

**A Guide to Federal Statute & Regulations
Related to Part C Finance
(DRAFT) February 2007**

Source: Part C of Public Law 108-446, the Individuals with Disabilities Education Act
& Current Part C Regulation 34 C.F.R. Part 303

Compiled by: Lynda Pletcher & Anne Taylor

nectac
The National Early Childhood Technical Assistance Center
www.nectac.org

Financial assistance for what?

Federal Statute Says...

“SEC. 631. FINDINGS AND POLICY.

“(a) **FINDINGS.**—Congress finds that there is an urgent and substantial need—

“(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child’s first 3 years of life;

“(2) to reduce the educational costs to our society, including our Nation’s schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

“(3) to maximize the potential for individuals with disabilities to live independently in society;

“(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

“(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

“(b) **POLICY.**—It is the policy of the United States to provide financial assistance to States—

“(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

“(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

“(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

“(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

How are the federal funds allocated?

Federal Statute Says...

“SEC. 643. ALLOCATION OF FUNDS.

“(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

“(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

“(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

“(b) PAYMENTS TO INDIANS.—

“(c) STATE ALLOTMENTS.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

“(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

“(A) $\frac{1}{2}$ of 1 percent of the remaining amount described in paragraph (1); or

“(B) \$500,000.

“(3) RATABLE REDUCTION.—

“(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

“(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

“(4) DEFINITIONS.—In this subsection—

“(A) the terms ‘infants’ and ‘toddlers’ mean children under 3 years of age; and

“(B) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

“(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

“(1) IN GENERAL.—For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.

“(2) AMOUNT OF GRANT.—

“(A) IN GENERAL.—Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the

number of infants and toddlers in all States receiving grants under such paragraph.

“(B) MAXIMUM AMOUNT.—No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

“(3) CARRYOVER OF AMOUNTS.—

“(A) FIRST SUCCEEDING FISCAL YEAR.—Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

Federal funds come to the states to do what?

Federal Statute Says...

“SEC. 633. GENERAL AUTHORITY.

“The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

Part C Regulation Says...

§ 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

- (a) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families.
- (b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.
- (c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.
- (d) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.
- (e) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to **at-risk infants and toddlers**, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of—
 - (1) Identifying and evaluating at-risk infants and toddlers;
 - (2) Making referrals of the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and
 - (3) Conducting periodic follow-up on each referral under paragraph (e)(2) of this section to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

(Authority: 20 U.S.C. 1433 and 1438)
[58 FR 40959, July 30, 1993, as amended at 63
FR 18293,
Apr. 14, 1998]

How may funds be used?

Federal Statute Says...

SEC. 638. USES OF FUNDS.

“In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

“(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part **that are not otherwise funded** through other public or private sources;

“(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

“(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

“(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and

“(5) in any State that does not provide services for at risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

“(A) identifying and evaluating at-risk infants and toddlers;

“(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

“(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

SEC. 640. PAYOR OF LAST RESORT.

“(a) **NONSUBSTITUTION.**—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, **except** that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 *may be used to pay the provider of services pending reimbursement* from the agency that has ultimate responsibility for the payment.

“(b) **OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.**—

“(1) **ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.**—

“(A) **IN GENERAL.**—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

“(i) the provision of, and financial responsibility for, services provided under this part; and

“(ii) such services are consistent with the requirements of section 635 and the State’s application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

“(B) **CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.**—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State’s agreement or mechanism under section 612(a)(12), where appropriate.

“(2) **REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.**—

“(A) **IN GENERAL.**—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

“(B) **REIMBURSEMENT.**—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency

agreement or other mechanism required under paragraph (1).

“(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

“(A) State statute or regulation;

“(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

“(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State’s application pursuant to section 637.

“(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

Part C Regulation Says...

§ 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(d) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.

(e) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of—

(1) Identifying and evaluating at-risk infants and toddlers;

(2) Making referrals of the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and

(3) Conducting periodic follow-up on each referral under paragraph (e)(2) of this section to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

(Authority: 20 U.S.C. 1433 and 1438)

[58 FR 40959, July 30, 1993, as amended at 63FR 18293, Apr. 14, 1998]

§ 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State’s early intervention program for infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1433, 1435(a)(10))

Who can we provide services to?

Federal Statute Says...

“SEC. 632. DEFINITIONS.

“In this part:

“(1) AT-RISK INFANT OR TODDLER.—The term ‘at-risk infant or toddler’ means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

“(2) COUNCIL.—The term ‘council’ means a State interagency coordinating council established under section 641.

“(3) DEVELOPMENTAL DELAY.—The term ‘developmental delay’, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

“(4) EARLY INTERVENTION SERVICES.—The term ‘early intervention services’ means developmental services that—

“(A) are provided under public supervision; ...

“(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

“(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

“(5) INFANT OR TODDLER WITH A DISABILITY.—The term ‘infant or toddler with a disability’—

“(A) means an individual under 3 years of age who needs early intervention services because the individual—

“(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; **OR**

“(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

“(B) may also include, at a State’s discretion—

“(i) at-risk infants and toddlers; and

“(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—

“(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

“(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.

