

• **OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in section 3(b) of the District of Columbia State Education Office Establishment Act of 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602 (b)(11)(2011 Supp.)); pursuant to section 504 of the Early Intervention Program Establishment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 7-863.04 (2008 Repl.)); Part C of the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. §§ 1400 - 1406 and 1431, *et seq.*); and Mayor's Order 2009-167, dated September 28, 2009, hereby gives notice of the intent (i) to create a new chapter 31, entitled "Early Intervention Program for Infants and Toddlers with Disabilities," within subtitle A (Office of the State Superintendent of Education) of title 5 (Education) of the District of Columbia Municipal Regulations (DCMR); (ii) to repeal in their entirety sections 3027 (Standards for Payment of Early Intervention Services for Families of Children with Developmental Delay) and 3028 (Fees for Early Intervention Services) chapter 30 (Central Referral Bureau; Health Care Fees), subtitle B (Public Health and Medicine), title 22 (Health) of the DCMR; and (iii) to repeal chapter 18 (Hearing Procedures for the Early Intervention Services Program) of title 29 (Public Welfare) of the DCMR, in not less than sixty (60) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this new chapter 31 within subtitle A of title 5 DCMR is to establish standards for the District of Columbia Early Intervention Program for infants and toddlers with disabilities. Federal law requires states to ensure that appropriate early intervention services are made available to infants and toddlers from birth through age two (2).

The proposed rule: (i) establishes a District of Columbia State-level definition of developmental delay for determining eligibility for early intervention services; (ii) sets a timeframe for implementation of the state option to extend early intervention services to children from three (3) until the beginning of the first (1<sup>st</sup>) school year for which the child is eligible to attend a pre-k program; (iii) adopts a policy allowing parents to opt out of the disclosure of information about their child to the Office of the State Superintendent of Education as the state educational agency (SEA) and the local educational agency (i.e., the District of Columbia Public Schools), and (iv) memorializes current practice adopting the Individuals with Disabilities Education Act (IDEA) Part B due process hearing practice and procedures and a forty-five (45) day timeline for resolution of due process complaints.

The proposed rule adheres to the federal regulations on evaluations and assessment of a child but clarifies the procedures applicable to evaluations as distinct from assessments. The proposed rule establishes uniform rates for early intervention services and offers services to all eligible children in the District of Columbia without taking into account a family's income. The proposed rule would, upon adoption, repeal rules which are out-of-date and are superseded by these rules.

This notice is being circulated throughout the District for a sixty (60) day period, including an opportunity to submit written comments and attend public hearings on these proposals. Two (2) public hearings have been scheduled for July 10 and July 17, 2012.

**Subtitle A (Office of the State Superintendent of Education) of title A (Education) of the District of Columbia Municipal Regulations (DCMR) is amended by adding a new chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities):**

**CHAPTER 31 EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES**

**3100 Availability of Early Intervention Services**

3100.1 Appropriate early intervention services as defined in 34 C.F.R. § 303.13, that are based on scientifically based research to the extent practicable, shall be available to all infants and toddlers with disabilities and their families who are residents of the District of Columbia, including without limitation:

- (a) Infants and toddlers with disabilities who are homeless children and their families; and
- (b) Infants and toddlers with disabilities who are wards of the District of Columbia.

**3101 Components of the Early Intervention Program**

3101.1 In addition to ensuring the availability of appropriate early intervention services, the District of Columbia early intervention program shall have the following components:

- (a) A definition of developmental delay;
- (b) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the District of Columbia that meets the requirements of 34 C.F.R. § 303.321;
- (c) For infants or toddlers with a disability who are eligible for early intervention services, a family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler. The family-directed identification must meet the requirements of 34 C.F.R. § 303.321;
- (d) An Individualized Family Service Plan (IFSP), as defined in 34 C.F.R. § 303.20, is developed and implemented as required by 34 C.F.R. §§ 303.340 - 303.345, and that includes service coordination services, as defined in 34 C.F.R. § 303.20;
- (e) A comprehensive child find system that meets the requirements of 34 C.F.R. §§ 303.302 and 303.303;

