



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 23, 2007

Alexa Posny
U.S. Department of Education
400 Maryland Avenue SW, room 4109
Potomac Center Plaza
Washington, DC 20202-2600

Dear Ms. Posny:

The undersigned members of the Consortium for Citizens with Disabilities Education Task Force appreciate the opportunity to submit comments on the notice of proposed rulemaking for the early intervention for infants and toddlers with disabilities program. While consensus was reached on most issues, we anticipate that some of the undersigned members may submit additional written comments that vary on specific issues.

The comments are organized to follow the order of the proposed regulations set out in the *Federal Register*. For all comments, proposed new language is underlined and deleted language is ~~struck-through~~.

Thank you for considering our views. If you have any comments or require additional information, please contact Katy Beh Neas at 202.347.3066.

Sincerely,

American Council of the Blind
American Foundation for the Blind
American Occupational Therapy Association
American Society for Deaf Children
American Speech Language Hearing Association
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law
Council for Exceptional Children
Conference of Educational Administrators of Schools and Programs for the Deaf
Council of Parent Attorneys and Advocates
Division of Early Childhood of the Council for Exceptional Children
Easter Seals
Helen Keller National Center
Learning Disabilities Association of America

National Center for Learning Disabilities
National Coalition on Deaf-Blindness
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
TASH
The Advocacy Institute
The Arc of the United States
United Cerebral Palsy

PART C NPRM COMMENTS
Consortium for Citizens with Disabilities Education Task Force
July 23, 2007

SUBPART A

303.1 PURPOSE OF THE EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Recommendation: Modify heading and section (a) as follows:

303.1 Purpose of the early intervention system program for infants and toddlers with disabilities **and their families.**

The purpose of this part is to provide financial assistance to States to—

- a) **maintain** develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system ~~that provides~~ **of early intervention services focused on enhancing the development of** for infants and toddlers with disabilities and ~~their~~ **enhancing the capacity of** families **to meet the developmental needs of their children;**

Rationale: We recommend several changes in this section. The term “*system*” and not “*program*” should be used as it is consistent with the statute and with other regulatory changes made in recent years. It is also consistent with the intent of an interagency coordinated effort.

In addition, the phrase “*and their families*” should be added to 303.1 following “*infants and toddlers with disabilities*” to clarify that the intent of Part C relates to infants and toddlers *and* their families.

CURRENT REGULATION 303.4 LIMITATION ON ELIGIBLE CHILDREN

Recommendation: Restore the language in current 303.4.

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

Rationale: This provision allows states to follow Part B and not Part C regulations with children who transition to preschool special education before their third birthday. This regulation is consistent with IDEA section 619(a) (2) and (h), long-standing provisions in the statute. This provision is necessary as an important component of many state transition systems as part of ensuring a seamless transition for children and families from Part C to preschool special education.

303.7 CONSENT

Recommendation: Support proposed definition of consent.

Rationale: The formal definition of consent is very useful to parents and lead agency personnel to ensure that parents understand their rights and responsibilities under Part C.

303.13 (b) TYPES OF EARLY INTERVENTION SERVICES

Recommendation: Clarify the list of early intervention services by moving “interpreting and transliteration services” out of proposed 303.13(b)(12)(iv) and to 303.13(b)(5). The remainder of the section will be renumbered accordingly.

(b)(5) Interpreting and Transliteration Services, includes oral transliteration services, sign language (including American Sign Language) interpreting services, and cued language interpreting services for families of infants or toddlers who are deaf or hard of hearing when needed.

Rationale: Speech language pathologists do not typically provide interpreting and transliteration services. Therefore, those interpreting and transliteration services including; oral transliteration services, sign language interpreting services, and cued language interpreting services should be in a separate section from speech language pathology services.

303.13 (b) TYPES OF EARLY INTERVENTION SERVICES

Recommendation: Modify 303.13 (b)(12)(iv) and move it to 303.13(b)(10) and change the language as follows. Renumber subsequent sections accordingly.

