

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Section 3 (b) of the District of Columbia State Education Office Establishment Act of 2000, (D.C. Law 13-176; D.C. Official Code § 38-2602 (b) (11) (2008 Supp.); and Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 *et seq.* hereby gives notice of her intent to adopt a new chapter A32 entitled “Early Intervention Services,” in Title 5 of the *District of Columbia Municipal Regulations* (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. This proposal will supersede portions of Title 22, chapter 30, governing family eligibility and cost participation in early intervention services.

The Office of the State Superintendent of Education is the lead agency for the District of Columbia responsible for implementing a comprehensive system of early intervention services for infants and toddlers with disabilities and their families in conformance with district laws and federal law to ensure that all children with disabilities, ages birth through two (2) years of age, have available to them early intervention services. This notice is being circulated throughout the District for a sixty day period, including an opportunity to submit written comments and attend a public hearing on these proposals. A public hearing has been scheduled for October 8, 2009.

The purpose of this proposed new chapter A32 in Title 5 of the DCMR is to establish standards for the operation of The Office of the State Superintendent of Education, Department of Special Education, DC Early Intervention Program (Program), including family eligibility and cost participation for early intervention services based upon the Federal Poverty Guidelines.

A32 EARLY INTERVENTION SERVICES**A3200 General Purpose**

A3200.1 This chapter establishes standards and procedures for early intervention services in the District of Columbia for infants and toddlers from birth through age two (2), in accordance with federal and local special education laws and regulations, specifically Part C of the Individuals with Disabilities Education Act, (IDEA) 20 U.S.C. § 1431 *et seq.* (Part C); and 34 C.F.R. Part 303.

A3200.2 The Office of the State Superintendent of Education (OSSE) is the lead agency responsible for providing early intervention services to eligible children and their families in the District of Columbia.

A3200.3 The OSSE Early Intervention Services Program (Program) shall administer the early intervention policy and procedures for the District of Columbia.

A3200.4 The regulations established in this chapter, all policies and procedures, and Program guidance align with the Part C Early Intervention State Plan submitted to the US Department of Education, which is available on the OSSE website at osse.dc.gov.

A3201 Public Awareness

A3201.1 The Program shall maintain a public awareness campaign focusing on the early identification and delivery of services to children who are eligible for early intervention services under this chapter and consistent with the IDEA.

A3202 Central Directory

A3202.1 Pursuant to 34 C.F.R. §303.301, the Program shall be the central point of contact for referrals for Part C Early Intervention Services.

A3202.2 The Program shall maintain a central directory that includes information on early intervention services, resources, and experts available in the District.

A3202.3 The Program shall:

- (a) Ensure the information clearly describes the nature and scope of the services and assistance available from each source listed in the directory;
- (b) Ensure the directory is accessible to the community; and
- (c) Update the directory annually.

A3203 Child Find System

A3203.1 The Program shall coordinate and implement a District-wide comprehensive child find system, consistent with the IDEA, to ensure all eligible children are identified, located, and evaluated in conformance with 34 C.F.R. §303.321.

A3204 Referrals

A3204.1 A referral to the Program shall be made within two (2) days of identifying a child who is less than three years of age and suspected of having a

disability or being at risk of having a disability, unless a child has already been identified, a referral has been made previously, or the parent(s) objects to a referral.

- A3204.2 The primary referral source, if other than the parent, shall:
- (a) Provide a general explanation of the services available under the Part C Early Intervention Program and the benefits to the child's development and to the family;
 - (b) Inform the parent that, unless the parent objects, the child will be referred to the Program for purposes of a free, multidisciplinary evaluation to determine eligibility for services; and
 - (c) Ensure the confidentiality of all information transmitted at the time of referral.
- A3204.3 A primary referral source, if other than the parent, shall ensure policy and procedures are in place to:
- (a) Maintain a confidential system of all forms of communication, data, and records;
 - (b) Provide parents with a general explanation of the services that are available under the Early Intervention Services Program and the benefits to the child's development and to the family;
 - (c) Track services that are available and/or provided to the child and family, including, without limitation, the projected benefits and projected outcomes of services to the child's development and to the family;
 - (d) Maintain a record confirming that the parent has been informed of the right to object to a child's referral and/or enrollment in the Program for developmental screening, home visits, and Part C Early Intervention Services; and
 - (e) If a parent objects to the referral, the primary referral source shall include written documentation of the parent's objection to the referral and follow-up actions taken by the primary referral source.