- (f) A public awareness program in accordance with 34 C.F.R. § 303.116;
- (g) A central directory in accordance with 34 C.F.R. § 303.117;
- (h) A comprehensive system of personnel development in accordance with 34 C.F.R. § 303.118;
- (i) Personnel standards in accordance with 34 C.F.R. § 303.119;(j)
- (j) A single line of responsibility in the Lead Agency with responsibilities as set forth in 34 C.F.R. § 303.120;
- (k) A policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the District of Columbia in accordance with 34 C.F.R. § 303.121;
- (l) Procedures for securing the timely reimbursement of funds used under part C of the Individuals with Disabilities Education Act (IDEA), approved June 4, 1997 (111 Stat. 37; 20 U.S.C. §§ 1400 – 1406 and 1431, *et seq.*) in accordance with 34 C.F.R. § 303.122;
- (m) Procedural Safeguards that meet the requirements of 34 C.F.R. part 303, subpart E;
- (n) A system for compiling and reporting timely and accurate data in accordance with 34 C.F.R. § 303.124;
- (o) A State Interagency Coordinating Council that meets the requirements of 34 C.F.R. art 303, subpart F;
- (p) Policies and procedures to ensure that early intervention services are provided in natural environments in accordance with 34 C.F.R. § 303.126; and,
- (q) Services available to children ages three (3) and older, in accordance with 34 C.F.R. § 303.211.

**3102 Evaluation of the Child**

3102.1 The Lead Agency ensures that, subject to obtaining parental consent in accordance with 34 C.F.R. § 303.420(a)(2), each child under the age of three (3) who is referred for evaluation or early intervention services under Part C of IDEA and suspected of having a disability, receives a timely, comprehensive, multidisciplinary evaluation of the child in accordance with 34 C.F.R. § 303.321.

- 3102.2 In accordance with 34 C.F.R. § 303.321(a)(2)(i), evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C of IDEA, consistent with the definition of infant or toddler with a disability in 34 C.F.R. § 303.321 and § 3108. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under Part C of IDEA.
- 3102.3 In accordance with 34 C.F.R. § 303.321(b), no single procedure shall be used as the sole criterion for determining an infant or toddler's eligibility for services under Part C of IDEA.
- 3102.4 In accordance with 34 C.F.R. § 303.321(b), the evaluation for an infant or toddler must include the following procedures:
- (a) Administering an evaluation instrument;
  - (b) Taking the infant or toddler's history (including interviewing the parent(s));
  - (c) Identifying the infant or toddler's level of functioning in each of the following developmental areas:
    - (1) Cognitive development;
    - (2) Physical development, including vision and hearing;
    - (3) Communication development;
    - (4) Social or emotional development; and
    - (5) Adaptive development.
  - (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.
- 3102.5 An infant or toddler's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) in accordance with 34 C.F.R. § 303.321 if those records indicate that the child's level of functioning in one (1) or more of the developmental areas identified in 34 C.F.R. § 303.21(a) (1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under 34 C.F.R. § 303.21 and § 3108. If the child's Part C eligibility is established under this section, the Lead Agency or Early Intervention Service provider (EIS provider) must conduct assessments of the child and family in accordance with 34 C.F.R. § 303.321 and § 3103.

3102.6 Agency determines that a child is not eligible under Part C of IDEA, the Lead Agency must provide the parent with prior written notice required in 34 C.F.R. § 303.421 and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms under 34 C.F.R. § 303.430 and § 3111, such as requesting a due process hearing or mediation or filing a state complaint.

**3103 Assessment of the Child and Family**

3103.1 In accordance with 34 C.F.R. § 303.321(a)(2)(ii) and (iii), 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 the child’s eligibility under Part C of IDEA and includes the assessment of the child, consistent with 34 C.F.R. § 303.321(c)(1) and the assessment of the child’s family, consistent with 34 C.F.R. § 303.321(c)(2). Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child’s first IFSP meeting.

