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**Chapter 170-300 WAC
(Proposed New Chapter)
RULES FOR THE PROVISION OF EARLY INTERVENTION SERVICES**

GENERAL PROVISIONS

NEW SECTION

WAC 170-300-01000 Authority. The state authority for this chapter is RCW 43.215.060. This authority enables the department of early learning to promulgate rules to implement chapter 43.215 RCW. This authority authorizes the department of early learning to receive federal funds in accordance with the provisions of federal law. Federal authority for this chapter is 20 U.S.C. Sec. 1431-1444, the Individuals with Disabilities Education Act.

NEW SECTION

WAC 170-300-01005 Intent. This chapter reflects the department's commitment to quality early learning opportunities for infants and toddlers with developmental delays or disabilities and their families and establishes the requirements for the statewide early support for infants and toddlers program.

NEW SECTION

WAC 170-300-01010 Applicability. (1)(a) The provisions of this chapter apply to:

(i) The following state agencies that assist in funding and/or the provision of early intervention services:

(A) The office of superintendent of public instruction under RCW 28A.155.065 and WAC 392-172A-02080;

(B) The health care authority under RCW 41.05;

(C) The department of social and health services under RCW 71A.12.030, 71A.12.120, 74.14A.025 and 70.195.030;

(D) The department of health under RCW 39.34; and

(E) The department of services for the blind under RCW 74.18.190;

(ii) A local lead agency under contract with the department of early learning to coordinate the early support for infants and toddlers program through local interagency agreements or memorandum of understandings including the monitoring and supervision of the provision of early intervention services, regardless of the funding source;

(iii) Early intervention service providers, under public supervision, identified in the individualized family service plan; and

(b) Are binding on the entities identified in subsection (1)(a) of this section that are part of the statewide system of early intervention regardless of whether they receive federal funds under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1431-1444.

(2) The provisions of this chapter apply to all children referred to the early support for infants and toddlers program including eligible infants and toddlers with disabilities and their families.

(3) The provisions of this chapter do not apply to any child with a disability receiving a free appropriate public education under chapter 392-172A WAC.

NEW SECTION

WAC 170-300-01015 Availability of early intervention services. (1) The agencies identified in WAC 170-300-01010 are responsible for the provision of early intervention services for all infants and toddlers with disabilities in the state and their families, including:

(a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state;

(b) Infants and toddlers with disabilities who are homeless children and their families; and

(c) Infants and toddlers with disabilities who are wards of the state.

(2) Early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, in subsection (1) of this section.

(3) The state requires that:

(a) Traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the state, are meaningfully involved in the planning and implementation of all the requirements of this chapter; and

(b) The families, in subsection (3)(a) of this section have access to culturally competent services within their local geographical areas.

DEFINITIONS

NEW SECTION

WAC 170-300-01025 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

- (1) “**Act**” means Individuals with Disabilities Education Act, as amended.
- (2) “**Assessment**” means the ongoing procedures used by qualified personnel to identify the child’s unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of a child’s eligibility under part C of the act and includes the assessment of the child and the child’s family consistent with WAC 170-300-04015 through 170-300-04045.
- (3) “**Child**” means an individual under the age of six and may include an infant or toddler with a disability under part C of the act.
- (4) “**Council**” means the state interagency coordinating council that meets the requirements of part C of IDEA.
- (5) “**County interagency coordinating council**” or “**CICC**” means the council established under RCW 70.195.020, within a geographic service area, to advise and assist a local lead agency in the implementation of early intervention services.
- (6) “**Day**” means calendar day, unless otherwise indicated.
- (7) “**Department**” or “**DEL**” means the Washington state department of early learning.
- (8) “**Destruction**” means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable.

(9) **“Duration”** means projecting when a given service will no longer be provided, such as when the child is expected to achieve the results or outcomes in his or her IFSP.

(10) **“Early intervention records”** mean all records regarding a child that are required to be collected, maintained, or used under part C of the act and its implementing regulations.

(11) **“Early intervention service program” or “EIS program”** means an entity designated by the state lead agency for federal reporting under this chapter. In Washington state, EIS program means a local lead agency.

(12) **“Early intervention service provider” or “EIS provider”** means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under part C of the act, whether or not the entity or individual receives federal funds under part C of the act, and may include, where appropriate, the state lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in Washington state under part C of the act.

(13) **“Early support for infants and toddlers program” or “ESIT program”** means the program within the DEL that administers part C of the act.

(14) **“Evaluation”** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under part C of the act, consistent with the definition of infant or toddler with a disability.

(15) **“Family resources coordination”** in Washington State has the same meaning as service coordination services or case management and as used in part C of the act, service coordination services means services provided by a service coordinator, as part of the early intervention team, to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including procedural safeguards, required under this chapter.

(16) **“Family resources coordinator” or “FRC”** means an individual who assists an eligible child and his/her family in gaining access to the early intervention services and other resources as identified in the individualized family service plan, and receiving the rights and procedural safeguards of the early intervention program.

(17) **“Frequency and intensity”** mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis.

(18) “**Homeless children**” means children who meet the definition given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

(19) “**Individualized family service plan team**” or “**IFSP team**” means the child’s family; family resources coordinator; service providers, and others, as identified on the plan.

(20) “**Include**” or “**Including**” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(21) “**Initial assessment**” refers to the assessment of the child and the family assessment conducted prior to the child’s first IFSP meeting.

(22) “**Initial evaluation**” refers to the child’s evaluation to determine his or her initial eligibility under part C of the act.

(23) “**Length**” means the length of time the service is provided during each session of that service, such as an hour or other specified time period.

(24) “**Local lead agency**” or “**LLA**” means the locally designated agency or organization holding the early intervention services contract, with the DEL, ESIT program, that ensures that early intervention services are provided in accordance with the LLA’s contract with ESIT, part C of the act federal requirements and the approved Washington state grant application.

(25) “**Location**” means the actual setting, place or places, where a service will be provided.

(26) “**Method**” means how a service is provided.

(27) “**Multidisciplinary**” means the involvement of two or more separate disciplines or professions and with respect to:

(a) Evaluation of the child and assessments of the child and family in accordance with this chapter, may include one individual who is qualified in more than one discipline or profession; and

(b) The IFSP team must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator, consistent with WAC 170-300-04070.

(28) “**Natural environments**” means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with this chapter.

(29) “**Parent training and information center**” means a center assisted under the act.

(30) “**Part C of IDEA**” means the infants and toddlers with disabilities program under the Individuals with Disabilities Education Act at 20 U.S.C. §§1431-1444, as amended.

(31) “**Personally identifiable information**” has the meaning given the term in 34 CFR §99.3, as amended, except that the term “student” in the definition of personally identifiable information in 34 CFR §99.3 means “child” as used in part C of the act and any reference to “school” means “EIS provider” as used in part C of the act.

(32) “**Public agency**” means the lead agency and any other agency or political subdivision of the state.

(33) “**Qualified personnel**” means personnel who have met Washington state’s approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations, or assessments, or providing early intervention services.

(34) “**Scientifically based research**” has the meaning given the term in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended. In applying the Elementary and Secondary Education Act to the regulations under part C of the act, any reference to “education activities and programs” refers to “early intervention services.”

(35) “**Secretary**” means the secretary of education.

(36) “**State educational agency**” or “**SEA**” has the meaning given the term in WAC 392-172A-01180.

(37) “**State lead agency**” or “**SLA**” means the DEL, ESIT program that administers the federal part C of the act grant to coordinate and provide statewide early intervention services. DEL is the single line of responsibility established by the governor that is responsible for the administration of part C of the act in Washington state.

(38) “**Under public supervision**” means services provided through a program funded by federal, state or local public monies, and services provided through a private provider, but whose services are supervised or paid for by a public agency.

(39) “**Ward of the state**” means:

(a) A child who, as determined by Washington state, is:

(i) A foster child;

(ii) A ward of Washington state; or

(iii) In the custody of a public child welfare agency.

(b) Ward of the state does not include a foster child who has a foster parent who meets the requirements of a parent under part C of the act.

ELIGIBILITY CRITERIA FOR DEVELOPMENTAL DELAY

NEW SECTION

WAC 170-300-01030 Eligibility criteria for developmental delay. The agencies, identified in WAC 170-300-01010, must use the following criteria to determine if children, birth to three, are eligible for early intervention services under part C of the act, through a multidisciplinary team’s determination of the existence of any one of the following criteria:

(1) A child who demonstrates a delay of one and a half standard deviation or twenty-five percent of chronological age delay in one or more of the following developmental areas, as measured by appropriate diagnostic instruments and procedures, and administered by qualified personnel:

(a) Cognitive;

(b) Physical (fine or gross motor);

(c) Communication (receptive or expressive language);

(d) Social or emotional; or

(e) Adaptive.

(2) In the case of hearing and vision, the criteria listed within hearing impairment and vision impairment in subsections (i) and (j) of this section applies.

(3) The SLA requires that informed clinical opinion, given by qualified personnel, may be used as an independent basis to establish a child's eligibility even when instruments do not establish eligibility. However, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.

(4) A child is eligible if he or she has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Such conditions include, but are not limited to:

- (a) Chromosomal abnormalities;
- (b) Genetic or congenital disorders;
- (c) Sensory Impairments;
- (d) Inborn errors of metabolism;
- (e) Disorders reflecting disturbance of the development of the nervous system;
- (f) Congenital infections;
- (g) Severe attachment disorders; and
- (h) Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.
- (i) Deafness/hearing loss that adversely affects a child's development is:
 - (i) Unilateral sensorineural hearing loss and/or permanent conductive hearing loss of forty-five dB or greater.
 - (ii) Bilateral sensorineural hearing loss and or permanent conductive hearing loss, which includes:
 - (A) Hearing loss of twenty dB or greater, better ear average of the frequencies five hundred, one thousand, and two thousand Hz.;

(B) High frequency loss greater than twenty-five dB at two or more consecutive frequencies or average of three frequencies between two thousand and six thousand Hz, in the better ear;

(C) Low frequency hearing loss greater than thirty dB at two hundred and fifty and five hundred Hz, in the better ear; or

(D) Thresholds greater than twenty-five dB on auditory brainstem response threshold testing in the better ear; or

(iii) A six-month history of fluctuating conductive hearing loss or chronic middle ear effusion/infection of three months, unresolved past initial evaluation; or

(j) Infants and toddlers with visual impairment/blindness are those children who have a visual impairment that adversely affects the child's development, even with correction. Eligibility shall be dependent on documentation of a visual impairment, including one or more of the following conditions:

(i) Legal blindness or visual impairment, as they are customarily defined, either in terms of qualifying reduction in visual acuity and/or a qualified reduction in visual fields.

(ii) A visual impairment that is progressive in nature and can be expected to lead to blindness within a reasonable period of time.

(iii) If a visual acuity or field cannot be determined:

(A) The qualified personnel must identify a diagnosis or medical history that indicates a high probability of visual loss that may adversely affect the child's development.

(B) A functional vision evaluation by a qualified professional is necessary to determine eligibility.

(5) The state's definition does not include children from birth to age three who do not meet the criteria in subsections (1) through (4) of this section, and who are at risk of having substantial developmental delays if early intervention services are not provided.

EARLY INTERVENTION SERVICES

NEW SECTION

WAC 170-300-00000 Early intervention services. (1) Early intervention services include developmental services that are:

- (a) Provided under public supervision by the local lead agency and the state lead agency;
- (b) Selected in collaboration with the parents;
- (c) Provided in accordance with the system of payments and fees policy; and
- (d) Designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the individualized family service plan team, in any one or more of the following areas, including:
 - (i) Physical development;
 - (ii) Cognitive development;
 - (iii) Communication development;
 - (iv) Social or emotional development; or
 - (v) Adaptive development.

