

Developing WAC

Washington Administrative Code

2013

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Authorities, Purpose, Applicability, Assurances, and Descriptions

Chapter 170-000 WAC (Proposed New Chapter) RULES FOR THE PROVISION OF EARLY INTERVENTION SERVICES

GENERAL PROVISIONS

NEW SECTION

WAC 170-000-0001 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 170-000-0005 Purpose. The purpose of this chapter is to implement chapters 43.215 and 70.195 RCW in conformity and consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1431-1444.

NEW SECTION

- WAC 170-000-0010 Applicability.** (1)(a) The provisions of this chapter apply to:
- (i) The department of early learning, the state lead agency responsible for administering, monitoring, and supervising the statewide system for part C of the Individuals with Disabilities Act, and coordinating with 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 provide early intervention services and service providers;

(iii) Early intervention service providers 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 170-000-0015 Availability of early intervention services. (1) Early intervention services, as defined in WAC 170-000-1000, are available to 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.

NEW SECTION

WAC 170-000-0020 Coordination with early learning programs. (1) The department of early learning, the state lead agency for part C of the Individuals with Disabilities Education

Act, early intervention in Washington state, must collaborate with head start and early head start programs under the Head Start Act (42 U.S.C. 9801, et seq, as amended), early education and child care programs and programs and services under part B of the Individuals with Disabilities Education Act, early childhood special education programs.

(2) The department of early learning, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act, must participate on Washington's early learning and advisory council that includes the state to local steering committee.

NEW SECTION

WAC 170-000-0025 Public participation, comment, and hearings. Washington state policies and procedures require public participation in the annual application for part C federal funds and when any new policy or procedure, including any revision to an existing policy or procedure, are published in a manner so that circulation occurs throughout the state for at least a sixty day period, with a thirty day opportunity for public comment and public hearings during that period.

(1) At least sixty days prior to being submitted to the U.S. Department of Education, each annual application for part C federal funds, including any policies, procedures, descriptions, methods, certifications, assurances, and other information required in the application, is published to provide for public participation.

(2) Each annual application for part C federal funds includes a description of the policies and procedures used by the state to require that before adopting any new policy or procedure, including any revision to an existing policy or procedure, needed to comply with part C of the Individuals with Disabilities Education Act and implementing regulations, the state lead agency must:

(a) Hold at least two public hearings on the new policy or procedure, including any revision to an existing policy or procedure;

(b) Provide notice of the hearings held in accordance with this section at least thirty days before the hearings are conducted to enable public participation; and

(c) Provide an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, early intervention service providers, and the members of the state interagency coordinating council, to comment for at least thirty days on the new policy or procedure, including any revision to an existing policy or procedure, needed to comply with part C of the Individuals with Disabilities Education Act and implementing regulations.

Definitions

DEFINITIONS

NEW SECTION

WAC 170-000-1000 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) “**Child**” means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in subsection (22) of this section.
- (3) “**Consent**” means 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, as defined in subsection (26) of this section;
 - (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;
 - (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
 - (d) If a parent revokes consent, that revocation is not retroactive to an action that occurred before the consent was revoked.
- (4) “**Council**” means the state interagency coordinating council that meets the requirements of WAC 170-000-0000 through 170-000-0000.
- (5) “**Day**” means calendar day, unless otherwise indicated.
- (6) “**Department**” or “**DEL**” means the Washington state department of early learning.
- (7) “**Developmental delay**” when used with respect to a child residing in Washington state, has the following meaning:
 - (a) A child has a developmental delay if she/he is experiencing a one and one-half standard deviation or twenty-five percent of chronological age delay in one or more developmental areas; or

(b) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(8) **“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.

(9) **“Early intervention services” or “EIS”** means 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;

(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;

(e) Meet the standards of Washington state, where the early intervention services are provided, including the requirements of part C of the act;

(f) Include services identified under subsection (j) of this section;

(g) Provided by qualified personnel, as defined in subsection (33) of this section, including the types of personnel listed in (k) of this subsection;

(h) To the maximum extent appropriate, provided in natural environments, as defined in subsection (27) of this section and consistent with this chapter; and

(i) Provided in conformity with an individualized family service plan adopted in accordance with the act and WAC 170-000-0000 through 170-000-0000;

(j) Early intervention services include:

(i) **“Assistive technology device”** means 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. The

term 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;

(ii) “Assistive technology service” means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. 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.

(iii) “Audiology services” includes:

(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.

(iv) “Family training, counseling and home visits” means 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.

(v) “Health services” means 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.

(A) The term includes:

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

(II) 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.

(B) The term does not include services that are:

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

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

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

(C) 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.

(D) 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;

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

(F) Medical-health services (such as immunizations and regular "well-baby" care) that are

routinely recommended for all children.

(vi) “Medical services” means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

(vii) “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.

(viii) “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 IDEA based on the assessment findings in this subsection; and

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

(ix) “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. 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.

(x) “Physical therapy” includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:

(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.

(xi) “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.

(xii) “Service coordination” means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including required procedural safeguards, and is referred to as family resources coordination in Washington state, as defined in subsection (13) of this section.

(xiii) “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.

(xiv) “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.

(xv) "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.

(xvi) "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.

(xvii) "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.

(xviii) “Vision services” means:

(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.

(k) Types of qualified personnel who provide early intervention services under part C of the act are:

- (i) Audiologists;
- (ii) Family therapist;
- (iii) Nurses;
- (iv) Occupational therapists;
- (v) Orientation and mobility specialists;
- (vi) Pediatricians and other physicians for diagnostic and evaluation purposes;
- (vii) Physical therapists
- (viii) Psychologists
- (ix) Registered dietitians
- (x) Social workers
- (xi) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness)
- (xii) Speech and language pathologists; and
- (xiii) Vision specialists including ophthalmologists and optometrists

(l) The services and personnel identified and defined in this subsection 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 subsection 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 subsection 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.

(10) “**Early intervention service provider**” or “**EIS provider**” means:

(a) 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.

(b) An EIS provider is responsible for:

(i) 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;

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

(iii) 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.

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

(12) **“Family resources coordination”** in Washington State has the same meaning as service coordination services or case management and is defined as follows:

(a) 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.

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

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

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

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

(i) 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

(ii) 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.

(c) Specific service coordination services include:

(i) 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;

(ii) 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;

(iii) Coordinating evaluations and assessments;

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

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

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

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

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

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

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

(e) 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; and

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

(13) **“Family resources coordinator” or “FRC”:**

(a) 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; and

(b) 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:

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

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

(iii) 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

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

(14) **“Free appropriate public education” or “FAPE”** means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the state educational agency, including the requirements of part B of the act;

(c) Include an appropriate preschool, elementary school, or secondary school education in Washington state; and

(d) Are provided in conformity with an individualized education program that meets the requirements under regulations for part B of the act.

(15) **“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.

(16) **“Individualized education program” or “IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with part B of the act.

(17) **“Individualized family service plan” or “IFSP”** means the written plan required for providing early intervention services to an eligible infant or toddler and the infant or toddler's family, consistent with WAC 170-000-0000 through 170-000-0000.

(18) **“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.

(19) **“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.

(20) **“Indian” and “Indian tribe”** means:

(a) An individual who is a member of an Indian tribe.

(b) Indian tribe means any federal or state Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a state Indian tribe that is not listed in the federal register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

(21) **“Infants and toddlers with disabilities”** means:

(a) Individuals under three years of age who needs early intervention services because the individual is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- (i) Cognitive development;
- (ii) Physical development, including vision and hearing;
- (iii) Communication development;
- (iv) Social or emotional development;
- (v) Adaptive development; or

(b) Has a diagnosed physical or mental condition that:

- (i) Has a high probability of resulting in developmental delay; and
- (ii) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(22) **“Local educational agency” or “LEA”** means:

(a) A public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public

elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties as are recognized in a state as an administrative agency, for its public elementary schools or secondary schools. The term includes the following:

(i) Educational service agency, defined as a regional public multiservice agency:

(A) Authorized by state law to develop, manage, and provide services or programs to LEAs; and

(B) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.

(ii) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under state law.

(b) The term includes an elementary school or secondary school funded by the bureau of Indian education, and not subject to the jurisdiction of any state educational agency other than the bureau of Indian education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the act with the smallest student population.

(23) **“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.

(24) **“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 accordance with WAC 170-000-0000 through 170-000-0000.

(25) **“Native language”**, when used with respect to an individual who is limited English proficient, as that term is defined in the act, means:

(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.

(c) Native language, 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, means the mode of communication that is normally used by the individual, such as sign language, braille, or oral communication.

(26) **“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.

(27) **“Parent”** means:

(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.

(f) 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.

(g) 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.

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

(29) **“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.

(30) **“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.

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

(32) **“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.

(33) **“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.”

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

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

(36) **“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.

(37) **“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 definition of a parent in subsection (28) of this section.

Definitions of Developmental Delay

ELIGIBILITY CRITERIA FOR DEVELOPMENTAL DELAY

NEW SECTION

WAC 170-000-0000 Eligibility criteria for developmental delay. The SLA ensures that children, birth to three, are eligible for early intervention services under part C of the act, if a multidisciplinary team finds any one of the following criteria exists:

(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 ensures 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.

Public Awareness

PUBLIC AWARENESS PROGRAM

NEW SECTION

WAC 170-000-0000 Public awareness program. (1) The SLA under part C of the act must implement a public awareness program that:

- (a) Focuses on the early identification of infants and toddlers with disabilities; and
 - (b) Provides information to parents of infants and toddlers through primary referral sources, in accordance with WAC 170-000-0000 through 170-000-0000.
- (2) The public awareness program requires the SLA to:
- (a) Prepare information on the availability of early intervention services under part C of the act and other services, as described in WAC 170-000-0000;
 - (b) Disseminate to all primary referral sources, especially hospitals and physicians, the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and
 - (c) Adopt procedures for assisting the primary referral sources, described in WAC 170-000-0000, in disseminating the information described in WAC 170-000-0000 to parents of infants and toddlers with disabilities.

NEW SECTION

WAC 170-000-0000 Information disseminated. (1) The SLA is required to prepare and disseminate the following information, including:

- (a) A description of the availability of early intervention services under the ESIT program;
 - (b) A description of Washington's child find system and how to refer a child under the age of three for an evaluation early intervention services; and
 - (c) The central directory, as described under WAC 170-000-0000 and 170-000-0000.
- (2) The SLA is required to have a public awareness program that informs parents of toddlers with disabilities of the availability of services under section 619 of the act at least ninety days prior to the toddler's third birthday.

NEW SECTION

WAC 170-000-0000 Dissemination process. (1) The SLA requires that program information and materials for parents and others are disseminated to all primary referral sources by the LLA. An LLA designated public awareness contact may order free hard copy print materials from the SLA for local distribution. LLAs are required to document where public awareness materials are locally distributed.

(2) Any individual may download program materials at no cost from the ESIT website.

(3) Program information and materials are provided in the native language of various population groups represented in the state when feasible to do so.