3103.2 If an infant or toddler is determined eligible for early intervention services in accordance with 34 C.F.R. § 303.21, a multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services must be conducted by qualified personnel appropriate to meet those needs. This assessment may occur simultaneously with the evaluation, provided that the requirements of this section are met. The assessment of the child must include the following:

- (a) A review of the results of the evaluation conducted under § 3102;
- (b) Personal observations of the child; and
- (c) The identification of the child’s needs in each of the developmental areas in 34 C.F.R. § 303.21 and subsection 3108.1(b).

3103.3 If an infant or toddler is determined eligible in accordance with 34 C.F.R. § 303.21, a family-directed assessment, as defined in 34 C.F.R. § 303.321(c)(2), 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. This assessment may occur simultaneously with the evaluation, provided that the requirements of this section are met. 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.

**3104 Use of Native Language for Evaluations and Assessments**

3104.1 All evaluations and assessments of a child shall, to the extent possible, be conducted in the child's native language.

**3105 Informed Clinical Opinion**

3105.1 Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C of IDEA 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 34 C.F.R. § 303.321(b) and subsection 3102.4.

**3106 Culturally Appropriate and Non-discriminatory Evaluations and Assessments**

3106.1 All evaluations and assessments of the child and family shall be strength based, conducted by qualified personnel in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

**3107 Post-Referral Timeline**

3107.1 Except as provided in 34 C.F.R. § 303.310(b) and subsection 3107.2, the initial evaluation and the initial assessments of the child and family under 34 C.F.R. § 303.321 and §§ 3102 and 3103 and the initial IFSP meeting under 34 C.F.R. § 303.342 must all be completed within forty-five (45) days from the date the Lead Agency receives the referral of the child.

3107.2 Subject to 34 C.F.R. § 303.310(c) and subsection 3107.3, the 45-day timeline described in 34 C.F.R. § 303.310(a) and subsection 3107.1 shall be extended to adjust for any period of time when:

- (a) The child or parent is unavailable to complete 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 initial evaluation or the initial assessment of the child, despite documented, repeated attempts by the Lead Agency or EIS provider to obtain parental consent.

3107.3 The Lead Agency ensures that in the event the circumstances described in 34 C.F.R. §§ 303.310(b)(1) or (b)(2) and subsection 3107.2 exist, the Lead Agency or the EIS provider must:

- (a) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the Lead Agency or the EIS provider to obtain parental consent;
- (b) Complete 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 34 C.F.R. § 303.310(b)(1) no longer exist or parental consent is obtained for the initial evaluation and the initial assessment of the child; and
- (c) Develop and implement an interim IFSP, to the extent appropriate and consistent with 34 C.F.R. § 303.345.

3107.4 The initial family assessment must be conducted within the forty-five (45) day timeline in 34 C.F.R. § 303.310(a) and subsection 3107.1 if the parent concurs and even if other family members are unavailable.

### **3108 Child Eligibility for Services**

3108.1 A child must be a resident of the District of Columbia in order to receive Part C early intervention services from the District of Columbia.

3108.2 A child is a resident of the District of Columbia if the child:

- (a) Is a ward of the District of Columbia;
- (b) Lives with a natural parent, step parent, or adoptive parent who is a District of Columbia resident and has custody or control of a child, including joint custody; or,
- (c) Lives with a guardian, custodian, or other primary caregiver who is a resident of the District of Columbia.

3108.3 Pursuant to Part C IDEA regulations at 34 C.F.R. §§ 303.21 and 303.111, a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and his/her third (3<sup>rd</sup>) birthday and any of the following apply:

- (a) The child demonstrates a delay of fifty (50%) percent, using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:
  - (1) Physical development, including vision or hearing;
  - (2) Cognitive development;
  - (3) Communication development;
  - (4) Social or emotional development; or
  - (5) Adaptive skills.
- (b) The child demonstrates a delay of twenty-five (25%) percent, using appropriate diagnostic instruments and procedures, in two (2) or more of the following developmental areas:
  - (1) Physical development, including vision or hearing;
  - (2) Cognitive development;
  - (3) Communication development;
  - (4) Social or emotional development;
  - (5) Adaptive skills; or
- (c) The child is diagnosed as having a physical or mental condition that has a high probability of resulting in a significant developmental delay.