A3205 Evaluation and Assessment

- A3205.1 The evaluation and assessment of each child shall be culturally appropriate, strengths-based, and conducted by a multi-disciplinary team. Any evaluation and assessment procedures must be voluntary on the part

of the family and conducted in the native language of the child and the child's parents.

- A3205.2 The evaluation and assessment shall include a timely, comprehensive, multi-disciplinary evaluation which identifies the appropriate Part C Early Intervention Services.
- A3205.3 No single procedure shall be used as the sole criterion for determining a child's eligibility for services under this chapter.
- A3205.4 All professionals providing evaluation and assessment services shall meet the standards established by the Program under A3221 and shall be trained in applicable policies and procedures.
- A3205.5 An evaluation and initial assessment of each child and family shall be completed within 45 days of referral. Exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days of referral shall be documented in a child's official file.
- A3205.6 An evaluation and assessment shall be conducted by trained personnel with knowledge and skills to administer and utilize appropriate methods and procedures and must be based on informed clinical opinion.
- A3205.7 An evaluation and assessment must include the following components:
- (a) A review of the child's current health records and medical history;
 - (b) An evaluation of the child's level of functioning in each of the following developmental areas:
 - (1) Cognitive development;
 - (2) Physical development, including vision and hearing;
 - (3) Communication development;
 - (4) Social or emotional development; and
 - (5) Adaptive development;
 - (c) An assessment that identifies the child's unique strengths and needs and the services appropriate to meet those needs; and
 - (d) A family assessment that identifies the necessary resources to enhance the family's capacity to meet the developmental needs of the child and identified priorities and concerns of the family.

A3205.8 Informed clinical opinion shall be used to assist in the determination of a child's eligibility for Part C Early Intervention Services. To collect qualitative and quantitative information, any or all of the following may be used to augment available psychometric and diagnostic data or supplement the evaluation process when there are no standardized measures appropriate for a given age or developmental area:

- (a.) Clinical interviews with parent;
- (b.) Evaluation/observation of a child;
- (c.) Observation of parent-child interaction;
- (d.) Information from teachers or child care providers; or
- (e.) Neurodevelopmental or other physical examinations.

A3205.9 The informed clinical opinion shall be maintained in the child's official file and shall include one or more of the following types of written documentation:

- (a.) Evaluation reports reflecting a child's development and professional recommendation(s) related to the need for early intervention services;
- (b.) Staffing notes indicating that the multidisciplinary team process was used to determine a child's eligibility for services based upon the sources of information available, including, but not limited to, the child's history and development and the family's concerns, priorities, and resources;
- (c.) Multidisciplinary team staffing notes or continuing service reports listing the procedures undertaken to support the recommendation and a statement that eligibility was based on the informed clinical opinion of the multidisciplinary team; or
- (d.) Documentation demonstrating that a child who is functioning above the stated criterion level because of intensive early intervention is eligible for services based on expected regression if services were to be terminated.

A3206 Individualized Family Service Plan

A3206.1 The Program shall develop a standard form for the Individualized Family Service Plan (IFSP) for the District of Columbia to document the early intervention services prescribed for the child and the child's family.

A3206.2 IFSP meetings shall be scheduled with reasonable advance written notification to the family and other appropriate IFSP participants.

A3206.3 Every eligible child shall have an initial meeting to develop the IFSP within forty five (45) calendar days of the referral.

A3206.4 The IFSP shall be reviewed by the multi-disciplinary team every six months or earlier if requested by a member of the multidisciplinary team, including the family. The IFSP review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. The purpose of the review is to address the following:

- (a) The degree to which progress toward achieving identified outcomes is being made; and
- (b) Whether modification or revision of these outcomes or services is necessary.

