <u>Information for parents.</u> The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if-- (1) The parent requests the information; or</p> | <p>§303.440 Filing a due process complaint. (a) <u>General.</u> (1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in §303.421(a) (relating to the identification, evaluation or placement of a child under Part C of the Act, or the provision of early intervention services to the infant or toddler with a disability and his or her family). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §303.443(f) apply to the timeline in this section. (b) <u>Information for parents.</u> The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--</p> | <p>§303.440 Filing a due process complaint. (a) <u>General.</u> (1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in §303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under Part C of the Act. (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §303.443(f) apply to the timeline in this section. (b) <u>Information for parents.</u> The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if-- (1) The parent requests the information; or</p> |

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| <p>(2) The parent or the agency files a due process complaint under this section.</p> | <p>(1) The parent requests the information; or (2) The parent or EIS provider files a due process complaint under this section.</p> <p>(c) <u>Timeline for Resolution.</u> The lead agency may adopt a 30- or 45- day timeline, subject to §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under §303.421, the specific timeline it has adopted.</p> | <p>(2) The parent or EIS provider files a due process complaint under this section.</p> <p>(c) <u>Timeline for Resolution.</u> The lead agency may adopt a 30- or 45-day timeline, subject to §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under §303.421, the specific timeline it has adopted.</p> |
| <p>Filing a due process complaint (§303.440) <u>Comment:</u> One commenter requested that the Department clarify the phrase “or should have known” as used in §303.440(a)(2), regarding an alleged violation that forms the basis of a due process complaint. <u>Discussion:</u> As provided in §303.440(a)(2), in States that choose to adopt the Part B due process procedures under section 615 of the Act, a due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint, in the time allowed by that State law. Whether a parent or public agency “should have known” about the action cited as the basis of the complaint is a determination that a due process hearing officer must make based on the individual facts of each case. Thus, further clarification of the term is not necessary or appropriate. <u>Changes:</u> None. <u>Comment:</u> One commenter expressed concern that §303.440(c) allows States to choose either a 30- or 45-day timeline to resolve a due process complaint. The commenter stated that 30 days is sufficient and should be mandated, particularly given the short amount of time that infants and toddlers are eligible for Part C services. <u>Discussion:</u> The option in §303.440(c) that allows lead agencies to adopt either a 30- or 45-day timeline to resolve a due process complaint is specific to States that choose to adopt Part B due process procedures under section 615 of the Act. The Part B regulations in 34 CFR 300.515(a) provide for a 45-day timeline for the due process hearing. Section 303.440(c) incorporates the 45-day timeline under the Part B procedures, but also allows States that choose to adopt the Part B procedures, to elect the shorter 30-day timeline provided under the Part C due process procedures. This gives States that choose to adopt the Part B due process procedures the flexibility to put in place a timeline shorter than that required under the Part B due process procedures. Therefore, we do not believe it is appropriate to revise the regulation as requested by the commenter. <u>Changes:</u> None.</p> | | |
| <p>Part B Regulations <u>§300.508 Due process complaint.</u> (a) General. (1) The public agency must have</p> | <p>§303.441 Due process complaint. (a) General. (1) The lead agency must have procedures that require either party, or the</p> | <p>§303.441 Due process complaint. (a) General. (1) The lead agency must have procedures that require either party, or the</p> |