Central Directory

CENTRAL DIRECTORY

NEW SECTION

WAC 170-000-0000 Central directory. (1) The SLA must maintain a central directory that is accessible to the general public, through the SLA's web site and other appropriate means, and includes accurate, up-to-date information about:

- (a) Public and private early intervention services, resources and experts available in the state;
- (b) Research and demonstration projects being conducted in the state relating to infants and toddlers with disabilities;
- (c) Professional and other groups, including parent support, and training and information centers, such as those funded under the act, that provide assistance to infants and toddlers with disabilities eligible under part C of the act and their families; and
- (d) Local lead agency FRCs for each geographic area of Washington.

(2) The information required in subsection (1) of this section must be in sufficient detail to ensure that:

- (a) The general public shall be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and
- (b) Parents of a child eligible for part C of the act can contact, by telephone or letter, any of the sources listed in the directory.

NEW SECTION

WAC 170-000-0000 Access to directory. (1) The SLA contracts for a toll - free 1-800 number, for the central directory. The toll - free number maintains current information and is updated on an ongoing basis. The toll - free number is accessible to the general public, distributed statewide, has multi-state access, and includes interpretive services.

(2) Directory information must be available in each region of the state including rural areas and in places and a manner that ensures accessibility by persons with disabilities.

(3) The central directory must be updated at least annually and accessible to the general public.

(4) Information about the directory is distributed through the statewide public awareness program consistent with WAC 170-000-0000 through WAC 170-000-0000.

Comprehensive System of Personnel Development

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

NEW SECTION

WAC 170-000-0000 Comprehensive system of personnel development - - General.

The SLA must include a comprehensive system of personnel development, including the training of paraprofessionals and primary referral sources with respect to the basic components of early intervention services available in Washington consistent with chapter 170-000 WAC.

NEW SECTION

WAC 170-000-0000 Training of personnel. (1) The comprehensive system of personnel development must include:

- (a) Training personnel in implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;
 - (b) Promoting the preparation of early intervention service providers who are fully and appropriately qualified to provide early intervention services under part C of the act; and
 - (c) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention services program under part C of the act to a preschool program under section 619 of part B of the act, head start, early head start, an elementary school program under part B of the act or another appropriate program.
- (2) The comprehensive system of personnel development may include:
- (a) Training personnel to work in rural and inner-city areas;
 - (b) Training personnel in the emotional and social development of young children;
 - (c) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and
 - (d) Training personnel who provide services under part C using standards that are consistent with early learning personnel development standards funded under the state advisory council on early childhood education and care established under the Head Start Act, if applicable.

(3) The comprehensive system of personnel development must provide:

- (a) Pre-service and in-service training to be conducted on an interdisciplinary basis to the

extent appropriate;

(b) The training of a variety of personnel to meet the requirements of part C of the act including:

(i) Early intervention service providers;

(ii) Primary referral sources;

(iii) Paraprofessionals;

(iv) FRCs; and

(c) Opportunities for parents to participate in training activities both as presenters and participants.

Personnel Standards

PERSONNEL STANDARDS

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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 170-000-0000.

(4) 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

CONTRACTING OR ARRANGING FOR SERVICES

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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, 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 170-000 WAC.

Comprehensive Child Find

COMPREHENSIVE CHILD FIND SYSTEM AND REFERRAL

NEW SECTION

WAC 170-000-0000 Comprehensive child find system - -General. The SLA must implement a comprehensive child find system that:

(1) Is consistent with part B of the act and the rules for the provision of special education under WAC 392-172A-02040.

(2) Includes a system for making referrals to LLA or EIS providers under part C of the act that:

(a) Includes timelines; and

(b) Provides for participation by the primary referral sources described in WAC 170-000-0000.

(3) Maintains rigorous standards for appropriately identifying infants and toddlers with disabilities for services under part C of the act that will reduce the need for future services.

(4) Meets the requirements of this section and procedures related to screenings, evaluations, and assessments under WAC 170-000-0000 through 170-000-0000.

NEW SECTION

WAC 170-000-0000 Scope of child find system. The SLA, as part of the child find system, requires that:

(1) 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) An effective method is developed and implemented to identify children who are in need of early intervention services.

NEW SECTION

WAC 170-000-0000 Coordination of child find system. (1) The SLA, with the assistance of the SICCC, requires that the child find system under part C of the act is coordinated with:

(a) All other major efforts to locate and identify children by other state agencies responsible for administering the various education, health, and social service programs relevant to part C of the act, including Indian tribes that receive payments under part C of the act, and other Indian tribes, as appropriate; and

(b) The efforts of the:

- (i) Program authorized under part B of the act;
- (ii) Maternal and child health program, including the maternal, infant, and early childhood home visiting program, under Title V of the Social Security Act, as amended, (42 U.S.C. 701(a));
- (iii) Early periodic screening, diagnosis, and treatment, under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));
- (iv) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
- (v) Head Start Act, including early head start programs under section 645A of the Head Start Act, (42 U.S.C. 9801 et seq.);
- (vi) Supplemental security income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
- (vii) Child protection services, family voluntary services, and child family welfare

workers, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) reauthorized with the enactment of the Keeping Children and Families Safe Act of 2003 (P.L. 108-36);

(viii) Child care programs and other early learning programs in Washington;

(ix) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

(x) Early hearing detection and intervention systems (42 U.S.C. 280g-1) administered by the centers for disease control;

(xi) Children's health insurance program authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.); and

(xii) Programs/agencies that administer the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11431 et seq.) for children that are homeless.

(2) The SLA requires the child find system include procedures for use by primary referral sources for referring a child under the age of three to the ESIT program.

(3) The SLA requires that 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.

(4) 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.

(5) The SLA, with the advice and assistance of the SICCC, shall take steps so that:

(a) There will not be unnecessary duplication of effort by the agencies involved in the state's child find system under part C of the act; and

(b) The state will make use of the resources available, through each public agency in the state, to implement the child find system in an effective manner.

NEW SECTION

WAC 170-000-0000 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.

Screening, Evaluation and Assessment

SCREENING, EVALUATION AND ASSESSMENT

NEW SECTION

WAC 170-000-0000 Definitions - - Evaluation, initial evaluation, assessment, and initial assessment. For the purpose of adopting requirements for screening, evaluation, and assessment under part C of the act, the following definitions apply:

(1) “**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.

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

(3) “**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 170-000-0000 and 170-000-0000.

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

NEW SECTION

WAC 170-000-0000 Timeline for screening, initial evaluation, initial assessments and initial IFSP meeting. (1) Except as provided in subsection (2) of this section, with 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 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 170-000-0000 Documenting exceptions to timeline period. The SLA requires implementation of procedures for documenting exceptions to the forty-five day timeline. As described in WAC 170-000-0000, 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 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 170-000-0000 no longer exist or 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 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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 170-000-0000 at any time during the screening process; and

(b) Obtain 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 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 170-000-0000, 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 170-000-0000; 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 170-000-0000 Evaluation and assessment - - General. The SLA requires that, subject to obtaining 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 170-000-0000 unless eligibility is established under WAC 170-000-0000.

(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 170-000-0000 are met.

NEW SECTION

WAC 170-000-0000 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 170-000-0000, 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 170-000-0000 and 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000 through 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000;
- (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 170-000-0000 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 170-000-0000 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 170-000-0000 Notice of ineligibility. If, based on the evaluation conducted under WAC 170-000-0000, 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 170-000-0000, 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 (IFSP)

INDIVIDUALIZED FAMILY SERVICE PLAN

NEW SECTION

WAC 170-000-0000 Definitions - - IFSP. For the purpose of adopting requirements for IFSPs under part C of the act, the following definitions apply:

(1) “**Individualized family service plan or IFSP**” means 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 170-000-0000 through 170-000-0000;

(b) Includes the content specified in WAC 170-000-0000;

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

(d) Is developed in accordance with the IFSP procedures included in WAC 170-000-0000 through 170-000-0000.

(2) “**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.

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

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

(5) “**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.

(6) “**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.

NEW SECTION

WAC 170-000-0000 IFSP - - General. (1) 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 170-000-0000 through 170-000-0000.

(2) 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 170-000-0000 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 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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 170-000-0000 through 170-000-0000 must be used in determining what early intervention services are needed and will be provided.

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000, 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) 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.

(6) 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.

(7) 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 170-000-0000 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 170-000-0000 and, with 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 170-000-0000 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) 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 170-000-0000 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

NATURAL ENVIRONMENTS

NEW SECTION

WAC 170-000-0000 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 170-000-0000.

(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 170-000-0000 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 170-000-0000; and
- (c) Based on the child's outcomes that are identified by the IFSP team.

Transition

TRANSITION

NEW SECTION

WAC 170-000-0000 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 WAC 170-000-0000 through 170-000-0000 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 170-000-0000 through 170-000-0000 and WAC 170-000-0000 apply to all toddlers with disabilities receiving services under part C of the act before those toddlers turn age three.

NEW SECTION

WAC 170-000-0000 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 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 170-000-0000 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 170-000-0000 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 170-000-0000 related to the IFSP; and

(c) Establish a transition plan in the IFSP, consistent with WAC 170-000-0000, 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, parental consent requirements, and initial and annual IFSP meeting participant requirements.

Part C to B Interagency Agreement – Transition

DEL Interagency Agreement Number 12-1170-01
OSPI Interagency Agreement Number 20120382
Title: Interagency Agreement on Transition

INTERAGENCY AGREEMENT AMENDMENT 1 BETWEEN THE DEPARTMENT OF EARLY LEARNING AND OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

THIS INTERAGENCY AGREEMENT Amendment (Agreement) is made and entered into by and is between the DEPARTMENT OF EARLY LEARNING, hereinafter referred to as "DEL," and OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION, hereinafter referred to as "OSPI". This amended agreement replaces the Interagency Agreement dated April 16, 2012.

IT IS THE PURPOSE OF THIS AGREEMENT TO:

- 1) Serve as a source document for DEL and OSPI to develop and disseminate materials, and to provide individual and joint training and/or technical assistance to LLAs and LEAs on transition.
- 2) Outline the procedures for the transition of toddlers with developmental delays and disabilities from Part C to Part B, ensuring that Part B eligible toddlers shall experience a smooth and effective transition to preschool services, as authorized in *34 CFR §303.209 (a)(3)(i)(A)*.
- 3) Ensure families' rights to services for which they are eligible; to outline responsibilities of and coordination and communication among DEL ESIT, OSPI, LEAs, and LLAs in implementing transition requirements; and to establish uniformity statewide that shall provide a coordinated, unduplicated, and seamless system for transitioning toddlers with developmental delays or disabilities, according to the Parts B and C. *20 USC §1412 et seq., 34 CFR §300 et seq. and 20, USC §1431 et seq., 34 CFR §303 et seq.*
- 4) Encourage cooperation and communication between DEL ESIT, OSPI, LEAs, LLAs, early intervention providers, and families to ensure the provision of a Free Appropriate Public Education (FAPE) by a toddler's third birthday, as authorized in *20 USC §1412(a)(9), 34 CFR, §300.124, and WAC 392-172A-02080*.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. PARTIES

- 1.1. This Agreement is entered into pursuant to requirements of *IDEA 34 CFR §303.209(a)(3)(i)* between the Department of Early Learning (DEL), Early Support for Infants and Toddlers (ESIT) program, the State Lead Agency (SLA) for Part C, and Office of Superintendent of Public Instruction (OSPI), Special Education, the State Educational Agency (SEA) for Part B.