(b)(10) Sign language and cued language services (including American Sign Language) includes, ~~provision of~~ sign-language, cued language, and auditory/oral language services, which, as used with respect to infants and toddlers who are deaf or hard of hearing, and including other infants and toddlers with disabilities ~~who are hearing impaired,~~ includes services to the infant or toddler with a disability and the family to ~~teach~~ facilitate their interactions with their children in sign language, cued language, and auditory/oral language as well as to ~~provide oral transliteration services, sign language, and cued language interpreting services~~ as appropriate. Such services are not limited to children who are deaf or hard of hearing and may also benefit children with other disabilities. Services for families of infants and toddlers who are deaf or hard of hearing should include information and counseling regarding hearing loss, amplification, communication opportunities, and the potential effects of hearing loss on social-emotional development, family and other social interactions, academic performance, and other behaviors.

Rationale: This modification clarifies what we believe the Department intended, that children and families should receive appropriate services to help the child acquire language and to help the family support the child's language acquisition.

In addition, the proposed regulation seems to limit certain services in this provision to infant and toddlers who are deaf or hard of hearing. However, many infants and toddlers with Down syndrome and other disabilities can benefit from these communication strategies. These children and their families should be able to receive any of the services listed in this provision if they are appropriate for the child.

When a family learns that their infant or toddler has significant hearing loss it is critical that they have access to a knowledgeable provider who can help them access, understand and cope with new information regarding the type, degree, and etiology of hearing loss and the variety of communication choices that are available to them. Early and timely information and support will help the family make informed choices.

303.13(b) TYPES OF EARLY INTERVENTION SERVICES
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Recommendation: Restore language from current 303.12(d)(6) and (7) and renumber as proposed 303.13 (b)(6) and (7). Renumber remaining sections accordingly.

(b)(6) Nursing services includes—

- (i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;**
- (ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and**
- (iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.**

(b)(7) Nutrition services includes—

- (i) Conducting individual assessments in—**
 - (a) Nutritional history and dietary intake;**
 - (b) Anthropometric, biochemical, and clinical variables;**
 - (c) Feeding skills and feeding problems; and**
 - (d) Food habits and food preferences;**
- (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and**
- (iii) Making referrals to appropriate community resources to carry out nutrition goals.**

Rationale: Nursing and nutrition services are essential components of early intervention for many infants and toddlers. If these needs are not addressed, the child may not be able to benefit from other early intervention services. The fact that the Act does not specifically list these services does not mean they cannot be put into the regulations. As pointed out in the preamble of the regulations, the statutory list was not intended to be exhaustive: “Nursing services or nutrition services could be deemed early intervention services if they are provided by qualified personnel and otherwise meet the definition of early intervention services.” The regulations should retain these provisions because of their importance and to clarify that they are permissible under Part C.

303.13 (b)(1) ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

Recommendation: The Department should clarify, through regulation, a letter to Part C lead agencies, policy statement, or other means, that hearing aids and appropriate related audiological services are included as assistive technology devices and services when determined necessary by the IFSP team.

Rationale: Timely access to hearing aids and appropriate related audiological services is sometimes problematic. According to the Office on Disability, U.S. Department of Health and Human Services:

Hearing aids are the primary tools that allow infants and children with hearing loss to have access to spoken language. Currently, the majority of infants with hearing loss in the United States identified through universal newborn hearing screening programs do not have timely provision of appropriate personal hearing aids. Delays can be months or a year or more until an amplification funding source is identified and the application process completed.

(A Brighter Future For Children With Hearing Loss: Closing the Gaps in Educational and Health Care Services, Meeting of Representatives of Federal Agencies that Support Programs of Services to Children with Special Needs, The Office on Disability, U.S. Department of Health and Human Services, Margaret J. Giannini, MD, FAAP Director, Washington, D.C. May 17, 2004, p. 7).

The Report recommends that "Federal agencies should ensure that infants and toddlers with hearing loss have immediate and free access to appropriate hearing aids."

303.13 (b)(6) OCCUPATIONAL THERAPY

Recommendation: Modify by adding the following statement at the beginning of the proposed definition.

(b)(6) *Occupational therapy* **means services provided by a qualified occupational therapist and** includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include-

Rationale: Making this change ensures that occupational therapy services provided to infants and toddlers under Part C are consistent with state licensure and practice acts implemented to ensure quality and consistency of professional services. The language is also consistent with the definition of occupational therapy in Part B of IDEA which will increase the alignment of Part B and Part C while clarifying and streamlining regulations guiding service provisions under both regulations. The statute requires this section be consistent with state standards for service provision and the suggested change would more accurately reflect the majority of state laws governing qualification standards for licensure and regulation of the professions in general.