(2) Early intervention services must:

- (a) Meet the standards of Washington state, where the early intervention services are provided, including the requirements of part C of the act;
- (b) Include services identified in this chapter;
- (c) Provided by qualified personnel;
- (d) To the maximum extent appropriate, provided in natural environments, consistent with this chapter; and
- (e) Provided in conformity with an individualized family service plan adopted in accordance with the act and WAC 170-300-04055 through 170-300-04110.

NEW SECTION

WAC 170-300-00000 Assistive technology device. (1) An assistive technology device includes any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of infants and toddlers with disabilities.

(2) An assistive technology device does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping,) maintenance, or replacement of that device.

(3) The IFSP team determines the need for an assistive technology device based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Assistive technology service. (1) An assistive technology service is any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device.

(2) Assistive technology services include:

(a) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for infants or toddlers with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an infant or toddler with disabilities or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of infants and toddlers with disabilities.

(3) The IFSP team determines the need for an assistive technology service based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Audiology services. (1) Audiology services include:

(a) Identification of infants and toddlers with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(b) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(c) Referral for medical and other services necessary for the habilitation or rehabilitation of infants and toddlers with disabilities who have an auditory impairment;

(d) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(e) Provision of services for prevention of hearing loss; and

(f) Determination of the infant's or toddler's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(2) The IFSP team determines the need for audiology services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Family training, counseling and home visits. (1) Family training, counseling and home visits are services provided, as appropriate, by social workers, psychologists, educators, and other qualified personnel to assist the family of an infant or toddler with a disability, in understanding the child's special needs and enhancing the child's development.

(2) The IFSP team determines the need for family training, counseling and home visits based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Health services. (1) Health services are services necessary to enable an otherwise eligible child to benefit from the other early intervention services under part C of the act, during the time that the child is eligible to receive early intervention services.

(2) Health services include:

(a) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(b) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

(3) Health services do not include services that are:

(a) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);

(b) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose);

(c) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant;

(d) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

(e) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(4) Nothing in part C of the act limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's individualized family service plan as being needed to meet the child's developmental outcomes.

(5) Nothing in part C of the act prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;

(6) The IFSP team determines the need for health services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Medical services. (1) Medical services are services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

(2) The IFSP team determines the need for medical services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Nursing services. (1) Nursing services include:

(a) 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;

(b) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(c) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(2) The IFSP team determines the need for nursing services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Nutrition services. (1) Nutrition services include:

(a) Conducting individual assessments in:

(i) Nutritional history and dietary intake;

(ii) Anthropometric, biochemical, and clinical variables;

(iii) Feeding skills and feeding problems; and

(iv) Food habits and food preferences.

(b) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under part C of the act based on the assessment findings in subsection (a); and

(c) Making referrals to appropriate community resources to carry out nutrition goals.

(2) The IFSP team determines the need for nutrition services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Occupational therapy services. (1) Occupational therapy includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development.

(2) These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:

(a) Identification, assessment, and intervention;

(b) 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

(c) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(3) The IFSP team determines the need for occupational therapy services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Physical therapy services. (1) 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.

(2) These services include:

(a) Screening, evaluation, and assessment of children to identify movement dysfunction;

(b) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(c) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(3) The IFSP team determines the need for physical therapy services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-0000 Psychological services. (1) Psychological services include:

(a) Administering psychological and developmental tests and other assessment procedures;

(b) Interpreting assessment results;

(c) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(d) 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.

(2) The IFSP team determines the need for psychological services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-0000 Service coordination - - General. (1) Service coordination services are services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including required procedural safeguards, and is referred to as family resources coordination in Washington state.

(2) Each infant or toddler with a disability and the child's family must be provided with one service coordinator who is responsible for:

(a) Coordinating all services required under part C of the act across agency lines; and

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

(3) Service coordination is an active, ongoing process that involves:

(a) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under part C of the act; and

(b) Coordinating the other services identified in the individualized family service plan that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.

NEW SECTION

WAC 170-300-00000 Service coordination - - Specific services. (1) Specific service coordination services include:

(a) Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the individualized family service plan, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

(b) Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;

(c) Coordinating evaluations and assessments;

(d) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(e) Conducting referral and other activities to assist families in identifying available EIS providers;

(f) Coordinating, facilitating, and monitoring the delivery of services required under part C of the act to require that the services are provided in a timely manner;

(g) Conducting follow-up activities to determine that appropriate part C services are being provided;

(h) Informing families of their rights and procedural safeguards and related resources;

(i) Coordinating the funding sources for services required under this Part c of the act; and

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

(2) The lead agency's or an EIS provider's use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act – Medicaid), for purposes of claims in compliance with the requirements of this chapter related to payor of last resort provisions.

NEW SECTION

WAC 170-300-00000 Service coordination - - Family resources coordinators.

(1) Washington state's policies and procedures for implementing the ESIT program are designed and implemented to require that family resources coordinators are able to effectively carry out, on an interagency basis, the functions and services listed in this subsection.

(2) Family resources coordinators may be employed or assigned in any way that is permitted under state law, so long as it is consistent with the requirements of part C of the act. FRCs must be registered according to ESIT procedures and have demonstrated knowledge and understanding about:

(a) Infants and toddlers who are eligible under part C;

(b) Part C of the act and its implementing regulations at 34 CFR Part 303;

(c) The nature and scope of services available under the state's early intervention program, the system of payments for services in the state, and other pertinent information; and

(d) Local early intervention resources available in their assigned geographic service area.

NEW SECTION

WAC 170-300-00000 Sign language and cued language. (1) Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(2) The IFSP team determines the need for sign language and cued language services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Social work services. (1) Social work services include:

(a) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(b) Preparing a social or emotional developmental assessment of the infant or toddler, within the context of the family;

(c) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;

(d) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and

(e) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

(2) The IFSP team determines the need for social work services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Special instruction. (1) Special instruction includes:

(a) The design of learning environments and activities that promote the infant or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(b) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(c) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(d) Working with the infant or toddler with a disability to enhance the child's development.

(2) The IFSP team determines the need for special instruction based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Speech-language pathology. (1) Speech-language pathology services include:

(a) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(b) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(c) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

(2) The IFSP team determines the need for speech-language pathology services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Transportation and related costs. (1) Transportation and related costs includes the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

(2) The IFSP team determines the need for transportation and related costs based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Vision services. (1) Vision services include:

(a) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(b) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(c) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

(2) The IFSP team determines the need for vision services based on the individualized needs of the child.

NEW SECTION

WAC 170-300-00000 Early intervention service providers. (1) An early intervention service provider is responsible for:

(a) Participating in the multidisciplinary individualized family service plan team's ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant's or toddler's family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the individualized family service plan;

(b) Providing early intervention services in accordance with the individualized family service plan of the infant or toddler with a disability; and

(c) Consulting with and training parents and others regarding the provision of the early intervention services described in the individualized family service plan of the infant or toddler with a disability.

(2) The types of qualified personnel who provide early intervention services under part C of the act are:

(a) Audiologists;

(b) Family therapist;

- (c) Nurses;
- (d) Occupational therapists;
- (e) Orientation and mobility specialists;
- (f) Pediatricians and other physicians for diagnostic and evaluation purposes;
- (g) Physical therapists;
- (h) Psychologists;
- (i) Registered dietitians;
- (j) Social workers;
- (k) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness);
- (l) Speech and language pathologists; and
- (m) Vision specialists including ophthalmologists and optometrists.

NEW SECTION

WAC 170-300-00000 Services and personnel. The services and personnel identified in this chapter do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in this chapter prohibits the identification in the individualized family service plan of another type of service as an early intervention service provided that the service meets the criteria identified in this chapter or of another type of personnel that may provide early intervention services in accordance with part C of the act, provided such personnel meet the requirements in this chapter.

COMPREHENSIVE CHILD FIND SYSTEM AND REFERRAL

NEW SECTION

WAC 170-300-01040 Scope of child find system. The agencies, identified in WAC 170-300-01010, as part of the child find system, are required to:

(1) Identify all infants and toddlers with disabilities in Washington who are potentially eligible for early intervention services under part C of the act are identified, located, and evaluated, including:

(a) Indian infants and toddlers with disabilities residing on a reservation geographically located in Washington, including coordination, as necessary, with tribes, tribal organizations, and tribal networks to identify infants and toddlers with disabilities in Washington, based, in part, on the information provided by them to the SLA under part C of the act;

(b) Infants and toddlers with disabilities who are homeless, in foster care, or wards of Washington state; and

(c) Infants and toddlers with disabilities under the age of three required by the Child Abuse Prevention and Treatment Act reauthorized with the enactment of the Keeping Children and Families Safe Act of 2003 (P.L. 108-36) and implemented through Washington's department of social and health services/children's administration referral procedures to part C early intervention, who are:

(i) Are the subject of a substantiated case of child abuse or neglect; or

(ii) Are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(2) Develop and implement an effective method to identify children who are in need of early intervention services.

NEW SECTION

WAC 170-300-01045 Coordination of child find system. (1) The agencies, identified in WAC 170-300-01010, as part of the child find system, are required to develop and implement procedures for use by primary referral sources, identified in WAC 170-300-01050, for referring a child under the age of three to the ESIT program.

(2) The procedures for referrals must:

(a) Provide for referring a child as soon as possible but in no case more than seven days after the child has been identified; and

(b) Meet the requirements of this section.

(3) The LLA must coordinate the early identification of eligible infants and toddlers and their families, including targeted outreach to traditionally underrepresented populations, within their geographic service area.

NEW SECTION

WAC 170-300-01050 Primary referral sources and procedures. (1) Primary referral sources include:

(a) Hospitals, including prenatal and postnatal care facilities;

- (b) Physicians;
- (c) Parents, including parents of infants and toddlers;
- (d) Child care programs and early learning programs;
- (e) Local education agencies and schools;
- (f) Public health facilities;
- (g) Other public health or social service agencies;
- (h) Other clinics and health care providers;
- (i) Public agencies and staff in the child welfare system, including child protective service and foster care;
- (j) Homeless family shelters; and
- (k) Domestic violence shelters and agencies.

(2) Once a referral is received by fax, phone, email or mail, a FRC must be appointed as soon as possible. Upon receiving the referral:

(a) If the referral came from a primary referral source, the LLA or service provider must acknowledge the receipt of a referral from a primary referral source as soon as possible. This acknowledgment includes the date the referral was received. General intake information must be documented; and

(b) The FRC must contact the parent(s) to discuss the referral to the ESIT program, complete general referral/intake information, and schedule an appointment to complete the intake process.

(3) If the parent(s) is not interested in participating in the ESIT program, the LLA or FRC must document this decision.

PARENT

NEW SECTION

WAC 170-300-00000 Parent. (1) For purposes of this chapter, parent includes:

(a) A biological or adoptive parent of a child;

(b) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

(c) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child, but not the state if the child is a ward of the state;

(d) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(e) A surrogate parent who has been appointed in accordance with these policies and procedures or part C of the act.

(2) Except as provided in this subsection, the biological or adoptive parent, when attempting to act as the parent under part C and when more than one party is qualified under this subsection to act as a parent, must be presumed to be the parent for purposes of this subsection unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

(3) If a judicial decree or order identifies a specific person or persons under this subsection to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of part C of the act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

PROCEDURAL SAFEGUARDS: GENERAL

CONFIDENTIALITY - - PARENTAL CONSENT - - PRIOR WRITTEN NOTICE - - SURROGATE PARENTS

NEW SECTION

WAC 170-300-02000 Procedural safeguards - - General. (1) The SLA under part C of the act has established procedural safeguards that meet the requirements of part C of the act and its implementing regulations, including the provisions on confidentiality,

written parental consent, prior written notice, surrogate parents, and dispute resolution procedures.

