



# Individuals With Disabilities Education Act Part C: Early Intervention Program for Infants and Toddlers With Disabilities



Final Regulations Side-by-Side  
Comparison  
SUBPART C  
October 2011



Council for  
Exceptional  
Children



Division for  
Early Childhood

The voice and vision of special education



# Subpart C – Procedures for Making Grants to States

Individuals with Disabilities Education Act: Part C Early Intervention  
Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA



**The Council for Exceptional Children (CEC)** is the largest international professional organization dedicated to improving the educational success of individuals with disabilities and/or gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice. [www.cec.sped.org](http://www.cec.sped.org)

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**Division of Early Childhood** is one of seventeen divisions of the Council for Exceptional Children (CEC) - the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities, and/or the gifted. DEC is especially for individuals who work with or on behalf of children with special needs, birth through age eight, and their families. [www.dec-sped.org](http://www.dec-sped.org)

For more information, please contact Sarah Mulligan, Executive Director for the Division for Early Childhood at [sara.mulligan@dec.sped.org](mailto:sara.mulligan@dec.sped.org), or 406-543-872 x224, or Sharon Walsh, Governmental Liaison at [WALSHTAYLO@aol.com](mailto:WALSHTAYLO@aol.com).



**Infant and Toddler Coordinators Association**

The Individuals with Disabilities Education Act (IDEA) Infant and Toddler Coordinators Association is organized as a not-for-profit corporation to promote mutual assistance, cooperation, and exchange of information and ideas in the administration of Part C and to provide support to state and territory Part C coordinators. [www.ideainfanttoddler.org](http://www.ideainfanttoddler.org)

For more information, please contact Maureen Greer, Executive Director or Sharon Walsh, Governmental Liaison at (317)251-0125 or [ideaitca@aol.com](mailto:ideaitca@aol.com)

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# Introduction

On Sept. 28, 2011, new regulations for the Part C Early Intervention Program for Infants and Toddlers with Disabilities were published in the Federal Register. These regulations, promulgated under the Individuals with Disabilities Education Act (IDEA), were in response to IDEA 2004, the most recent reauthorization of IDEA. Public comments had been received on a Noticed of Proposed Rulemaking (NPRM) for Part C published May 9, 2007. These final regulations are effective Oct. 28, 2011.

The Council for Exceptional Children (CEC), its Division for Early Childhood (DEC) and the IDEA Infant Toddler Coordinators Association (ITCA) are pleased to provide this side-by-side comparison of the 2011 final Part C regulations to the 1999 Part C regulations. This document is designed as a tool to assist readers in understanding the new regulations in relation to the 1999 regulations.

The document is available for downloading in two different formats. The complete document, organized into its eight subparts, can be downloaded or selected subparts can be downloaded. The document is organized according to the subparts in the 1999 regulations with the exception of a new Subpart H, which is based on the new regulations.

Subpart A: General

Subpart B: State Application for a Grant and Requirements for a Statewide System

Subpart C: Procedures for Making Grants to States

Subpart D: Program and Service Components of a Statewide System of Early Intervention Services

Subpart E: Procedural Safeguards

Subpart F: State Administration

Subpart G: State Interagency Coordinating Council

Subpart H: Monitoring and Enforcement; Reporting; and Allocation of Funds

Both formats of the document are available at the Web sites of all three associations:

[www.cec.sped.org](http://www.cec.sped.org)

[www.dec-sped.org](http://www.dec-sped.org)

[www.ideainfanttoddler.org](http://www.ideainfanttoddler.org)

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The side-by-side format of the document includes:

- *Left column* “1999 Part C Regulations” includes the current Part C regulations last published in the Federal Register on March 12, 1999.
- *Middle column* “2011 Part C Regulations” provides sections of the new regulations aligned next to the applicable 1999 regulatory section.
- *Right column* “U.S. Department of Education Selected Analysis of Comments and Changes” includes selected quotes from this introductory section of the new Part C regulations package. These quotes are selected to provide the reader with an understanding of why a particular regulation was changed or not as compared with the NPRM. These quotes also provide additional clarification of the Department’s intent when revising or adding a particular final regulation.

The reader should note a few things in reviewing the new regulations. First, all “notes” that are included in the current regulations have been removed. Also, specific language from 34 CFR Part 300, related to confidentiality and dispute resolution, has been incorporated into relevant sections of the Part C regulations package with necessary changes made for applicability to Part C.

Finally, the reader should note that in many instances, the final regulations represent a reorganization of the existing regulations. Numerous provisions have been moved and resulting citations have changed. These changes made the task of alignment difficult. While we have made every effort to ensure accurate alignment of the new provisions, there may be instances in which this was not possible.

The final Part C regulations contain numerous changes and additions. The reader is encouraged to consider and review the new regulations completely. The following are a selected list of changes made and areas to review:

- Definitions of key terms, including multidisciplinary, natural environments, and native language, have been revised and new definitions, including local educational agency (LEA) and scientifically-based research have been added.
- Transition requirements have been revised, including provisions related to notification to the local educational agency (LEA) and state educational agency (SEA), timelines, an opt-out policy, the transition conference, and the transition plan.