3108.4 All infants and toddlers who do not qualify for Part C early intervention services shall be referred by the Lead Agency or EIS provider, with parental permission, to their pediatrician for medically necessary services.

**3109 Notification of Potential Eligibility Opt-Out Policy**

3109.1 Consistent with 34 C.F.R. § 303.401, the Lead Agency shall notify the appropriate local education agency within the District of Columbia and the state education agency within the District of Columbia of personally identifying information for each child potentially eligible for Part B of the IDEA by the time the child reaches the age of two (2) years and three (3) months, unless a parent has signed and submitted a written request to opt out of notifying the local education agency. The Lead Agency or Lead Agency representative must explain to parents that the information that will be released will include the following:

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

3109.2 Prior to sending notification to the local educational agency and the state education agency, the Lead Agency or Lead Agency representative will discuss parental rights with the parent, including the right to eligibility determination for Part B services and the right to opt-out of having personally identifiable information shared with the local educational agency and the state educational agency. If a parent chooses to opt out, the written request must be signed and submitted to the Lead Agency no later than ten (10) days prior to the child reaching the age of two (2) years and three (3) months. If the child enters the program after the age of two (2) years and three (3) months, the parent may opt out within ten (10) days after the date that the parent provides written consent for services.

3109.3 The opt-out form shall become part of the child's early intervention record. A parent may revoke his or her choice to opt out at any time by providing written notification to the Lead Agency. The Lead Agency or Lead Agency representative will work with the family to make a referral to the appropriate local educational agency within ten (10) days of receiving notification of revocation.

**3110 State Option to Make Services under Part C of IDEA Available to Children Ages Three (3) and Older**

3110.1 Beginning on July 1, 2013, and in accordance with 34 C.F.R. § 303.211, a parent of a child with a disability who is eligible for preschool services under section 619 of Part B of IDEA and who previously received early intervention services under Part C of IDEA may choose the continuation of early intervention services under Part C for his or her child after the child turns three (3) subject to subsection 3110.2 below.

3110.2 The option to continue early intervention services under Part C of IDEA applies to children with disabilities from age three (3) until the first school year for which the child is eligible to attend a pre-k program. As used in this subsection, "pre-k" refers to the year immediately preceding kindergarten. In no case may services under this section be provided beyond the age at which the child actually enters, or is eligible under District of Columbia law to enter, kindergarten or elementary school in the District of Columbia.

3110.3 Consistent with 34 C.F.R. § 303.344(d), services provided pursuant to this section shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

- 3110.4 Any child served pursuant to this section has the right, at any time, to receive a free appropriate public education (FAPE) (as that term is defined at 34 C.F.R. § 303.15) under Part B of IDEA instead of early intervention services under Part C of IDEA.
- 3110.5 All early intervention services identified in the toddler with a disabilities IFSP under 34 C.F.R. § 303.344 (and consented to by the parent under 34 C.F.R. § 303.342(e)) must continue to be provided beyond age three until that toddler's initial eligibility determination under Part B of IDEA is made under 34 C.F.R. § 300.306. This provision does not apply if the local educational agency has requested parental consent for the initial evaluation under 34 C.F.R. § 300.300(a) and the parent has not provided that consent.
- 3110.6 The Lead Agency will submit to the Secretary of the U.S. Department of Education, in accordance with the report requirements under 34 C.F.R. § 303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of Part B of IDEA but whose parents choose for their children to continue to receive early intervention services under Part C of IDEA.

### **3111 Procedural Safeguards**

- 3111.1 The Lead Agency adopts the provisions on confidentiality in 34 C.F.R. §§ 303.401 through 303.417, parent consent and notice in 34 C.F.R. §§ 303.420 and 303.421, surrogate parents in 34 C.F.R. § 303.422, and dispute resolution procedures in 34 C.F.R. § 303.430.
- 3111.2 With respect to due process hearing procedures under 34 C.F.R. § 303.430(d), the Lead Agency adopts the Part B due process hearing procedures under section 615 of IDEA and §§ 303.440 - 303.449 with a forty-five (45) day timeline for resolving due process complaints, as provided in 34 C.F.R. § 303.440(c).