1.2. Oversight Responsibility

- (a) DEL is responsible for oversight of all ESIT LLA's compliance with Part C and DEL policies and procedures. This includes, but is not limited to, conducting compliance monitoring regarding transition requirements in Part C.
- (b) OSPI is responsible for oversight of all LEA's compliance with Part B and OSPI policies and procedures. This includes, but is not limited to, conducting compliance monitoring regarding transition requirements under Part B.

2. AGREEMENT MANAGEMENT

- 2.1. The Agreement Manager for each of the Parties shall be the contact person for all communications regarding the performance of this Agreement. Agency and Agreement Manager information for this Agreement is as follows:

2.1. OSPI BUSINESS ADDRESS

Office of Superintendent of Public Instruction
Old Capitol Building
PO Box 47200
Olympia, WA 98504-7200
TIN: 91-6001112
UBI: 342-008-830

OSPI AGREEMENT MANAGER

Pam McPartland
Program Supervisor
Pamela.McPartland@k12.wa.us
Phone: (360) 725-6075

DEL BUSINESS ADDRESS

Department of Early Learning
PO Box 40970
Olympia, WA 98504-0970
TIN: 75-3214740
UBI: 602-605-520

DEL AGREEMENT MANAGER

Sheila Ammons
ESIT Program Consultant
Sheila.Ammons@del.wa.gov
Phone: (360) 725-4439

- 2.2. Each party shall notify the other party in writing within ten business days of any changes to the name and contact information regarding either Party's designated Agreement Manager.

3. EXHIBITS AND ATTACHMENTS

Attached hereto and incorporated herein as though set forth in full are the following exhibit and attachment:

- Exhibit A STATEMENT OF WORK
- Attachment 1 Washington's Definition of "Potentially Eligible" for Part B Services

4. AUTHORITY

DEL and OSPI are authorized to enter into this Agreement by Chapter 39.34 RCW. DEL ESIT is further complying with the IDEA 34 CFR §303.209(a)(3)(i)(A), which requires an interagency agreement on transition when the State Educational Agency is not the State Lead Agency for the early intervention program.

5. PERIOD OF PERFORMANCE

This Agreement shall become effective on April 1, 2013 and shall remain in force and effect until June 30, 2017 unless terminated or further amended.

6. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

7. DISPUTES

Parties are encouraged to resolve disputes at the lowest possible level. Any dispute that cannot be resolved at the lowest possible level should first be directed, in writing, to the State Superintendent of OSPI and the Director of DEL. If resolution is not achieved at the agency level, it shall be determined

by a Dispute Board in the following manner:

- 7.1. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both Parties.
- 7.2. The cost of resolution shall be borne as allocated by the Dispute Board.
- 7.3. As an alternative to this process, either of the Parties may request intervention by the Governor, as provided by *RCW 43.17.330*, in which event the Governor's process shall control.

8. TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered in accordance with the terms of this Agreement prior to the effective date of termination.

9. COMPLIANCE WITH LAWS

The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable current federal, state, and local laws, rules, and regulations, including but not limited to, 20 USC Section 1400 et seq, Chapter 39.34 RCW (the Interlocal Cooperation Act), all applicable non-discrimination laws, and, if applicable, Chapter 42.56 RCW (the Public Records Act), 5 U.S.C. 522 (the Freedom of Information Act), and Chapter 40.14 RCW (Records Retention Act).

10. CONFORMANCE

If any provision of this Agreement violates any applicable federal or Washington statute, regulation, or rule of law, that provision is considered modified to conform to that statute, regulation, or rule of law.

11. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by the authorized representatives of the Parties and attached to the original Agreement.

12. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

13. ALL WRITINGS CONTAINED HEREIN

This Agreement, including the referenced exhibit and attachment, contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

State of Washington
Office of Superintendent of Public Instruction

Randolph I. Dorn
Signature

Randolph I. DORN
Printed Name

State Superintendent 3/27/13
Title Date Signed

State of Washington
Department of Early Learning

Deborah Carr
Signature

Deborah Carr
Printed Name

DEL Contracts Administrator 4-4-13
Title Date Signed

EXHIBIT A – AMENDMENT 1 STATEMENT OF WORK

1. DEFINITIONS

- 1.1. Department of Early Learning (DEL) means the State Lead Agency (SLA) and its employees and authorized agents. *34 CFR §303.22*
- 1.2. Early Intervention Services means developmental services that are provided under public supervision, are selected in collaboration with the parents, are provided according to ESIT's System of Payments Policy, are 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, are provided in natural environments in conformity with an IFSP. *34 CFR 303.13*
- 1.3. Early Support for Infants and Toddlers (ESIT) means the program of DEL, with the general supervisory authority over the implementation of IDEA, Part C, early intervention services to eligible infants and toddlers aged birth to 3 and their families.
- 1.4. Evaluation for Part B of IDEA means the procedures used that include a review of data and additional assessments, if needed to determine whether a student is eligible for special education and related services under Part B of the IDEA. The district selects the members of the evaluation group needed to conduct the evaluation. To meet eligibility, a student has a disability that is defined in the state special education regulations, the disability has an adverse educational impact, and the student needs specially designed instruction. *34 CFR §300.15; WAC 392-172A-01070 and 01035*
- 1.5. Evaluation for Part C of the IDEA means a timely, comprehensive, multidisciplinary process to determine eligibility for early intervention services under Part C. This includes administering an evaluation instrument, taking the child's history including interviewing the parent, identifying the child's level of functioning in all developmental areas, gathering information from other sources to understand the child's unique strengths and needs, and reviewing medical, educational, and other records. *34 CFR §303.321*
- 1.6. Family Resources Coordinator (FRC) means the person responsible for coordination and case management of early intervention services for infants and toddlers and their families. *34 CFR §303.34*
- 1.7. Free Appropriate Public Education (FAPE) means special education and related services provided to students aged 3 to 21 that meet state standards and are provided through the development of an individualized education program. These services are provided at public expense under public supervision and direction, without charge to the parents. *34 CFR §300.101; WAC 392-172A-02000*
- 1.8. Individualized Education Program (IEP) means a written statement of an educational program that is developed, reviewed, or revised in accordance with applicable federal and state laws for providing special education services to students who are eligible for special education. The IEP includes the special education and related services, and modifications and supports needed for the student to participate or appropriate activities for preschool. *34 CFR §300.320; WAC 392-172A-03090*
- 1.9. Individualized Education Program Team or IEP Team means a group of individuals consistent with *WAC 392-172A-03095* that includes parents, district staff, others invited by the district or parent, and, at the request of the parent, the Part C Family Resources Coordinator (FRC).

- 1.10. Individualized Family Service Plan (IFSP) means the written plan required for providing early intervention services to an eligible infant or toddler and the child's family. *34 CFR §303.344*
- 1.11. Individualized Family Service Plan Team or IFSP Team means the infant or toddler's family; Family Resources Coordinator; service providers, and others, as identified on the plan. *34 CFR §303.343*
- 1.12. Individuals with Disabilities Education Act (IDEA) means the federal law that addresses the requirements for identifying, evaluating, and serving eligible students. *20 USC §1400 et seq.*
 - (a) Part C of the act addresses early intervention services for eligible infants and toddlers, ages birth to 3.
 - (b) Part B of the act addresses special education and related services for eligible students, ages 3 to 21.
- 1.13. Local Education Agency (LEA) means the school district responsible for IDEA services to resident children or students under Part C or Part B. *34 CFR §303.23*
- 1.14. Local Lead Agency (LLA) means the entity in each specific geographic area of Washington State who is under Contract with ESIT to implement, coordinate, and provide Early Intervention Services, as defined by Part C.
- 1.15. Office of the Superintendent of Public Instruction (OSPI) means the State Education Agency (SEA) and its employees and authorized agents who have general supervisory authority over the implementation of special education and related services under Part B. The special education section of OSPI is responsible for state implementation of Part B. *34 CFR §303.36*
- 1.16. Potentially Eligible means toddlers eligible for Part C services that may be eligible for special education and related services under Part B (and further defined in Attachment 1, incorporated by reference).
- 1.17. Transition means the process to transfer services and supports for toddlers with disabilities from Part C to Part B.
- 1.18. Transition Plan means a document that is part of the IFSP for all infants and toddlers, including those who are potentially eligible for Part B services. The plan must include Part C program options, steps, and potential services that may assist in transition.

2. SCOPE OF WORK

The Parties agree to coordinate at the state level to ensure that implementation of the following transition steps occur at the local level, so that toddlers who are potentially eligible receive timely transitions:

2.1. Transition Timeline and Procedures

Throughout an infant or toddler's enrollment in early intervention, the family and the child's IFSP Team discuss the transition steps to be taken to ensure a smooth transition for the toddler when early intervention services end, by the toddler's third birthday. The provision of a FAPE through an IEP is required no later than the eligible toddler's third birthday. The toddler is no longer enrolled in and eligible for early intervention services after the toddler's third birthday. For those toddlers who are not potentially eligible for Part B special education, the LLA shall make reasonable efforts to identify other possible and appropriate resources in the community to assist the toddler and family in transitioning out of early intervention services.

2.2. Transition Notification

- (a) At least 90 days prior to the toddler's third birthday, ESIT shall send an electronic notification to the SEA and to the LEA where the toddler receiving Part C services resides

for all toddlers who are potentially eligible (see Attachment 1 for definition) for services under Part B and who shall shortly turn 3 years old and exit the Part C program. After the electronic notification is transmitted, confirmation is automatically recorded on the next IFSP. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR 34 §303.209(b)*

- (b) The electronic notification data report is transmitted by ESIT to the SEA and LEA on a monthly basis. The report covering the prior month is for toddlers potentially eligible for Part B, who turned 2 years and 3 months, according to Section 2.2(a). The report lists the toddler's name, date of birth, and parent contact information. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR §303.401(d)*
- (c) If a toddler is determined eligible for Part C less than 90 days but more than 45 days before the third birthday, ESIT shall provide the notification to the SEA and LEA as soon as possible after determining the toddler's eligibility for Part C and potential eligibility for the Part B. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR §303.209(b)(ii)*
- (d) Notice for toddlers in Section 2.2(c) shall be sent via a secure email to the SEA by ESIT no later than the next business day after potential eligibility for Part B services is established and recorded. ESIT assures the LLA shall notify the LEA for toddlers identified in Section 2.2(c) by secure email or phone no later than the next business day after potential eligibility for Part B services is established and recorded.
- (e) If a toddler is referred to Part C less than 45 days before the toddler's third birthday the LLA, with parental consent, shall refer the family to the SEA and appropriate LEA. The LLA is not required to conduct an evaluation, assessment, or initial IFSP meeting. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR §303.209(b)(iii)*

2.3. Transition Conference

- (a) If the parent has provided approval, the LLA shall convene a transition conference for a toddler who may be eligible for Part B to discuss any services the toddler may receive under Part B. If a toddler is not potentially eligible for Part B, then reasonable efforts shall be made to hold a conference to discuss other appropriate services. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(II) – (III) and 34 CFR §303.209(c)*
- (b) If the toddler may be eligible for Part B and the parent approves, the conference shall be held no later than 90 days before the toddler's third birthday, but at the discretion of all Parties, the transition conference may occur up to 9 months before the toddler's third birthday. The transition conference may be combined with the IFSP meeting to develop the transition plan. The transition conference shall be held at a time and location convenient for the family and 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. Meeting arrangements shall be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they shall be able to attend. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(II) – (III) and 34 CFR §§303.209(c) and 303.342(d) – (e)*
- (c) The Part C FRC is responsible for inviting meeting participants to the transition conference.
 - (i) For the toddler who may be eligible for preschool services under Part B, the transition conference must include the family of the toddler, the LLA representative(s), the LEA representative(s), and other individuals required to be included in an initial or annual IFSP meeting in accordance with *34 CFR §303.343(a)*. The LEA representative will participate in the transition planning conference. *34 CFR §300.124(c) and WAC 392-172A-02080(2)*
 - (ii) If the transition conference is for a toddler who is not potentially eligible for preschool services under Part B, meeting participants include the family, the LLA representative(s), and representatives of the other early childhood program option(s) of

interest to the family. *34 CFR §303.209(c) and (e) and §303.343(a)*

- (d) Any transition conference must meet the requirements in *34 CFR §§303.432(d) and (e); §303.343(a) and §303.209(e)*.