- An optional state screening policy has been added as part of a new organizational structure of pre-referral, referral, and post-referral activities.
- The two working-day requirement from identification to referral has been changed to “as soon as possible but no more than 7 calendar days after identification.”
- The 45-day required timeline from referral to the IFSP meeting has been retained with the addition of some provisions permitting documentation of extraordinary circumstances for a delay.
- Child Find provisions have been changed to add programs with which the lead agency must collaborate.
- Definitions and provisions for evaluation and assessment including family assessment have been revised.
- Required provisions for the “use of informed clinical opinion” have been clarified.
- Natural environment provisions have been revised to reflect the 2004 statutory change.
- Changes in the content of the IFSP have been made including in the “early intervention services” and “other services” components.
- Several changes have been made to procedural safeguards, including provisions related to written prior notice, confidentiality, surrogate parents, and dispute resolution.
- Changes have been made in provisions related to financial responsibility, systems of payment, and ability to pay, as well as to the use of public benefits and insurance and private insurance.
- Provisions related to monitoring, enforcement, reporting, and allocation have been included in a new subpart of the Part C regulations.

The Department has announced plans to publish a Notice of Proposed Rulemaking (NPRM) related to maintenance of effort (MOE) requirements with an opportunity for public comment in the near future.

As you work to implement these new regulations in order to serve infants and toddlers with disabilities and their families, CEC, DEC, and ITCA stand ready to serve as a resource for you.

**SUBPART C—PROCEDURES FOR MAKING GRANTS TO STATES**

1999 Part C Regulations	2011 Part C Regulations	U.S. Department of Education Selected Analysis of Comments and Changes
<p><b><u>§303.200 Formula for State allocations.</u></b>                      (a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.732 (a) Formula for state allocations.</u></b></p>	
<p><b><u>§303.200 Formula for State allocations.</u></b>                      (b) For the purpose of allotting funds to the States under paragraph (a) of this section—                      (1) Aggregate amount means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;                      (2) Infants and toddlers means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and                      (3) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.732 (d) Formula for state allocations.</u></b></p>	
<p><b><u>§303.201 Distribution of allotments from non participating States.</u></b>                      If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.733 Reallotment of funds.</u></b></p>	
<p><b><u>§303.202 Minimum grant that a State may receive.</u></b>                      No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or \$500,000, whichever is greater.</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.732(b) State allotments.</u></b></p>	



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<p><b><u>§ 303.203 Payments to the Secretary of the Interior.</u></b>                      The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.731 Payment to Indians.</u></b></p>	
<p><b><u>§303.204 Payments to the jurisdictions.</u></b>                      (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.730 Formula for state allocations.</u></b></p>	
<p><b><u>§303.204 Payments to the jurisdictions.</u></b>                      (b) The provisions of Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.</p>	<p><b>NOTE: This regulation now appears under Subpart H <u>§303.730 Formula for state allocations.</u></b></p>	
<p><b><u>§ 303.100 Conditions of assistance.</u></b>                      General Requirements                      (a) In order to receive funds under this part for any fiscal year, a State must have--                      (1) An approved application that contains the information required in this part, including--                      (i) The information required in §§ 303.140 through 303.148; and                      (ii) The information required in §§ 303.161 through 303.176.</p>	<p><b><u>§303.200 State application and assurances.</u></b>                      Each application must contain--                      (a) The specific State application requirements (including certifications, descriptions, methods, and policies and procedures) required in §§303.201 through 303.212;</p>	
<p><b><u>§ 303.100 Conditions of assistance.</u></b>                      (2) The statement of assurance required under §§ 303.120 through 303.128 on file with the Secretary.</p>	<p><b><u>§303.200 State application and assurances.</u></b>                      (b) The assurances required in §§303.221 through 303.227.</p>	
<p><b><u>§303.142 Designation of lead agency.</u></b>                      Each application must include a designation of the</p>	<p><b><u>§303.201 Designation of lead agency.</u></b>                      Each application must include the name of the</p>	



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<p><b>§303.142 Designation of lead agency.</b> lead agency in the State that will be responsible for the administration of funds provided under this part.</p>	<p><b>§303.201 Designation of lead agency.</b> State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part.</p>	
<p><b>§303.143 Designation regarding financial responsibility.</b> Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.</p>	<p><b>§303.202 Certification regarding financial responsibility.</b> Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency’s contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.</p>	
<p><b>§303.140 General.</b> A State’s application under this part must contain information and assurances demonstrating to the satisfaction of the Secretary that— (a) The statewide system of early intervention services required in this part is in effect; and (b) A State policy is in effect that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State.</p>	<p><b>§303.203 Statewide system and description of services.</b> Each application must include -- (a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State’s system;</p>	
<p><b>§303.173 Policies and procedures related to financial matters.</b> Each application must include— (a) Funding policies that meet the requirements in §§ 303.520 and 303.521; (b) Information about funding sources, as required</p>	<p><b>§303.203 Statewide system and description of services.</b> (b) The State’s policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart</p>	<p>The Department added an additional requirement for the application regarding “Policies or procedures adopted by the State as its system of payments that meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family</p>