In addition, corresponding changes to other services that are delivered by distinct professionals, such as speech-language pathologists to deliver speech language services, should be incorporated throughout the definition section.

303.13 (b)(11) SPECIAL INSTRUCTION

Recommendation: Modify as follows:

(b)(11) *Special instruction* includes –

. . .

(iii) Providing families with information, skills, and support related to enhancing the **physical, cognitive, communication, social or emotional, and adaptive skill** development of the child; and

Rationale: This clarification would provide guidance as to all five developmental areas that must be addressed through early intervention services.

303.13 (b)(13) TRANSPORTATION AND RELATED COSTS

Recommendation: Restore reference to taxi services from current 303.12(b)(15).

(b)(13)Transportation and related costs include the cost of travel (e.g., mileage, or travel **by taxi,** common carrier or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an infant or toddler with a disability and the child’s family to receive early intervention services.

Rationale: The regulations should be clear that taxi service is an appropriate mode of transportation.

DEFINITIONS USED IN THIS PART

Recommendation: Add new definitions for “interpreting” and “transliteration.” Renumber the remainder of the section accordingly.

303.22 Interpreting

Interpreting services involve the translation of language from one modality (e.g. speech) into another (e.g. sign language).

303.35 Transliteration

Transliteration services convey spoken information into an accessible form (e.g. spoken language to cued language) or voices over difficult to understand speech into more clear speech (oral transliteration).

Rationale: Separate out the definitions for interpreting and transliteration services to clarify the differences between the two types of services and demonstrate when each type of service would be needed for infants and toddlers who are deaf or hard of hearing.

303.24 MULTIDISCIPLINARY

Recommendation: Retain the current definition at 303.17.

Rationale: CCD strongly disagrees with the proposed change in 303.24 regarding the definition of “multidisciplinary.” Permitting one individual to represent a multidisciplinary perspective is not consistent with recommended practice.

303.26 NATURAL ENVIRONMENTS

Recommendation: Modify the definition of “natural environments” by using the statute language from 632(4)(G).

Natural environments means settings **in which** ~~that are natural or normal for~~ an infant or toddler without a disability **typically spends time**, ~~may include~~ **including** the home **and community settings in which children without disabilities participate**; and must be consistent with the provisions of section 303.126.

Rationale: The concept of natural environments is to help families with young children with disabilities facilitate the development of their child in the context of each child’s family’s unique needs. For some families, their non-disabled child would be at home until his/her third birthday when the child would typically participate in a pre-school program. For the majority of families with a child under the age of 6, the child would spend his/her day in a family or center-based child care program. Unfortunately, implementation of this requirement in some places is narrowly interpreted to mean ONLY the child’s home, and not inclusive center-based child care programs. The landmark report *From Neurons to Neighborhoods* found that nearly 45 percent of mothers with an infant with a disability do not return to work because they cannot find a child care program that will accept their child. If the Part C regulations were clear that child care or Head Start programs are appropriate settings in which children with and without disabilities can participate, this dynamic could be changed, thus transforming the economic circumstances of many families to the benefit of all family members.

In addition, certain public funding sources, such as Medicaid, do not always reimburse services delivered at a child’s home. Rather, in some states Medicaid will only provide services in a Medicaid approved facility. Part C regulation should not be a barrier to a significant financial resource that is available to the Part C system.

303.33 (a) SERVICE COORDINATION SERVICES

Recommendation: Modify the definition of “service coordination services” as follows:

(a) *Service coordination services* means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under Part C of the Act, including –

- (1) Coordinating all services required under this part across agency lines;
- (2) Assisting parents of infants and toddlers with disabilities in gaining access to and coordinating **for parents** the provision of the early intervention services and coordinating other services identified in the IFSP under section 303.344(e) **(including medical and child care services)**

that are needed or are being provided to the infant or toddler with a disability and the child's family; and

(3) Serving as the single point of contact for carrying out the activities described in paragraph (b) of this section.

(b) The term includes –

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review and evaluation of IFSPs;

(3) Assisting families in identifying available EIS providers;

(4) Coordinating and monitoring the delivery of services required under this part;

(5) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources **including the availability of advocacy services**;

(6) Coordinating the funding sources for services required under this part; and

(7) Facilitating the development of a transition plan to preschool, school or other services, if appropriate.

(c) The lead agency's or an IES provider's use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Medicaid), for purposes of claims in compliance with the requirements of proposed section 303.501 (payor of last resort).