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| <p>procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).</p> <p>(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.</p> <p>(b) <u>Content of complaint.</u> The due process complaint required in paragraph (a)(1) of this section must include--</p> <ol style="list-style-type: none"> (1) The name of the child; (2) The address of the residence of the child; (3) The name of the school the child is attending; (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. <p>(c) <u>Notice required before a hearing on a due process complaint.</u> A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.</p> | <p>attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).</p> <p>(2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.</p> <p>(b) <u>Content of complaint.</u> The due process complaint required in paragraph (a)(1) of this section must include--</p> <ol style="list-style-type: none"> (1) The name of the child; (2) The address of the residence of the child; (3) The name of the EIS provider serving the child; (4) In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. <p>(c) <u>Notice required before a hearing on a due process complaint.</u> A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.</p> <p>(d) <u>Sufficiency of complaint.</u> (1) The due</p> | <p>attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).</p> <p>(2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.</p> <p>(b) <u>Content of complaint.</u> The due process complaint required in paragraph (a)(1) of this section must include--</p> <ol style="list-style-type: none"> (1) The name of the child; (2) The address of the residence of the child; (3) The name of the EIS provider serving the child; (4) In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time. <p>(c) <u>Notice required before a hearing on a due process complaint.</u> A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.</p> <p>(d) <u>Sufficiency of complaint.</u> (1) The due</p> |
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| <p>(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.</p> <p>(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.</p> <p>(3) A party may amend its due process complaint only if--</p> <p>(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or</p> <p>(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.</p> <p>(e) LEA response to a due process complaint.</p> | <p>process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.</p> <p>(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.</p> <p>(3) A party may amend its due process complaint only if--</p> <p>(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or</p> <p>(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.</p> <p>(e) <u>Lead agency response to a due process complaint.</u> (1) If the lead agency has not sent</p> | <p>process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.</p> <p>(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination.</p> <p>(3) A party may amend its due process complaint only if--</p> <p>(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or</p> <p>(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.</p> <p>(e) <u>Lead agency response to a due process complaint.</u> (1) If the lead agency has not sent</p> |
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| <p>(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--</p> <ul style="list-style-type: none"> (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; (iv) A description of the other factors that are relevant to the agency’s proposed or refused action. <p>(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent’s due process complaint was insufficient, where appropriate.</p> <p>(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.</p> | <p>a prior written notice under §303.421 to the parent regarding the subject matter contained in the parent’s due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes--</p> <ul style="list-style-type: none"> (i) An explanation of why the lead agency proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IFSP team considered and the reasons why those options were rejected; (iii) A description of each evaluation procedure, assessment, record, or report the lead agency used as the basis for the proposed or refused action; (iv) A description of the other factors that are relevant to the agency’s proposed or refused action. <p>(2) A response by the lead agency under paragraph (e)(1) of this section shall not be construed to preclude the lead agency from asserting that the parent’s due process complaint was insufficient, where appropriate.</p> <p>(f) <u>Other party response to a due process complaint.</u> Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.</p> | <p>a prior written notice under §303.421 to the parent regarding the subject matter contained in the parent’s due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes--</p> <ul style="list-style-type: none"> (i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected; (iii) A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; (iv) A description of the other factors that are relevant to the agency’s or EIS provider’s proposed or refused action. <p>(2) A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent’s due process complaint was insufficient, where appropriate.</p> <p>(f) <u>Other party response to a due process complaint.</u> Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.</p> |
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Due process complaint (§303.441)
Comment: One commenter requested that the Department clarify whether the 15 days referred to in §303.441(d)(1) are calendar days or working days.

Discussion: The 15 days are calendar days. As defined in §303.9, a day means calendar day, unless otherwise indicated.

Changes: None.

Comment: One commenter recommended amending §303.441(b) to reflect the Part B provisions in 34 CFR 300.153(b)(4), which recognize that a homeless family may not have an address to list when filing a complaint.

Discussion: The commenter’s concern is addressed in §303.441(b)(4), which requires, in the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act), that the due process complaint include available contact information for the child and the name of the EIS provider serving the child.

Changes: None.

Comment: One commenter requested that §303.441(d) specify that hearing officers must allow parties to amend their due process complaint notices unless doing so would prejudice the other party. The commenter stated that generally, parents may not understand fully the due process procedures and should be allowed to modify their due process complaint without having to file a new complaint and begin the process again.

Discussion: Section 303.441(d)(3)(i), consistent with section 615(c)(2)(E) of the Act, provides that a party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting; or, as provided in §303.441(d)(3)(ii), the hearing officer grants permission to amend the complaint, except that the hearing officer may only grant permission to amend the complaint at any time not later than five days before the due process hearing begins. We further note that a party may withdraw its complaint, and re-file it. The regulation aligns with the Act and, therefore, we decline to revise the regulation as requested by the commenter.

Changes: None.

Comment: One commenter recommended extending the time when a party receiving a due process complaint must send a response that specifically addresses the issues raised in the due process complaint. The commenter stated that the 10 days provided in §303.441(f) is not enough time to research and develop an appropriate response.

