

§ 303.400

34 CFR Ch. III (7-1-07 Edition)

(f) A State may allow 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 eligible children under this part.

(g) In implementing this section, a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to eligible children, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(2) of this section, consistent with State law, within 3 years.

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

(Authority: 20 U.S.C. 1435(a)(9))

NOTE: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18295, Apr. 14, 1998]

Subpart E—Procedural Safeguards

GENERAL

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—

- (a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and
(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in

the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1439)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) Consent means that—

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

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

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

(b) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) Personally identifiable means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

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

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

(Authority: 20 U.S.C. 1439)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other

area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1439(a)(4))

§ 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

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

(2) The reasons for taking the action;

(3) All procedural safeguards that are available under §§ 303.401-303.460 of this part; and

(4) The State complaint procedures under §§ 303.510-303.512, including a description of how to file a complaint and the timelines under those procedures.

(c) *Native language.* (1) The notice must be—

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

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

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

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1439(a)(6) and (7))

[58 FR 40959, July 30, 1993, as amended at 64 FR 12536, Mar. 12, 1999]

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services (see § 303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1439)

NOTE 1: In addition to the consent requirements in this section, other consent requirements are included in (1) § 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

NOTE 2: Under § 300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

§ 303.405 Parent right to decline service.

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1439(a)(3))

§ 303.406 Surrogate parents.

(a) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.18) can be identified;