Rationale: Service coordination services must include those services that are not directly early intervention services but that are essential to the well-being of the child and the family, in accordance with section 303.344(e). Case managers should coordinate these services for parents, instead of merely assisting the parents in accessing and coordinating the services, in order to ensure that the services provided to the child are not dependent on the parents' ability to handle this task. In addition, parents of infants and toddlers may need advocacy services to help them understand their rights and procedural safeguards.

SUBPART B

303.105 POSITIVE EFFORTS TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES

Recommendation: Encourage states to report their efforts to employ qualified individuals with disabilities.

Rationale: The regulations should encourage, but not require, states to demonstrate the steps taken to employ qualified individuals with disabilities.

303.112 AVAILABILITY OF EARLY INTERVENTION SERVICES

Recommendation: Modify as follows:

Each system must include a State policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available **and accessible** to all infants and toddlers with disabilities and their families...

Rationale: A policy that states that services are available to all eligible children is insufficient. States must demonstrate that eligible families can actually access such services. In many rural areas, in

practical terms, services are not available to families who have no means of transportation. Such services might be available in a larger city, several hours away. These services are not truly available to a family without transportation.

303.119 (b) QUALIFICATION STANDARDS

Recommendation: Reinforce and strengthen the requirement that establishment and maintenance of qualification standards be consistent with state standards regarding licensure and regulation of a profession to ensure that personnel providing services under Part C are not in violation of their state practice and licensure acts.

(b) Qualification standards. The policies and procedures required in paragraph (a) of this section must provide for the establishment and maintenance of qualification standards that are consistent with any State-approved or State-recognized certification, licensing, registration, **state practice acts** or other comparable requirements that apply to the profession, discipline, or area **or scope of practice** in which personnel are providing early intervention services.

Rationale: In order to ensure qualified personnel are providing the necessary services to infants and toddlers at-risk of or with disabilities, it is essential that the Part C regulations reinforce state licensure laws and practice acts implemented to ensure quality of personnel providing services within specific professional disciplines such as occupational and physical therapy as well as speech-language pathology services. Most states have built a requirement into practice acts that professionals within a discipline must be trained specifically in that discipline and that no one other than those who have graduated from an accredited education program and are licensed can provide that service. Such laws and regulations ensure the protection of professional scopes of practice and more importantly help guarantee that consumers receive quality services from trained professionals.

303.126 EARLY INTERVENTION SERVICES IN NATURAL ENVIRONMENTS

Recommendation: Modify 303.126 (a) and (b) as follows:

Each system must include policies and procedures to ensure, consistent with Section Section 303.13(a)(8) (early intervention services), 303.26 (natural environments), and 300.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided –

- (a) to the maximum extent appropriate, in natural environments; and
- (b) in settings other than the natural environment that are most appropriate, as determined by ~~the parent and~~ the IFSP team **that includes the parent**, only when early intervention services necessary to meet the unique needs of the infant or toddler and the family cannot be provided satisfactorily in a natural environment.

Rationale: In both Part B and Part C of IDEA, there is a presumption that most children will benefit from services delivered in settings in which children without disabilities typically participate. However, if the child's IFSP team that includes the child's parents determines that the child's and family's unique needs cannot be met when early intervention services are delivered in the natural environment, the law and the regulation permit other placements.

SUBPART C

303.208(a)(2) PUBLIC PARTICIPATION POLICIES AND PROCEDURES

Recommendation: Modify 303.208(a)(2) as follows:

(a)(2) Before submitting a State application under this part (including any policies, procedures, descriptions, methods, certifications and assurances required in subparts B and C of this part), the State **shall--**

- (i) **Comply** ~~complies~~ with the public participation requirements in paragraph (a) of this section; and
- (ii) **Publish** ~~publishes~~ each proposed application, policy or procedure to--
 - (A) Ensure circulation throughout the State, at least 60 days before the date on which the application, policy or procedure is submitted to the Secretary; and
 - (B) Provide an opportunity for public comment for at least 30 days during that 60-day period.
 - (C) **Provide adequate notice of the hearings required in paragraph (a)(1) of this section at least 30 days before the dates that the hearings are conducted.**

Rationale: The first few edits are to add the word “shall” and to match the subject with the verbs. The addition of (C) is to maintain the requirement for 30 days notice before hearings are held. This provision is found in current 303.110(a)(3). The proposed regulations do not provide states with any guidance on “adequate notice.” Parents need 30 days to ensure that they can meaningfully participate in the hearings.

