

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AB59

Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations governing the Early Intervention Program for Infants and Toddlers with Disabilities. These regulations are needed to reflect changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Act or IDEA).

DATES: These regulations are effective on October 28, 2011.

FOR FURTHER INFORMATION CONTACT:

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Telephone: (202) 245-7605. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay System (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., braille, large print, audiotape, or computer diskette) upon request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: These regulations implement changes in the regulations governing the Early Intervention Program for Infants and Toddlers with Disabilities necessitated by the reauthorization of the IDEA.

On May 9, 2007, the U.S. Department of Education (the Department) published a notice of proposed rulemaking in the **Federal Register** (72 FR 26456) (NPRM) to amend the regulations governing the Early Intervention Program for Infants and Toddlers with Disabilities. In the preamble to the NPRM, the Secretary discussed, on pages 26456 through 26496, the changes proposed to the regulations for this program, which regulations are set forth in 34 CFR part 303.

In these regulations, the Department is amending and finalizing the regulations proposed in the May 2007 NPRM, except in the maintenance of effort (MOE) provisions (proposed § 303.225) (which implement part C's supplement not supplant requirements). The Department plans to obtain

additional public input and conduct further rulemaking in this area.

Due to the economic changes that many States have experienced since the publication of the NPRM in May 2007, the Department has received many informal inquiries requesting guidance on the MOE provisions in the part C regulations (which implement the supplement not supplant requirements under part C of the Act). States also have expressed concern about their ability to meet the MOE requirements and their continued participation in the part C program. In response to these concerns, the Department intends to issue a separate NPRM and seek input from the public on the MOE provisions. Accordingly, these final regulations continue in § 303.225 the MOE requirements in current § 303.124.

Major Changes in the Regulations

The following is a summary of the major changes in these final regulations from the regulations proposed in the NPRM (the rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section of this preamble):

Subpart A—General

Definitions

- The definition of *multidisciplinary* in § 303.24 has been revised with respect to the individualized family service plan (IFSP) Team composition to require the parent and two or more individuals from separate disciplines or professions with one of these individuals being the service coordinator.

- Revised § 303.25(a) and new § 303.321(a)(5) and (a)(6) clarify that in the case of a child who is limited English proficient, *native language* means the language normally used by the parents of the child except that when conducting evaluations and assessments of the child, qualified personnel determine whether it is developmentally appropriate to use the language normally used by the child. Additionally, we have removed the requirement in proposed § 303.25(a)(2) that the native language of the parents be used in all direct contact with the child.

- We have revised the definition of *personally identifiable information* in § 303.29 to cross-reference, with appropriate modifications, the definition of that same term contained in the regulations under the Family Educational Rights and Privacy Act (FERPA) in 34 CFR 99.3, as amended.

- New § 303.32 adds to these regulations a definition of *scientifically*

based research, which cross-references, with appropriate modifications, the definition of the same term contained in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Subpart C—State Application and Assurances

Application Requirements

- Section 303.203(b)(2) clarifies that the State's application must include, as part of coordination of all resources, those methods the State uses to implement the payor of last resort requirements in § 303.511.

- Revised § 303.208(b), regarding public participation policies and procedures, requires lead agencies to hold public hearings, provide at least 30 days' prior notice for the hearings, and provide a public comment period of at least 30 days before adopting any new or revised part C policies or procedures.

- Revised § 303.209(b)(1)(i) (proposed § 303.209(b)(2)(i)) requires that, for toddlers with disabilities who may be eligible for preschool services under part B of the Act, the lead agency notify (consistent with any opt-out policy adopted by the State under § 303.401(e)), not only the local educational agency (LEA) where the toddler resides, but also the State educational agency (SEA), and revise the timeline for the notification to occur not fewer than 90 days before the toddler's third birthday.

- New § 303.209(b)(1)(ii) clarifies that if the lead agency determines a child to be eligible for part C services between 45 and 90 days prior to the toddler's third birthday, the lead agency must notify (consistent with any opt-out policy adopted by the State under § 303.401(e)), not only the LEA where the toddler resides, but also the SEA, as soon as possible after the toddler's eligibility determination.

- New § 303.209(b)(1)(iii) provides that if a child is referred to the lead agency fewer than 45 days before that toddler's third birthday, the lead agency is not required to conduct the initial evaluation, assessment, or IFSP meeting, and if that child may be eligible for preschool services or other services under part B of the Act, the lead agency, with the parental consent required under § 303.414, must refer the toddler to the SEA and appropriate LEA.

- Revised § 303.209(d)(2) clarifies that the transition plan is not a separate document, but is included in the IFSP.

- New § 303.209(e) clarifies that a transition conference under § 303.209(c) or meeting to develop the transition plan under § 303.209(d) must meet the