(2) The SLA requires effective implementation of procedural safeguards, by each participating agency, including the SLA, each LLA, FRCs and other EIS providers in Washington that are involved in the provision of early intervention services, under part C of the act through contracts with LLAs and EIS providers.

(3) State and local interagency agreements must be developed for the effective implementation of part C of the act procedural safeguards by each public agency in the state that is involved in the provision of early intervention services.

NEW SECTION

WAC 170-300-0000 Confidentiality of information - - Participating agency.

(1) A participating agency includes:

(a) Any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C of the act and its implementing regulations with respect to a particular child; and

(b) The SLA, LLA, FRCs, EIS providers and any individual or entity that provides any part C services, including service coordination, evaluations and assessments, and other part C services.

(2) A participating agency does not include primary referral sources, or public agencies, such as the state medicaid or children's health insurance program or private entities, such as private insurance companies, that act solely as funding sources for part C services.

NEW SECTION

WAC 170-300-0000 Confidentiality of information - - Personally identifiable information. (1) Personally identifiable information includes, but is not limited to, the following:

(a) The name of the child, the child's parent, or other family members;

(b) The address of the child or child's family;

(c) A personal identifier, such as the child's or parent's social security number, child number, or biometric record;

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty; and

(e) Other indirect identifiers such as the child's date of birth, place of birth, and mother's maiden name;

(2) Personally identifiable information also includes:

(a) Other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the early intervention community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or

(b) Information requested by a person who the contractor reasonably believes knows the identity of the child to whom the early intervention record relates.

NEW SECTION

WAC 170-300-02010 Confidentiality of information - - General. (1) The SLA requires that the parents of a child referred under part C of the act are afforded the right to confidentiality of personally identifiable information, including the right to written notice of and written consent to, the exchange of that information among agencies, consistent with federal and state laws.

(2) The SLA requires the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to part C of the act by participating agencies, including the SLA, LLAs, FRCs, and other EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act in 20 U.S.C. 1232g and 34CFR part 99.

(3) The SLA has procedures in effect requiring that the parents of infants or toddlers who are referred to or receive services under part C of the act, are afforded the opportunity to inspect and review all part C early intervention records about the child and the child's family that are collected, maintained, or used under part C, including records related to screening, evaluations and assessments, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under part C of the act.

(4) The confidentiality procedures described in WAC 170-300-02005 through 170-300-02075 applies from the point in time when the child is referred for early

intervention services under part C of the act until the participating agency is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

NEW SECTION

WAC 170-300-02015 Confidentiality of information - - Notice to parents. The LLA or EIS provider must give notice when a child is referred under part C of the act, that is adequate to fully inform parents about the requirements under confidentiality, including:

(1) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information.

(2) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.

(3) A description of all the rights of parents and children regarding this information, including their rights under the part C confidentiality provisions.

(4) A description of the extent that the notice is provided in the native languages of the various population groups in Washington state.

NEW SECTION

WAC 170-300-02020 Confidentiality of information - - Access rights. (1) Each participating agency must permit parents to inspect and review, during business hours, any early intervention records relating to their child that are collected, maintained, or used by the agency under part C of the act. The agency must comply with the parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any impartial due process hearing and in no case more than ten days after the request has been made.

(2) The right to inspect and review early intervention records includes:

(a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

(b) The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent inspect and review the early intervention records.

(3) An agency may presume that the parent has authority to inspect and review records relating to his or her child, unless the agency has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.

(4) The LLA or EIS provider must make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

NEW SECTION

WAC 170-300-02025 Confidentiality of information - - Record of access. Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under part C of the act, except access by parents and authorized representatives of the participating agency, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

NEW SECTION

WAC 170-300-02030 Confidentiality of information - - Records on more than one child. If any early intervention record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child, or to be informed of that specific information.

NEW SECTION

WAC 170-300-02035 Confidentiality of information - - List of types and locations of information. Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

NEW SECTION

WAC 170-300-02040 Confidentiality of information - - Fees. (1) Except for the initial copy, each participating agency may charge a fee for copies of records that are made for parents under part C of the act, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in subsection (3) of this section.

(2) A participating agency may not charge a fee to search for or to retrieve information under part C of the act.

(3) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

NEW SECTION

WAC 170-300-02045 Confidentiality of information - - Amendment of records at parent's request. (1) A parent who believes that information in early intervention records collected, maintained, or used under part C of the act is inaccurate or misleading or violates the privacy or other rights of the child or parent, may request the participating agency that maintains the information to amend the information.

(2) The participating agency must decide whether to amend the information, in accordance with the request, within a reasonable period of time of receipt of the request.

(3) If the participating agency decides to refuse to amend the information, in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under WAC 170-300-02050.

NEW SECTION

WAC 170-300-02050 Confidentiality of information - - Opportunity for a hearing. The participating agency, on request, must provide parents with an opportunity for a hearing to challenge information in their child's early intervention records to be sure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent. A parent may request a due process hearing under the part C procedures, provided that such hearing procedures meet the requirements of the Family Educational Rights and Privacy Act or may request a hearing directly under the Family Educational Rights and Privacy Act procedures in WAC 170-300-02055.

NEW SECTION

WAC 170-300-02055 Confidentiality of information - - Family Educational Rights and Privacy Act hearing procedures. A Family Educational Rights and Privacy Act hearing initiated under WAC 170-300-02050 to challenge information in early intervention records must be conducted according to procedures that include at least the following elements:

- (1) The hearing must be held within a reasonable period of time after the participating agency has received the request.
- (2) The parent must be given notice of the date, time, and place reasonably in advance of the hearing.
- (3) The hearing may be conducted by any individual, including an official of the participating agency, who does not have a direct interest in the outcome of the hearing.
- (4) The parent must be given a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or represented by individuals of his or her choice, at his or her own expense, including an attorney.
- (5) The participating agency must provide a written decision to the parent, within a reasonable period of time after the conclusion of the hearing.
- (6) The decision must:
 - (a) Be based solely upon the evidence presented at the hearing; and
 - (b) Include a written summary of the evidence and the reasons for the decision.

NEW SECTION

WAC 170-300-02060 Confidentiality of information - - Result of hearing. (1) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.

(2) If, as a result of the hearing, a decision is made that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, the participating agency must inform the parent(s) of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(3) Any explanation placed in the records of the child under subsection (2) of this section must:

(a) Be maintained by the participating agency, as part of the records of the child, as long as the record or contested portion is maintained by the agency; and

(b) If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed.

NEW SECTION

WAC 170-300-02065 Confidentiality of information - - Consent. (1) Without written parental consent, the SLA must disclose to the SEA and the LEA where the child resides, in accordance with the state interagency transition agreement, the following personally identifiable information under the act:

(a) A child's name;

(b) A child's date of birth; and

(c) Parent contact information, including parents' names, addresses, and telephone numbers.

(2) The information listed in subsection (1) of this section is needed to enable the SLA, as well as LEAs and the SEA under part B of the act, to identify all children potentially eligible for services under part C and part B of the act.

(3) Except as provided in subsection (4) of this section, prior written parental consent must be obtained before personally identifiable information is:

(a) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part C of the act, subject to subsection (4) of this section; or

(b) Used for any purpose other than meeting a requirement of part C of the act.

(4) The SLA or other participating agency may not disclose personally identifiable information to any party except participating agencies, including the SLA, LLAs, FRCs, and EIS providers that are part of the state's early intervention program without written parental consent, unless authorized to do so under:

(a) The transition requirements in WAC 170-300-05055 through 170-300-05070 and the state's interagency agreement for transition; or

(b) One of the exceptions enumerated in the Family Educational Rights and Privacy Act regulations at 34 CFR§99.31, where applicable to part C, which are expressly adopted to apply to part C through this reference. In applying the exceptions in the Family Educational Rights and Privacy Act at 34 CFR§99.31 to part C, participating agencies must also comply with the pertinent conditions in 34 CFR§§99.32, 99.33, 99.34, 99.35, and 99.36.

(5) The SLA must provide procedures to be used when a parent refuses to provide consent under this section, such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under part C, provided that those procedures do not override a parent's right to refuse consent under this section.

NEW SECTION

WAC 170-300-02070 Confidentiality of information - - Safeguards. (1) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(2) The participating agency must designate one individual responsible for ensuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information must receive training or instruction regarding:

(a) The protection of the confidentiality of personally identifiable information in WAC 170-300-02005 through 170-300-02075; and

(b) The Family Educational Rights and Privacy Act.

(4) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees, within the agency, who may have access to personally identifiable information.

NEW SECTION

WAC 170-300-02075 Confidentiality of information - - Destruction of information. (1) The participating agency must inform parents when personally

identifiable information collected, maintained, or used under part C is no longer needed to provide services to the child under part C of the act, the General Education Provisions Act provisions in 20 U.S.C. 1232f, and education department general administrative rights, 34CFR §§76 and 80.

(2) Subject to subsection (1) of this section, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information, including address and phone number, names of FRCs and EIS provider(s), and exit data, including year and age upon exit, and any programs entered into upon exiting, may be maintained without time limitation.

NEW SECTION

WAC 170-300-02080 Prior written notice. (1) Prior written notice must be provided to the parent(s), a reasonable time before the SLA, LLA, the FRC or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler or the provision of appropriate early intervention services to the child and the family.

(2) The notice must be in sufficient detail to inform the parents about:

(a) The action that is being proposed or refused;

(b) The reasons for taking the action; and

(c) All the procedural safeguards that are available under part C of the act including a description of mediation, how to file a state complaint and a due process hearing, including any timelines under those procedures.

(3) The notice must be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(4) If the native language or other mode of communication of the parent is not a written language, the LLA, the FRC, or other EIS provider must take steps to make sure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the notice; and

(c) There is written evidence that the requirements of this section are met.

NEW SECTION

WAC 170-300-00000 Parental consent. (1) Obtaining parental consent requires that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language;

(b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive to an action that occurred before the consent was revoked.

NEW SECTION

WAC 170-300-02085 Parental consent and ability to decline services. (1) The LLA and EIS provider must obtain written parental consent before:

(a) Administering screening procedures under WAC 170-300-04015 that are used to determine whether a child is suspected of having a disability;

(b) All evaluations and assessments of a child are conducted under WAC 170-300-04020 through 170-300-04040;

(c) Early intervention services are provided to the child under part C;

(d) Public benefits or insurance or private insurance is used if such consent is required under WAC 170-300-05020 through 170-300-05030; and

(e) Disclosure of personally identifiable information consistent with WAC 170-300-02065 related to disclosure of confidential information.

(2) If a parent does not give consent for screening, evaluations and assessments, or the provision of early intervention services, the LLA or EIS provider must make reasonable efforts to be sure that the parent:

(a) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and

(b) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(3) The SLA, LLA or EIS provider may not use the due process hearing procedures under part C or part B of the act to challenge a parent's refusal to provide any consent that is required under this section.

(4) The parents of an infant or toddler with a disability:

(a) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under part C at any time, in accordance with state law; and

(b) May decline a service after first accepting it, without jeopardizing other early intervention services under part C.

NEW SECTION

WAC 170-300-02090 Surrogate parents - - Purpose. Each LLA or EIS provider must protect the rights of the child when:

(1) No parent, as defined in WAC 170-300-01025, can be identified.

(2) The LLA or other EIS provider, after reasonable efforts, cannot locate a parent.

(3) The child is a ward of the state of Washington under the laws of the state.

NEW SECTION

WAC 170-300-02095 Surrogate parents - - Assignment procedures. The duty of the LLA or other EIS provider under part C of the act includes the assignment of an individual to act as a surrogate for the parent.

(1) This assignment process must include a method for:

(a) Determining whether a child needs a surrogate parent; and

(b) Assigning a surrogate parent to the child.