Discussion: Section 303.441(f) incorporates the requirements in section 615(c)(2)(B)(ii) of the Act, which provides that the receiving party must provide the party that filed the complaint a response to the complaint within 10 days of receiving the complaint. We do not have the authority to extend this time period.

Changes: None.

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| <p>Part B Regulations</p> <p>§300.510 Resolution process.</p> <p>(a) <u>Resolution meeting.</u> (1) Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--</p> <p>(i) Includes a representative of the public</p> | <p>§303.442 Resolution process.</p> <p>(a) <u>Resolution meeting.</u> (1) Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP team who have specific knowledge of the facts identified in the due process complaint that--</p> <p>(i) Includes a representative of the lead agency</p> | <p>§303.442 Resolution process.</p> <p>(a) <u>Resolution meeting.</u> (1) Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that--</p> <p>(i) Includes a representative of the lead agency</p> |
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| <p>agency who has decision-making authority on behalf of that agency; and</p> <p>(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.</p> <p>(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.</p> <p>(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--</p> <p>(i) The parent and the LEA agree in writing to waive the meeting; or</p> <p>(ii) The parent and the LEA agree to use the mediation process described in §300.506.</p> <p>(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.</p> <p>(b) <u>Resolution period.</u> (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.</p> <p>(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.</p> <p>(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay</p> | <p>who has decision-making authority on behalf of that agency; and</p> <p>(ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.</p> <p>(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.</p> <p>(3) The meeting described in paragraph (a)(1) and (a)(2) of this section need not be held if--</p> <p>(i) The parent and lead agency agree in writing to waive the meeting; or</p> <p>(ii) The parent and lead agency agree to use the mediation process described in §303.431.</p> <p>(4) The parent and the lead agency must determine the relevant members of the IFSP team to attend the meeting.</p> <p>(b) <u>Resolution period.</u> (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.</p> <p>(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.</p> <p>(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the</p> | <p>who has decision-making authority on behalf of that agency; and</p> <p>(ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.</p> <p>(2) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.</p> <p>(3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if--</p> <p>(i) The parent and lead agency agree in writing to waive the meeting; or</p> <p>(ii) The parent and lead agency agree to use the mediation process described in §303.431.</p> <p>(4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.</p> <p>(b) <u>Resolution period.</u> (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.</p> <p>(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.</p> <p>(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) of this section, the failure of the parent filing a due process complaint to</p> |
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| <p>the timelines for the resolution process and due process hearing until the meeting is held.</p> <p>(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent’s due process complaint.</p> <p>(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.</p> <p>(c) <u>Adjustments to 30-day resolution period.</u> The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events:</p> <p>(1) Both parties agree in writing to waive the resolution meeting;</p> <p>(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;</p> <p>(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.</p> <p>(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2)</p> | <p>parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.</p> <p>(4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency, may at the conclusion of the 30-day period, request that a hearing officer dismiss the parent’s due process complaint.</p> <p>(5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.</p> <p>(c) <u>Adjustments to 30-day resolution period.</u> The 30- or 45- day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events:</p> <p>(1) Both parties agree in writing to waive the resolution meeting.</p> <p>(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.</p> <p>(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.</p> | <p>participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.</p> <p>(4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent’s due process complaint.</p> <p>(5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.</p> <p>(c) <u>Adjustments to 30-day resolution period.</u> The 30- or 45-day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events:</p> <p>(1) Both parties agree in writing to waive the resolution meeting.</p> <p>(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.</p> <p>(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.</p> |
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| <p>of this section, the parties must execute a legally binding agreement that is--</p> <p>(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and</p> <p>(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.</p> | <p>(d) <u>Written settlement agreement.</u> If a resolution to the dispute is reached at the meeting described in paragraph (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--</p> <p>(1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and</p> <p>(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.</p> <p>(e) <u>Agreement review period.</u> If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement’s execution.</p> | <p>(d) <u>Written settlement agreement.</u> If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is--</p> <p>(1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and</p> <p>(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.</p> <p>(e) <u>Agreement review period.</u> If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement’s execution.</p> |
| <p><u>Resolution process (§303.442)</u></p> <p><u>Comment:</u> One commenter requested that the Department revise the paragraph heading of §303.442(a), “Resolution meeting” to read “Meeting to obtain facts and details.”</p> <p><u>Discussion:</u> Section 303.442(a)(2) states that the purpose of the resolution meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute. “Resolution meeting” is thus, the appropriate paragraph heading for §303.442(a).</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters stated that there is no statutory basis for the 30-day resolution timeline in §303.442 and that the timeline is too long for a time-sensitive program like Part C of the Act.</p> <p><u>Discussion:</u> Section 303.442, regarding the resolution process, only applies in cases where a State has chosen to adopt the Part B due process procedures under section 615 of the Act. Section 303.442(b)(1) incorporates the 30-day resolution timeline specified in section 615(f)(1)(B)(ii) of the Act.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> A few commenters requested that §303.442(b)(4) include a definition of the term “reasonable effort.”</p> <p><u>Discussion:</u> Section 303.442(b)(4) provides that, if the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request</p> | | |