A3206.5 The following persons shall participate in the IFSP process:

- (a) The parent(s) or legal guardians of the child;
- (b) Other family members, as requested by the parent, if feasible to do so;
- (c) The service coordinator;
- (d) An advocate or person outside of the family, if the parent requests that the person participates;
- (e) The interim service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for the implementation of the IFSP;
- (f) The persons directly involved in conducting the evaluations and assessments; and

- (g) Other persons, as appropriate, who will be providing services to the child and family.

A3206.7 In the event a participant listed above is unable to attend an IFSP meeting in person, arrangements shall be made for that person's involvement through other means of communication, including participating by telephone, conference call, designating a knowledgeable authorized representative to attend the meeting on a participant's behalf, or making pertinent records available at the meeting.

A3206.8 The contents of the IFSP must be fully explained to the parents and informed written consent must be obtained prior to the provision of Part C early intervention services described in the IFSP.

A3206.9 A meeting shall be conducted at least annually to evaluate the IFSP for a child and the child's family, and as appropriate, to revise the content of the IFSP. The results of any current evaluations conducted and other information available from the ongoing assessment of the child and family must be used in determining what services are needed and will be provided.

A3207 Content of the Individualized Family Service Plan

A3207.1 The IFSP shall specify a comprehensive list of services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child, consistent with the requirements of the IDEA.

A3207.2 The IFSP shall include a statement of the child's present levels of development based on professionally acceptable objective criteria including:

- (a) Present levels of physical development, including vision, hearing, and health status;
- (b) Cognitive development;
- (c) Communication development;
- (d) Social or emotional development; and
- (e) Adaptive development.

A3207.3 With the concurrence of the family, the IFSP shall include a statement of the family's resources, needs, concerns, and priorities related to enhancing the development of the infant or toddler.

- A3207.4 The IFSP shall include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine:
- (a) The degree to which progress toward achieving the outcomes is being made; and
 - (b) Whether modifications or revisions of the outcomes or services are necessary.
- A3207.5 The IFSP shall include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), necessary to meet the unique needs and identified outcomes projected for the child and family including:
- (a) Specific services;
 - (b) Frequency, intensity, and location of services to be provided;
 - (c) Modality of the service to be provided;
 - (d) Method for payment arrangements, including the different sources of payment for the service specified; and
 - (e) To the maximum extent appropriate, a natural environment in which early intervention services shall be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment.
- A3207.6 To the extent appropriate, the IFSP shall also list medical and other services that the child needs, but that are not covered under Part C early intervention services, including the funding sources to be used to pay for such services or the steps that will be taken to secure those services through public or private sources.
- A3207.7 The IFSP shall identify projected dates for initiation of the early intervention services and the anticipated duration of these services.
- A3207.8 The IFSP must include the name of the service coordinator from the Program who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

A3207.9 Each IFSP, including the initial IFSP, shall identify the steps to be taken to support the transition of children receiving Part C early intervention services to preschool or other appropriate services, consistent with 34 C.F.R. §§303.148 and 303.344(h), including:

- (a) Convening within six months and no less than 90 days before the child's third birthday, a transition meeting with the family, and other representatives requested by the family of the child and the local educational agency (LEA), unless the family objects to the LEA representative's attendance at the meeting. An LEA may also participate in earlier IFSP meetings to discuss transition planning by agreement of the parent, the Program, and an LEA;
- (b) Determining procedures to prepare the child for changes in service delivery, including steps to help the child and family adjust to and function successfully in a new setting;
- (c) Transmitting, with written parental consent, information about the child to the LEA, or other community service provider, to ensure continuity of services, including provision of evaluation and assessment information and copies of IFSPs that have been developed and implemented; and
- (d) Identifying the dedicated Part C service coordinator who will continue to provide care coordination services for the child and family until the Part B transition coordinator is named at the conclusion of the Individualized Education Plan (IEP) meeting.

A3207.10 The IFSP shall include parent signature(s) to acknowledge parents as the primary decision makers on the IFSP team as well as the signature of other parties participating in the development of the IFSP document.

A3208 Child Eligibility

A3208.1 A child must be a resident of the District of Columbia to receive Part C Early Intervention Services from the District of Columbia

A3208.2 A child is a resident of the District of Columbia if the child lives with a parent, legal guardian, or person "acting as a parent" (as that term is defined by the IDEA) with a residence in the District of Columbia.