(2) In implementing the provisions under this section for children who are wards of the state or placed in foster care, the LLA or EIS provider must consult with the public agency that has been assigned care of the child.

(3) In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the LLA or EIS provider may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in WAC 170-300-02100.

(4) The LLA or other EIS provider may select a surrogate parent in any way permitted under state law.

NEW SECTION

WAC 170-300-02100 Surrogate parents - - Selection criteria, rights, and timeline. (1) Public agencies must select a person as a surrogate parent that:

(a) Is not an employee of the SLA, LLA, or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;

(b) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and

(c) Has knowledge and skills so the child has adequate representation.

(2) A person who is otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(3) The surrogate parent has the same rights as a parent for all purposes under part C of the act.

(4) The LLA or other EIS provider must make reasonable efforts to assign a surrogate parent not more than thirty days after a public agency determines that the child needs a surrogate parent.

PROCEDURAL SAFEGUARDS: DISPUTE RESOLUTION OPTIONS

NEW SECTION

WAC 170-300-03000 Mediation - - General. The SLA must establish and implement procedures to allow parties to disputes involving any matter under part C, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

NEW SECTION

WAC 170-300-03005 Mediation - - Procedures. (1) The mediation procedures must:

- (a) Be voluntary on the part of the parties;
 - (b) Not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under part C of the act; and
 - (c) Be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- (2) The SLA must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
- (3) The SLA must select mediators on a random, rotational, or other impartial basis.
- (4) SLA must bear the cost of the mediation process, including the costs of meetings described in WAC 170-300-03020.
- (5) Each session in the mediation process must be scheduled in a timely manner, held in a location that is convenient to the parties to the dispute, and maintain confidentiality consistent with subsection (1)(a) under WAC 170-300-03010.

NEW SECTION

WAC 170-300-03010 Mediation - - Agreement. (1) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the LLA or EIS provider who has the authority to bind such agency.

(2) A written, signed mediation agreement under this section is enforceable in any Washington state court of competent jurisdiction or in a district court of the United States.

NEW SECTION

WAC 170-300-03015 Mediation - - Impartiality of mediator. (1) An individual who serves as a mediator under part C:

(a) May not be an employee of the SLA, LLA, or an EIS provider that is involved in the provision of early intervention services or other services to the child; and

(b) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of the SLA, LLA, or an EIS provider solely because he or she is paid by the agency or provider to serve as a mediator.

NEW SECTION

WAC 170-300-03020 Mediation - - Meeting to encourage mediation. The SLA may establish procedures to offer to parents, LLAs, and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party.

(1) The disinterested party may be under contract with an appropriate alternative dispute resolution entity, or a parent training and information center, or community parent resource center in Washington state established under 34CFR §§671 or 672.

(2) The disinterested party would explain the benefits of, and encourage the use of, the mediation process to the parents.

NEW SECTION

WAC 170-300-03025 Due process hearing - - General. The SLA must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

NEW SECTION

WAC 170-300-03030 Due process hearing - - Appointment of a hearing officer. Whenever a due process hearing request is received, a due process hearing officer must be appointed by the SLA to implement the complaint resolution process.

(1) The due process hearing officer must:

(a) Have knowledge about the provisions of part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

(b) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the due process complaint;

(ii) Examine all information relevant to the issues;

(iii) Seek to reach a timely resolution of the due process complaint; and

(iv) Provide a record of the proceedings, including a written decision.

(2) Impartial means that the due process hearing officer appointed to implement the due process hearing under part C:

(a) Is not an employee of the SLA, LLA, or an EIS provider involved in the provision of early intervention services or care of the child; and

(b) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(3) A person who otherwise qualifies under this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures under part C.

NEW SECTION

WAC 170-300-03035 Due process hearing - - Parent rights in a hearing. The SLA, LLA, or EIS provider must notify the parents of a child referred to part C of their rights in the due process hearing carried out under WAC 170-300-03025 through 170-300-03040 including:

(1) At the parent's expense, be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing.

(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent.

(5) Receive a copy of the findings of fact and decisions at no cost to the parent.

NEW SECTION

WAC 170-300-03040 Due process hearing - - Convenience of hearings and timelines. (1) Any due process hearing conducted under WAC 170-300-03025 through 170-300-03035 must be carried out at a time and place that is reasonably convenient to the parents.

(2) Not later than thirty calendar days after the receipt of a parent's due process complaint, the due process hearing required under WAC 170-300-03025 through 170-300-03035 must be completed and a written decision mailed to each of the parties.

(3) A hearing officer may grant specific extensions of time beyond the period set out in subsection (2) of this section at the request of either party.

NEW SECTION

WAC 170-300-03045 Due process hearing - - Civil action. Any party aggrieved by the findings and decision issued in an impartial due process hearing has the right to bring a civil action in Washington state or federal court under the act.

NEW SECTION

WAC 170-300-03050 Due process hearing - - Pendency. During the pendency of any proceeding involving a due process complaint, unless the SLA and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint under WAC 170-300-03025 through 170-300-03040 involves an application for initial services under part C of the act, the child must receive those services that are not in dispute.

NEW SECTION

WAC 170-300-03055 State administrative complaints - - General. (1) The SLA must resolve any complaint, including a complaint filed by an organization or individual from another state that meets the requirements of this section and WAC 170-300-03060 through 170-300-03070, by providing for the filing of a complaint with the SLA.

(2) The required timeline for resolving the complaint begins with the receipt of the complaint by the SLA or the LLA, whichever is first. Any complaint received by an LLA must be immediately transmitted to the SLA.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the SLA, in accordance with this section.

(4) The party filing the complaint must forward a copy of the complaint to the LLA, public agency, or EIS provider serving the child at the same time the party files the complaint with the SLA.

(5) The SLA must widely disseminate complaint procedure information to parents and other interested individuals, including parent training centers, protection and advocacy agencies and other appropriate entities.

NEW SECTION

WAC 170-300-03060 Complaint content. An individual or organization may file a written and signed complaint that must include:

- (1) A statement that the SLA, LLA, public agency, or EIS provider has violated a requirement of part C of the act.
- (2) The facts on which the statement is based.
- (3) The signature and contact information for the complainant.
- (4) If alleging violations with respect to a specific child:
 - (a) The name and address of the residence of the child;
 - (b) The name of the LLA or EIS provider serving the child;
 - (c) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

NEW SECTION

WAC 170-300-03065 Complaint procedures. (1) The SLA has a time limit of sixty calendar days after a complaint is filed to:

- (a) Carry out an independent on-site investigation, if the SLA determines that such an investigation is necessary;
- (b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (c) Provide the SLA, LLA, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum:
 - (i) At the discretion of the SLA, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the SLA, LLA, public agency, or EIS provider to voluntarily engage in mediation, consistent with WAC 170-300-03000 through 170-300-03020;

(d) Review all relevant information and make an independent determination, as to whether the SLA, LLA, public agency, or early intervention service provider is violating a requirement of part C of the act; and

(e) Issue a written decision to the complainant and the LLA, public agency, or early intervention service provider that addresses each allegation in the complaint and contains:

(i) Findings of fact and conclusions; and

(ii) The reason for the SLA's final decision.

2) In resolving a complaint in which the SLA finds a failure to provide appropriate services, the SLA, pursuant to its general supervisory authority under part C of the act, must address:

(a) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

(b) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

(3) The SLA must permit an extension of the sixty day time limit only if:

(a) Exceptional circumstances exist with respect to a particular complaint; or

(b) The parent and the SLA, LLA, public agency, or EIS provider involved agree to extend the time to engage in mediation consistent with WAC 170-300-03000 through 170-300-03020.

(4) To require effective implementation of the SLA's final decision, if needed, the SLA must:

(a) Provide technical assistance;

(b) Negotiate; and

(c) Require that corrective actions to achieve compliance are implemented in a timely manner.

NEW SECTION

WAC 170-300-03070 Complaint and due process hearing. (1) If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the SLA must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the proceeding.

(2) Any issue in the complaint that is not a part of the due process hearing shall be resolved within the sixty calendar day timeline using the complaint procedures in WAC 170-300-03065.

(3) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding on that issue; and

(b) The SLA must inform the complainant to that effect.

(4) A complaint alleging that the SLA's, an LLA's, a public agency's, or an EIS provider's failure to implement a due process hearing decision must be resolved by the SLA.

SCREENING, EVALUATION AND ASSESSMENT

NEW SECTION

WAC 170-300-04005 Timeline for screening, initial evaluation, initial assessments and initial IFSP meeting. (1) Except as provided in subsection (2) of this section, with written parental consent, any screening, the initial evaluation and the initial assessments of the child and family and the initial IFSP meeting must be completed within forty-five days from the date the LLA or EIS provider receives the referral of the child.

(2) The forty-five day timeline does not apply for any period when:

(a) The child or parent is unavailable to complete the screening, the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or

(b) The parent has not provided consent for the screening, the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the LLA or EIS provider to obtain written parental consent.

(3) The initial family assessment must be conducted within the forty-five day timeline, if the parent concurs and even if other family members are unavailable.

NEW SECTION

WAC 170-300-04010 Documenting exceptions to timeline period. The SLA requires implementation of procedures for documenting exceptions to the forty-five day timeline, as described in WAC 170-300-04005, the LLA or EIS provider must:

(1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the LLA or EIS provider to obtain written parental consent.

(2) Complete the screening, the initial evaluation, the initial assessments, of the child and family, and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in WAC 170-300-04005 no longer exist or written parental consent is obtained for the screening, the initial evaluation, and the initial assessment of the child.

(3) Develop and implement an interim IFSP, to the extent appropriate and consistent with WAC 170-300-04105.

NEW SECTION

WAC 170-300-00000 Native language. (1) When used with respect to an individual who is limited English proficient, native language refers to:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in this subsection; and

(b) For evaluations and assessments conducted pursuant to this chapter, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(2) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, native language refers

to the mode of communication that is normally used by the individual, such as sign language, braille, or oral communication.

NEW SECTION

WAC 170-300-04015 Screening procedures. (1) Screening procedures:

(a) Are activities under this section carried out by, or under the supervision of, the LLA or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and

(b) Include the administration of appropriate instruments by personnel trained to administer those instruments.

(2) If the LLA or EIS provider proposes to screen a child who has been referred to part C, it must:

(a) Provide the parent notice under WAC 170-300-02080 of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under WAC 170-300-04020 through 170-300-04040 at any time during the screening process; and

(b) Obtain written parental consent before conducting the screening procedures.

(3) If the parent consents to the screening and the screening or other available information indicates that the child is:

(a) Suspected of having a disability, after notice is provided and once written parental consent is obtained, an evaluation and assessment of the child must be conducted; or

(b) Not suspected of having a disability, the LLA or EIS provider must provide notice of that determination to the parent including a description of the parent's right to request an evaluation.

(4) If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted according to WAC 170-300-04020 through 170-300-04040, even if the LLA or EIS provider has determined that the child is not suspected of having a disability.

(5) For every child under the age of three who is referred to the ESIT program or screened in accordance with this section, the LLA is not required to:

(a) Provide an evaluation of the child unless the child is suspected of having a disability or the parent requests an evaluation under WAC 170-300-04020 through 170-300-04040; or

(b) Make early intervention services available under part C of the act to the child unless a determination is made that the child meets the definition of infant or toddler with a disability.

NEW SECTION

WAC 170-300-04020 Evaluation and assessment - - General. The SLA requires that, subject to obtaining written parental consent, each child under the age of three who is referred for evaluation or early intervention services under part C and suspected of having a disability receives:

(1) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with WAC 170-300-04020 through 170-300-04040, unless eligibility is established under WAC 170-300-04025.