that the hearing officer dismiss the parent’s due process complaint. We would expect that throughout the 30-day resolution period the lead agency would make those efforts necessary, as dictated by the individual circumstances of each particular case, to encourage the parent to participate in the resolution meeting. If the lead agency requests the hearing officer to dismiss the parent’s due process complaint pursuant to §303.442(b)(4), it would be up to the hearing officer to determine whether the lead agency has made reasonable efforts to obtain the participation of the parent in the resolution meeting. Thus, specifying activities that would constitute reasonable efforts under §303.442(b)(4) in all cases is not appropriate.

Changes: None.

Comment: Several commenters suggested that §303.442(b)(4) is incompatible with the nature of the Part C program because dismissing a case when a parent does not agree to participate in a resolution session may establish an adversarial relationship between the parents and the lead agency.

Discussion: Section 303.442(b)(4) provides that when a parent does not participate in the resolution meeting, despite the lead agency’s reasonable efforts to persuade the parent to participate (which efforts must be documented), the lead agency may request that the hearing officer dismiss the due process complaint. Although this section provides the lead agency with the option to request dismissal, the lead agency is not required to request a dismissal and may agree instead to an extension of the time to conduct a resolution meeting in order for the parties to continue mediation efforts. Additionally, it is the due process hearing officer who determines whether dismissal of the due process complaint is warranted, based not only on the lead agency’s request, if one is made, but also based on any parent’s response. The availability of both the lead agency’s option to request dismissal and the impartial hearing officer’s determination ensures that dismissal of a due process complaint is based on case-specific circumstances.

Changes: None.

Comment: One commenter recommended that §303.442(b) be amended to require the lead agency to present the requirements in this section to a parent verbally or in the parent’s primary mode of communication, in order to ensure that a parent understands these requirements.

Discussion: Section 303.421(b)(3), regarding the content of the prior written notice and procedural safeguards notice, provides that the notice must be in sufficient detail to inform the parents about, among other things, how to file a due process complaint in the due process procedures the State has adopted pursuant to §303.430(d), and any timelines under those procedures. Further, §303.421(c)(1)(ii) requires that the notice be provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Thus, the regulations already address the commenter’s concern regarding providing the notice in a parent’s primary mode of communication and we do not believe that it is appropriate to amend the regulations to require verbal reading of the notice. We would expect that the notice would be read to a parent if the parent requested this assistance.

Changes: None.