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<p><b>§303.145 Description of use of funds.</b> by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.</p>	<p><b>§303.205 Description of use of funds.</b> The description must be presented separately for the lead agency and the Council and include the information required in paragraphs (b) through (e) of this section.</p>	
<p><b>§303.145 Description of use of funds.</b> (b) Administrative positions. Each application must include— (1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and (2) For each position, the percentage of salary paid with those funds.</p>	<p><b>§303.205 Description of use of funds.</b> (b) State administration funds including administrative positions. For lead agencies other than State educational agencies (SEAs), each application must include the total-- (1) Amount of funds retained by the lead agency for administration purposes, including the amount in paragraph (b)(2) of this section; and (2) Number of full-time equivalent administrative positions to be used to implement Part C of the Act, and the total amount of salaries (including benefits) for those positions.</p>	
<p><b>§303.145 Description of use of funds.</b> (c) Maintenance and implementation activities. Each application must include— (1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and (2) The approximate amount of funds to be spent for each activity.</p>	<p><b>§303.205 Description of use of funds.</b> (c) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.</p>	
<p><b>§303.145 Description of use of funds.</b> (d) Direct services. (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in § 303.16(b), and their families, consistent with §§ 303.521 and 303.527.</p>	<p><b>§303.205 Description of use of funds.</b> (d) Direct services. Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.</p>	

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<p><b><u>§303.145 Description of use of funds.</u></b>                      (2) The description must include information about each type of service to be provided, including—                      (i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations);                      And (ii) The approximate amount of funds under this part to be used for the service.</p>		
<p><b><u>§303.145 Description of use of funds.</u></b>                      (f) Activities by other agencies. If other agencies are to receive funds under this part, the application must include—                      (1) The name of each agency expected to receive funds;                      (2) The approximate amount of funds each agency will receive; and                      (3) A summary of the purposes for which the funds will be used.</p>	<p><b><u>§303.205 Description of use of funds.</u></b>                      (e) Activities by other public agencies. If other public agencies are to receive funds under this part, the application must include--                      (1) The name of each agency expected to receive funds;                      (2) The approximate amount of funds each agency will receive; and                      (3) A summary of the purposes for which the funds will be used.</p>	
	<p><b><u>§303.206 Referral policies for specific children.</u></b>                      Each application must include the State’s policies and procedures that require the referral for early intervention services under this part of specific children under the age of three, as described in §303.303(b).</p>	
<p><b><u>§303.147 Services to all geographic areas.</u></b>                      Each application must include a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State.</p>	<p><b><u>§303.207 Availability of resources.</u></b>                      Each application must include a description of the procedure used by the State to ensure that resources are made available under this part for all geographic areas within the State.</p>	<p>The Department clarified that ““resources” to include not only services but also funding, personnel, and other materials. This regulatory provision ensures that resources--not just services--are available in all geographic areas within a State.”</p>
<p><b><u>§303.110 General requirements and timelines for public participation.</u></b>                      (a) Before submitting to the Secretary its</p>	<p><b><u>§303.208 Public participation policies and procedures.</u></b>                      (a)Application. At least 60 days prior to being</p>	<p>The Department included language that requires the state to ensure public participation for any new or revised policy or procedure.</p>

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<p><b><u>§303.110 General requirements and timelines for public participation.</u></b>                      application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—                      (1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;</p>	<p><b><u>§303.208 Public participation policies and procedures.</u></b>                      submitted to the Department, each application for funds under this part (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.</p>	
<p><b><u>§303.110 General requirements and timelines for public participation.</u></b>                      (2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and                      (3) Provide adequate notice of the hearings required in paragraph (a) (2) of this section at least 30 days before the dates that the hearings are conducted.</p>	<p><b><u>§303.208 Public participation policies and procedures.</u></b>                      (b) State Policies and Procedures. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations, the lead agency--                      (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);                      (2) Provides notice of the hearings held in accordance with paragraph (b)(1) of this section at least 30 days before the hearings are conducted to enable public participation; and                      (3) Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations.</p>	



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<p><b><u>§303.111 Notice of public hearings and opportunity to comment.</u></b>                      The notice required in § 303.110(a)(3) must—                      (a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, throughout the State about the hearings and opportunity to comment on the application or policy; and                      (b) Be in sufficient detail to inform the public about—                      (1) The purpose and scope of the State application or policy, and its relationship to part C of the Act;                      (2) The length of the comment period and the date, time, and location of each hearing; and                      (3) The procedures for providing oral comments or submitting written comments.</p>	<p><b><u>NOTE: This regulation now appears under Subpart C §303.208 Public participation policies and procedures.</u></b></p>	
<p><b><u>§303.148 Transition to preschool programs.</u></b>                      Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including—                      (a) A description of how the families will be included in the transition plans;</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      (a) Application requirements. Each State must include the following in its application:                      (1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to--                      (i) Preschool or other appropriate services (for toddlers with disabilities); or                      (ii) Exiting the program for infants and toddlers with disabilities.                      (2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section.                      (3)(i)(A) If the lead agency is not the SEA, an</p>	<p>The Department clarified that “the transition requirements in §303.209 apply to all infants and toddlers under the age of three who are transitioning from the Part C program (as described in §303.211(b) (6) (i)) and that the transition requirements described in §303.211(b) (6) (ii) apply to children age three and older who are transitioning from services provided pursuant to §303.211..”</p> <p>The Department also identified the need for intra-agency agreements in order “...to have clearly defined transition coordination policies and procedures between the early intervention program under Part C of the Act and the preschool program under Part B of the Act, requiring an intra-agency agreement will be a useful tool to enhance</p>