(2) If the child is determined eligible as an infant or toddler with a disability:

(a) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services to meet those needs; and

(b) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family may occur simultaneously with the evaluation, provided that the requirements of WAC 170-300-04040 and 170-300-04045 are met.

NEW SECTION

WAC 170-300-04025 Use of records to establish eligibility. (1) A child's medical and other records may be used to establish eligibility, without conducting an evaluation of the child, under part C of the act, if those records indicate that the child's level of functioning in one or more of the developmental areas, as identified and defined in WAC 170-300-01030, constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability due to a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

(2) If the child's Part C eligibility is established under subsection (1) of this section, the LLA or EIS provider must conduct assessments of the child and family in accordance with WAC 170-300-04040 and 170-300-04045.

NEW SECTION

WAC 170-300-04030 Use of informed clinical opinion. (1) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child.

(2) The SLA requires that informed clinical opinion be used, when applicable to an individual child, as an independent basis to establish that child's eligibility under part C of the act even when other instruments do not establish eligibility. However, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under WAC 170-300-04035.

NEW SECTION

WAC 170-300-04035 Evaluation and assessment procedures. (1) All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

(2) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child.

(3) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed.

(4) In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under part C of the act. Procedures must include:

- (a) Administering an evaluation instrument;
- (b) Taking the child's history, including interviewing the parent;
- (c) Identifying the child's level of functioning in each of the developmental areas, as defined in WAC 170-300-01030;

(d) Gathering information from other sources, such as family members, other care givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

(e) Reviewing medical, educational, or other records.

NEW SECTION

WAC 170-300-04040 Assessment of child. (1) An assessment of each infant or toddler with a disability must be conducted by qualified personnel, in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs.

(2) The assessment of the child must include the following:

(a) A review of the results of the evaluation conducted;

(b) Personal observations of the child; and

(c) The identification of the child's needs in each of the developmental areas.

NEW SECTION

WAC 170-300-04045 Family-directed assessment. (1) A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability.

(2) The family-directed assessment must:

(a) Be voluntary on the part of each family member participating in the assessment;

(b) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and

(c) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

NEW SECTION

WAC 170-300-04050 Notice of ineligibility. If, based on the evaluation conducted under WAC 170-300-04020 through 170-300-04040, the LLA determines that a child is not eligible under part C of the act, the LLA must provide the parent with prior written notice required under WAC 170-300-02080, and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms, such as requesting a due process hearing, mediation or filing a state administrative complaint.

INDIVIDUALIZED FAMILY SERVICE PLAN

NEW SECTION

WAC 170-300-00000 IFSP - - General. (1) The individualized family service plan is a written plan for providing early intervention services to an infant or toddler with a disability under part C of the act and the infant’s or toddler’s family that:

(a) Is based on the evaluation and assessment described in WAC 170-300-04000 through 170-300-04050;

(b) Includes the content specified in WAC 170-300-04095;

(c) Is implemented as soon as possible once written parental consent for the early intervention services in the IFSP is obtained; and

(d) Is developed in accordance with the IFSP procedures included in this section and WAC 170-300-04060 through 170-300-04105.

(2) For each infant or toddler with a disability, the SLA requires that each LLA, EIS service provider and FRC must develop, review, and implement an IFSP developed by a multidisciplinary team, which includes the parent, that:

(a) Is consistent with the definition of IFSP; and

(b) Meets the requirements of WAC 170-300-04065 through 170-300-04120.

(3) If there is a dispute between agencies, as to who has responsibility for developing or implementing an IFSP, the SLA must resolve the dispute or assign responsibility.

NEW SECTION

WAC 170-300-04065 Timeline for developing initial IFSP. For a child referred to the ESIT program and determined to be eligible under part C of the act as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the forty-five day time period described in WAC 170-300-04005.

NEW SECTION

WAC 170-300-04070 Periodic review. (1) A review of the IFSP for a child and the child's family must be conducted every six months or more frequently if conditions warrant, or if the family requests such a review.

(2) The purpose of the periodic review is to determine:

(a) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

(b) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

(3) The IFSP review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(4) Each periodic review must provide for the participation of:

(a) The parent or parents of the child;

(b) Other family members as requested by the parent, if feasible to do so;

(c) An advocate or person outside of the family if the parent requests that the person participate;

(d) The FRC designated by the LLA to be responsible for implementing the IFSP;
and

(e) If conditions warrant, provisions must be made for the participation of:

(i) A person or persons directly involved in conducting the evaluations and assessments; and

(ii) As appropriate, persons who will be providing early intervention services under part C of the act to the child or family.

NEW SECTION

WAC 170-300-04075 Annual meeting to evaluate IFSP. (1) A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family and develop a new IFSP.

(2) The results of any current evaluations and other information available from the assessments of the child and family conducted under WAC 170-300-04000 through 170-300-04050 must be used in determining what early intervention services are needed and will be provided.

NEW SECTION

WAC 170-300-04080 Accessibility and convenience of IFSP meetings. (1) All IFSP meetings, initial, annual, and periodic, must be conducted:

(a) In settings and at times that are convenient to families; and

(b) In the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants, early enough before the meeting date to assure that they will be able to attend.

NEW SECTION

WAC 170-300-04085 Parental consent for services. The contents of the IFSP must be fully explained to the parents and informed written consent must be obtained prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service.

NEW SECTION

WAC 170-300-04090 Participants in initial and annual IFSP team meeting. (1) Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:

(a) The parent or parents of the child;

- (b) Other family members as requested by the parent, if feasible to do so;
- (c) An advocate or person outside of the family, if the parent requests that the person participate;
- (d) The FRC designated by the LLA to be responsible for implementation of the IFSP;
- (e) A person or persons directly involved in conducting the evaluations and assessments; and
- (f) As appropriate, persons who will be providing early intervention services under part C of the act to the child or family.

(2) If a person or persons directly involved in conducting the evaluations and assessments is unable to attend any meeting, arrangements must be made for the person(s) involvement through other means, including one of the following:

- (a) Participating in a telephone conference call;
- (b) Having a knowledgeable, authorized representative attend the meeting; or
- (c) Making pertinent records available at the meeting.

NEW SECTION

WAC 170-300-04095 Content of the IFSP. The IFSP must include:

(1) Based on the information from the child's evaluation and assessments conducted a statement of the infant or toddler with a disability's present levels of:

- (a) Physical development, including: fine motor, gross motor, vision, hearing, and health status;
- (b) Cognitive development;
- (c) Communication development;
- (d) Social or emotional development; and
- (e) Adaptive development.

(2) With the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family.

(3) A statement of the measurable results or measurable outcomes expected to be achieved for the child, including preliteracy and language skills, as developmentally appropriate for the child and family, and the criteria, procedures, and timelines used to determine:

(a) The degree to which progress toward achieving the results or outcomes, identified in the IFSP, is being made; and

(b) Whether modifications or revisions of the expected results or outcomes or early intervention services identified in the IFSP are necessary.

(4) A statement of the specific early intervention services based on peer-reviewed research, to the extent practicable, that are necessary to meet the unique needs of the child and the family, to achieve the results or outcomes identified including:

(a) Length, duration, frequency, intensity, and method of delivering the early intervention services;

(b) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate consistent with WAC 170-300-04115 and 170-300-04120, or subject to this section, a justification as to why an early intervention service will not be provided in the natural environment;

(c) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be:

(i) Made by the IFSP team, which includes the parent and other team members;

(ii) Consistent with the provisions in this section; and

(iii) Based on the child's outcomes that are identified by the IFSP team;

(d) The location of the early intervention services; and

(e) The payment arrangements, if any.

(5) EIS providers may not interrupt, modify, or otherwise change the delivery of EIS for reasons unrelated to the child's individual needs, including due to service availability, changes in EIS providers' schedules, or availability of staff during summer months.

(6) To the extent appropriate, the IFSP also must:

(a) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under part C of the act; and

(b) If those services are not currently being provided, include a description of the steps the FRC or family may take to assist the child and family in securing those other services.

(7) The projected date for the initiation of each early intervention service in the IFSP, which date must be as soon as possible after the parent consents to the service and the anticipated duration of each service.

(8) The name of the FRC from the profession most relevant to the child's or family's needs, or who is otherwise qualified to carry out all applicable responsibilities under this part C of the act, who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons. In meeting the requirements of this section, the term "profession" includes "service coordination."

NEW SECTION

WAC 170-300-04100 Transition steps and services. (1) The IFSP must include steps and services to be taken to support the smooth transition of the child from part C of the act to:

(a) Preschool services under part B of the act, to the extent that those services are appropriate; or

(b) Other appropriate services.

(2) The steps required include:

(a) Discussions with and training of parents, as appropriate, regarding future placements and other matters related to the child's transition;

(b) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(c) Confirmation that child find information about the child has been transmitted to the LEA or other relevant agency, in accordance with WAC 170-300-02065 and, with written parental consent if required, transmission of additional information needed by the LEA for continuity of services from the part C of the act program to the part B of the act program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP; and

(d) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

NEW SECTION

WAC 170-300-04105 Interim IFSP. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment if the following conditions are met:

(1) Written parental consent is obtained.

(2) An interim IFSP is developed that includes:

(a) The name of the FRC who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

(b) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(3) Evaluations and assessments are completed within the forty-five day timeline.

NEW SECTION

WAC 170-300-04110 Responsibility and accountability. Each public agency, LLA or EI service provider, who has a direct role in the provision of early intervention services, is responsible for making a good faith effort to assist each eligible child and family in achieving the outcomes in the child's IFSP. However, part C of the act does

not require that any public agency, LLA or EI service provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

NATURAL ENVIRONMENTS

NEW SECTION

WAC 170-300-04115 Natural environments - - General. (1) The SLA requires that, to the maximum extent appropriate to the needs of the child, early intervention services are provided in natural environments.

(2) Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of WAC 170-300-04120.

(3) The SLA requires that the provision of early intervention services, for any infant or toddler with a disability, occurs in a setting other than the natural environments that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be achieved satisfactorily for the infant or toddler in a natural environment.

NEW SECTION

WAC 170-300-04120 Natural environments - - Procedures. (1) The IFSP must include a statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate. The IFSP also must include a written statement justifying why an early intervention service will not be provided in a natural environment.

(2) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be:

- (a) Made by the IFSP team, which includes the parent and other team members;
- (b) Consistent with the provisions in WAC 170-300-04115; and
- (c) Based on the child's outcomes that are identified by the IFSP team.

SYSTEM OF PAYMENTS AND FAMILY FEES

NEW SECTION

WAC 170-300-05000 Payor of last resort. (1) Except as provided in subsection (2) of this section, funds under part C may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the department of defense, but for the enactment of part C of the act. Therefore, funds under part C may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source subject to WAC 170-300-05025 and 170-300-05030.

(2) If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, ESIT may use funds under part C of the act to pay the provider of authorized services and functions, including health services, as defined in WAC 170-300-01025, but not medical services, functions of the child find system, and evaluations and assessments, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(3) Nothing in part C may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq., relating to maternal and child health, or Title XIX of the Social Security Act, 42 U.S.C. 1396, relating to Medicaid, including section 1903(a) of the Social Security Act regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted under WAC 170-300-04055 through 170-300-04110.

NEW SECTION

WAC 170-300-05005 Functions and services provided at public expense. (1) The following part C functions and services must be provided at public expense by the ESIT program and its service providers and for which no fees may be charged to families:

(a) Implementing the child find requirements in WAC 170-300-01035 through 170-300-01050;

(b) Evaluation and assessment, and the functions related to evaluation and assessment in WAC 170-300-01025;

(c) Service coordination services, family resources coordination, as defined in WAC 170-300-01025; and

(d) Administrative and coordinative activities related to:

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with WAC 170-300-04055 through 170-300-04110; and

(ii) Implementation of procedural safeguards under WAC 170-300-02000 through 170-300-03070, and the other components of the statewide system of early intervention services in chapter 170-300 WAC.