SUBPART D

303.301(c) COORDINATION

Recommendation: Add the State Children’s Health Insurance Program (SCHIP) under Title XXI of the Social Security Act and the Early Hearing Detection and Intervention (EHDI) systems to the list of programs with which Part C should coordinate child find activities.

Rationale: Many children with disabilities participate in SCHIP programs and most states now have early hearing detection programs that can identify hearing loss in infants. One of the biggest challenges these programs are facing is ensuring that deaf and hard of hearing children are enrolled in early intervention programs. EHDI and early intervention systems should collaborate more effectively in order to serve children and families better.

303.302(a)(2)(i) REFERRAL PROCEDURES

Recommendation: Modify section 303.302(a)(2)(i) as follows:

(a)(2) The procedures required in paragraph (a)(1) of this section must –

(i) Provide for referring a child **within 2 working days to the extent practicable** ~~as soon as possible~~ after the child has been identified; and

Rationale: It is understandable that the Part C system has no meaningful authority over the actions taken by primary referral sources. However, we are concerned that the elimination of any specific time frame dilutes the concept of urgency that should be a key component of referring an infant or toddler who is possibly in need of early intervention services.

303.320 (a)(3) EVALUATION AND ASSESSMENT

Recommendation: Support.

Rationale: It is essential to the success of early intervention services that each child be evaluated and assessed by qualified personnel, using the child's native language and using culturally appropriate and research validated tools.

303.320(e) TIMELINES

Recommendation: Modify the timeline to clarify that the initial IFSP must be completed 45 days after referral to the Part C agency.

(e)Timelines. (1)(i) Except as provided in paragraph (e)(2) of this section, the evaluation of the child (including any assessments of the child and family) and assessment of service needs, as well as the initial IFSP meeting, must be completed within 45 days ~~from the date the lead agency obtains parental consent to conduct an evaluation of the child~~ **after the public agency receives a referral.**

Rationale: There continues to be a need for urgency in the development of the initial IFSP. Six weeks should be sufficient time to secure parental consent and to develop this initial plan. If the public agency can demonstrate why additional time is necessary, then the public agency should be afforded additional time.

A specific provision should be added to 303.320 (e) to allow the lead agency to document family requested delays (e.g. child or family illness, work or family vacation scheduling needs or other family requested considerations) that would interfere with the ability of the lead agency to meet the 45 day timeline.

303.343(b) IFSP TEAM MEETINGS AND PERIODIC REVIEWS

Recommendation: Modify as follows to permit parents to request the participation of others in the IFSP review.

(b) Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant **or if the parents request**, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

Rationale: Parents must always have the ability to have anyone they choose to attend any IFSP meeting.

303.344 CONTENT OF THE IFSP

Recommendation: Modify this section to include the following special factors. This section will be numbered as 303.344(e). The subsequent sections will be renumbered accordingly.

- (i) In the case of a child whose behavior impedes his or her development, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- (ii) In the case of a child of a family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;
- (iii) In the case of a child who is blind or visually impaired, if appropriate, provide for exposing the child to pre-literacy or readiness activities related to the use of Braille (e.g., through tactile stimulation and the use of “raised” picture books);
- (iv) Consider the communication development needs of the child, and in the case of a child who is deaf or hard of hearing, consider –
 - (A) The appropriate use of communication and language development opportunities including spoken language, signed language, including American Sign Language, tactile signed language, and cued language.
 - (B) Opportunities for direct communication with peers, professional personnel, and deaf and hard of hearing adults in the child's language and communication mode consistent with the developmental level of the child, and full range of needs related to the child's language and communication mode or mode(s).
- (v) Consider whether the child requires assistive technology devices and services.

Rationale: This language mirrors the special factors language in Part B. It is essential that IFSP teams discuss whether a child and family can benefit from these activities and services.

303.344(e) CONTENT OF THE IFSP, OTHER SERVICES

Recommendation: Modify the proposed regulation as follows:

- (e) other services. To the extent appropriate, the IFSP also must –
- (1) Identify medical, **child care, respite** and other services that the child or family needs or is receiving through other sources but that are neither required nor funded under this part; and
 - (2) If those services are not currently being provided, include a description of **the public funding sources if available for those services and** the steps the service coordinator or family may take to assist the child and family in securing those other services.