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	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      interagency agreement between the lead agency and the SEA; or                      (B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act.                      (ii) To ensure a seamless transition between services under this part and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f), and 300.323(b).                      (4) Any policy the lead agency has adopted under §303.401(d) and (e).</p>	<p>coordination and communication between the Part C and Part B preschool programs.”</p>
<p><b><u>§303.148 Transition to preschool programs.</u></b>                      (b) A description of how the lead agency under this part will—                      (1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law;                      (2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      (b) Notification to the SEA and appropriate LEA.                      (1) The State lead agency must ensure that--                      (i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;</p>	<p>The Department revised this section to “...require that LEA notification occur no fewer than 90 days prior to the toddler with a disability’s third birthday. This “not fewer than 90 days” timeline for LEA notification aligns with the date by which: (1) a transition conference must be conducted for a toddler with a disability who may be eligible for services under Part B of the Act (as required in section 637(a)(9)(A)(ii)(II) of the Act and §303.209(c)(1)); and (2) a transition plan must be in place for all toddlers with disabilities (as required in §303.209(d)(2)).”                      The Department clarified that “...the LEA</p>



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<p><b><u>§303.148 Transition to preschool programs.</u></b>                      the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or                      (ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;                      (3) Review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      (ii) Subject to paragraph (b)(2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler’s third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the lead agency, as soon as possible after determining the child’s eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or                      (iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler’s third birthday and that toddler may be eligible for preschool services under Part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.                      (2) The State must ensure that the notification required under paragraphs (b) (1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.</p>	<p>notification requirement applies only to toddlers with disabilities who may be eligible for preschool services under Part B of the Act and not to all toddlers with disabilities.”</p> <p>The Department clarified that “...if a child is referred to the lead agency fewer than 45 days before that child’s third birthday, the lead agency is not required to conduct an evaluation, assessment or an initial IFSP meeting.”</p>
<p><b><u>§303.148 Transition to preschool programs.</u></b>                      (c) If the State educational agency, which is responsible for administering preschool programs</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      (c) Conference to discuss services. The State lead</p>	<p>The Department clarified “...that the transition conference conducted under paragraph (c) of this section or the meeting to develop the transition</p>

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<p><b><u>§303.148 Transition to preschool programs.</u></b>                      under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      agency must ensure that--                      (1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler’s third birthday to discuss any services the toddler may receive under Part B of the Act; and.                      (2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.</p>	<p>plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the IFSP meeting and participant requirements in §§303.342(d) and (e) and 303.343(a).</p>
<p><b><u>§303.148 Transition to preschool programs.</u></b>                      (b)(2)(i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or                      (ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      (d) Transition plan. The State lead agency must ensure that for all toddlers with disabilities--                      (1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and                      (ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and §303.344(h);                      (2) It establishes a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all</p>	<p>The Department clarified “that if transition planning occurs more than nine months prior to a toddler’s third birthday, this planning may not accurately reflect the needs of the child at the time of transition. For this reason, the regulations only allow the parties to establish a transition plan for a child not earlier than nine months prior to the child’s third birthday.”</p> <p>Additionally, the Department indicated “that a transition plan referred to in this section is actually a part of an IFSP and not a separate document. Consistent with section 636(a) of the Act, the IFSP</p>

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<p><b><u>§303.148 Transition to preschool programs.</u></b>                      appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;                      (3) Review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and                      (4) Establish a transition plan;</p>	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      parties, not more than 9 months--before the toddler’s third birthday; and                      (3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate--                      (i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and                      (ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.</p>	<p>must include a description of the appropriate transition services for the infant or toddler.”</p>
	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      e) Transition conference and meeting to develop transition plan. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).</p>	<p>The Department clarified that “transition conferences conducted under §303.209(c) must meet the accessibility and parental consent requirements in §303.342(d) and (e) and the meeting participant requirements in §303.343(a).”</p>
	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      (f) Applicability of transition requirements. (1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under §303.211.                      (2) In a State that offers services under §303.211, for toddlers with disabilities identified in §303.209(b)(1)(i), the parent must be provided at the transition conference conducted under</p>	<p>The Department indicated that at the transition conference, “the parents of a toddler with a disability must receive: (1) an explanation, consistent with §303.211(b)(1)(ii), of the toddler’s options to continue to receive early intervention services under this part or preschool services under section 619 of the Act; and (2) the initial annual notice referenced in §303.211(b)(1)”</p>