(2) In accordance with WAC 170-300-05040, if a family meets the definition of “inability to pay”, all part C services identified on their child’s IFSP will be provided at no cost to the family. In addition, the families’ inability to pay must not result in a delay or denial of part C services.

NEW SECTION

WAC 170-300-05010 Functions and services subject to family cost participation. (1) The following functions and services are subject to family cost participation and for which co-payments, co-insurance, deductibles, or fees may be charged to families:

- (a) Assistive technology device;
- (b) Assistive technology service;
- (c) Audiology services;
- (d) Counseling;
- (e) Health services;
- (f) Nursing services;
- (g) Nutrition services;
- (h) Occupational therapy;
- (i) Physical therapy;

- (j) Psychological services;
- (k) Social work services; and
- (l) Speech-language pathology services.

(2) Families will not be charged any more than the actual cost of the part C early intervention service that is subject to family cost participation, factoring in any amount received from other sources of funds designated for payment for that service.

NEW SECTION

WAC 170-300-05015 Funding sources in system of payments and family fees.

(1) Unless inability to pay has been determined under WAC 170-300-05040, all families who receive services that are subject to family cost participation will contribute financially to their child's services by using their public insurance benefits, private insurance benefits, or by paying a fee.

(2) The following fund sources have been incorporated into ESIT's system of payments and fees policy:

- (a) Public health care coverage/insurance, apple health for kids/medicaid;
- (b) Private health care coverage/insurance; and
- (c) Family fees.

NEW SECTION

WAC 170-300-05020 Family income and expense information. (1) Prior to billing public or private insurance, parents must be provided the ESIT system of payment and fees policy. Parents must be provided prior written notice and asked to complete, as appropriate, consent to access public and/or private insurance, and income and expense verification form.

(2) The family's FRC must assist parents in understanding the prior written notice, and reviewing and completing the consent to access public and/or private insurance, and income and expense verification form, as appropriate.

(3) The prior written notice, consent to access public and/or private insurance, and income and expense verification form must be submitted to the FRC assigned to the family, as appropriate.

(4) If the families income and expense information results in an adjusted annual income below two hundred percent of the federal poverty level based on family size, the parents will not be required to pay insurance co-pays, co-insurance, insurance deductibles, or a monthly fee. Other agency funds or part C funds as payor of last resort may be used to cover these costs.

(5) If the families income and expense information results in an adjusted annual income above two hundred percent of the federal poverty level based on family size, if applicable, the parents will be required to pay insurance co-pays, co-insurance, insurance deductibles, or a monthly fee.

NEW SECTION

WAC 170-300-05025 Use of public health care coverage/insurance - - Apple health for kids/Medicaid. (1) Families enrolled in the ESIT program will not be required to sign up for or enroll in Apple health for kids/Medicaid as a condition for their child to receive part C early intervention services.

(2) Parents must be provided the ESIT system of payments and fees policy prior to using a child or parent's public benefits or insurance to pay for part C services.

(3) Early intervention providers must obtain parent consent if access to apple health for kids/Medicaid would result in any of the following:

(a) A decrease in the available lifetime coverage or any other insured benefit for the child or parent under that program;

(b) Result in the child's family paying for services that would otherwise have been paid for by the public benefits or insurance program;

(c) Result in any increase in premiums or discontinuation of public benefits or insurance for the child or family; or

(d) Risk the loss of eligibility for the child or the child's family for home and community-based waivers based on aggregate health-related expenditures.

(4) When families have both apple health for kids/Medicaid and private insurance, early intervention providers must obtain written parental consent for:

(a) The use of the family's private health care coverage/insurance to pay for the initial provision of early intervention services contained on the IFSP; and

(b) The use of private health care coverage/insurance to pay for any increase in frequency, length, duration or intensity of services in the child's IFSP.

(5) Families with public insurance or benefits will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance.

(6) Early intervention providers must:

(a) Give written notification to parents enrolled in apple health for kids/Medicaid informing them that personally identifiable information will be disclosed to apple health for kids/Medicaid for the purpose of billing early intervention services provided to their child;

(b) Inform parents that they have the right to withdraw their consent to the disclosure of personally identifiable information for billing purposes at any time; and

(c) Provide a written statement of the general categories of costs that the family may incur, as a result of the use of apple health for kids/Medicaid.

(7) Early intervention providers will not pay the cost of premiums for apple health for kids/Medicaid.

(8) If the parent does not provide consent to enroll in or access apple health for kids/Medicaid, early intervention providers must still make available those part C early intervention services on the IFSP to which the parent has provided consent. The lack of consent for use of apple health for kids/Medicaid may not be used to delay or deny any services under chapter 170-300 WAC to the child or family.

(9) When eligibility for apple health for kids/Medicaid cannot be confirmed or the parent has declined to provide income and expense information, the family will be required to follow Washington's system payment and fees policy.

NEW SECTION

WAC 170-300-05030 Use of private health care coverage/insurance. (1)
Parents must be provided the ESIT system of payment and fees policy, prior to using a child or parent's private health care coverage/ insurance to pay for part C services.

(2) Early intervention providers must obtain written parental consent for:

(a) The use of the family's private health care coverage/insurance to pay for the initial provision of early intervention services contained on the IFSP; and

(b) The use of private health care coverage/insurance to pay for any increase in frequency, length, duration, or intensity of services in the child's IFSP.

(3) Families with private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance.

(4) Early intervention providers must provide a written statement of the general categories of costs that the family may incur as a result of the use of private health care coverage/insurance, such as:

(a) Co-payments, co-insurance, premiums, or deductibles or other long-term costs, such as the loss of benefits because of annual or lifetime health care coverage/insurance caps under the insurance policy for the child, the parent, or the child's family members;

(b) The potential that the use of the family's private health care coverage/insurance may negatively affect the availability of health insurance to the child with a disability, the parent, or the child's family members covered under the policy; and health care coverage/insurance may be discontinued due to the use of the insurance policy to pay for part C early intervention services; or

(c) The potential that health care coverage/insurance premiums may be affected by the use of private insurance to pay for early intervention services.

(5) Early intervention providers will not pay the cost of premiums for health care coverage/insurance.

(6) If the parent does not provide consent to access private health care coverage/insurance, early intervention providers must still make available those part C early intervention services on the IFSP to which the parent has provided consent. The lack of consent may not be used to delay or deny any services to the child or family. When the parent does not give consent to access their private health care coverage/insurance, the family will be required to follow Washington's system of payment and fees policy.

(7) For all families who have been billed co-payments, co-insurance, or deductibles, other agency funds, including part C payor of last resort funds, may be used to cover these costs.

(8) Families who are ninety days delinquent in paying their co-payments, co-insurance, or deductibles will have the services subject to family cost participation suspended until a payment plan is developed. Written notification to parent, Family Resource Coordinator and service provider(s) must be provided prior to suspension of services.

NEW SECTION

WAC 170-300-05035 Parent ability to pay - - Definition. ESIT has defined “ability to pay” as the total adjusted annual income of the family that falls at or above two hundred percent of the federal poverty level, adjusted for allowable non-reimbursed expenses that exceed ten percent.

(1) Income and expense information is needed to determine a family’s ability to pay monthly fees.

(2) Allowable non-reimbursed expenses include:

(a) Medical and dental expenses including premiums, deductibles, co-pays, and co-insurance;

(b) Mental health treatment not covered by insurance;

(c) Home health care provided by licensed home health agency;

(d) Child support/alimony payments; and

(e) Child care costs incurred while parent(s) work or go to school.

(3) Prior to billing public health care coverage/insurance or private health care coverage/insurance, parents must be provided prior written notice, and asked to review and complete consent to access public and/or private insurance, and income and expense verification form that must include the following:

(a) Income and expense information;

(b) Consent to release personally identifiable information; and,

(c) Consent to access public and/or private insurance coverage.

(4) The family’s ability to pay status must be reviewed and updated at least annually or sooner if the parent requests.

NEW SECTION

WAC 170-300-05040 Parent inability to pay - - Definition. ESIT has defined “inability to pay” as the total adjusted annual income of the family that falls below two hundred percent of the federal poverty level, adjusted for allowable non-reimbursed expenses that exceed ten percent.

(1) Income and expense information is needed to determine a family’s inability to pay.

(2) Allowable non-reimbursed expenses include:

(a) Medical and dental expenses including premiums, deductibles, co-pays, and co-insurance;

(b) Mental health treatment not covered by insurance;

(c) Home health care provided by licensed home health agency;

(d) Child support/alimony payments; and

(e) Child care costs incurred while parent(s) work or go to school.

(3) Prior to billing public health care coverage/insurance or private health care coverage/insurance, parents must be provided prior written notice, and asked to review and complete consent to access public and/or private insurance, and income and expense verification form that must include the following:

(a) Income and expense information;

(b) Consent to release personally identifiable information; and

(c) Consent to access public and/or private insurance coverage.

(4) The family’s ability to pay status must be reviewed and updated at least annually or sooner if the parent requests.

NEW SECTION

WAC 170-300-05045 Family fees. (1) For families who have been determined to have the “ability to pay” under WAC 170-300-05035, ESIT has established a monthly fee

for early intervention services subject to family cost participation when any of the following occur:

- (a) The parent declines use of their private health care coverage/ insurance;
 - (b) The parent declines use of their apple health for kids/Medicaid public health care coverage/insurance and has an adjusted annual income at or above two hundred percent of the federal poverty level; or
 - (c) The parent does not have either apple health for kids/Medicaid or private health care coverage/ insurance.
- (2) The parent who decline to provide income and expense information will be charged a monthly fee at the highest level based upon family size, factoring in any amount received from other public sources of funding received in payment for those services.
 - (3) The monthly fee schedule is based on the federal poverty level guidelines and will be updated on an annual basis.
 - (4) If the parents gives consent to access their public and/or private insurance for the provision of early intervention services that are subject to family cost participation, they will not pay a monthly fee.
 - (5) For families who are enrolled in apple health for kids/Medicaid, meet the definition of “inability to pay” under WAC 170-300-05040, and the parent declines access to this funding source as payment for the part C early intervention services, all part C services identified on their child’s IFSP will be provided at no cost. In addition, the family’s inability to pay will not result in a delay or denial of part C services.
 - (6) For families who are not enrolled in apple health for kids/Medicaid and have declined to provide income and expense information, will be charged a monthly fee at the highest level based upon family size, factoring in any amount received from other public sources of funding received in payment for those services.
 - (7) Parents who decline access to their private health care coverage/insurance and who have provided income and expense information will be charged a monthly fee based on family size and adjusted annual income.
 - (8) Families may ask to have a re-determination of their monthly fee any time there is a change in family size, income and/or expenses. Any adjustment made to the monthly fee must occur after re-determination has been made.

(9) Families, who are ninety days delinquent in paying their monthly fee, will have the services for their child subject to family cost participation suspended until an acceptable payment plan is developed. Written notification to parents, Family Resource Coordinator and service provider(s) must be provided prior to suspension of services.

NEW SECTION

WAC 170-300-05050 Procedural safeguards. (1) Parents must be provided a copy of the system of payment and fees policy that details their procedural safeguards related to:

- (a) The imposition of fees;
- (b) The state's determination of the parent's ability or inability to pay; and
- (c) The billing of public or private insurance.

(2) Parents have the right to:

- (a) Participate in mediation under WAC 170-300-03000 through 170-300-03020;
- (b) Request a due process hearing under WAC 170-300-03025 through 170-300-03050;
- (c) File a state complaint under WAC 170-300-03055 through 170-300-03070; and/or
- (d) Use any other procedure established by the state to speed resolution of financial claims.