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| <p><u>Part B Regulations</u> <u>§300.511 Impartial due process hearing.</u> (a) <u>General.</u> Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and</p> | <p><u>§303.443 Impartial due process hearing.</u> (a) <u>General.</u> Whenever a due process complaint is received consistent with §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.</p> | <p><u>§303.443 Impartial due process hearing.</u> (a) <u>General.</u> Whenever a due process complaint is received consistent with §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.</p> |
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| <p>300.510.</p> <p>(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.</p> <p>(c) <u>Impartial hearing officer.</u> (1) At a minimum, a hearing officer--</p> <p>(i) Must not be--</p> <p>(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;</p> <p>(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(3) Each public agency must keep a list of the</p> | <p>(b) <u>Agency responsible for conducting the due process hearing.</u> The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.</p> <p>(c) <u>Impartial hearing officer.</u> (1) At a minimum, a hearing officer--</p> <p>(i) Must not be--</p> <p>(A) An employee of the State, lead agency, or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;</p> <p>(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(3) Each public agency must keep a list of the</p> | <p>(b) <u>Agency responsible for conducting the due process hearing.</u> The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.</p> <p>(c) <u>Impartial hearing officer.</u> (1) At a minimum, a hearing officer--</p> <p>(i) Must not be--</p> <p>(A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;</p> <p>(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> |
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| <p>persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p> <p>(d) <u>Subject matter of due process hearings.</u> The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees</p> <p>(e) <u>Timeline for requesting a hearing.</u> A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.</p> <p>(f) <u>Exceptions to the timeline.</u> The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--</p> <p>(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or</p> <p>(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.</p> | <p>persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p> <p>(d) <u>Subject matter of due process hearings.</u> The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §303.441(b), unless the other party agrees otherwise.</p> <p>(e) <u>Timeline for requesting a hearing.</u> A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.</p> <p>(f) <u>Exceptions to the timeline.</u> The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--</p> <p>(1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or</p> <p>(2) The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to</p> | <p>(3) Each lead agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p> <p>(d) <u>Subject matter of due process hearings.</u> The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §303.441(b), unless the other party agrees otherwise.</p> <p>(e) <u>Timeline for requesting a hearing.</u> A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.</p> <p>(f) <u>Exceptions to the timeline.</u> The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--</p> <p>(1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or</p> <p>(2) The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to</p> |
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| <p>Part B Regulations §300.512 Hearing rights. (a) <u>General.</u> Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to-- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. (b) <u>Additional disclosure of information.</u> (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant</p> | <p>the parent. §303.444 Hearing rights. (a) <u>General.</u> Any party to a hearing conducted pursuant to §§303.440 through 303.445, or an appeal conducted pursuant to §303.446, has the right to-- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants or toddlers with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions. (b) <u>Additional disclosure of information.</u> (1) At least five business days prior to a hearing conducted pursuant to §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p> | <p>the parent. §303.444 Hearing rights. (a) <u>General.</u> Any party to a hearing conducted pursuant to §§303.440 through 303.445, or an appeal conducted pursuant to §303.446, has the right to-- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants or toddlers with disabilities; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; (4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and (5) Obtain written or, at the option of the parents, electronic findings of fact and decisions. (b) <u>Additional disclosure of information.</u> (1) At least five business days prior to a hearing conducted pursuant to §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p> |
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| <p>evaluation or recommendation at the hearing without the consent of the other party.</p> <p>(c) <u>Parental rights at hearings.</u> Parents involved in hearings must be given the right to--</p> <p>(1) Have the child who is the subject of the hearing present;</p> <p>(2) Open the hearing to the public; and</p> <p>(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.</p> | <p>(c) <u>Parental rights at hearings.</u> Parents involved in hearings must be given the right to--</p> <p>(1) Have the child who is the subject of the hearing present;</p> <p>(2) Open the hearing to the public; and</p> <p>(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.</p> | <p>(c) <u>Parental rights at hearings.</u> Parents involved in hearings must --</p> <p>(1) Be given the right to open the hearing to the public; and</p> <p>(2) Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.</p> |
| <p><u>Hearing rights (§303.444)</u></p> <p><u>Comment:</u> One commenter questioned whether it is appropriate to have an infant or toddler at a due process hearing.</p> <p><u>Discussion:</u> While parents always have the right to determine whether their infant or toddler is present at a hearing, we do not believe it is necessary to specify this right in §303.444(c)(1) because, in general, infants and toddlers with disabilities do not need to be present to either serve as witnesses at, or required participants in, a due process hearing. However, we note that under either the Part B or Part C due process hearing procedures, a parent is in the best position to decide whether an infant or toddler will attend the due process hearing.</p> <p><u>Changes:</u> We have removed §303.444(c)(1) and renumbered paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2) of this section.</p> | | |
| <p><u>Part B Regulations</u></p> <p><u>§300.513 Hearing decisions.</u></p> <p>(a) <u>Decision of hearing officer on the provision of FAPE.</u> (1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds.</p> <p>(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--</p> <p>(i) Impeded the child’s right to a FAPE;</p> <p>(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or</p> | <p><u>§303.445 Hearing decisions.</u></p> <p>(a) <u>Decision of hearing officer.</u> (1) Subject to paragraph (a)(2) of this section, a hearing officer must make a determination, based on substantive grounds, of whether the child was appropriately identified, placed, or evaluated, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the Act.</p> <p>(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive appropriate identification, evaluation, placement, or provision of early intervention services for the child and that child’s family under Part C of the Act only if the procedural</p> | <p><u>§303.445 Hearing decisions.</u></p> <p>(a) <u>Decision of hearing officer.</u> (1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the Act, must be based on substantive grounds.</p> <p>(2) In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early intervention services under Part C of the Act only if the procedural inadequacies--</p> |