- A3208.3 Consistent with federal regulations, 34 C.F.R. §303.16, a child is eligible for the District of Columbia Part C early intervention services if the child:
- (a) Demonstrates a developmental delay at 3.0 standard deviations or 50 percent delay, in one or more of the following areas:
 - (1) Physical development, including vision or hearing;
 - (2) Communication development;
 - (3) Cognitive development;
 - (4) Social or emotional development; or
 - (5) Adaptive skills;
 - (b) Demonstrates a need for early intervention services through informed clinical opinion; or
 - (c) Is diagnosed as having a physical or mental condition that has a high probability of resulting in a significant developmental delay.

A3208.4 The Program shall conduct ongoing monitoring and repeated screening at six month intervals including children found not eligible, to ensure that progress is monitored and that necessary referrals are made as needs are identified.

A3208.5 Medicaid-eligible children who do not qualify for Part C early intervention services shall be referred to their pediatrician for related services.

A3209 Financial Eligibility and Assistance

A3209.1 Prior to the provision of early intervention services, the Program shall determine whether or not a family is eligible for financial assistance and what if any contribution is required with regard to payment for early intervention services.

A3209.2 The amount of financial assistance and parent contribution shall be based upon the adjusted gross income reported in the parent's most recent year's annual federal income tax filing or in the event such filing is not required, the submission of relevant documentation indicating annual adjusted gross income.

- A3209.3 Financial eligibility is dependent upon the timely submission to the Program of a cost participation application. Each family seeking financial assistance for the payment of early intervention services shall submit an initial cost participation application and an annual application thereafter within the timeframes determined by the State Superintendent of Education.
- A3209.4 Financial assistance for Part C early intervention services shall be applicable solely for the needs of an eligible child who is not entitled to receive Part C Early Intervention Services under another public or private source. Consistent with this chapter, financial assistance may be provided by the Program in the event the child is not eligible to receive financial assistance for such services from a public or private source.
- A3209.5 Parents of an eligible child with a combined adjusted gross income of two hundred percent (200%) or greater than the Federal Poverty Level (FPL) issued each year by the United States Department of Health and Human Services shall be required to contribute to the cost of services in accordance with this chapter.
- A3209.6 The Program shall report contribution determinations to service providers.
- A3209.7 A service provider shall be responsible for the collection of the parent contribution.
- A3210 Reserved**
- A3211 Parent Contributions**
- A3211.1 At least annually, or at such earlier time that the Program determines reassessment of the parents' financial circumstances is warranted, the Program or a designee shall conduct a reassessment and adjust as appropriate the parent contribution for early intervention services.
- A3211.2 A parent(s) has a right to request in writing an adjustment to a contribution in the event of a change in financial circumstances that may cause a hardship to the family and should be taken into account with regard to a contribution determination.
- A3211.3 A request for a contribution adjustment shall include a revised application for the current year and all relevant documentation to support such request for that year.

- A3211.4 The Program may adjust the amount of a parent's contribution based upon convincing documentation that the change in financial circumstances merits a revision to the current required contribution.
- A3211.5 The Program determination and all supporting documentation for such determination shall be maintained as confidential and retained in the Program's permanent official file for the eligible child.
- A3211.6 A re-evaluation during a current year does not alter the requirement or timing for the submission of an annual application for continuing financial assistance.
- A3211.7 A parent may submit to the State Superintendent of Education or a designee, a written request for reconsideration of a Program contribution determination within thirty (30) days from the date of the Program determination.
- A3211.8 The aggrieved parent shall submit in writing a statement in support of his/her request for reconsideration, with all supporting documentation, clearly identifying how such documentation supports the basis for the parent's request.
- A3211.9 The administrative review shall be conducted by the State Superintendent of Education or a designee.
- A3211.10 Written notice of a final agency decision shall be sent to the aggrieved parent within ninety (90) days after receipt of the request for reconsideration.

A3212 Early Intervention Services at No Cost

- A3212.1 The following early intervention services shall be provided at no cost to any child from zero through two years of age:
- (a) Implementation of child find requirements;
 - (b) Evaluation and assessment, for the purpose of determining whether a child has a delay or disabilities which meet the District of Columbia's definition of developmental delay;
 - (c) Service coordination services; and

- (d) Administrative and coordinated activities related to:
 - (1) The development, review, and evaluation of Individualized Family Service Plans; and
 - (2) Implementation of the procedural safeguards.

