

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;