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| <p>(iii) Caused a deprivation of educational benefit.</p> <p>(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.</p> <p>(b) <u>Construction clause.</u> Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.</p> <p>(c) <u>Separate request for a due process hearing.</u> Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.</p> <p>(d) <u>Findings and decision to advisory panel and general public.</u> The public agency, after deleting any personally identifiable information, must--</p> <p>(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and</p> <p>(2) Make those findings and decisions available to the public.</p> | <p>inadequacies--</p> <p>(i) Impeded the child’s right to identification, evaluation, and placement or provision of early intervention services for the child and that child’s family under Part C of the Act;</p> <p>(ii) Significantly impeded the parents’ opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child’s family under Part C of the Act; or</p> <p>(iii) Caused a deprivation of educational or developmental benefit.</p> <p>(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§303.400 through 303.449.</p> <p>(b) <u>Construction clause.</u> Nothing in §§303.440 through 303.445 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if a lead agency level appeal is available.</p> <p>(c) <u>Separate due process complaint.</u> Nothing in §§303.440 through 303.449 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.</p> <p>(d) <u>Findings and decisions to general public.</u> The lead agency, after deleting any personally identifiable information, must make the</p> | <p>(i) Impeded the child’s right to identification, evaluation, and placement or provision of early intervention services for the child and that child’s family under Part C of the Act;</p> <p>(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child’s family under Part C of the Act; or</p> <p>(iii) Caused a deprivation of educational or developmental benefit.</p> <p>(3) Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§303.400 through 303.449.</p> <p>(b) <u>Construction clause.</u> Nothing in §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if the lead agency level appeal is available.</p> <p>(c) <u>Separate due process complaint.</u> Nothing in §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.</p> <p>(d) <u>Findings and decisions to general public.</u> The lead agency, after deleting any personally identifiable information, must make the findings and decisions available to the public.</p> |
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| | findings and decisions available to the public. | |
| <p><u>Hearing decisions (§303.445)</u> <u>Comment:</u> One commenter recommended eliminating the provisions distinguishing between substantive and procedural violations of Part C of the Act in §303.445, stating that it is not appropriate to make this distinction in the Part C regulations. According to the commenter, this regulation violates section 607(a) of the Act. <u>Discussion:</u> Section 303.445 applies to States that choose to adopt the Part B due process procedures under section 615 of the Act. Thus, it is appropriate to include language in §303.445 that is parallel to 34 CFR 300.513, which reflects section 615(f)(3)(E) of the Act concerning the nature of hearing officer decisions, including the requirement that decisions be based on substantive grounds, and to include the standards under which a hearing officer may find that a child was denied appropriate identification, evaluation, placement, or provision of early intervention services based on procedural inadequacies. Section 303.445(a) is based on the requirements specified in section 615(f)(3)(E) of the Act and thus, is consistent with section 607(a) of the Act, which requires the Secretary to issue regulations that are necessary to ensure that there is compliance with the specific requirements of the Act. <u>Changes:</u> None. <u>Comment:</u> One commenter recommended that the heading of §303.445(a) be amended to reflect the standard that a hearing officer must use to make decisions--which is whether the infant or toddler with a disability and his or her family were provided appropriate early intervention services. <u>Discussion:</u> Section 303.445(a) incorporates section 615(f)(3)(E) of the Act, which provides the substantive and procedural grounds upon which the decision of a due process hearing officer may be based; these substantive and procedural grounds are broader than the standard suggested by the commenter. Therefore, we decline to amend the heading of this paragraph. <u>Changes:</u> None. <u>Comment:</u> None.</p> | | |
| <p><u>Part B Regulations</u> <u>§300.514 Finality of decision; appeal; impartial review.</u> (a) <u>Finality of hearing decision.</u> A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516. (b) <u>Appeal of decisions; impartial review.</u> (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and</p> | <p><u>§303.446 Finality of decision; appeal; impartial review.</u> (a) <u>Finality of hearing decision.</u> A decision made in a hearing conducted pursuant to §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §303.448. (b) <u>Appeal of decisions; impartial review.</u> (1) If the hearing required by §303.443 is conducted by a public agency other than the lead agency, any party aggrieved by the findings and decision in the hearing may appeal to the lead agency.</p> | <p><u>§303.446 Finality of decision; appeal; impartial review.</u> (a) <u>Finality of hearing decision.</u> A decision made in a hearing conducted pursuant to §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §303.448. (b) <u>Appeal of decisions; impartial review.</u> (1) The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency. (2) If there is an appeal, the lead agency must</p> |