A3213 Schedule of Contributions for Early Intervention Services

A3213.1 The schedule of monthly contributions for early intervention services is based on a sliding scale. Parent(s) with an adjusted gross income under 200% of the FPL shall be exempt from making any contribution and all required early intervention services pursuant to 34 C.F.R. §303.344 are provided without charge to the family.

A3213.2 Schedule of Contributions:

| Persons in Family | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|-----------------------|--|------|------|------|------|------|------|------|------|------|
| Adjusted Gross Income | Percentage of Contribution for Approved Services | | | | | | | | | |
| Annual | \$21,660 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Monthly | \$1,805 | | | | | | | | | |
| Weekly | \$417 | | | | | | | | | |
| Annual | \$29,140 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Monthly | \$2,428 | | | | | | | | | |
| Weekly | \$560 | | | | | | | | | |
| Annual | \$36,620 | 10 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Monthly | \$3,052 | | | | | | | | | |
| Weekly | \$704 | | | | | | | | | |
| Annual | \$44,100 | 15 | 10 | 5 | 0 | 0 | 0 | 0 | 0 | 0 |
| Monthly | \$3,675 | | | | | | | | | |
| Weekly | \$848 | | | | | | | | | |
| Annual | \$51,580 | 20 | 15 | 10 | 5 | 0 | 0 | 0 | 0 | 0 |
| Monthly | \$4,298 | | | | | | | | | |
| Weekly | \$992 | | | | | | | | | |
| Annual | \$59,060 | 25 | 20 | 15 | 10 | 5 | 0 | 0 | 0 | 0 |
| Monthly | \$4,922 | | | | | | | | | |
| Weekly | \$1,136 | | | | | | | | | |
| Annual | \$66,540 | 30 | 25 | 20 | 15 | 10 | 5 | 0 | 0 | 0 |
| Monthly | \$5,545 | | | | | | | | | |
| Weekly | \$1,280 | | | | | | | | | |
| Annual | \$74,020 | 35 | 30 | 25 | 20 | 15 | 10 | 5 | 0 | 0 |
| Monthly | \$6,168 | | | | | | | | | |
| Weekly | \$1,423 | | | | | | | | | |
| Annual | \$81,500 | 40 | 35 | 30 | 25 | 20 | 15 | 10 | 5 | 0 |
| Monthly | \$6,792 | | | | | | | | | |
| Weekly | \$1,567 | | | | | | | | | |
| Annual | \$88,980 | 45 | 40 | 35 | 30 | 25 | 20 | 15 | 10 | 5 |
| Monthly | \$7,415 | | | | | | | | | |
| Weekly | \$1,711 | | | | | | | | | |
| Annual | \$96,460 | 50 | 45 | 40 | 35 | 30 | 25 | 20 | 15 | 10 |
| Monthly | \$8,038 | | | | | | | | | |
| Weekly | \$1,855 | | | | | | | | | |
| Annual | \$103,940 | 55 | 50 | 45 | 40 | 35 | 30 | 25 | 20 | 15 |
| Monthly | \$8,662 | | | | | | | | | |
| Weekly | \$1,999 | | | | | | | | | |
| Annual | \$111,420 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Monthly | \$9,285 | | | | | | | | | |
| Weekly | \$2,143 | | | | | | | | | |

A3214. Rates for Part C Early Intervention Services

A3214.1 The Program shall be responsible for establishing hourly rates and flat fees to be paid for any Part C early intervention services in conformance with provisions set forth in this chapter.

A3214.2 A Provider shall obtain prior written Program approval for the applicable hourly rate or flat fee rate to be paid to such provider for a Part C early intervention service, when the rate for such service is not listed in the rate schedule below.