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	<p><b><u>§303.209 Transition to preschool and other programs.</u></b>                      paragraph (c)(1) of this section:                      (i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler’s options to continue to receive early intervention services under this part or preschool services under section 619 of the Act.                      (ii) The initial annual notice referenced in §303.211(b)(1).                      (3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).</p>	
	<p><b><u>§303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.</u></b>                      (a) Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq, as amended), early education and child care programs, and services under this part.</p>	
	<p><b><u>§303.210 Coordination with Head Start and Early Head Start, early education, and child care programs.</u></b>                      (b) The State lead agency must participate, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act, on the State Advisory Council on Early Childhood Education and Care established under the Head Start Act.</p>	<p>The Department has added “that the State lead agency must participate as a representative on the State Advisory Council, if applicable.”</p>
	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      (a) General. (1) Subject to paragraphs (a)(2) and</p>	<p>The Department reaffirmed that “providing Part C services to children who (a) are three years of age and older, (b) are eligible for services under section 619 of the Act, and (c) previously received early</p>

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	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b></p> <p>(b) of this section, a State may elect to include in its application for a grant under this part a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under this part, may choose the continuation of early intervention services under this part for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school.</p> <p>(2) A State that adopts the policy described in paragraph (a)(1) of this section may determine whether it applies to children with disabilities--</p> <p>(i) From age three until the beginning of the school year following the child’s third birthday;</p> <p>(ii) From age three until the beginning of the school year following the child’s fourth birthday;</p> <p>or</p> <p>(iii) From age three until the beginning of the school year following the child’s fifth birthday.</p> <p>(3) In no case may a State provide services under this section beyond the age at which the child actually enters, or is eligible under State law to enter, kindergarten or elementary school in the State.</p>	<p>intervention services is an option each State can consider.”</p> <p>The Department clarified “the subsets of age ranges States can select to provide services under the option in §303.211 ... and added new (a)(3) to highlight the statutory requirement from section 635(c)(1) of the Act that a State may provide services under §303.211 only until the child enters, or is eligible under State law to enter, kindergarten or elementary school in the State.”</p>
	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b></p> <p>(b) Requirements. If a State’s application for a grant under this part includes the State policy</p>	<p>The Departed indicated that “States choosing to offer early intervention services under §303.211 must provide parents of these children with disabilities with an annual notice that includes, among other things, an explanation of the</p>

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	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b></p> <p>described in paragraph (a) of this section, the system must ensure the following:</p> <p>(1) Parents of children with disabilities who are eligible for services under section 619 of the Act and who previously received early intervention services under this part will be provided an annual notice that contains --</p> <p>(i) A description of the rights of the parents to elect to receive services pursuant to this section or under Part B of the Act; and</p> <p>(ii) An explanation of the differences between services provided pursuant to this section and services provided under Part B of the Act, including--</p> <p>(A) The types of services and the locations at which the services are provided;</p> <p>(B) The procedural safeguards that apply; and</p> <p>(C) Possible costs (including the costs or fees to be charged to families as described in §§303.520 and 303.521), if any, to parents of children eligible under this part.</p> <p>(2) Consistent with §303.344(d), services provided pursuant to this section will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills.</p> <p>(3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as that term is defined at §303.15) under Part B of the Act instead of early intervention services under Part C of the Act.</p> <p>(4) The lead agency must continue to provide all</p>	<p>differences between early intervention services provided under Part C of the Act and preschool services provided under Part B of the Act.”</p> <p>The department clarified that “parents whose child is receiving services under Part C of the Act past the age of three pursuant to §303.211 retain the right, at any time, to opt out of these early intervention services pursuant to §303.211 and, instead, to obtain FAPE under Part B of the Act for their child.”</p>



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	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b></p> <p>early intervention services identified in the toddler with a disability’s IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler’s initial eligibility determination under Part B of the Act is made under 34 CFR 300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under 34 CFR 300.300(a) and the parent has not provided that consent.</p> <p>(5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable.</p> <p>(6)(i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition requirements in §303.209(b)(1)(i) and (b)(1)(ii), (c)(1), and (d) are met.</p> <p>(ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by--</p> <p>(A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or will no longer receive, early intervention services under this</p>	



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	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      section;                      (B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section, to discuss any services that the child may receive under Part B of the Act; and                      (C) Establishing a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the child will no longer be eligible under paragraph (a)(2) of this section to receive, or no longer receives, early intervention services under this section.                      (7) In States that adopt the option to make services under this part available to children ages three and older pursuant to this section, there will be a referral to the Part C system, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.</p>	
	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      (c) Reporting requirement. If a State includes in its application a State policy described in paragraph</p>	

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	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      (a) of this section, the State must submit to the Secretary, in the State’s report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under this part.</p>	
	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      (d) Available funds. The State policy described in paragraph (a) of this section must describe the funds--including an identification as Federal, State, or local funds--that will be used to ensure that the option described in paragraph (a) of this section is available to eligible children and families who provide the consent described in paragraph (b)(5) of this section, including fees, if any, to be charged to families as described in §§303.520 and 303.521.</p>	
	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      (e) Rules of construction. (1) If a statewide system includes a State policy described in paragraph (a) of this section, a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under Part B of the Act for the period of time in which the child is receiving services under this part.                      (2) Nothing in this section may be construed to</p>	