2.4. The Individualized Family Service Plan (IFSP) Transition Plan

- (a) At an IFSP meeting not fewer than 90 days, but at the discretion of all Parties up to 9 months, before the toddler's third birthday, the IFSP team, including the family, shall develop and document a transition plan on the IFSP for each infant and toddler with a disability exiting the Part C program. The transition plan is part of the IFSP and describes any appropriate steps for the toddler to exit the Part C program and any transition services needed by the toddler and the family for transition to preschool or other appropriate services at age 3. *IDEA 20 USC 1437 §637(a)(9)(A)(i) and 637(a)(9)(C) and 34 CFR §§303.209(d) and 303.344(h)*
- (b) Transition steps shall include:
 - (i) Discussion with and training of parents, as appropriate, regarding future placements and other matters related to the toddler's transition;
 - (ii) Procedures to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to, and function in, a new setting;
 - (iii) Confirmation that child find (referral) information has been transmitted to the SEA and LEA or other relevant agency and, with parental consent, information such as the most recent evaluation, assessment, and IFSP has also been transmitted.
 - (iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the toddler. *IDEA 20 USC 1437 §637(a)(9)(A)(i) and 34 CFR §303.344(h)*
- (c) The transition conference and the IFSP meeting to develop the transition plan may be combined in one meeting. *34 CFR §303.209(e)*
- (d) The FRC and other IFSP team members shall review the program options for the toddler with a disability who is potentially eligible for Part B, for the period from that toddler's third birthday through the remainder of the school year. The team also discusses with the family all early childhood options available in their community. Options may include preschool special education services, Head Start, private preschools, and child care settings. *IDEA 20 USC 1437 §637(a)(9)(B) and 34 CFR §303.209(d)(1)(i)*

2.5. Late Referrals to Part C

- (a) Initial Referral to Part C Between 2 Years 9 Months and 2 Years 10 ½ Months of Age

Upon receipt of an initial referral of a toddler between the ages of 2 years 9 months and 2 years 10 ½ months (89 to 46 days prior to the toddler's third birthday) the LLA shall complete the eligibility determination process, hold the initial IFSP meeting, and conduct the transition planning within 45 calendar days of the referral. LLAs and LEAs may jointly and concurrently conduct the evaluation, eligibility, initial IFSP meeting, and initial IEP meeting to meet Part C and Part B timelines. Transition conferences are not required. The IEP should be in place by the student's third birthday, when possible.

- (b) Initial Referral to Part C Between 2 Years 10 ½ Months and 3 Years of Age

Upon receipt of an initial referral of a toddler between the ages of 2 years 10 1/2 months and 3 years of age (less than 45 days prior to the toddler's third birthday), the LLA is not required to complete the evaluation of the toddler. With parental consent, the LLA shall refer toddlers to the SEA and the LEA of residence or assist the family in making the

referral. The LEA responds by accepting this as an initial referral for special education and not as a toddler served by Part C.

2.6. Eligibility for Preschool Special Education Services

- (a) For toddlers who are transitioning from Part C to Part B, LEAs shall ensure that an IEP has been developed and is implemented by the toddler's third birthday, when a toddler is eligible for special education services and the parent consents to initial services. The LEA is responsible for reviewing existing data on the student, including information provided by parents and the LLA, to determine whether the toddler shall be evaluated for special education. If the LEA decides that it will not conduct an evaluation, the LEA shall provide the parent with prior written notice addressing the decision.
- (b) If the toddler is to be evaluated, the LEA provides prior written notice that addresses the areas of assessments and requests the parents' informed written consent to conduct an initial evaluation. For an eligible toddler to have an IEP in place by his/her third birthday, the evaluation shall be completed and an eligibility decision shall be reached within 35 school days from consent or sooner, depending on the date of the toddler's third birthday. If the parent does not provide consent for the evaluation, the LEA may, but is not required to, ask the parent to participate in mediation in order to obtain their consent, or request a due process hearing to override the parent's refusal to consent.
- (c) The LEA convenes the evaluation group and invites the parent(s) to explain the results of the evaluation; and to determine eligibility for Part B special education and related services. The LEA must also provide the parent with prior written notice addressing the eligibility decision.

2.7. Individualized Education Program (IEP) Team Meeting

- (a) If a toddler is determined to be eligible for special education services, the LEA must hold an IEP team meeting within 30 days of the eligibility determination or sooner depending upon the date of the toddler's third birthday. The IEP team meeting may be held at the same time as the evaluation and eligibility meeting.
- (b) The LEA is responsible for arranging an IEP meeting with the required IEP team members, by the toddler's third birthday. If requested by the parent, the LEA shall also invite the ESIT Family Resources Coordinator (FRC) to the IEP meeting to assist with the smooth transition of services. *34 CFR §300.321(f) and WAC 392-172A-03095(6)*.
- (c) If parents do not consent to the provision of initial services the district may not provide services to the toddler. If the parents refuse consent of initial services prior to the IEP meeting, the district is not required to convene an IEP meeting.
- (d) When developing the initial IEP for all toddlers who transition from Part C services to Part B, the IEP team must consider the IFSP that contains the IFSP content (including the natural environments statement) described in *IDEA 20 USC 1437 §636(d)* and its implementing regulations *34 CFR §300.323(b)(1)*.

ATTACHMENT 1

Washington’s Definition of “Potentially Eligible” for Part B Services

I. Introduction

IDEA §637(a)(9)(A)(ii)(II) Part C regulations *34 CFR §303.209(b)* requires the Part C State Lead Agency (SLA) to notify the State Education Agency (SEA) and the Local Education Agency (LEA) where the toddler with a disability resides that the toddler, who may be eligible for Part B, shall shortly reach the age of eligibility for Part B services (i.e., 3 years old). Under SPP/APR Indicator C-8B, the Part C SLA shall report this LEA Notification responsibility **only** for those toddlers with disabilities who are potentially eligible for services under Part B (i.e., those toddlers referred to Part B). Office of Special Education Programs (OSEP) Early Childhood Transition FAQs: SPP/APR Indicators C-8 and B-12 issued December 1, 2009 (question #5), clarifies that “potentially eligible for Part B has the same meaning as toddlers who may be eligible for Part B under *IDEA §637(a)(9)(A)(ii)(II)*).

Part C and Part B program staff worked collaboratively to define “Potentially Eligible for Part B” services in Washington State. Providing notification to the SEA and appropriate LEA, of toddlers who are potentially eligible for Part B, serves as an initial referral to the LEA for Part B eligibility determination, which requires the LEA to provide notice of procedural safeguards and information on Part B to the toddler’s parents. Washington State’s definition of “Potentially Eligible” is based on a broad framework and includes Part C toddlers who shall be referred to Part B for initial evaluation. In defining potentially eligible, the LEA’s ability to make an informed decision about whether or not to evaluate a toddler for whom an LEA Notification (referral) was received was also considered.

II. Definition of Potentially Eligible for Part B

The definition of potentially eligible is based on each individual toddler’s current eligibility status based upon a developmental delay and/or diagnosed physical or mental condition (including the use of informed clinical opinion).

The following summarizes the State’s definition of “Potentially Eligible” for Part B services.

A toddler is potentially eligible and should be referred to the LEA for special education evaluation if they meet the following conditions (see Table 2):

- Toddler is over age 2 years and 3 months and is eligible for Part C services under the category of:, and
 - “Developmental Delay” (DD) and one or more of the following are present:
 - Toddler demonstrates 2 standard deviations below the mean in one or more areas of development or 1.5 standard deviations in two or more areas of development; *WAC 392-172A-01035 (2)(d)(i)* (NOTE: This does not require the completion of an evaluation.) or
 - Toddler continues to display moderate or significant delay in any developmental areas; or
 - Parent or team wants the toddler to be referred to Part B.
 - The toddler is eligible for Part C services under the category of “ Diagnosed Physical or Mental Condition” and if any of the following are present:
 - The toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
 - The toddler exhibits at least mild delays in any developmental area; or

- Parent or team wants the toddler to be referred to Part B.

A toddler is NOT potentially eligible and should NOT be referred to the LEA for special education evaluation (through LEA Notification), unless the parent or team believe a referral to Part B is needed as a result of an IFSP team review, if they meet the following conditions (see Table 2):

- Toddler is over age 2 years and 3 months and is eligible for Part C services, and
 - The toddler is eligible for Part C services under the category of “Developmental Delay” (DD), if any of the following are present unless the team or the parent(s) feels a referral is needed:
 - Toddler demonstrates 1.5 standard deviations in one area of development
 - Toddler has only mild delays in any developmental area
 - Toddler is currently eligible as a result of Informed Clinical Opinion only
 - The toddler is eligible for Part C services under the category of “Diagnosed Physical or Mental Condition”, if any of the following are present unless the team or the parent(s) feels a referral is needed:
 - Toddler is exhibiting skills that are age appropriate
 - Toddler is currently eligible as a result of Informed Clinical Opinion only.

To determine if the toddler is potentially eligible for Part B preschool special education services, the IFSP team is responsible for reviewing each toddler’s most recent assessment and progress monitoring data, as well as relevant medical information, at an IFSP meeting around the toddler’s second birthday.¹ The state is responsible for providing Notification to the SEA and appropriate LEA where the toddler resides not fewer than 90 days before a toddler’s third birthday. For toddlers referred to Part C more than 45 days but less than 90 days, Notification to the SEA and appropriate LEA of potentially eligible toddlers should be provided as soon as eligibility for Part C is determined. If a toddler is referred to Part C fewer than 45 days before the toddler’s third birthday, Part C, with written parental consent, refers the toddler to the SEA and LEA where the toddler resides. According to the Part C regulations *34 CFR §303.209(b)(1)(iii)*, Part C is not required to conduct an evaluation, assessment, or an initial IFSP meeting when a toddler is referred to Part C fewer than 45 days before the toddler’s third birthday.