A3214.3 Schedule of Maximum Provider Rates for Part C Early Intervention Services

| Service Category | Maximum Rate |
|--|---|
| <i>Evaluation and IFSP Development</i> | |
| Development of an Initial IFSP | \$ 130 Flat Rate |
| Development of an Initial IFSP including the cost of all professional services for initial multidisciplinary evaluations | \$ 650 Flat Rate |
| Single-Discipline Evaluation | \$ 240 Flat Rate |
| Annual Reassessment | \$ 400 Flat Rate |
| Vision/Hearing Screening | \$ 80 Flat Rate |
| Review of the Child’s Existing Documentation | \$ 80 Per Hour (time estimate) |
| Observation of Child | \$ 80 Per Hour |
| <i>Direct Services</i> | |
| Attendance at IFSP Meeting by Service Provider | \$ 55 Per Hour (up to one (1) Hour) for each IFSP meeting |
| Assistive Technology Services | \$ 55 Per Hour |
| Parent Counseling and Training | \$ 55 Per Hour |
| Health and Nursing Services | \$ 65 Per Hour |
| Nutrition Services | \$ 55 Per Hour |

| | |
|---|--|
| Occupational Therapy Services | \$ 95 Per Hour (Individual) \$ 300 Per Hour (Group – not to exceed six (6) families) |
| Physical Therapy Services | \$ 95 Per Hour (Individual) \$ 300 Per Hour (Group – not to exceed six (6) families) |
| Psychological Services | \$ 80 Per Hour |
| Service Coordination Services | \$ 55 Per Hour |
| Special Instruction (Cognitive, ABA, Auditory Oral, Low Vision) | \$ 55 - \$80 Per Hour (Individual) \$ 250 Per Hour (Group – not to exceed eight (8) children) |
| Speech-Language Pathology Services | \$ 95 Per Hour (Individual) \$ 300 Per Hour (Group – not to exceed six (6) families) |
| Vision Services | \$ 80 Per Hour |

A3215 Procedural Safeguards

A3215.1 The Program shall disseminate to parents of children receiving early intervention services a parents' rights brochure and a family guide for the District-wide Part C early intervention services that includes an explanation of procedural safeguard policies, including parental consent

A3215.2 In accordance with the confidentiality procedures of 34 C.F.R. §§300.560-300.576, the parents of an eligible child shall be given the opportunity to inspect and review the early intervention record relating to:

- (a) Evaluations and assessments;
- (b) Eligibility determination;
- (c) Development and implementation of IFSPs;
- (d) Individual complaints related to the early intervention system's programming for, or service delivery pertaining to, the child; and
- (e) Any other area under 34 C.F.R. Part 303 involving the early Intervention record about the child and the child's family.

A3215.3 All access to records is governed by applicable District and federal law.

A3215.4 Prior written notification shall be given to the parents of an eligible child within a reasonable time period, as determined or agreed to by the parents, before a service provider proposes, or refuses, to initiate or change the

identification, evaluation, or placement of a child, or the provision of appropriate early intervention services to the child and the child's family.

- (a) The notice shall be in sufficient detail to inform the parents about:
 - (1) The action that is being proposed or refused;
 - (2) The reasons for taking the action; and
 - (3) All procedural safeguards that are available under 34 CFR §303.400.
- (b) The notice shall be:
 - (1) Written in language understandable to the general public;
 - (2) Provided in the native language of the parents, unless it is clearly not feasible to do so;
 - (3) If the native language or other mode of communication of the parent is not a written language, the Program shall take steps to ensure that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication as appropriate.

A3216 Parental Consent

A3216.1 Written informed parental consent shall be obtained before:

- (a) Conducting the initial evaluation and assessment of a child consistent with 34 C.F.R. §303.322;
- (b) Determining the resources, priorities, and concerns of the family related to enhancing the development of the child;
- (c) Initiating the provision of early intervention services; and
- (d) Assigning any financial obligations for early intervention services to the parents on the IFSP.

A3216.2 If written consent is not given, the Program shall make reasonable efforts to ensure that the parent:

- (a) Is fully aware of the nature of the evaluation and assessment or the services that are available for the infant or toddler; and

- (b) Understands that the child will not be able to receive the evaluation and assessment or early intervention services unless written consent is given.