### **3112 Methods to Ensure the Provision of, and Financial Responsibility for, Part C Services**

- 3112.1 The Lead Agency shall utilize interagency agreements between each state public agency and the Lead Agency in order to ensure:
- (a) The provision of, and establishing financial responsibility for, early intervention services provided under the IDEA and this chapter; and
  - (b) Such services are consistent with the requirement in section 635 of the IDEA and the State's application under section 637 of the IDEA, including the provision of such services during the pendency of any dispute between state agencies.

- 3112.2 The Lead Agency shall utilize public insurance, such as Medicaid’s Title XIX and the Early Periodic Screening Diagnosis and Treatment (EPSDT) program (42 U.S.C. § 1396), to the maximum extent possible.
- 3112.3 The D.C. Department of Health Care Finance shall ensure timely reimbursement for services provided in accordance with Part C services including but not limited to, service coordination, evaluation and assessment, and IFSP services.
- 3112.4 The Lead Agency and the D.C. Department of Health Care Finance shall identify policies and procedures for allocating financial responsibility for Early Intervention Services through an inter-agency agreement.
- 3112.5 Pursuant to 34 C.F.R. § 303.520(a), the Lead Agency shall obtain written parental consent to access public benefits or insurance to pay for Part C services.
- 3112.6 Pursuant to 34 C.F.R. §303.510(c), nothing in subsection 3113.2 shall permit a District of Columbia agency to reduce medical or other assistance available to children and families in the District of Columbia or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. §§ 701, *et seq.* (SSA) or Title XIX of the SSA, 42 U.S.C. § 1396, including section 1903(a) of the SSA 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 pursuant to part C of the IDEA.

**3113 Early Intervention (EI) Services Rates**

- 3113.1 The Lead Agency shall establish and publish on an annual basis, or more frequently if necessary, maximum rates to be paid for early intervention services consistent with this chapter.
- 3113.2 The following schedule shall be used to determine rate of payment for services in the Early Intervention Service System.

<b>Service Category</b>	<b>Provider*</b>	<b>Rate/Hour</b>
Assistive Technology Services	RC1	\$95.00
Assessments for Service Planning	RC1	\$125.00
“	RC2	\$95.00
Audiology/Auditory Verbal Therapy	RC1	\$125.00

Developmental Therapy Services	RC2	\$85.00
Developmental Therapy Services -Applied Behavioral Analysis Method	RC1	\$125.00
“	RC2	\$85.00
Group Therapy (two (2) or more children)	RC1	\$70.00
“	RC2	\$55.00
Health and Nursing Services	RC1	\$120.00
“	RC2	\$75.00
Nutrition Services	RC2	\$85.00
Occupational Therapy Services	RC1	\$125.00
“	RC2	\$95.00
Parent Counseling/ Social Work Services	RC2	\$85.00
Psychological Services	RC1	\$125.00
Physical Therapy Services	RC1	\$125.00
“	RC2	\$75.00
Speech-Language Pathology Services	RC1	\$125.00
“	RC2	\$95.00
Team Treatment Activities (more than one professional providing services during same session for an individual child/family)	RC1	\$70.00
Vision Services/O&M	RC2	\$125.00

\*Reimbursement Category 1 (RC 1) providers are physical therapists, occupational therapists, speech-language pathologists, nurses (registered nurses or nurse practitioners), psychologists, board certified applied behavior analysis therapists, audiologists, certified assistive technology specialists, and certified auditory verbal therapists or educators.

\*Reimbursement Category 2 (RC 2) providers are physical therapy assistants, occupational therapy assistants, speech language pathology assistants, certified therapeutic recreational specialists, counselors, special educators, dietitians, family therapists, orientation and mobility specialists, social workers certified nurse aides, licensed practical nurses, and board certified assistant applied behavior analysis therapists.

3113.3 The Lead Agency may, in its sole discretion, adjust a rate specified in this chapter, based upon identification and documentation of unique or highly specialized need of a child that cannot be addressed and funded at the rates annually established by the Lead Agency.