Table 1 outlines the Part C and Part B eligibility definition and Table 2, summarizes Washington’s definition of potentially eligible and the required actions related to the provision of the Notification to the SEA and appropriate LEA (referral to Part B).

¹ Reviewing each child’s most recent assessment and progress monitoring data and relevant medical information to determine if the child is potentially eligible for Part B preschool special education services does not mean that a standardize test should be used to re-determine the child’s eligibility for Part C.

Table 1: Washington Part C and Part B Eligibility Definitions

(See next page)

Part C Eligibility Definition

The State Lead Agency (SLA) ensures that infants and toddlers, birth to three, shall be eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA), if the multidisciplinary team finds any one of the following criteria exists:

- 1) **Developmental Delay:** A toddler shall be eligible if he or she demonstrates a delay of 1.5 standard deviations or 25% of chronological age delay in one or more of the following developmental areas, as measured by appropriate diagnostic instruments and procedures, including the use of informed clinical opinion, and administered by qualified personnel.
 - a. Cognitive development
 - b. Physical (vision, hearing, fine or gross motor) development
 - c. Communication (receptive and expressive language) development
 - d. Social or Emotional development
 - e. Adaptive development
 - f. Informed Clinical Opinion
 - (i) The SLA must ensure 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.
 - (ii) In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.
- 2) **Diagnosed Physical or Mental Condition:** A toddler shall be eligible if he or she has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Procedures used to determine eligibility under diagnosed physical or mental condition must include the use of informed clinical opinion. 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 – a hearing loss that adversely affects a child's development is:
 - (i) Unilateral sensorineural hearing loss and/or permanent conductive hearing loss of 45 dB or greater.
 - (ii) Bilateral sensorineural hearing loss and or permanent conductive hearing loss, which includes:
 - A. Hearing loss of 20 dB or greater, better ear average of the frequencies 500, 1,000, and 2,000 Hz.;
 - B. High frequency loss greater than 25 dB at two or more consecutive frequencies or average of three frequencies between 2,000 and 6,000 Hz, in the better ear;
 - C. Low frequency hearing loss greater than 30 dB at 250 and 500 Hz, in the better ear; or

- D. Thresholds greater than 25 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. Vision Impairment – infants and toddlers with visual impairment/blindness are:
 - (i) 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:
 - (ii) Legal blindness or visual handicap, as they are customarily defined, either in terms of qualifying reduction in visual acuity and/or a qualified reduction in visual fields.
 - (iii) A visual impairment that is progressive in nature and can be expected to lead to blindness within a reasonable period of time.
 - (iv) 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.

This definition does not include infants and toddlers from birth to age three who do not meet the above criteria and who are at risk of having substantial developmental delays if early intervention services are not provided.

Note: Informed clinical opinion must be used to determine an infant or toddler’s eligibility under Part C. Informed clinical opinion may be used on an independent basis to establish a toddler’s eligibility, but must not be used to negate the results of evaluation instruments used to establish eligibility. *IDEA Part C Regulations, 34 CFR §303.321(a)(3)(ii)*. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area.

Part B Eligibility Definition of Developmental Delay WAC 392-172A-01035(2)(d)(i)

Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student’s educational performance in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

- 1) Two standard deviations below the mean in one or more of the five developmental areas; or
- 2) One and one-half standard deviations below the mean in two or more of the five developmental areas

A student is eligible for special education in another category if he or she:

- 1) Meets eligibility criteria;
- 2) Has an adverse educational impact as a result of the disability; and
- 3) Needs specially designed instruction

Table 2: LEA Notification of Potentially Eligible (Referral) Required Actions

If toddler is age two and is eligible for Part C services in accordance with:			
Developmental Delay (DD)		Diagnosed Physical or Mental Condition	
<p>If any of the following are present:</p> <p>1. Toddler demonstrates 2.0 standard deviations in one area of development or 1.5 standard deviations in two or more areas of development (NOTE: This does not require the completion of a reevaluation)</p> <p>OR</p> <p>2. Toddler continues to display moderate or significant delay in the following developmental areas: Cognitive</p> <ul style="list-style-type: none"> • Physical (vision, hearing, fine or gross motor) • Communication • Social or Emotional • Adaptive <p>OR</p> <p>3. Meets neither of the above items, but parent or team believe a referral to Part B is needed.</p>	<p>If any of the following are present:</p> <p>1. Toddler demonstrates 1.5 standard deviations in one area of development</p> <p>OR</p> <p>2. Toddler has only mild delays in any developmental area</p> <p>OR</p> <p>3. Toddler is currently eligible as a result of Informed Clinical Opinion only</p>	<p>If the following are present:</p> <p>1. The toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay in any of the following areas:</p> <ul style="list-style-type: none"> • Chromosomal abnormalities associated with intellectual disabilities, such as Down syndrome • Congenital central nervous system birth defects or syndromes, such as Myelomeningocele, Fetal Alcohol Syndrome; or Cornelia de Lange syndrome • Deaf, blind, or deaf-blind • Established central nervous system deficits resulting from hypoxia, trauma, or infection • Cerebral Palsy • Health impairments, such as autism, epilepsy, neurological impairment, or other chronic, acute, or degenerative health problems • Orthopedically impaired, which means impairments of the normal function of muscles, joints, or bones due to congenital anomaly, disease, or permanent injury • Microcephaly • Vision Impairment • Hearing Impairment <p>AND</p> <p>2. The toddler is exhibiting at least a mild delay in any developmental area</p> <p>OR</p> <p>3. The parent(s) or team believes a referral to Part B is needed</p>	<p>If the following are present:</p> <p>1. The toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay in any of the following areas:</p> <ul style="list-style-type: none"> • Chromosomal abnormalities associated with intellectual disabilities, such as Down syndrome • Congenital central nervous system birth defects or syndromes, such as Myelomeningocele, Fetal Alcohol Syndrome; or Cornelia de Lange syndrome • Deaf, blind, or deaf-blind • Established central nervous system deficits resulting from hypoxia, trauma, or infection • Cerebral Palsy • Health impairments, such as autism, epilepsy, neurological impairment, or other chronic, acute, or degenerative health problems • Orthopedically impaired, which means impairments of the normal function of muscles, joints, or bones due to congenital anomaly, disease, or permanent injury • Microcephaly • Vision Impairment • Hearing Impairment <p>AND</p> <p>2. The toddler is exhibiting that skills are age appropriate</p> <p>OR</p> <p>3. Toddler is currently eligible as a result of Informed Clinical Opinion only</p>
<p>Refer to Part B</p>	<p>Do Not Refer Unless The Parent(s) or Team Believe Referral is Needed</p>	<p>Refer to Part B</p>	<p>Do Not Refer Unless The Parent(s) or Team Believe Referral is Needed</p>

Procedural Safeguards

PROCEDURAL SAFEGUARDS

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

NEW SECTION

WAC 170-000-0000 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, 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 170-000-0000 Confidentiality of information - - Definitions. The following definitions apply to the confidentiality of information requirement under part C of the act:

(1) “**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.

(2) “**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.

(3) “**Participating agency**” means 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. A participating agency includes 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, but 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.

(4) “**Personally identifiable information**” means information that 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;
- (e) Other indirect identifiers such as the child's date of birth, place of birth, and mother's maiden name;
- (f) 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
- (g) 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 170-000-0000 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 170-000-0000 through 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000.

NEW SECTION

WAC 170-000-0000 Confidentiality of information - - Family Educational Rights and Privacy Act hearing procedures. A Family Educational Rights and Privacy Act hearing initiated under WAC 170-000-0000 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 170-000-0000 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 170-000-0000 Confidentiality of information - - Consent. (1) Without 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 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 parental consent, unless authorized to do so under:

(a) The transition requirements in WAC 170-000-0000 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 170-000-0000 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 WACs on protection of the confidentiality of personally identifiable information; 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 170-000-0000 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 170-000-0000 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 170-000-0000 Parental consent and ability to decline services. (1) The LLA and EIS provider must obtain parental consent before:

(a) Administering screening procedures under WAC 170-000-0000 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 170-000-0000 through 170-000-0000;

(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 170-000-0000 through 170-000-0000; and

(e) Disclosure of personally identifiable information consistent with WAC 170-000-0000 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 170-000-0000 Surrogate parents - - Purpose. Each LLA or EIS provider must protect the rights of the child when:

- (1) No parent, as defined in WAC 170-000-0000, 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 170-000-0000 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 170-000-0000.
- (4) The LLA or other EIS provider may select a surrogate parent in any way permitted under state law.

NEW SECTION

WAC 170-000-0000 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.

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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 170-000-0000.

(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 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 through 170-000-0000 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 170-000-0000 Due process hearing - - Convenience of hearings and timelines.

- (1) Any due process hearing conducted under WAC 170-000-0000 through 170-000-0000 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 170-000-0000 through 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 through 170-000-0000 involves an application for initial services under part C of the act, the child must receive those services that are not in dispute.

State Procedures for Resolving Administrative Complaints

STATE PROCEDURES FOR RESOLVING ADMINISTRATIVE COMPLAINTS

NEW SECTION

WAC 170-000-0000 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 170-000-0000 through 170-000-0000, 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 WAC 170-000-0000 through 170-000-0000.

(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 170-000-0000 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 170-000-0000 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 170-000-0000;

(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 pursuant to WAC 170-000-0000.

(4) To ensure 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 170-000-0000 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 170-000-0000.

(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.

Methods to Ensure Provision Of and Financial Responsibility for Part C Services

INTERAGENCY METHOD FOR PROVIDING AND FINANCING EARLY INTERVENTION SERVICES

NEW SECTION

WAC 170-000-0000 Method for cooperation and coordination - - General. (1) The SLA has entered into a formal interagency agreement with the state-level agencies identified under WAC 170-000-0000 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 170-000-0000 through 170-000-0000.

(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.

(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 170-000-0000 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 170-000-0000 through 170-000-0000.

NEW SECTION

WAC 170-000-0000 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) DEL;

(b) DSHS;

(c) DOH;

(d) DSB;

(e) HCA; and

(f) OSPI.

(5) The chair of the SICCC 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.

Part C Interagency Agreement

DEL Interagency Agreement Number **12-1172**
DOH Interagency Agreement Number **N19540**
DSHS Interagency Agreement Number **1361-67891**
HCA Interagency Agreement Number **K580**
OSPI Interagency Agreement Number **20120394**
Title: IDEA, Part C, Interagency Agreement

**INTERAGENCY AGREEMENT
BETWEEN
THE DEPARTMENT OF EARLY LEARNING
AND
DEPARTMENT OF HEALTH
DEPARTMENT OF SERVICES FOR THE BLIND
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
HEALTH CARE AUTHORITY
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION**

THIS INTERAGENCY AGREEMENT (Agreement) is made and entered into by and between the DEPARTMENT OF EARLY LEARNING, hereinafter referred to as "DEL," and the DEPARTMENT OF HEALTH, hereinafter referred to as "DOH"; the DEPARTMENT OF SERVICES FOR THE BLIND, hereinafter referred to as "DSB"; the DEPARTMENT OF SOCIAL AND HEALTH SERVICES, hereinafter referred to as "DSHS"; the HEALTH CARE AUTHORITY, hereinafter referred to as "HCA"; and the OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION, hereinafter referred to as "OSPI".