- A3216.3 In addition to the consent requirements of this chapter, consent requirements regarding personally identifiable information in 34 C.F.R. §300.571 and 34 C.F.R. Part 99 shall be met.
- A3216.4 The parents of an eligible child may determine whether they, their child, or other family members will accept or decline any early intervention service in accordance with applicable law, and may decline a particular service, initially or after first accepting it, without jeopardizing the right to receive other early intervention services.
- A3216.5 When a child is found eligible or not eligible, the Program shall enter this information into a database specific to the Program. Certain information about the child shall also be shared with the LEA for transition planning purposes and to provide the parents with information about the Part B program options, unless the parents of the child opt out in writing.

A3217 Confidentiality

- A3217.1 The Program shall establish and implement procedures to ensure that confidentiality of personally identifiable information collected, used, or maintained is consistent with 34 C.F.R. Part 99 and 34 C.F.R. §§ 300.128, 300.502, 300.560-300.576, and 303.460 and with other applicable District and federal laws and regulations. Policies and procedures shall apply only to early intervention records.
- A3217.2 Service providers maintaining an early intervention record during the period of a child's eligibility shall implement policies and procedures in conformance with this chapter and applicable District and federal laws and regulations.

A3218 Mediation, Due Process, and State Complaint Procedures

- A3218.1 The mediation and due process procedures applicable to proceedings for Part B of the IDEA in the District of Columbia shall govern the mediation and hearing process for parties with regard to Part C Early Intervention Services in conformance with 34 C.F.R. §§ 303.506 – 303.512.
- A3218.2 Alternatively or in addition to utilizing the mediation and/or due process procedures, an organization or an individual may file a written signed state complaint. The state complaint policies and procedures can be found on the OSSE's website.

- A3218.3 The state complaint must include:
- (a) A statement that the District of Columbia has violated a requirement of Part C of the Act or the regulations in this Chapter; and
 - (b) The facts on which the complaint is based.
- A3218.4 The alleged violation must have occurred not more than one year before the date that the complaint is received by the Program unless a longer period is reasonable because:
- (a) The alleged violation continues for that child or other children; or
 - (b) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.
- A3218.5 If a written state complaint is received that is also the subject of a due process hearing under 34 C.F.R. §303.420, or contains multiple issues, of which one or more are part of that hearing, the Program shall set aside any part of the state complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process proceeding, must be resolved within the 60-calendar-day timeline using the complaint procedures described in A3218.3(a) and (b) in conformance with the IDEA and its implementing regulations.
- A3218.6 If an issue raised in a state complaint filed under this section has previously been decided in a due process hearing involving the same parties:
- (a) The hearing decision is binding; and
 - (b) The Program shall inform the complainant to that effect.
- A3218.7 During the pendency of any proceeding involving a complaint under this section, unless the Program and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.
- A3218.8 If the state complaint involves an application for initial services under this chapter, the child must receive those services that are not in dispute.

A3219 Interagency Agreements

A3219.1 The OSSE shall enter into agreements with other District agencies involved in early intervention services in conformance with applicable District and federal requirements when appropriate.

A3220 District of Columbia Interagency Coordinating Council

A3220.1 An Interagency Coordinating Council (ICC) shall assist and provide advice to the Program on policy and practice decisions, including child find activities.

A3221 Comprehensive System of Personnel Development

A3221.1 An interagency Comprehensive System of Personnel Development (CSPD) plan shall be developed and implemented consistent with the requirements of Part B of the IDEA (34 C.F.R. §§ 300.380 through 300.387) to ensure sufficient number of qualified and skilled providers of early intervention supports and services.

A3221.2 The OSSE shall establish appropriate professional requirements for personnel providing early interventions services for eligible children and their families consistent with federal and local requirements.

A3222 Nondiscriminatory Procedures

A3222.1 The Program shall assure that nondiscriminatory procedures are utilized in all evaluation and assessment activities. These procedures include the following requirements:

- (a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;
- (b) All assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

A3223 Oversight and Accountability

A3223.1 The OSSE shall implement a monitoring framework to ensure Program compliance for both contracted providers and local functions related to early intervention program. The monitoring framework shall include monitoring agencies, institutions, and organizations used to carry out Part C; enforcing obligations imposed on those agencies under Part C; providing technical assistance, if necessary, to those agencies, institutions,

and organizations; and correcting deficiencies that are identified through monitoring.