(3) ESIT providers must give a written copy of the system of payments and fees policy to parents when requesting:

- (a) Consent for the provision of early intervention services is obtained at any IFSP meeting; and
- (b) Consent for the use of private insurance to pay for part C services.

TRANSITION

NEW SECTION

WAC 170-300-05055 Transition - - General. (1) The SLA requires a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under part C of the act to:

- (a) Special education and related services; or
- (b) Other appropriate services for toddlers with disabilities; or
- (c) When exiting the ESIT program at any age.

(2) The SLA and the SEA provide for a seamless transition between services under part C and under part B of the act through the development and implementation of an interagency agreement that meets the requirements of this section and WAC 170-300-05060 through 170-300-05070 and chapter 392-172A WAC, rules for the provision of special education.

(3) The SLA requires that the transition notification, conference, and IFSP requirements of WAC 170-300-05060 through 170-300-05070 apply to all toddlers with disabilities receiving services under part C of the act before those toddlers turn age three.

NEW SECTION

WAC 170-300-05060 Transition - - Notification. (1) The LLA and FRC are responsible for meeting the notification requirements and must disclose the following personally identifiable information:

- (a) A child's name;
- (b) A child's date of birth; and
- (c) Parent contact information, including parents' names, addresses, and telephone numbers.

(2) The information, in subsection (1) of this section, is needed to enable the SLA, as well as LEAs and the SEA under part B of the act, to identify all children potentially eligible for services under part B of the act. The SLA must:

(a) Notify the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the act, as determined in accordance with Washington state law, not fewer than ninety days before the third birthday of the toddler with a disability, if that toddler has been determined to be potentially eligible for special education and related services under part B of the act;

(b) If the toddler is determined eligible for early intervention services under part C of the act more than forty-five but less than ninety days before that toddler's third birthday and if that toddler has been determined to be potentially eligible for special education services under part B of the act, as soon as possible after determining the child's eligibility. The SLA will notify the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the act, as determined in accordance with Washington state law; or

(c) If a toddler is referred to ESIT fewer than forty-five days before that toddler's third birthday and that toddler may be eligible for special education and related services under part B of the act, with the written parental consent, the LLA and the FRC refers the toddler to the SEA and the LEA for the area in which the toddler resides. The LLA and FRC are not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

(3) The LLA and the FRC, who are responsible for facilitating the implementation of the IFSP, must establish potential eligibility for part B services, with the IFSP team, according to Washington's state definition and enter the decision into the ESIT data management system.

NEW SECTION

WAC 170-300-05065 Transition - - Conference to discuss services. The LLA and the FRC, who are responsible for facilitating the implementation of the IFSP, must:

(1) Convene a transition conference, among the LLA, the FRC, the family, and the LEA not fewer than ninety days, and, at the discretion of all parties, not more than nine months, before the toddler's third birthday to discuss any services the toddler may receive under part B of the act, if a toddler with a disability has been determined to be potentially eligible for special education and related services under part B of the act, with the approval of the family of the toddler.

(2) Make reasonable efforts to convene a transition conference among the LLA, the FRC, the family, and providers of other appropriate services for the toddler, to discuss

appropriate services that the toddler may receive, if determined that a toddler with a disability is not potentially eligible for special education and related services under part B of the act, with the approval of the family of that toddler.

NEW SECTION

WAC 170-300-05070 Transition plan. (1) The LLA and the FRC, who are responsible for facilitating the implementation of the IFSP, must:

(a) Review the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year;

(b) Provide for the participation of each family of a toddler with a disability who is served under part C of the act is included in the development of the transition plan consistent with WAC 170-300-04100 related to the IFSP; and

(c) Establish a transition plan in the IFSP, consistent with WAC 170-300-04100, not fewer than ninety days, and, at the discretion of all parties, not more than nine months, before the toddler's third birthday.

(2) Any conference conducted to discuss services or meeting convened to develop the transition plan, which conference and meeting may be combined into one meeting, must meet the IFSP meeting requirements related to accessibility and convenience of meetings, written parental consent requirements, and initial and annual IFSP meeting participant requirements.

INTERAGENCY METHOD FOR PROVIDING AND FINANCING EARLY INTERVENTION SERVICES

NEW SECTION

WAC 170-300-06000 Method for cooperation and coordination - - General. (1) The SLA has entered into a formal interagency agreement with the state-level agencies identified under WAC 170-300-01010 that are involved in the ESIT program under part C of the act.

(2) The SLA method provides for the identification and coordination of all available resources for early intervention services within Washington state, including those from federal, state, local, and private sources, consistent with the use of funds and payor of last resort requirements under WAC 170-300-05000.

(3) The SLA has adopted methods that:

(a) Include a mechanism so that no services that a child is entitled to receive under part C are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

(b) Are consistent with the written funding policies adopted by Washington state under part C and include provisions the state has adopted regarding the use of public and private insurance to pay for part C services.

(4) The SLA's method includes additional components necessary to provide for effective cooperation and coordination among LLA's, EIS providers, and all public agencies involved in the ESIT program consistent with WAC 170-300-07055 through 170-300-07075.

(5) The SLA's method provides for meeting the SLA's general supervision responsibilities, including monitoring of LLA's, EIS providers, and all public agencies involved in the ESIT program.

NEW SECTION

WAC 170-300-06005 Interagency dispute resolution - - General. (1) The SLA's interagency agreement:

(a) Defines financial responsibility of each state agency for payment of early intervention services consistent with state law and part C;

(b) Includes 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 ESIT; and

(c) Provides for making a final determination that is binding upon the state agencies involved.

(2) The SLA is responsible for resolving individual disputes involving state level agency disagreements under WAC 170-300-06010.

NEW SECTION

WAC 170-300-06010 Interagency dispute resolution - - Procedures. (1) The dispute resolution procedures in the interagency agreement:

(a) Permits a state 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;

(b) Include the process that the SLA 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; and

(c) Require services to be provided to eligible infants and toddlers and their families in a timely manner, pending resolution of dispute(s).

(2) In the event that an interagency dispute arises related to the agreement or disputes about payments or other matters related to the state's ESIT program, the agencies may elect mediation to resolve the dispute or refer the dispute to the dispute board. In the event that mediation cannot resolve the dispute, the dispute must be referred to the dispute board for timely resolution.

(3) The dispute board has been appointed and is convened as disputes arise.

(4) The following members comprise the dispute board:

(a) Department of early learning;

(b) Department of social and health services;

(c) Department of health;

(d) Department of services for the blind;

(e) Health care authority; and

(f) Office of superintendent of public instruction.

(5) The chair of the SICC is a member of the dispute board and serves as the board's chair.

(6) During a dispute, DEL must:

(a) Assign financial responsibility to an agency to the extent of the agency's responsibility to pay for services, in accordance with the payor of last resort provisions;
or

(b) Pay for the service in accordance with the payor of last resort provisions.

(7) If in resolving a dispute, it is determined that the assignment of fiscal responsibility was inappropriate, DEL must reassign responsibility to the appropriate agency.

(8) Based on the outcome of the dispute resolution, DEL must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned the fiscal responsibility, if appropriate.

(9) The decision of the dispute board is final.

(10) To the extent necessary for compliance with the dispute board's decision, if any agency involved in the dispute is not satisfied with the dispute board's decision, the agency may request the decision be referred to the governor.

PERSONNEL STANDARDS

NEW SECTION

WAC 170-300-07035 Personnel standards - -General. (1) The SLA must establish and maintain qualification standards for personnel necessary to carry out part C of the act.

(2) Consistent with subsection (1) of this section, all personnel must be appropriately and adequately prepared and trained, including the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with state law, regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities and their families.

(3) The personnel qualification standards are consistent with any state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which the individual is conducting evaluations, assessments or providing early intervention services.

(4) The SLA has adopted procedures that include making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities and their families.

(5) In a geographic area of the state where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable coursework necessary to meet state standards must be recruited and hired in accordance with state requirements.

NEW SECTION

WAC 170-300-07040 Personnel standards - -Procedures. (1) The SLA and participating agencies must follow existing Washington Administrative Codes and Revised Codes of Washington that establish personnel qualification standards.

(2) The SLA and participating agencies must follow existing hiring and personnel standards for the types of personnel included in WAC 170-300-01025.

(3) Employers and applicants should consult the websites of the Washington state department of health and office of superintendent of public instruction for the most current licensure and/or certification requirements.

CONTRACTING OR ARRANGING FOR SERVICES

NEW SECTION

WAC 170-300-07045 Contracting or arranging for services - - General. The SLA must implement procedures pertaining to contracting or making other arrangements with public or private individuals or agency service providers to provide early intervention services consistent with the provisions of part C, including the contents of the application and the conditions of the contract or other arrangements.

NEW SECTION

WAC 170-300-07050 Contracting procedures. Contracting procedures include:

(1) A requirement that all early intervention services meet Washington state standards, are consistent with the provisions of part C of the act, and are consistent with federal education department general administrative regulations in 34 CFR Part 80.

(2) The mechanisms that the SLA uses in arranging for these services include request for proposal, request for application, competitive awards, intra- or interagency agreements, memorandum of understanding, personal service, and/or client services contracts.

(3) The basic requirements that must be met by any individual or organization seeking to provide these services for the SLA consistent with chapter 170-300 WAC.

NEW SECTION

WAC 170-300-07055 LLA contract- - Content. The LLA contract with the department must address the following required components:

(1) Providing EIS consistent with chapter 170-300 WAC, under public supervision, for all eligible infants and toddlers up to their third birthday and their families.

(2) Monitoring and enforcing requirements under chapter 170-300 WAC for each EIS program located in the LLA's geographic service area consistent with WAC 170-300-08045.

(3) Implementing, with prior written approval from ESIT, system changes affecting FRC or EIS delivery including subcontract changes, if any.

(4) Maintaining a CICC within the geographic service area, to advise and assist the LLA in the implementation of local EIS.

(5) Developing, implementing, and monitoring a local EIS plan approved by ESIT with the advice and assistance of the CICC.

(6) Describing the provision of family resource coordination, within the LLA's geographic service area, including how FRCs are co-located or embedded in the EI service delivery teams or how teaming occurs for program planning purposes.

(7) Implementing, maintaining, and monitoring local formal interagency agreements, in accordance with RCW 70.195.030 and consistent with WAC 170-300-07060 and 170-300-07065.

(8) Subcontracting, with prior written approval of DEL, for implementation of the scope of work described in the LLA contract.

(9) Utilizing the data management system consistent with ESIT procedures for entering accurate, valid, and reliable data required for mandatory reporting.

(10) Developing a local budget including a financial management system that provides for the utilization of federal, state, and local funds consistent with chapter 170-300 WAC including maintenance of effort and payor of last resort.

(11) Implementing a compensation and billing process consistent with the general terms and conditions of the LLA contract.

(12) Maintaining an inventory list of equipment purchases including selling or disposition with prior written approval from DEL.

(13) Requiring mandatory reporting of abuse and neglect involving children and vulnerable adults in accordance with RCW 26.44.030.

(14) Completing background checks as defined in RCW 43.43.830 through 43.43.840.

NEW SECTION

WAC 170-300-07060 Local formal interagency agreement - - Purpose. A local formal interagency agreement required under RCW 70.195.030 provides for local agencies and entities, including local school districts, counties, and service providers receiving public money for providing or paying for EI services that define their relationships and financial responsibilities to provide services within each county. In establishing priorities, school districts, counties, and other service providers must address the needs of children birth to three years of age and their families and continue to participate in providing services and collaborating with each other.

NEW SECTION

WAC 170-300-07065 Local formal interagency agreement- - Content. A local formal interagency agreement required under RCW 70.195.030 must include:

(1) The names of the local agencies and service providers that have entered into the interagency agreement with the LLA, including authorized signatures of participants.