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	<p><b><u>§303.211 State option to make services under this part available to children ages three and older.</u></b>                      require a provider of services under this part to provide a child served under this part with FAPE.</p>	
	<p><b><u>§303.212 Additional information and assurances.</u></b>                      Each application must contain –                      (a) A description of the steps the State is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by section 427(b) of GEPA; and</p>	
	<p><b><u>§303.212 Additional information and assurances.</u></b>                      (b) Other information and assurances as the Secretary may reasonably require.</p>	
<p><b><u>§303.120 General.</u></b>                      (a) A State’s statement of assurances must contain the information required in §§ 303.121 through 303.128.                      (b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State’s participation under this part.                      (c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.128.</p>	<p><b><u>§303.220 Assurances satisfactory to the Secretary.</u></b>                      Each application must contain assurances satisfactory to the Secretary that the State has met the requirements in §§303.221 through 303.227.</p>	
<p><b><u>§303.127 Assurance regarding expenditure of funds.</u></b>                      The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.</p>	<p><b><u>§303.221 Expenditure of funds.</u></b>                      The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§303.500 and 303.501.</p>	

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<p><b><u>§303.126 Pavor of last resort.</u></b>                      The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—                      (a) Nonsubstitution of funds; and                      (b) Non-reduction of other benefits.</p>	<p><b><u>§303.222 Pavor of last resort.</u></b>                      The State must ensure that it will comply with the requirements in §§303.510 and 303.511 in subpart F of this part.</p>	
<p><b><u>§303.122 Control of funds and property.</u></b>                      The statement must provide assurance satisfactory to the Secretary that—                      (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part;</p>	<p><b><u>§303.223 Control of funds and property.</u></b>                      The State must ensure that--                      (a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part;</p>	
<p><b><u>§303.122 Control of funds and property.</u></b>                      (b) A public agency will administer the funds and property.</p>	<p><b><u>§303.223 Control of funds and property.</u></b>                      (b) A public agency will administer the funds and property.</p>	
<p><b><u>§303.121 Reports and records.</u></b>                      The statement must provide for—                      (a) Making reports in such form and containing such information as the Secretary may require;</p>	<p><b><u>§303.224 Reports and records.</u></b>                      The State must ensure that it will--                      (a) Make reports in the form and containing the information that the Secretary may require;</p>	
<p><b><u>§303.121 Reports and records.</u></b>                      (b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.</p>	<p><b><u>§303.224 Reports and records.</u></b>                      (b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.</p>	
<p><b><u>§303.124 Prohibition against supplanting.</u></b>                      (a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to</p>	<p><b><u>§303.225 Prohibition against supplanting; indirect costs.</u></b>                      (a) Each application must provide satisfactory assurance that the Federal funds made available</p>	

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<p><b><u>§303.124 Prohibition against supplanting.</u></b>                      supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.</p>	<p><b><u>§303.225 Prohibition against supplanting; indirect costs.</u></b>                      under section 643 of the Act to the State:                      (1) Will not be commingled with State funds; and                      (2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.</p>	
<p><b><u>§303.124 Prohibition against supplanting.</u></b>                      (b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—                      (1) Decreases in the number of children who are eligible to receive early intervention services under this part; and                      (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.</p>	<p><b><u>§303.225 Prohibition against supplanting; indirect costs.</u></b>                      (b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—                      (1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and                      (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.</p>	<p>The Department indicated it will issue a new NPRM related to MOE.</p>
<p><b><u>§303.123 Prohibition against commingling.</u></b>                      The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.</p>	<p><b><u>§303.225 Prohibition against supplanting; indirect costs.</u></b>                      (c) Requirement regarding indirect costs. (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant.                      (2) If approved by the lead agency’s cognizant</p>	

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	<p><b><u>§303.225 Prohibition against supplanting; indirect costs.</u></b>                      Federal agency or by the Secretary, the lead agency must charge indirect costs through either--                      (i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or                      (ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.                      (3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.</p>	
<p><b><u>§303.123 Prohibition against commingling.</u></b>                      NOTE: As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure.                      Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified— with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State’s early intervention program. Thus, the assurance in this section is satisfied by the use of an accounting system that includes an “audit trail” of the expenditure of funds awarded under this part.</p>		



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<p><b><u>§303.123 Prohibition against commingling.</u></b> Separate bank accounts are not required.</p>		
<p><b><u>§303.125 Fiscal control.</u></b> The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.</p>	<p><b><u>§303.226 Fiscal control.</u></b> The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.</p>	
<p><b><u>§303.128 Traditionally underserved groups.</u></b> The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure— (a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part;</p>	<p><b><u>§303.227 Traditionally underserved groups.</u></b> The State must ensure that policies and practices have been adopted to ensure-- (a) That traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of this part;</p>	
<p><b><u>§303.128 Traditionally underserved groups.</u></b> (b) That these families have access to culturally competent services within their local geographical areas.</p>	<p><b><u>§303.227 Traditionally underserved groups.</u></b> (b) That these families have access to culturally competent services within their local geographical areas.</p>	
<p><b><u>§ 303.100 Conditions of assistance.</u></b> (b) If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets an application requirement, including any policy or procedure filed under this part before July 1, 1998, that meets such a requirement, the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.</p>	<p><b><u>§303.228 Subsequent State application and modifications of application.</u></b> (a)Subsequent State application. If a State has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the State meets an application requirement in this part, including any policy, procedure, method, or assurance filed under this part (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the State to have met that requirement for purposes of receiving a grant under this part.</p>	