A3224 Data Collection

A3224.1 The Program shall maintain a District-wide data collection system to compile all information necessary to meet federal reporting requirements and ensure effective management of the early intervention program.

A3299 Definitions

Any term used in this chapter that is not otherwise defined herein shall have the same meaning as the Individuals with Disabilities Education Act, 20 USC §1414 *et seq.*, and its implementing regulations, 34 C.F.R. Part 303.

Administrative Review means a review by the Program based upon a written request to review the financial circumstances involved in determining a family's ability to pay.

Contribution means the amount of money determined to be due and payable by the parent to a service provider.

Cost of Services means the maximum costs for Part C early intervention services, such as physical therapy, that a primary referral source may charge based upon a written agreement with the Program.

Day means calendar days unless otherwise specified.

Developmental Delay means a child demonstrates a significant developmental delay at 3.0 standard deviations, or 50 percent delay, in one or more of the following areas:

- (a) Physical development, including vision or hearing;
- (b) Communication development;
- (c) Social or emotional development;
- (d) Adaptive skills;
- (e) Demonstrates a need for early intervention services through informed clinical opinion; or
- (f) Is diagnosed as having a physical or mental condition that has a high probability of resulting in a significant developmental delay.

Early Intervention Services means services which are designed to meet the developmental needs of an eligible child under 34 C.F.R. §303.12 and the needs of the family related to enhancing the child's development; selected in collaboration with the parents in conformance with the IFSP and consistent with District and federal laws and regulations.

Existing Documentation means any available documentation regarding a child's possible or diagnosed disability or developmental delay, including evaluations, medical reports, and assessments, that may contribute to the eligibility determination and identification of the early intervention services.

Fee means the amounts acceptable as payment for services by families that are based on the accrued charges, co-payments, and deductibles incurred as a result of the services a family receives each month.

Income means the combined total adjusted gross income of the parent(s) with primary responsibility for the child, declared in the joint and/or individual annual federal income tax filing for the most recent calendar year; or in the event such filing is not required with the federal government, other appropriate documentation to establish a parent(s) total annual income. Examples of income sources include, but are not limited to revenues from: wages, salaries, tips, partnership income, interest, dividends, capital gains, fringe benefits, IRA distributions, pensions, annuities, royalties, trusts, rental income, S corporations, farm income, alimony, child support, Social Security Income, unemployment compensation, and disability compensation.

Individualized Family Service Plan or (IFSP) means a written plan for providing early intervention services to an eligible child and the child's family.

Infants and Toddlers with disabilities means children from birth through the second year (i.e., prior to the day of the child's third birthday), who are eligible for early intervention services, as documented by appropriate qualified personnel.

Informed Clinical Opinion means the best use of quantitative and qualitative information by qualified personnel regarding a child, and family if applicable. Such information includes, if applicable, the child's functional status, rate of change in development, and prognosis.

Informed Consent means the parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication. The parent understands that providing consent is voluntary and may be revoked at any time.

Natural Environment means settings that are natural or normal for the child's age peers who have no disability, including the home, a relative's home when care is delivered by the relative, child care setting, or other communities setting in which children without disabilities participate.

Part B Transition Coordinator means each local education agency that anticipates enrolling preschool-aged children must designate an onsite staff person to participate in transition activities and serve as the primary contact person for other agencies involved with the early childhood transition process

Residence means the location in the District of Columbia where the parent(s) with primary responsibility for the child resides and claims as the permanent place of residence for purposes of one or more of the following: federal and state taxes; receiving public financial support; voter registration; driver registration; valid residential lease; or other criteria that reveals an intent to establish the District of Columbia as the person's domicile.

Screening Procedure means an activity carried out by the Program, early intervention service provider, or designated primary referral source (except for parents) to identify children suspected of having a disability and in need of early intervention services at the earliest possible age.

Persons wishing to comment on this rule should submit their comments in writing to Kerri L. Briggs, PhD., State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C. 20001, Attention; Part C Regulations, Jessica Morffi; or to osse.publiccomment@dc.gov. All comments must be received no later than October 18, 2009. Copies of this proposed rulemaking may be obtained from the OSSE website at osse.dc.gov or upon request at the above referenced location.