(2) The specific roles and financial responsibilities of the LLA and each EIS provider including:

(a) Coordinated child find/early identification and referral;

(b) Family resource coordination;

(c) Evaluation and assessment;

(d) IFSP development and team participation;

(e) Specific EIS to be provided; and

(f) Transition activities/plans to preschool special education or other appropriate services.

(3) A statement that the signing parties agree to maintain, coordinate, participate in, and/or provide the EIS and activities described in the interagency agreement.

(4) A procedure for resolving disputes between the LLA and/or EIS providers through a local review and resolution process.

NEW SECTION

WAC 170-300-07070 Memorandum of understanding - - Purpose. A memorandum of understanding between an LLA and a local school district is a mechanism for identifying the responsibilities of each entity in the provision of EI services including family resource coordination under RCW 28A.155.065.

NEW SECTION

WAC 170-300-07075 Memorandum of understanding - - Content. A memorandum of understanding between an LLA and a local school district must include the following information:

- (1) A statement of the specific EI service being addressed by the memorandum of understanding.
- (2) The school year to which the agreement applies and termination date.
- (3) The responsibilities of the LLA including:
 - (a) Granting access to the ESIT program's data management system consistent with the interagency agreement between DEL and OSPI;
 - (b) Providing monitoring oversight to the district consistent with chapter 170-300 WAC;
 - (c) Providing technical assistance to the district, as necessary; and
 - (d) Providing written notification to the district regarding ESIT program updates.
- (4) The responsibilities of the local school district including:
 - (a) Providing families with an understanding of the procedural safeguards under chapter 170-300 WAC;
 - (b) Providing early intervention services under public supervision consistent with chapter 170-300 WAC;
 - (c) Implementing any ESIT approved corrective action plan, resulting from monitoring activities carried out by the LLA;
 - (d) Providing information to families regarding ESIT's system of payment and fees consistent with chapter 170-300 WAC; and

(e) Participating in the dispute resolution options consistent with chapter 170-300 WAC, as necessary.

SUPERVISION, MONITORING AND ENFORCEMENT

NEW SECTION

WAC 170-300-08025 Supervision, monitoring and enforcement - - General. The SLA's general supervisory responsibilities for monitoring and enforcement under part C of the act consistent with chapter 170-300 WAC include:

- (1) Monitoring the implementation of part C of the act;
- (2) Making LLA and EIS provider determinations annually about their performance in the implementation of part C of the act;
- (3) Enforcing part C of the act, consistent with WAC 170-300-08060 through the use of appropriate enforcement mechanisms.
- (4) Reporting annually on the performance of the state and of each LLA and EIS provider under part C of the act, consistent with WAC 170-300-08040.

NEW SECTION

WAC 170-300-08030 Monitoring - - General. (1) The primary focus of the SLA's monitoring activities must be on:

- (a) Improving early intervention results and functional outcomes for all infants and toddlers with disabilities;
- (b) Requiring that LLAs and EIS providers meet the program requirements under part C of the act, with emphasis on those requirements that are most closely related to improving results for infants and toddlers with disabilities;
- (c) Using indicators established by the US secretary for the state performance plan and state identified indicators to measure performance; and

(d) Using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(i) Early intervention services in natural environments; and

(ii) State exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services.

(2) In exercising its monitoring responsibilities under subsection (1) of this section, when the SLA identifies LLA or EIS provider noncompliance with the requirements of part C of the act, the SLA:

(a) Corrects any noncompliance as soon as possible and in no case later than one year after the state's identification of the noncompliance;

(b) Enforces any obligations imposed on those agencies under part C of the act, and chapter 170-300 WAC; and

(c) Provides technical assistance, if necessary, to those agencies, institutions, and organizations.

NEW SECTION

WAC 170-300-08035 State performance plan - - General. (1) The SLA has a state performance plan in place that:

(a) Meets the requirements described in section 616 of part C the act;

(b) Is approved by the US secretary and includes an evaluation of Washington's efforts to implement the requirements and purposes of part C of the act; and

(c) Includes a description of how improvement activities will assist in accomplishing the rigorous and measureable targets set for each indicator established by the secretary under the priority areas described in WAC 170-300-08030.

(2) The SLA reviews the state performance plan annually and submits a revised document to the US secretary when changes occur.

(3) The SLA collects valid and reliable data as needed to report annually to the US secretary on state performance plan indicators.

(4) The SLA collects census data on specific indicators through the state data management system and performance and compliance data through the early childhood outcomes center family survey, LLA self-monitoring process, and through ESIT onsite monitoring.

NEW SECTION

WAC 170-300-08040 State performance plan - - Targets and reporting. (1) The SLA uses the targets established in Washington’s state performance plan under part C of the act and the priority areas described in WAC 170-300-08030 to analyze the performance of each LLA and EIS provider in implementing part C of the act.

(2) The SLA reports annually to the public on the performance of each LLA and EIS provider located in the state on the targets in the Washington annual performance report, as soon as practicable, but no later than one hundred-twenty days following submission to the US secretary.

(3) The SLA makes the state performance plan, and annual performance report, and the state’s annual reports on the performance of each LLA and EIS provider available through public means, by posting on the SLA’s website, and distributing to the state interagency coordinating council and LLAs and EIS providers.

(4) The SLA reports annually to the US secretary on the performance of the state under the state performance plan.

(5) The SLA does not report to the public or the US secretary any information on performance that would be inconsistent with WAC 170-300-08075.

NEW SECTION

WAC 170-300-08045 Monitoring - - Procedures. The SLA implements a three-pronged approach to meet its general supervision and monitoring responsibilities, including:

(1) Gathering LLA census data, through the state’s data management system, to monitor on state performance plan compliance indicators and state selected compliance indicators. The data management system compliance report feature identifies each individual instance of child specific noncompliance reflected in the child’s record and provides the means to verify the timely correction of each individual instance of noncompliance that has occurred.

(2) Self-monitoring by LLA's focuses on reviewing data used by the SLA, LLAs, EIS providers, and subcontractors to do the following:

- (a) Identify noncompliance and areas where improvement is needed;
- (b) Develop and implement an approved corrective action plan when notice of noncompliance is provided by ESIT;
- (c) Assist in the identification of the quality practices that are being implemented;
- (d) Assist in the identification of technical assistance and training needed to improve results for children and families;
- (e) Substantiate that the SLA, LLAs, and EIS providers are complying with the requirements under part C of the act; and
- (f) Provide for monitoring the implementation of part C of the act related requirements associated with each state performance plan indicator.

(3) The onsite monitoring visit of all LLAs will be selected based on an LLA's performance on state performance plan indicators, state selected monitoring indicators, LLA and EIS provider determination status, local self-monitoring results, and any other information made available.

NEW SECTION

WAC 170-300-08050 Monitoring - - Determination of local performance. (1) Based on LLA information obtained through the data management system, self-monitoring process, onsite monitoring and any other public information made available, the SLA determines if each LLA or EIS provider:

- (a) Meets the requirements and purposes of part C of the act;
- (b) Needs assistance in implementing the requirements and purposes of part C of the act;
- (c) Needs intervention in implementing the requirements and purposes of part C of the act; or
- (d) Needs substantial intervention in implementing the requirements and purposes of part C of the act.

(2) For determinations made under subsection (1)(b), (1)(c), and (1)(d) of this section, the SLA provides reasonable notice and an opportunity for an LLA or EIS provider to discuss their status determination.

NEW SECTION

WAC 170-300-08055 Enforcement - - General. (1) If the SLA determines, for two consecutive years, an LLA or EIS provider needs assistance in implementing the requirements of part C of the act, the SLA is required to take one or more of the following actions:

(a) Advise the LLA or EIS provider of available sources of technical assistance that may help address the areas in which they need assistance. This may include assistance from SLA or other technical assistance providers which may include:

(i) The provision of advice by experts to address the areas in which the agency needs assistance, including explicit plans and timelines for addressing the areas of concern;

(ii) Assistance in identifying and receiving technical assistance that focuses on early intervention service provision strategies and implement methods of early intervention service provision that are based on scientifically based research;

(iii) Designating and using LLA and EIS program administrators, FRCs, service providers and other early intervention services personnel to provide advice, technical assistance, and support; and

(iv) Developing additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national technical assistance centers supported under part D of the act, and private consultants; or

(b) Identify the LLA contractor or EIS provider as a high-risk contractor or service provider and impose special conditions on the contract the SLA has with the LLA or required actions on the part of the service provider.

(2) If the SLA determines, for three or more consecutive years, that an LLA or EIS provider needs intervention in implementing the requirements of part C of the act, one or both of the following will apply:

(a) The SLA may take any of the actions described in subsection (1) of this section; and

(b) The SLA takes one or more of the following actions:

(i) Requires the LLA or EIS provider to complete a corrective action plan; or

(ii) Withholds, in whole or in part, any further payments to the LLA or EIS provider.

(3) Notwithstanding subsections (1) and (2) of this section, when the SLA at any time determines that an LLA or EIS provider needs substantial intervention in implementing the requirements and purposes of part C of the act or that there is a substantial failure to comply with any requirement under part C of the act by the LLA or EIS provider, the SLA will take one or more of the following actions:

(a) Withhold, in whole or in part, any further payments to the LLA, EIS provider or provider agency; or

(b) Refer the matter for additional enforcement action, including the recovery of funds.

(4) Nothing in this section restricts Washington from utilizing any other authority available to monitor and enforce the requirements of part C of the act.

NEW SECTION

WAC 170-300-08060 Enforcement action against the state. Whenever the SLA receives notice that the US secretary is proposing to take or is taking an enforcement action against the SLA consistent with WAC 170-300-08055, the SLA must notify the public and take any action necessary to bring a pending action related to part C of the act and its implementing regulations to the attention of the public. This requirement is met by posting the notice on the SLA's website and distributing the notice to the SICC, LLAs and the media.

DATA COLLECTION AND REPORTING

NEW SECTION

WAC 170-300-08065 Data collection and reporting - - General. (1) The SLA has procedures to compile and report timely and accurate data on the statewide system that meet the requirements in part C of the act consistent with the state's monitoring and general supervision responsibilities under WAC 170-300-08025 through 170-300-08045.

(2) The SLA's procedures must include a process for the following:

(a) Collecting data from LLAs, public agencies, early intervention services contractors, and service providers in the state;

(b) Making use of census data for a reporting period; and

(c) Provide for reporting data required under section 618 and 616 of the act that relate to part C, including the number of due process complaints filed under section 615, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

(3) The information required must be provided by the SLA at the time and in the manner specified by the secretary of the U.S. Department of Education.

NEW SECTION

WAC 170-300-08070 Data collection and reporting - - Procedures. (1) The SLA must compile data by requiring the LLAs and EIS providers to enter data into the ESIT electronic data management system, as specified in each LLA contract. The ESIT data management system generates automated reports that calculate the following data:

(a) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who are receiving early intervention services;

(b) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons;

(c) The settings in which early intervention services are primarily provided, by age, race and ethnicity; and

(d) Other information requested by the SLA or the secretary of the U.S. Department of Education.

(2) The SLA must gather data from existing information systems managed by state agencies that administer funds or provide early intervention services.

NEW SECTION

WAC 170-300-08075 Data collection and reporting - - Annual reporting. (1) The SLA must include in its annual report to the secretary of the U.S. Department of

Education a certification signed by an authorized official of the SLA that the information provided in WAC 170-300-08070 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

(2) The data collected from the data management system supplies the data required by the U.S. Department of Education and is based on the submission requirements identified by the secretary of the U.S. Department of Education.

(3) The data described in WAC 170-300-08040 is publicly reported by the state in a manner that does not result in the disclosure of data that are personally identifiable to individual children or where the available data are insufficient to yield statistically reliable information.