#### **3114 Availability of Resources**

3114.1 In accordance with 34 C.F.R. § 303.207, the Lead Agency shall provide services to children in all geographic areas within the District of Columbia and require that all provider contracts include a provision that EIS providers must serve children from all geographic areas within the District of Columbia.

#### **3115 Policy for Contracting or Otherwise Arranging for Services**

3115.1 All service providers seeking payment for Part C services from the Lead Agency shall have a contract with the Lead Agency specifying terms and conditions at rates consistent with this chapter.

3115.2 The Lead Agency shall establish contracts with service providers who meet the personnel standards established pursuant to 34 C.F.R. § 303.119. The contracts must be consistent with the provisions of Part C of the IDEA including the contents of the application for federal funds required by 34 C.F.R. §§ 303.201 - 303.227.

3115.3 All contracts with the Lead Agency shall include a requirement that all early intervention services meet standards set by the Lead Agency and must be consistent with 34 C.F.R. part 303 and the Education Department General Administrative Regulations in 34 C.F.R. part 80.

#### **3199 Definitions**

3199.1 All terms used in this chapter shall be the same and conform to the definitions of such terms in the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1431, *et seq.* and all regulations set forth in 34 C.F.R. §§ 303.000 - 303.733. Several of these definitions are included herein for convenience.

**Early intervention service provider or EIS provider** - an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under part C of the IDEA, whether or not the entity or individual receives

Federal funds under part C of the IDEA, and may include, where appropriate, the Lead Agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under part C of the IDEA.

**Individual Family Service Plan (IFSP)** - a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant's or toddler's family that:

- (a) Is based on an evaluation and assessment of the child and family, consistent with 34 C.F.R. § 303.321;
- (b) Includes information about the child's present levels of development, information about the family, results or outcomes to be achieved, the early intervention services necessary to meet the needs of the child and family and, to the extent appropriate, the identification of other services that the child or family needs or is receiving through other sources;
- (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 in 34 C.F.R. §§ 303.342, 303.343, and 303.345.

**Infant or Toddler with a disability** - an individual under three (3) years of age who needs early intervention services because the individual:

- (a) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas:
  - (1) Cognitive development;
  - (2) Physical development, including vision and hearing;
  - (3) Communication development;
  - (4) Social or emotional development;
  - (5) Adaptive development;
- (b) Has a diagnosed physical or mental condition that:
  - (1) Has a high probability of resulting in developmental delay; and
  - (2) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; in-born 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: or

- (c) A child of a parent elects the extended IFSP option pursuant to this chapter.

**Lead Agency** - the Office of the State Superintendent of Education (OSSE), as the District of Columbia agency responsible for implementing a comprehensive system of early intervention services for infants and toddlers with disabilities and their families in conformance with District of Columbia law and federal law to ensure that all children with disabilities, ages birth through three (3) years of age have early intervention services available to them.

**Parent** - a natural or adoptive parent of a child, a guardian (but not the District if the child is a ward of the District), a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), or a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519. A foster parent may act as a parent if:

- (a) The natural parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law; and
- (b) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under the IDEA and has no interest that conflicts with the interests of the child.

**Section 3027 (Standards for Payment of Early Intervention Services for Families of Children with Developmental Delay) of chapter 30 (Central Referral Bureau; Health Care Fees) of subtitle B (Public Health and Medicine) of title 22 (Health) of the DCMR is repealed in its entirety.**

**Section 3028 (Fees for Early Intervention Services) of chapter 30 (Central Referral Bureau; Health Care Fees) of subtitle B (Public Health and Medicine) of title 22 (Health) of the DCMR is repealed in its entirety.**

**Chapter 18 (Hearing Procedures for the Early Intervention Services Program) of title 29 (Public Welfare) of the DCMR is repealed in its entirety.**

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than sixty (60) days after the date of publication of this notice in the *D.C. Register* via email addressed to: [osseccomments.proposedregulations@dc.gov](mailto:osseccomments.proposedregulations@dc.gov); or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: "Early Intervention Services," 810 First Street, NE 9<sup>th</sup> Floor, Washington, DC 20002. [(202) 727-6436]. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at [www.osse.dc.gov](http://www.osse.dc.gov).