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| <p>decision in the hearing may appeal to the SEA.</p> <p>(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--</p> <ul style="list-style-type: none"> (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties. <p>(c) <u>Findings and decision to advisory panel and general public.</u> The SEA, after deleting any personally identifiable information, must--</p> <ul style="list-style-type: none"> (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and (2) Make those findings and decisions available to the public. <p>(d) <u>Finality of review decision.</u> The decision made by the reviewing official is final unless a party brings a civil action under §300.516.</p> | <p>(2) If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must--</p> <ul style="list-style-type: none"> (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties. <p>(c) <u>Findings of fact and decision to the general public.</u> The lead agency, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.</p> <p>(d) <u>Finality of review decision.</u> The decision made by the reviewing official is final unless a party brings a civil action under §303.448.</p> | <p>conduct an impartial review of the findings and decision appealed. The official conducting the review must--</p> <ul style="list-style-type: none"> (i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties. <p>(c) <u>Findings of fact and decision to the general public.</u> The lead agency, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.</p> <p>(d) <u>Finality of review decision.</u> The decision made by the reviewing official is final unless a party brings a civil action under §303.448.</p> |
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§303.446 Finality of decision; appeal; impartial review.

Discussion: In order to make §303.446(b) consistent with §303.443(b), which requires the lead agency to conduct the due process hearing, and section 635(a)(10) of the Act, which requires the lead agency to have a single line of responsibility, we have removed in §303.446(b) the authority for a public agency (other than the lead agency) to conduct due process hearings when a State adopts under §303.430(d) the Part B due process procedures. However, we have retained the authority for the lead agency to establish procedures that would allow any party aggrieved by the findings and decision in the due process hearing to appeal to, or request reconsideration of the decision by, the lead agency. If the lead agency establishes such procedures, those procedures must meet the same requirements in §303.446(b), (c), and (d).

Changes: We have removed the authority for public agencies (other than the lead agency) to conduct due process hearings in §303.446(b), consistent with §303.443(b), which requires the lead agency to conduct the due process hearing. We amended §303.446(b) to permit the lead agency to establish procedures that would allow any party aggrieved by the findings and decision in the due process hearing to appeal to, or request reconsideration of the decision by, the lead agency.

Part B Regulations

§300.515 Timelines and convenience of hearings and reviews.

- (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)--
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.

- (b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.

- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

§303.447 Timelines and convenience of hearings and reviews.

- (a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency’s written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c)--
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.

- (b) The lead agency must ensure that not later than 30 days after the receipt of a request for a review--
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.

- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods

§303.447 Timelines and convenience of hearings and reviews.

- (a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency’s written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c)--
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.

- (b) The lead agency must ensure that not later than 30 days after the receipt of a request for a review--
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.