- (3) Family training, counseling, and home visits** means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.
- (4) Health services** (See § 303.13).
- (5) Medical services only for diagnostic or evaluation purposes** means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.
- (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.
- (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.
- (8) Occupational therapy** includes services to address the functional needs of a child 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—
- (i) Identification, assessment, and intervention;
 - (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
 - (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- (9) Physical therapy** includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—
- (i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.
- (10) Psychological services** includes—
- (i) Administering psychological and developmental tests and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and
 - (iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
- (11) Service coordination services** means assistance and services provided by a service coordinator to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.23.
- (12) Social work services** includes—
- (i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
 - (ii) Preparing a social or emotional developmental assessment of the child within the family context;

- (iii) Providing individual and family group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;
- (iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and
- (v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(13) Special instruction includes—

- (i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
- (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;
- (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
- (iv) Working with the child to enhance the child's development.

(14) Speech-language pathology includes—

- (i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
- (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and
- (iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(15) Transportation and related costs includes 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 a child eligible under this part and the child's family to receive early intervention services.

(16) Vision services means—

- (i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;
- (ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
- (iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(Authority: 20 U.S.C. 1401(1) and (2); 1432(4))

NOTE: The lists of services in paragraph (d) and qualified personnel in paragraph (e) of this section are not exhaustive. *Early intervention services may include such services as the provision of respite and other family support services.* Qualified personnel may include such personnel as vision specialists, paraprofessionals, and parent-to-parent support personnel.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18294, Apr. 14, 1998; 64 FR 12535, Mar. 12, 1999]

If our state accepts the federal funds, what assurances are we required to make?

Federal Statute Says...

“SEC. 634. ELIGIBILITY.

“In order to be eligible for a grant under section 633, a **State shall provide assurances** to the Secretary that the State—

“(1) has adopted a policy 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, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

“(2) has in effect a statewide system that meets the requirements of section 635.

Part C Regulation Says...

§ 303.120 General.

(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.

(Authority: 20 U.S.C. 1437(b))

§ 303.121 Reports and records.

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(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.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(4))

§ 303.122 Control of funds and property.

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; and

(b) A public agency will administer the funds and property.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(3))

§ 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(5)(A))

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. Separate bank accounts are not required.

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to 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.

(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.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(5)(B))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18294, Apr. 14, 1998]

§ 303.125 Fiscal control.

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.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(6))

§ 303.126 Payor of last resort.

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.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1437(b)(2))

accounting for, Federal funds paid under section 643 to the State;

“(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and

“(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

“(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

“(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

“(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

What are the requirements of the state application?

Part C Regulation Says...

§ 303.20 Policies.

(a) As used in this part, **policies means** State statutes, regulations, Governor’s orders, directives by the lead agency, or other written documents that represent the State’s position concerning any matter covered under this part.

(b) State policies include—

- (1) A State’s commitment to maintain the statewide system (see § 303.140);
- (2) A State’s eligibility criteria and procedures (see § 303.300);
- (3) A statement that, consistent with § 303.520(b), provides that services under this part will be provided *at no cost to parents*, except where a system of payments is provided for under Federal or State law.
- (4) A State’s standards for personnel who provide services to children eligible under this part (see § 303.361);
- (5) A State’s position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and
- (6) Other positions that the State has adopted related to implementing any of the other requirements under this part.

““(9) **Policies and procedures** relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities

““(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

“(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, **whether or not such programs or activities are receiving assistance** made available under section 633, to **ensure that the State complies** with this part;

- “(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;
- “(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;
- “(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;
- “(E) the resolution of intra- and interagency disputes; and
- “(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(Authority: 20 U.S.C. 1431–1445)
[58 FR 40959, July 30, 1993. Redesignated and amended at 63 FR 18294, Apr. 14, 1998]

What is the state’s responsibility for supervision and monitoring of finance?

Part C Regulation Says...

§ 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for—

- (1) The general administration and supervision of programs and activities receiving assistance under this part; and
- (2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) *Methods of administering programs.* In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

- (1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;
- (2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations;
- (3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and
- (4) Correcting deficiencies that are identified through monitoring.

(Approved by the Office of Management and Budget under control number 1820–0550)
(Authority: 20 U.S.C. 1435(a)(10)(A))

What is the state's responsibility for interagency agreements for finance?

Part C Regulation Says...

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility, in accordance with § 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.*

(1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(Approved by the Office of Management and Budget under control number 1820-0550)
(Authority: 20 U.S.C. 1435(a)(10)(C) and (a)(10)(F))

NOTE: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

What are the policies related to payment?

Part C Regulation Says...

§ 303.520 Policies related to payment for services.

- (a) *General.* Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must—
- (1) Meet the requirements in paragraph (b) of this section; and
 - (2) Be reflected in the interagency agreements required in § 303.523.
- (b) *Specific funding policies.* A State's policies must—
- (1) Specify which functions and services will be provided at no cost to all parents;
 - (2) Specify which functions or services, if any, will be subject to a system of payments, and include—
 - (i) system and schedule of sliding fees that will be used; and
 - (ii) The basis and amount of payments; and
 - (3) Include an assurance that—
 - (i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and
 - (ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family; and
 - (4) Set out any fees that will be charged for early intervention services and the basis for those fees.
 - (c) *Procedures to ensure the timely provision of services.* No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.
- (d) *Proceeds from public or private insurance.*
- (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25.
 - (2) If a public agency spends reimbursements from Federal funds (*e.g.*, Medicaid) for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in § 303.124.

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10))
[58 FR 40959, July 30, 1993, as amended at 64
FR 12536, Mar. 12, 1999]

§ 303.521 Fees.

- (a) *General.* A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.
- (b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:
- (1) Implementing the child find requirements in § 303.321.
 - (2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Service coordination, as included in §§ 303.22 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in §§303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Approved by the Office of Management and

Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1432(4))