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<p><b><u>§ 303.100 Conditions of assistance.</u></b>                      (c) An application that meets the requirements of this part remains in effect until the State submits to the Secretary modifications of that application.</p>	<p><b><u>§303.228 Subsequent State application and modifications of application.</u></b>                      (b) Modification of application. An application submitted by a State that meets the requirements of this part remains in effect until the State submits to the Secretary such modifications as the State determines necessary. This section applies to a modification of an application to the same extent and in the same manner as this paragraph applies to the original application.</p>	
<p><b><u>§ 303.100 Conditions of assistance.</u></b>                      (d) The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if--                      (1) An amendment is made to the Act, or to a regulation under this part;                      (2) A new interpretation is made of the Act by a Federal court or the State's highest court; or                      (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.</p>	<p><b><u>§303.228 Subsequent State application and modifications of application.</u></b>                      (c) Modifications required by the Secretary. The Secretary may require a State to modify its application under this part to the extent necessary to ensure the State's compliance with this part if—                      (1) An amendment is made to the Act or to a Federal regulation issued under the Act;                      (2) A new interpretation of the Act is made by a Federal court or the State's highest court; or                      (3) An official finding of noncompliance with Federal law or regulations is made with respect to the State.</p>	
	<p><b><u>§303.229 Determination by the Secretary that a State is eligible.</u></b>                      If the Secretary determines that a State is eligible to receive a grant under Part C of the Act, the Secretary notifies the State of that determination.</p>	
	<p><b><u>§303.230 Standard for disapproval of an application.</u></b>                      The Secretary does not disapprove an application under this part unless the Secretary determines, after notice and opportunity for a hearing in accordance with the procedures in §§303.231</p>	

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	<p><b><u>§303.230 Standard for disapproval of an application.</u></b>                      through 303.236, that the application fails to comply with the requirements of this part.</p>	
	<p><b><u>§303.231 Notice and hearing before determining that a State is not eligible.</u></b>                      (a) General. (1) The Secretary does not make a final determination that a State is not eligible to receive a grant under Part C of the Act until providing the State--                      (i) Reasonable notice; and                      (ii) An opportunity for a hearing.                      (2) In implementing paragraph (a)(1)(i) of this section, the Secretary sends a written notice to the lead agency by certified mail with a return receipt requested.</p>	
	<p><b><u>§303.231 Notice and hearing before determining that a State is not eligible.</u></b>                      (b) Content of notice. In the written notice described in paragraph (a)(2) of this section, the Secretary--                      (1) States the basis on which the Secretary proposes to make a final determination that the State is not eligible;                      (2) May describe possible options for resolving the issues;                      (3) Advises the lead agency that it may request a hearing and that the request for a hearing must be made not later than 30 days after it receives the notice of the proposed final determination that the State is not eligible; and                      (4) Provides the lead agency with information about the hearing procedures that will be followed.</p>	
	<p><b><u>§303.232 Hearing Official or Panel.</u></b>                      (a) If the lead agency requests a hearing, the</p>	

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	<p><b>§303.232 Hearing Official or Panel.</b>                      Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing.</p>	
	<p><b>§303.232 Hearing Official or Panel.</b>                      (b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (a) As used in §§303.231 through 303.235, the term party or parties means any of the following:                      (1) A lead agency that requests a hearing regarding the proposed disapproval of the State's eligibility under this part.                      (2) The Department official who administers the program of financial assistance under this part.                      (3) A person, group, or agency with an interest in, and having relevant information about, the case that has applied for and been granted leave to intervene by the Hearing Official or Hearing Panel.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (b) Within 15 days after receiving a request for a hearing, the Secretary designates a Hearing Official or Hearing Panel and notifies the parties.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (c) The Hearing Official or Hearing Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid</p>	

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	<p><b><u>§303.233 Hearing procedures.</u></b>                      delay, and to maintain order, including the following:                      (1) The Hearing Official or Hearing Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.                      (2) The Hearing Official or Hearing Panel may schedule a prehearing conference with the Hearing Official or Hearing Panel and the parties.                      (3) Any party may request the Hearing Official or Hearing Panel to schedule a prehearing or other conference. The Hearing Official or Hearing Panel decides whether a conference is necessary and notifies all parties.                      (4) At a prehearing or other conference, the Hearing Official or Hearing Panel and the parties may consider subjects such as--                      (i) Narrowing and clarifying issues;                      (ii) Assisting the parties in reaching agreements and stipulations;                      (iii) Clarifying the positions of the parties;                      (iv) Determining whether an evidentiary hearing or oral argument should be held; and                      (v) Setting dates for--                      (A) The exchange of written documents;                      (B) The receipt of comments from the parties on the need for oral argument or an evidentiary hearing;                      (C) Further proceedings before the Hearing Official or Hearing Panel, including an evidentiary hearing or oral argument, if either is scheduled;                      (D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and an</p>	