- (c) A hearing or reviewing officer may grant

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| <p>(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.</p> | <p>set out in paragraphs (a) and (b) of this section at the request of either party.</p> <p>(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.</p> | <p>specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.</p> <p>(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.</p> |
| <p><u>Timelines and convenience of hearings and reviews (§303.447)</u> <u>Comment:</u> One commenter requested that the word “child” as used in §303.447(d), concerning the requirement that each hearing and each review involving oral arguments be conducted at a time and place that is reasonably convenient to the parents and child involved, be defined or removed. <u>Discussion:</u> Section 303.6 defines the term <u>child</u> as it is used throughout this part. <u>Changes:</u> None.</p> | | |
| <p><u>Part B Regulations</u> <u>§300.516 Civil action.</u> (a) <u>General.</u> Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.</p> <p>(b) <u>Time limitation.</u> The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under</p> | <p><u>§303.448 Civil action.</u> (a) <u>General.</u> Any party aggrieved by the findings and decision made under §§303.440 through 303.445 who does not have the right to an appeal under §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.</p> <p>(b) <u>Time limitation.</u> The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by that State law.</p> | <p><u>§303.448 Civil action.</u> (a) <u>General.</u> Any party aggrieved by the findings and decision made under §§303.440 through 303.445 who does not have the right to an appeal under §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.</p> <p>(b) <u>Time limitation.</u> The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by that State law.</p> |

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| <p>Part B of the Act, in the time allowed by that State law.</p> <p>(c) <u>Additional requirements.</u> In any action brought under paragraph (a) of this section, the court--</p> <p>(1) Receives the records of the administrative proceedings;</p> <p>(2) Hears additional evidence at the request of a party; and</p> <p>(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.</p> <p>(d) <u>Jurisdiction of district courts.</u> The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.</p> <p>(e) <u>Rule of construction.</u> Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.</p> | <p>(c) <u>Additional requirements.</u> In any action brought under paragraph (a) of this section, the court--</p> <p>(1) Receives the records of the administrative proceedings;</p> <p>(2) Hears additional evidence at the request of a party; and</p> <p>(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.</p> <p>(d) <u>Jurisdiction of district courts.</u> The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.</p> <p>(e) <u>Rule of construction.</u> Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.</p> | <p>(c) <u>Additional requirements.</u> In any action brought under paragraph (a) of this section, the court--</p> <p>(1) Receives the records of the administrative proceedings;</p> <p>(2) Hears additional evidence at the request of a party; and</p> <p>(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.</p> <p>(d) <u>Jurisdiction of district courts.</u> The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.</p> <p>(e) <u>Rule of construction.</u> Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.</p> |
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Civil action (§303.448)
Comment: A few commenters recommended that §303.448 stipulate that courts have subject-matter jurisdiction over actions brought under sections 615 and 639 of the Act, concerning procedural safeguards.
Discussion: Section 303.448 incorporates sections 615(i)(2), 615(i)(3)(A), 615(l), and 639 of the Act, which provide for the right of an aggrieved

party to bring a civil action to appeal the findings and final decision of a due process hearing. Concerning the commenter’s request to clarify subject-matter jurisdiction of courts to hear such a civil action, section 615(i)(2)(A) of the Act states that a civil action to appeal a due process decision may be brought in a district court of the United States without regard to the amount in controversy. These sections of the Act set forth the requisite subject-matter jurisdiction for Federal and State courts to hear such civil actions. Thus, it is not necessary to clarify subject-matter jurisdictional grounds beyond those identified in sections 615(i)(2), 615(i)(3)(A), 615(l), and 639 of the Act.

Changes: None.

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| <p>Part B Regulations §300.537 State enforcement mechanisms. Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.</p> | <p>§303.449 State enforcement mechanisms. Notwithstanding §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.</p> | <p>§303.449 State enforcement mechanisms. Notwithstanding §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.</p> |
| | | <p>§303.521 System of payments and fees. (e) <u>Procedural Safeguards.</u> (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</p> |

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| | | <p>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.</p> <p>(2) A State must inform parents of these procedural safeguard options by either--</p> <ul style="list-style-type: none">(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<u>(ii) Including this information with the notice provided to parents under §303.421.</u> |
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