IT IS THE PURPOSE OF THIS AGREEMENT to meet the requirements as set forth in the federal Individuals with Disabilities Education Act (IDEA), Part C *Public Law 108-446* and regulations *34 CFR §303*.

THEREFORE, IT IS MUTUALLY AGREED THAT:

14. PARTIES

14.1. This Interagency Agreement (Agreement) is entered into pursuant to requirements of the Individuals with Disabilities Education Act (IDEA), Parts C and B; Public Law 108-446, 34 CFR §§300 and 303, between the Department of Early Learning, and the Departments of Health, Services for the Blind, Social and Health Services, Health Care Authority, and Office of Superintendent of Public Instruction for early intervention services for infants and toddlers with disabilities from birth to three and their families.

14.2. Agency/Division/Program Acronyms:

ADSA	Aging and Disability Services Administration (DSHS)
BHSIA	Behavioral Health and Services Integration Administration (DSHS)
CA	Children's Administration (DSHS)
CSHCN	Children with Special Health Care Needs (DOH)
DDA	Developmental Disabilities Administration (DSHS)
DEL	Department of Early Learning

DOH	Department of Health
DSB	Department of Services for the Blind
DSHS	Department of Social and Health Services
DBHR	Division of Behavioral Health and Recovery (DSHS/ADSA)
ECEAP	Early Childhood Education and Assistance Program (DEL)
EHDDI	Early Hearing Loss Detection, Diagnosis and Intervention (DOH)
ESIT	Early Support for Infants and Toddlers program (DEL)
HCA	Health Care Authority
ODHH	Office of Deaf and Hard of Hearing (DSHS)
OHC	Office of Healthy Communities (DOH)
OSPI	Office of Superintendent of Public Instruction
WIC	Women, Infants, and Children (DOH)

15. AGREEMENT MANAGEMENT

- 15.1. The Agreement Manager for each of the Parties shall be the contact person for all communications regarding the performance of this Agreement. Agency and Agreement Manager information for this Agreement is as follows:

DOH BUSINESS ADDRESS

Department of Health
Mail Stop 47855
Olympia, WA 98504-7855
TIN: 91-1444603

DOH AGREEMENT MANAGER

Maria Nardella
CSHCN Program Manager
Maria.Nardella@doh.wa.gov
Phone: (360) 236-3573

DSB BUSINESS ADDRESS

Department of Services for the Blind
3411 S Alaska St; Mail Stop TB-77
Seattle, WA 98118
TIN: 91-1001714

DSB AGREEMENT MANAGER

Michael MacKillop
Assistant Director
michael.mackillop@dsb.wa.gov
Phone: (206) 906-5520

DSHS BUSINESS ADDRESS

Department of Social & Health Services
Mail Stop 45811
Olympia, WA 98504-5811
TIN: 91-6001088

DSHS AGREEMENT MANAGER

Stephen Ssemaala
Contract Manager
Stephen.Ssemaala@dshs.wa.gov
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HCA AGREEMENT MANAGER

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OSPI AGREEMENT MANAGER

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DEL AGREEMENT MANAGER

Kathy Blodgett
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Phone: (360) 725-3520

- 15.2. Each party shall notify the other parties in writing within ten business days of any changes to the name and contact information regarding any party's designated Agreement Manager.

16. EXHIBITS AND ATTACHMENTS

Attached hereto and incorporated herein as though set forth in full are the following exhibit:

- Exhibit A STATEMENT OF WORK

17. AUTHORITY

The following federal and state statutes provide the agencies' authority and support to enter into this Interagency Agreement:

- 4.1. The IDEA, Parts C and B; Public Law 108-446, 34 CFR §§300 and 303
- 4.2. RCW 43.215: DEL
- 4.3. RCW 71A.12.030 and 120: DSHS
- 4.4. RCW 74.14A.025 and 70.195.030: DSHS, Public Health and Safety (Family Policy), and Early Intervention Services – Birth to Six
- 4.5. RCW 74.18.190: DSB, Child and Family Program.
- 4.6. RCW 41.05: HCA
- 4.7. RCW 28A.155.065 and WAC 392-172A-01305; 172A-02080: OSPI
- 4.8. RCW 39.34: DOH

18. PERIOD OF PERFORMANCE

This Agreement shall become effective on the last signature date of the Parties and shall remain in force and effect until June 30, 2018, unless terminated or amended.

19. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended, including an amendment to extend the period of performance, by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

20. TERMINATION

Any party may terminate this Agreement upon 30 days prior written notification to the other parties. If this Agreement is so terminated, the Parties shall be liable only for performance rendered in accordance with the terms of this Agreement prior to the effective date of termination.

21. COMPLIANCE WITH LAWS

The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable current federal, state, and local laws, rules, and regulations, including but not limited to, 20 USC Section 1400 et.seq, Chapter 39.34 RCW (the Interlocal Cooperation Act), all applicable non-discrimination laws and, if applicable, Chapter 42.56 RCW (the Public Records Act), 5 U.S.C. 522 (the Freedom of Information Act), and Chapter 40.14 RCW (Records Retention Act).

22. CONFORMANCE

If any provision of this Agreement violates any applicable federal or Washington statute, regulation, or rule of law, that provision is considered modified to conform to that statute, regulation, or rule of law.

23. WAIVER

A failure by any party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by the authorized representatives of the

Parties and attached to the original Agreement.


24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

25. ALL WRITINGS CONTAINED HEREIN


This Agreement, including the referenced exhibit, contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement.



Elizabeth Hyde
Department of Early Learning

3/11/13
DATE



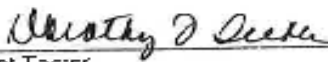
Kevin Quigley
Department of Social and Health Services

3/18/13
DATE



Mary Selucky
Department of Health

3/13/13
DATE



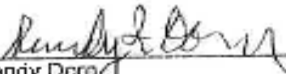
Dorothy Frost Teeter
Health Care Authority

3/20/13
DATE



Lou Oms Juward
Department of Services for the Blind

3/7/13
DATE



Randy Dorn
Office of Superintendent of Public Instruction

3-27-13
DATE

Received

MAR 27 2013

Department of
Early Learning

EXHIBIT A – STATEMENT OF WORK

3. PURPOSE AND INTENT DETAILED

- 1.1. The purpose and intent of this Agreement is to assure cooperation in the implementation and funding of a statewide, comprehensive, coordinated, multidisciplinary, and interagency system of services for infants and toddlers with disabilities and their families. No single state agency has all the resources required to implement a comprehensive early intervention system of services.
- 1.2. The Agreement promotes cross-agency collaboration and strengthens support for early intervention funding that is reasonable and necessary for the implementation of the state's early intervention program and available through existing federal, state, local, and private resources. IDEA Part C funds may not be used to satisfy a financial commitment for services that would otherwise be paid for from another federal, state, or local public or private source. Part C funds 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. No single agency is solely responsible for the early intervention services listed in the chart in Section 5 of this agreement that defines which agencies provide and pay for each required early intervention service under the early intervention section of IDEA.
- 1.3. The IDEA, Part C, addresses the urgent and substantial need to:
 - (a) Enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first three years of life.
 - (b) Reduce the educational costs to our society, including our nation's schools, by minimizing the need for special education and related services after infants and toddlers reach school age.
 - (c) Maximize the potential for individuals with disabilities to live independently in society;
 - (d) Enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.
 - (e) Enhance the capacity of the state, to identify, evaluate, and meet the needs of all children, particularly minority, low income, inner city, and rural children, and infants and toddlers in foster care through local agencies, and service providers.

4. ROLE OF THE IDEA, PART C, STATE LEAD AGENCY

- 4.1. The DEL is the Governor appointed State Lead Agency (SLA), for implementing the early intervention section (Part C) of the IDEA, as defined by Washington State's Federally Approved Plan, for the Early Support for Infants and Toddlers (ESIT) program. This early intervention program (Part C) is administered by the DEL, Division of Partnerships and Collaboration, ESIT program.
- 4.2. The Washington State DEL, including the Head Start State Collaboration Office within DEL, DOH, DSB, DSHS, HCA, and OSPI, hereafter referred to as the Agencies, confirm the intent to work proactively as partners to coordinate, implement, and fund a comprehensive statewide system of early intervention services for eligible infants and toddlers, with disabilities and/or developmental delays, birth to three years, and their families.

- 4.3. The responsibilities of the SLA, DEL, include:
- (a) Carrying out the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and early intervention providers, related to IDEA, Part C.
 - (b) Monitoring of programs and activities used that carry out IDEA, Part C activities, whether or not the programs and/or activities are administered by agencies, institutions, organizations, and early intervention providers who may or may not receive assistance under IDEA, Part C, to ensure that the state complies with IDEA, Part C.
 - (c) Correcting any non-compliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the non-compliance.
 - (d) Identifying and coordinating all available resources for early intervention services within the state, including those from federal, state, local, and private resources, as reflected in the System of Payments and Fees Policy.
 - (e) Developing and implementing procedures to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C in a timely manner, pending the resolution of any disputes among public agencies or early intervention providers.
 - (f) Implementing the dispute resolution procedures outlined in this Agreement.

5. MISSION AND PRINCIPLES

The following mission and principles are reflected within the early intervention services system throughout Washington State.

5.1. MISSION:

The mission of the ESIT program is to build upon family strengths, by providing coordination, supports, resources, and services to enhance the development of children with developmental delays and disabilities through everyday learning opportunities.

5.2. PRINCIPLES:

The early intervention system promotes a family-centered, culturally relevant, coordinated, and community-based system of services and supports to meet the needs of infants and toddlers, and their families participating in Part C services.

- (a) Families are equal partners who bring to the team skills, experience, and knowledge about their child; and, are the final decision makers as to what will work best for their family.
- (b) Early intervention recognizes that family relationships are the central focus in the life of an infant or toddler.
- (c) Infants and toddlers learn best through everyday experiences and interactions with familiar people in familiar settings.

- (d) The early intervention process, from initial contact to transition, must be responsive, flexible, and individualized to reflect the child's and family's priorities, learning styles, and cultural beliefs.
- (e) All families, with the necessary supports and resources, can enhance their children's learning and development.
- (f) The role of the service provider is to work in a team to support Individualized Family Service Plan (IFSP) functional outcomes, based on child and family needs and priorities.
- (g) Early intervention practices must be based on the best available current evidence and research.

6. INTERAGENCY COORDINATION

Interagency coordination is essential at all levels of the early intervention service delivery system.