Rationale: The IFSP should be the central resource of information about existing resources for families, regardless of whether the services needed are early intervention services. The IFSP process should assist families in learning about health insurance for their child through public programs such as Medicaid and the State Children’s Health Insurance Program and for child care supports through the Child Care and Development Block Grant. How to access mental health services and supports should also be discussed.

SUBPART E

303.401(e)(1) OPTION TO INFORM A PARENT ABOUT INTENDED DISCLOSURE

Recommendation: Change (e)(1) to state that:

- (e) Option to inform a parent about intended disclosure (1) A state lead agency, through its policies and procedures, **must** ~~may~~ require public agencies and EIS providers, prior to making the limited disclosure ...

Rationale: This section of the proposed regulations permits a state lead agency to develop policies and procedures that require public agencies to inform the parent about the disclosure and permit a timeframe for the parent to object to the disclosure. The requirement to inform parents about the disclosure and the subsequent time period to object should be mandatory and not state discretionary. It is a basic right that parents should have the right to know who has access to their child’s information. The option will still permit agencies to share information as long as a parent does not object and at the same time keeps parents informed about what agencies have information about his or her child.

303.414 CONSENT PRIOR TO DISCLOSURE OR USE

Recommendation: We suggest that the Department include in their regulations clarification that contact information and personally identifiable information should also be disclosed to Protection and Advocacy Agency’s (P&A’s) when P&A’s seek access pursuant to their authority of the Protection and Advocacy of Individuals with Mental Illness (PAIMI Act), specifically 42 U.S.C. § 10805(a)(4); 42 C.F.R. §51.41.

Rationale: The Department has made clear in its regulations that participating agencies may disclose to a P&A contact information or personally identifiable information of an infant or toddler when the P&A requests access under their authority under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act). We agree and applaud the Department for their recognition of this issue and for clarifying it. As the Department stated in an amicus brief it filed in *Connecticut Office of Protection and Advocacy for Persons with Disabilities v. Hartford Bd. of Education*, 464 F.3d 229 (2nd Cir. 2006), “FERPA does not bar a P&A from obtaining access to the name of and contact information for a parent, guardian, or other legal representative of a minor student with a disability or mental illness, where the P&A’s probable cause determination satisfies the requirements for access to records under the PAIMI Act and the DD Act.” The Department further stated in its amicus brief that “[t]o the extent that the statutes are in conflict, the specific access provisions of the PAIMI Act and the DD Act (and 29 U.S.C. § 794e, by incorporation) are properly understood as a limited override of FERPA’s generally applicable non-disclosure requirements.” The Department’s recognition assists in the protection of children at a very vulnerable age. The regulation will eliminate the need for protracted litigation about the issue and instead ensure infants and toddlers’ rights are protected.

303.440 – 303.449

Recommendation: Clarify that these sections only apply to those states that choose to adopt the Part B due process procedures under section 615 of the Act. For example, write the statement: “This section only applies to those states that choose to adopt the Part B due process procedures under section 615 of the Act” under every section from 303.440-303.449.

Rationale: As currently drafted, this section of the proposed regulation is confusing. It is easy for the reader to miss the heading and think that all Part C agencies must offer a resolution session, when in fact, only those agencies in states that adopt the Part B due process procedures are required to do so.

303.448(d) JURISDICTION OF DISTRICT COURTS

Recommendation: This section of the proposed regulation states that the U.S. District Courts have jurisdiction over cases brought under 615 without regard to the amount in controversy. The regulation should reference 639 (a)(1), the Part C section regarding procedural safeguards rather than the Part B section of the statute. Include a reference to 20 U.S.C. § 1439 in 303.448(d).

Rationale: The cases brought under Part C are also done so in U.S. District Court without regard to the amount in controversy.

SUPBART F

303.510(c) NON-REDUCTION OF BENEFITS

Recommendation: Add a reference to the State Children's Health Insurance Program (SCHIP) under Title XXI of the Social Security Act.

(c) Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act 42 U.S.C. 701 et seq., (SSA) (relating to maternal and child health) ~~or~~ Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), **or Title XXI of the SSA (relating to the State Children's Health Insurance Program)** within the State.

Rationale: SCHIP is another federal program that provides medical assistance to children who may receive early intervention programs.