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INFANT & TODDLER  
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# ITCA WEBINAR SERIES: 2011 PART C REGULATIONS

**Topic: Procedural Safeguards  
and Data Requirements**

# SERIES OVERVIEW

- ③ Presentation of significant changes in the new regulations
- ③ Member discussion on potential impact
- ③ Member Identification of products to support states

# DRAFT HANDOUT

- ◎ Initial Analysis
- ◎ Format:
  - ◎ Column 1: Old regulations
  - ◎ Column 2: Draft regulations
  - ◎ Column 3: 2011 regulations (shaded)
  - ◎ Cross Column: Preamble language
- ◎ Sequence:
  - ◎ Sequential for 2011 regulations

# Subpart E: Procedural Safeguards

- ⊙ General Responsibilities
- ⊙ Confidentiality of Information
- ⊙ Parental Consent and Notice
- ⊙ Surrogate Parent
- ⊙ Dispute Resolution Procedures

# §303.400(c) General Responsibilities

- ⊙ Adds requirement to make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

# Definitions Moved

- ① Definitions were moved from Procedural Safeguards to Subpart A
  - ② Consent
  - ② Native Language
  - ② Personally identifiable

# §303.27 Parent

## Parent means--

- ⊙ A biological or adoptive parent of a child;
- ⊙ A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- ⊙ A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);

## §303.27 Parent (cont)

### Parent means--

- ⊙ An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- ⊙ A surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.



## §303.27. Parent (cont)

The biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified ...to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

## §303.27 Parent (cont)

If a judicial decree or order identifies a specific person or persons ...to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

# §303.420 Parent Consent

- ❖ Clarifies parental consent required before:
  - ❖ Administering screening
  - ❖ All evaluations and assessments
  - ❖ Providing early intervention services
  - ❖ Use of public benefits or insurance or private insurance are accessed, if required
  - ❖ Disclosure of personally identifiable information consistent with requirements
- May not use hearing procedures under Part B or Part C to challenge parent's refusal to provide any consent (this now includes consent to evaluation)

## §303.322 DETERMINATION THAT A CHILD IS NOT ELIGIBLE.

- ⊙ “If, based on the evaluation conducted under 303.321 the lead agency determines that a child is not eligible under this part, the lead agency must provide the parent with prior written notice required in §303.421, and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms under §303.430, such as requesting a due process hearing or mediation or filing a State complaint.”

# § § 303.401 - 417

## Confidentiality of Information

- ⊙ Incorporates Part B language (300.610 - 300.627) with modifications
- ⊙ Clarifies procedures apply as soon child is referred for EI services
- ⊙ Lead agency or an EIS provider must accept referral without parent consent
- ⊙ 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). “

# § § 303.401 - 417

## Confidentiality of Information

- ⊙ Defines early intervention records
- ⊙ Reinforces applicability of FERPA to Part C
- ⊙ Includes opt-put policy for notification
- ⊙ Adds GEPA and EDGAR provisions to language about destruction of records

# § § 303.401 - 417

## Confidentiality of Information

- ⊙ Allows parent to access Part C due process or FERPA procedures to challenge content in record
- ⊙ Changed timeline for parental access to records from 45 days to 10 days
- ⊙ Added “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.”
- ⊙ Clarifies right to amend records only applies to information about the parent and child, not other family members

# §303.422 Surrogate Parent

- ⊙ 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.
- ⊙ In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements.



# §303.422 Surrogate Parent

- ⊙ Expands language regarding who may not be a surrogate parent to include “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”
- ⊙ Requires reasonable efforts to ensure assignment of surrogate parent not more than 30 days after determination child needs a surrogate parent.

## §303.431 Mediation

- ⊙ May be requested at any time
- ⊙ Mediation agreement a legally binding agreement is enforceable in state or federal court
- ⊙ Agreement is signed by both the parent and a representative of the lead agency who has the authority to bind such agency
- ⊙ Adds impartiality criteria for a mediator
- ⊙ Changes optional procedure to offer (not require) meeting to encourage mediation

## §303.432-434 State Complaints

- ⊙ Eliminates option to have another agency investigate a complaint with subsequent lead agency review
- ⊙ Adds reference to compensatory services in remedies section
- ⊙ Deletes three year reference for filing deadline; only one year now

## §303.432-434 State Complaints

- ⊙ Changes language to “the lead agency, public agency, or EIS provider” has violated Part C
- ⊙ Adding requirement the complaint must include- signature and contact information for complainant, and if related to a specific child, name/address of child, name of provider, description of problem and proposed resolution

## §303.432-434 State Complaints

- ⊙ Gives agency opportunity to respond and at state discretion to offer a resolution
- ⊙ Adds option to extend timeline if parties agree
- ⊙ Offers mediation option
- ⊙ Requires party filing complaint to provide copy to agency or provider serving child at same time as filing complaint

# §303.430 - 438 Due Process Hearing

- ⊙ Retains state option to use either Part B or Part C process
- ⊙ Incorporates Part B procedures into Part C regulations with modifications including option of 30 or 45 day timeline
- ⊙ Under Part C process, extension of 30 day timeline can now be granted
- ⊙ Requires copies of transcription and facts and findings to be provided to parents at no cost

# §303.723 Data Reporting

- © “The lead agency must include in its report a certification signed by an authorized official of the agency that the information provided under §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.”

# §303.724 Data Reporting

- ⊙ “...the lead agency must conduct its own child count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must:
  - ⊙ Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;
  - ⊙ Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);
  - ⊙ Obtain certification from each EIS provider that an unduplicated and accurate count has been made;