6.1. DEL, DSHS, DOH, DSB, OSPI and HCA agree to:

- (a) Support family-centered service delivery, based on the developmental needs of infants and toddlers with disabilities, which includes referrals to the Family Resources Coordinator (FRC), as the first point of contact, for children with known or suspected developmental delays and/or disabilities, birth to three, and their families.
- (b) Identify, develop, and implement strategies to resolve unmet needs in early intervention services.
- (c) Encourage local interagency agreements to support the coordination and identification of funding sources used for early intervention services.
- (d) Support and promote collaborative planning and participation in state and local activities to ensure Individualized Family Service Plans (IFSPs) are developed and implemented as the global service plan.
- (e) Coordinate the marketing and the provision of training and personnel development across agencies.
- (f) Coordinate early intervention services to avoid duplication and assure maintenance of effort.
- (g) Participate on the State Interagency Coordinating Council (SICC).
- (h) Support the efforts of County Interagency Coordinating Councils (CICCs) and encourage local service providers to participate on CICCs.
- (i) Encourage and support the distribution of public awareness information and materials regarding the Early Support for Infants and Toddlers (ESIT) program.
- (j) Continue to promote the integration of education, health, and social services.
- (k) Coordinate legislative mandated activities and efforts.
- (l) Coordinate and support efforts in meeting the standards as set forth in the early intervention section of IDEA and in the Washington State's Federally Approved Plan.

6.2. **DEL and DOH agree to:**

- (a) Coordinate and provide information on the importance of a medical home for providing comprehensive, coordinated, collaborative services with the family and other social, health, and education resources.
- (b) Coordinate Early Hearing, Detection, Diagnosis, and Intervention (EHDDI) activities and projects.
- (c) Participate in the development of a Washington State Universal Developmental Screening System.

6.3. **DEL and OSPI agree to:**

- (a) Coordinate data collection efforts required by IDEA and other federal and state requirements.
- (b) Encourage and support smooth transitions for infants and toddlers, transitioning out of ESIT into Part B preschool special education services, according to the DEL/OSPI Transition Agreement in place.

6.4. **DEL, OSPI, DSHS agree to:**

Coordinate and support efforts in meeting the goals of the DEL Early Learning, Birth to Three State Plans and the Joint Early Learning Partnership Agreements to assure statewide coordinated early learning services and supports.

6.5. **DEL agrees to:**

- (a) Participate and support collaboration efforts with Head Start and Early Head Start, early education, and child care programs through DEL's Head Start State Collaboration Office, Early Learning Advisory Council (ELAC) and State Interagency Coordinating Council's (SICC) activities and initiatives.
- (b) Provide training and technical assistance to local public or private agencies and staff, as needed.
- (c) Assure a coordinated child find (early identification) system, with the assistance of the State Interagency Coordinating Council (SICC), the Early Learning Advisory Council (ELAC), and partner agencies. The system shall:
 - (i) Assure all eligible infants and toddlers in the state are identified, located, and evaluated.
 - (ii) Include a method to identify infants and toddlers receiving early intervention services.
 - (iii) Be a coordinated and shared responsibility among state agencies, early intervention services contractors, providers, and local communities.
- (d) Take steps to assure that unnecessary duplication of efforts does not exist between the agencies involved, and that the state will make use of the resources available, through each public agency in the state, to implement the child find system in an effective manner. This includes coordination of child find (early identification) efforts with the following:
 - (i) Assistance to state's programs under IDEA, Part B (Public Schools) through the Office of Superintendent of Public Instruction (OSPI)

- (ii) Assistance to state's programs, including child find efforts to the homeless population, through OSPI, under the McKinney Vento Act
 - (iii) Maternal and Child Health Programs, under Title V of the Social Security Act, including the Maternal, Infant, and Early Childhood Home Visiting Program, and Coordinated Children's Services, under Title V
 - (iv) Supplemental Security Income Program under Title XVI of the Social Security Act
 - (v) Medicaid's Early Periodic Screening, Diagnosis, and Treatment (Apple Health for Kids) program, under Title XIX of the Social Security Act
 - (vi) Child Protection and Child Welfare programs under the state agency implementing Child Abuse Prevention and Treatment Act (CAPTA)
 - (vii) Child Care programs in the state
 - (viii) Programs that provide services under the Family Violence Prevention and Services Act
 - (ix) Early Hearing Detection, Diagnosis, and Intervention (EHDDI) system
 - (x) Children's Health Insurance Program under Title XXI of the Social Security Act
 - (xi) Developmental Disabilities Assistance and Bill of Rights Act (federal Department of Developmental Disabilities)
 - (xii) Head Start, including Early Head Start
 - (xiii) Tribes and tribal organizations that receive payments under IDEA, and other tribes and tribal organizations, as appropriate
 - (xiv) State Early Childhood Education and Assistance Program
- (e) Assures a coordinated statewide comprehensive Child Find system for the purpose of locating, evaluating, and identifying all infants and toddlers, birth to three, with a suspected disability and/or developmental delay, including Indian infants and toddlers living on reservations, infants and toddlers who are homeless, and infants and toddlers at risk of experiencing a developmental delay due to biological or environmental factors (including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure).
- (f) Assures that referral procedures are developed and used for referring a child to the appropriate public agency.
- (g) Assures procedures are in place for referring a child to early intervention as soon as possible, but in no case, more than seven days, after the child has been identified.

5. WASHINGTON STATE EARLY INTERVENTION SERVICES AND FINANCIAL RESPONSIBILITY

5.1. The method used for ensuring financial responsibility of each agency related to the provision of Part C early intervention services is contained in this Agreement. No single agency is solely responsible for the early intervention services provided or funded in Washington State. The services listed on this chart and on the following page(s) define which agencies provide and pay for each required early intervention service(s), as defined by the early intervention section of IDEA. Each agency's role is defined as either provider/payer of the service, coordination of the service, or not a service provider within current eligibility.

SPECIFIC DUTIES/ RESPONSIBILITIES	DEL: ESIT (4), HEAD START , ECEAP, CHILD CARE, HOME VISITING	DOH: OHC CSHCN WIC EHDDI	DSHS: DBHR BHSIA	DSHS: DDA	DSHS: CA	DSHS OFFICE OF INDIAN POLICY	DSHS: ODHH	HCA: MEDI- CAID	TRIBAL GOV'T	DSB	OSPI: Through LEAs (7)
Primary Referral Sources	C	C	C	C	C	N	C	C	C	C	C
Early Identification & Screening / Child Find	P,C	P,C	P,C	C	P,C	N	C	P,C	P,C	C	P,C
Multidisciplinary Evaluation and Assessment	P,C	P,C	C	C	P,C	N	C	P,C	P,C	C	P,C
Case Management	P,C	P,C	P,C	P	C	N	P,C	P,C	C	P,C	N
Medical Services (5), (8)	P,C	P,C	C	C	N	N	N	P,C	P,C	C	C
Health Services (6), (8)	P,C	P,C	C	C	N	N	C	P,C	P,C	C	P,C
Early Intervention Services (1), (8)	P,C	P,C	P,C	P	C	N	C	P,C	P,C	C	P,C
Family Resources Coordination, including Transition (8)	P,C	C	C	C	C	N	C	C	C	C	P,C
Transportation (8)	P,C	C	N	P	C	N	N	P,C	C	N	P
Family Training & Counseling (2) (8)	P,C	P,C	P,C	P	P,C	N	C	C	P,C	C	P
Consultation to Agencies (3)	P,C	P,C	P,C	C	P,C	P,C	P,C	C	P,C	P,C	P,C

Key to Chart:

P = Provider or payer of service within each agency's current eligibility requirements and resource capacity

C = Participates in the coordination of the service

N = Not a service provider within current eligibility resource capacity

- | |
|---|
| <p>(1) <u>Other Early Intervention Services</u> includes assistive technology, audiology, nursing, nutrition, occupational therapy, physical therapy, orientation and mobility, psychological, social work, special instruction, speech/language therapy, and vision. Agencies may provide or pay for some or all of the above specialized services within current eligibility.</p> <p>(2) <u>Family Training and Counseling</u> means services provided by social workers, psychologists, and other qualified personnel to assist families in understanding their child's needs and enhancing their child's development.</p> |
| <p>(3) <u>Consultation to Agencies</u> means training and technical assistance to public or private agencies and staff. It focuses on enhancing the capacity of personnel and programs to serve infants and toddlers with disabilities.</p> <p>(4) <u>DEL/ESIT</u> is the IDEA, Part C early intervention programmatic home. The Early Support for Infants and Toddlers (ESIT) program is payer of last resort for services listed above.</p> <p>(5) <u>Medical</u> services only for diagnostic or evaluation purposes, provided by a licensed physician, to determine a child's developmental status and need for early intervention services.</p> <p>(6) <u>Health</u> means services necessary to enable a child to benefit from the other early intervention services, under the early intervention section of IDEA, during the time the child is receiving the other early intervention services.</p> <p>(7) <u>OSPI</u> exercises general supervisory authority over Local Education Agencies (LEAs), who are the providers of services, as it applies under IDEA, Part B. LEAs providing early intervention services do so in accordance with IDEA, Part C, administered through DEL/ESIT federal application and state policies and procedures. DEL exercises general authority over Local Lead Agencies (LLAs) and LEAs as it applies to IDEA, Part C. Participation in the provision of early intervention services is mandatory on the part of Local Education Agencies (LEAs), effective September 1, 2009.</p> <p>(8) These services are delivered as agreed upon by the Individualized Family Service Plan (IFSP) team and identified on the IFSP.</p> |

5.2. The following details further describe each agency's financial responsibilities:

- (a) DEL:
- (i) Effective July 1, 2010, (DEL) is the designated State Lead Agency for the federal Individuals with Disabilities Education Act (IDEA), Part C.
 - (ii) DEL is responsible to implement the statewide system of early intervention services and assure services are provided to each eligible child and family, in accordance with IDEA Part C and DEL/ESIT state policies and procedures. DEL's responsibility is to administer and monitor the early intervention services and programs, enforce obligations, provide technical assistance, identify and correct any non-compliance, identify and coordinate all available resources, collaborate with other agencies regarding financial responsibility under the IDEA (34 CFR §§303.511 – 520), and implement procedures to

ensure early intervention services are provided in a timely manner to eligible infants and toddlers with their families, in accordance with IDEA Part C.

(b) OSPI:

OSPI is responsible to process a monthly special education child count and allocate funding to each LEA based on each Part C eligible child identified, enrolled in the district, have a current evaluation, and current IFSP and who receives services. LEAs are required to provide and/or contract for direct early intervention services for Part C eligible children services in partnership with local lead agencies and early intervention providers. Funds may be contracted out to early intervention programs to provide needed early intervention services, or LEAs may use the funds to directly provide Part C early intervention services, or a combination of both. Services are to be provided according to IDEA Part C, and ESIT policies and procedures. Funds allocated to LEAs for Part C eligible children, shall be used to provide the early intervention services in accordance with OSPI apportionment rules.