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	<p><b><u>§303.233 Hearing procedures.</u></b>                      estimation of time for each presentation; and                      (E) Completion of the review and the initial decision of the Hearing Official or Hearing Panel.                      (5) A prehearing or other conference held under paragraph (c)(4) of this section may be conducted by telephone conference call.                      (6) At a prehearing or other conference, the parties must be prepared to discuss the subjects listed in paragraph (c)(4) of this section.                      (7) Following a prehearing or other conference, the Hearing Official or Hearing Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.</p>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (d) The Hearing Official or Hearing Panel may require the parties to state their positions and to provide all or part of their evidence in writing.</p>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (e) The Hearing Official or Hearing Panel may require the parties to present testimony through affidavits and to conduct cross-examination through interrogatories.</p>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (f) The Hearing Official or Hearing Panel may direct the parties to exchange relevant documents, information, and lists of witnesses, and to send copies to the Hearing Official or Hearing Panel.</p>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (g) The Hearing Official or Hearing Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.</p>	

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	<p><b>§303.233 Hearing procedures.</b>                      (h) The Hearing Official or Hearing Panel may rule on motions and other issues at any stage of the proceedings.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (i) The Hearing Official or Hearing Panel may examine witnesses.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (j) The Hearing Official or Hearing Panel may set reasonable time limits for submission of written documents.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (k) The Hearing Official or Hearing Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (l) The Hearing Official or Hearing Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (m)(1) The parties must present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Hearing Panel must determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties. (2) The Hearing Official or Hearing Panel gives each party an opportunity to be represented by counsel.</p>	
	<p><b>§303.233 Hearing procedures.</b>                      (n) If the Hearing Official or Hearing Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the</p>	

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	<p><b><u>§303.233 Hearing procedures.</u></b>                      Hearing Official or Hearing Panel gives each party, in addition to the opportunity to be represented by counsel--</p> <ul style="list-style-type: none"> <li>(1) An opportunity to present witnesses on the party's behalf; and</li> <li>(2) An opportunity to cross-examine witnesses either orally or with written questions.</li> </ul>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (o) The Hearing Official or Hearing Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.</p>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (p)(1) The Hearing Official or Hearing Panel--</p> <ul style="list-style-type: none"> <li>(i) Arranges for the preparation of a transcript of each hearing;</li> <li>(ii) Retains the original transcript as part of the record of the hearing; and</li> <li>(iii) Provides one copy of the transcript to each party.</li> </ul> <p>(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.</p>	
	<p><b><u>§303.233 Hearing procedures.</u></b>                      (q) Each party must file with the Hearing Official or Hearing Panel all written motions, briefs, and other documents and must at the same time provide a copy to the other parties to the proceedings.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (a)The Hearing Official or Hearing Panel prepares an initial written decision that addresses each of the points in the notice sent by the Secretary to the lead agency under §303.231, including any amendments to or further clarification of the issues under</p>	



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	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      §303.233(c).</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (b) The initial decision of a Hearing Panel is made by a majority of Hearing Panel members.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (c) The Hearing Official or Hearing Panel mails, by certified mail with return receipt requested, a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Hearing Panel within 15 days of the date the party receives the Panel's decision.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (e) The Hearing Official or Hearing Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Hearing Panel within seven days of the date the party receives the initial comments and recommendations.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (f) The Hearing Official or Hearing Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.</p>	

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	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (g) The initial decision of the Hearing Official or Hearing Panel becomes the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Hearing Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (h) The Secretary rejects or modifies the initial decision of the Hearing Official or Hearing Panel if the Secretary finds that it is clearly erroneous.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (i) The Secretary conducts the review based on the initial decision, the written record, the transcript of the Hearing Official's or Hearing Panel's proceedings, and written comments.</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (j) The Secretary may remand the matter to the Hearing Official or Hearing Panel for further proceedings</p>	
	<p><b><u>§303.234 Initial decision; final decision.</u></b>                      (k) Unless the Secretary remands the matter as provided in paragraph (j) of this section, the Secretary issues the final decision, with any necessary modifications, within 30 days after notifying the Hearing Official or Hearing Panel that the initial decision is being further reviewed.</p>	
	<p><b><u>§303.235 Filing requirements.</u></b>                      (a) Any written submission by a party under §§303.230 through 303.236 must be filed with the Secretary by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents</p>	

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	<p><b>§303.235 Filing requirements.</b> longer than five pages.</p>	
	<p><b>§303.235 Filing requirements.</b> (b) The filing date under paragraph (a) of this section is the date the document is-- (1) Hand-delivered; (2) Mailed; or (3) Sent by facsimile transmission.</p>	
	<p><b>§303.235 Filing requirements.</b> (c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.</p>	
	<p><b>§303.235 Filing requirements.</b> (d) If a document is filed by facsimile transmission, the Secretary, the Hearing Official, or the Panel, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.</p>	
	<p><b>§303.235 Filing requirements.</b> (e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.</p>	
	<p><b>§303.236 Judicial review.</b> If a State is dissatisfied with the Secretary's final decision with respect to the eligibility of the State under Part C of the Act, the State may, not later than 60 days after notice of that decision, file with the United States Court of Appeals for the circuit in which that State is located a petition for review of that decision. A copy of the petition must be transmitted by the clerk of the court to the Secretary. The Secretary then files in the court the record of the proceedings upon which the</p>	

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	<p><b><u>§303.236 Judicial review.</u></b>                      Secretary's action was based, as provided in 28 U.S.C. 2112.</p>	