(c) HCA:

The HCA is responsible to assure that Part C /Medicaid eligible children are able to access their Medicaid benefits, as determined by HCA, to pay for medically necessary early intervention services. Some children access this benefit through Healthy Options Managed Care, others access using a fee for service approach, while other Part C children served through neurodevelopmental centers access Medicaid funding through a carve-out process. By this Agreement, state partners will establish policies, procedures, and methods to continue to identify and resolve barriers and challenges for the use of Medicaid to fund early intervention services.

(d) DSHS:

DSHS is responsible to continue an annual contribution of over 5.2 million dollars to fund the Developmental Disabilities Administration, Child Developmental Services program through established county contracts.

6. AGENCY DISPUTE RESOLUTION

The dispute resolution process and procedures outlined in this Agreement are to ensure services that a child is entitled to receive under Part C are not delayed or denied because of disputes between agencies regarding financial or other responsibilities. System disputes concerning early intervention services may occur among providers or agencies. Disputes may include inter- and intra-agency issues of compliance with the federal statutory and regulatory expectations of the early intervention section of IDEA/ESIT; the responsibility for provision of or payment for any of the early intervention services; the process for evaluation and placement; or other matters related to the Early Support for Infants and Toddlers (ESIT) program.

- 6.1. Each agency shall resolve internal disputes, applying to payments or other relative matters, in a timely manner, based on their respective procedures.
- 6.2. In the event that interagency disputes arise related to this Agreement, or disputes arise about payments or other matters related to the state's early intervention 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, it must be referred to the Dispute Board for timely resolution within 30 days.

- 6.3. The Dispute Board will be appointed and convened as disputes arise and will resolve any disputes within 30 days. The following members will comprise the Dispute Board:
 - (a) DEL shall appoint a member to the Dispute Board;
 - (b) DSHS shall appoint a member to the Dispute Board;
 - (c) DOH shall appoint a member to the Dispute Board;
 - (d) DSB shall appoint a member to the Dispute Board;
 - (e) HCA shall appoint a member to the Dispute Board;
 - (f) OSPI shall appoint a member to the Dispute Board; and
 - (g) The Chair of the State Interagency Coordinating Council is a member of the Dispute Board and will serve as the Board's Chair.
- 6.4. While disputes are pending involving payment for or provision of required services, DEL shall:
 - (a) Pay the provider of services pending determination of responsibility for the payment.
 - (b) Pay the provider of services in accordance with the interim payment provisions in §303.510.
- 6.5. The Decision of the Dispute Board is final and binding, unless an appeal is made to the Governor. A written appeal must be submitted to the Governor, within 15 days of the Dispute Board's Decision.
- 6.6. The decision of the Governor is final and binding.
- 6.7. If during the SLA's resolution of the dispute, the Governor, Governor's designee, or the lead agency determines that the assignment of financial responsibility was inappropriately made the following will occur:
 - (a) The Governor, the Governor's designee or the lead agency must reassign the financial responsibility to the appropriate agency; and,
 - (b) The SLA must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.
- 6.8. DEL assures that all IFSP services are provided to each eligible infant and toddler and their family in a timely manner (within 30 days of parents giving signed consent to services), while resolution of pending dispute(s) occurs.

System of Payments and Fees

SYSTEM OF PAYMENTS AND FAMILY FEES

NEW SECTION

WAC 170-000-0000 Payor of last resort. (1) Except as provided under WAC 170-000-0000, 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 170-000-0000 and 170-000-0000.

(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 170-000-0000, 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 under WAC 170-000-0000 through 170-000-0000.

(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 170-000-0000 through 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 170-000-0000;

(b) Evaluation and assessment, and the functions related to evaluation and assessment in WAC 170-000-0000;

(c) Service coordination services, family resources coordination, as defined in WAC 170-000-0000; and

(d) Administrative and coordinative activities related to:

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with WAC 170-000-0000 through 170-000-0000; and

(ii) Implementation of procedural safeguards under WAC 170-000-0000 through 170-000-0000, and the other components of the statewide system of early intervention services in chapter 170-000 WAC.

(2) In accordance with WAC 170-000-0000, 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 170-000-0000 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 170-000-0000 Funding sources in system of payments and family fees.

(1) Unless inability to pay has been determined under WAC 170-000-0000, 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 170-000-0000 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 170-000-0000 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 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 170-000 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 170-000-0000 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 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 170-000-0000 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 170-000-0000 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 170-000-0000 Family fees. (1) For families who have been determined to have the “ability to pay” under WAC 170-000-0000, 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 170-000-0000, 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 170-000-0000 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 170-000-0000 through 170-000-0000;
- (b) Request a due process hearing under WAC 170-000-0000 through 170-000-0000;
- (c) File a state complaint under WAC 170-000-0000 through 170-000-0000; 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.

State Interagency Coordinating Council (SICC)

STATE INTERAGENCY COORDINATING COUNCIL

NEW SECTION

WAC 170-000-0000 Establishment of the council. The SICC is appointed by the governor to advise and assist the SLA, in its duties, as required by part C of the act. The governor ensures that the membership of the SICC reasonably represents the population of the state and has appointed a chairperson who is not a representative of the SLA.

NEW SECTION

WAC 170-000-0000 Composition of the council. (1) The members of the council include:

(a) At least twenty percent parents, including minority parents, parents of infants or toddlers with disabilities, or children twelve or younger with a disability who have knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability, age six or younger;

(b) At least twenty percent public or private early intervention service providers;

(c) At least one representative from the state legislature;

(d) At least one person involved in personnel preparation;

(e) At least one member from each state agency providing or paying for early intervention services to infants and toddlers with disabilities and their families and having sufficient authority to engage in policy planning and implementation on behalf of the agency;

(f) At least one member from the SEA responsible for preschool services to children with disabilities and having sufficient authority to engage in policy planning and implementation on behalf of the agency;

(g) At least one member from the state agency responsible for state Medicaid and children's health insurance program;

(h) At least one member from head start or early head start agency or program;

(i) At least one member from the state agency responsible for child care;

(j) At least one member from the agency responsible for the state regulation of private health insurance;

(k) At least one member from the office of the coordination of education of homeless children and youth;

(l) At least one member from the state child welfare agency responsible for foster care; and

(m) At least one member must be from the state agency responsible for children's mental health.

(2) The governor may appoint one member to represent more than one program or agency listed in subsection (1)(g) through (m) of this section.

(3) Other members selected by the governor may include a representative from the bureau of Indian education or where there is no bureau of Indian education operated or funded school, from the Indian health service or tribes/tribal councils.

NEW SECTION

WAC 170-000-0000 Use of funds by the council. (1) Subject to the approval by the governor, the council may use funds under part C of the act to:

(a) Conduct hearings and forums;

(b) Reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties, including child care for parent representatives;

(c) Pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business;

(d) Hire staff; and

(e) Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under part C of the act.

(2) Except as provided in subsection (1) of this section, council members must serve without compensation from funds available under part C of the act.

NEW SECTION

WAC 170-000-0000 Council meetings. (1) Council meetings are:

(a) Held, at a minimum, at least quarterly, to advise and assist the SLA;

(b) Publicly announced with sufficient advance notice of meeting dates so that all interested parties have an opportunity to attend; and

(c) Open and accessible to the general public.

(2) As needed, interpreters for the deaf and other necessary services must be provided at SICC meetings, both for members and participants. The SICC budget may be used to pay for these services.

(3) No SICC member may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

NEW SECTION

WAC 170-000-0000 Council activities and required duties. (1) The council may carry out the following activities:

(a) Advise and assist the SLA, SEA, and other state agencies responsible for providing or paying for the provision of appropriate services for children with disabilities from birth through age five;

(b) Advise appropriate agencies in the state with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state; and

(c) Coordinate and collaborate with the state advisory council on early childhood education and care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other state interagency early learning initiatives, as appropriate.

(2) The council must advise and assist the SLA in the performance of its responsibilities, as the single line of authority and general supervision responsibilities including:

(a) Identification of sources of fiscal and other support for services for early intervention service programs under part C of the act;

(b) Assignment of financial responsibility to the appropriate agency;

(c) Promotion of methods, including use of intra-agency and interagency agreements for collaboration regarding child find, monitoring, financial responsibility and provision of early intervention services, and transition; and

(d) Preparation of applications under part C and amendments to those applications.

(3) The council must advise and assist the SEA and the SLA regarding the transition of toddlers with disabilities to preschool and other appropriate services.

(4) The council must:

(a) Prepare and submit an annual report to the governor and to the U.S. secretary of education on the status of early intervention service programs for infants and toddlers with disabilities and their families under part C of the act operated within the state; and

(b) Submit the report to the U.S. secretary of education by a date that the secretary establishes.

(5) Each annual report must contain the information required by the U.S. secretary of education for the year for which the report is made.

Supervision, Monitoring, and Enforcement

SUPERVISION, MONITORING AND ENFORCEMENT

NEW SECTION

WAC 170-000-0000 Supervision, monitoring and enforcement - - General. The SLA's general supervisory responsibilities for monitoring and enforcement under part C of the act consistent with chapter 170-000 WAC include:

- (1) Monitoring the implementation of part C of the act;
- (2) Making LLA determinations annually about their performance in the implementation of part C of the act;
- (3) Enforcing part C of the act, consistent with WAC 170-000-0000 through the use of appropriate enforcement mechanisms.
- (4) Reporting annually on the performance of the state and of each LLA under part C of the act, consistent with WAC 170-000-0000.

NEW SECTION

WAC 170-000-0000 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 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 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 170-000 WAC; and
 - (c) Provides technical assistance, if necessary, to those agencies, institutions, and organizations.

NEW SECTION

WAC 170-000-0000 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 170-000-0000.
- (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 170-000-0000 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 170-000-0000 to analyze the performance of each LLA in implementing part C of the act.

(2) The SLA reports annually to the public on the performance of each LLA 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 available through public means, by posting on the SLA’s website, and distributing to the state interagency coordinating council and LLAs.

(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 170-000-0000.

NEW SECTION

WAC 170-000-0000 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) Assist in the identification of the quality practices that are being implemented;
 - (c) Assist in the identification of technical assistance and training needed to improve results for children and families;
 - (d) Substantiate that the SLA, LLAs, and EIS providers are complying with the requirements under part C of the act; and
 - (e) 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 determination status, local self-monitoring results, and any other information made available.

NEW SECTION

WAC 170-000-0000 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:

- (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 to discuss their status determination.

NEW SECTION

WAC 170-000-0000 Enforcement - - General. (1) If the SLA determines, for two consecutive years, a LLA 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 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 as a high-risk contractor and imposes special conditions on the contract the SLA has with the LLA.

(2) If the SLA determines, for three or more consecutive years, that an LLA 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 to complete a corrective action plan; or

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

(3) Notwithstanding subsections (1) and (2) of this section, when the SLA at any time determines that a LLA 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, the SLA will take one or more of the following actions:

(a) Withhold, in whole or in part, any further payments to the LLA 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 170-000-0000 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 170-000-0000, 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

DATA COLLECTION AND REPORTING

NEW SECTION

WAC 170-000-0000 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 170-000-0000 through 170-000-0000.

(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, 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 170-000-0000 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 170-000-0000 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 170-000-0000 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 170-000-0000 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.