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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 30, 2000

Honorable Feather O. Houstoun, Secretary
Department of Public Welfare
333 Health & Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-452 (IRRC #2122)
Department of Public Welfare
Early Intervention Services

Dear Secretary Houstoun:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Dennis M. O'Brien, Majority Chairman, House Health & Human Services Committee
Honorable Frank L. Oliver, Democratic Chairman, House Health & Human Services Committee
Honorable Harold F. Mowery, Chairman, Senate Public Health & Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health & Welfare Committee
Nia Wilson, Legal Counsel, House Health and Human Services Committee
Stanley Mitchell, Chief Counsel, House Health & Human Services Committee
Mel Knowlton, Department of Public Welfare
Maureen Cronin, Department of Public Welfare
Thomas Vracarich, Department of Public Welfare

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation No. 14-452

Early Intervention Services

November 30, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which has not been met. The Department of Public Welfare (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by October 31, 2002, the regulation will be deemed withdrawn.

1. Section 4226.1. Introduction. – Clarity.

In the first sentence of Subsection (a), a word appears to be missing. The word “to” should be inserted after the phrase “under 3 years of age” and before “maximize.”

2. Section 4226.5. Definitions. – Consistency with federal statutes and regulations; Clarity.

Appropriate professional requirements

This term is defined, in part, as “Entry level requirements that: (i) Are based on the *highest requirements* in the profession or discipline....” (Emphasis added.) The phrase “highest requirements” is vague and should be clarified in the final-form regulation.

The phrase “suitable qualifications” in Paragraph (ii) is also vague and should be clarified.

Child

This term is defined as “An individual under 3 years of age who has been determined eligible for services under this chapter.” The federal definition of “children,” at 34 CFR Section 303.7, includes the definition of “infants and toddlers with disabilities.” For consistency with the federal regulations, the definition of “child” in the final-form regulation should include “infant and toddler with disabilities.”

County MH/MR program (legal entity)

For improved clarity, the acronym “MH/MR” should be spelled out as “Mental Health/Mental Retardation.”

Early intervention services and Infant and toddler with disabilities

These definitions vary from comparable definitions in federal law, at 20 USCA Sections 1432(4) and (5). For example, the definition of “early intervention services” in the proposed regulation does not address natural environments or the Individualized Family Service Plan (IFSP). The proposed definition of “infant and toddler with disabilities” eliminates the federal language relating to measurement of developmental delays. The definitions of these terms should be revised to match the federal definitions, or the reasons for the variations should be explained.

Evaluation, Family training, counseling and home visits, Health services and IFSP

The definitions of these terms vary from corresponding definitions in federal regulations, at 34 CFR Part 303. These definitions should be revised to be consistent with the federal regulations, or the reasons for the variations should be explained.

MDE

This acronym is defined as “multidisciplinary evaluation.” However, the term “multidisciplinary evaluation” is not defined. A definition of this term should be included in the final-form regulation.

Parent

The definition of this term includes a surrogate parent, but does not specify that a surrogate parent may be a foster parent. To avoid confusion regarding who qualifies as a “parent,” the definition should specifically include a foster parent who meets the requirements of Section 4226.105(f).

Terms for which definitions should be added

The terms “service coordinator” and “early interventionist” are used throughout the regulation, but are not defined. For improved clarity, definitions of these terms should be added to Section 4226.5. Additionally, the definitions should cross-reference Section 4226.53, which lists activities related to service coordination, and Section 4226.55, which lists early interventionist responsibilities.

3. Section 4226.11 Financial administration. – Clarity.

The phrase “County Mental Health and Mental Retardation Program” should be abbreviated to “County MH/MR Program” since this is the defined term in Section 4226.5.

4. Section 4226.14. Documentation of other funding sources. – Clarity.

Subsection (a)

Under this subsection, certain information is required to be “kept with the child and family’s permanent legal entity’s file.” However, the regulation does not specify a time limitation for

retaining the “permanent file.” The final-form regulation should clarify this record keeping requirement.

Subsection (b)

This subsection requires the legal entity’s written procedures on funding to be “approved by the Department.” This provision implies that the Department reviews and approves the procedures used by the legal entity. However, the regulation contains no details on when and how review occurs. Additionally, the criteria that the written procedures must meet to qualify for Department approval are not included.

Does the Department issue a formal approval, or are the written procedures reviewed as part of the Department’s annual review of the legal entity? If there is a formal approval, the criteria and process for obtaining Department approval should be specified. If there is no formal approval, the phrase “and approved by the Department” should be deleted.

5. Section 4226.15. Interim payments. – Clarity.

Subsection (a) refers to “receipt of early intervention services by an infant, toddler or family *in a timely fashion.*” (Emphasis added.) The clarity of the regulation would be improved by including a specific time frame.

6. Section 4226.22. Eligibility for early intervention services. – Clarity.

Subsection (a)

Pursuant to Paragraph (1), “developmental delay” occurs when “the child is delayed by 25% of the child’s chronological age in one or more developmental areas...” What is the basis for the 25% standard?

Paragraph (2) establishes a standard for delay in developmental areas as “1.5 standard deviations below the mean on accepted or recognized standard tests for infants and toddlers.” What is the basis for establishing the standard at the 1.5 standard deviations below the mean?

Subsection (b)

This subsection permits the use of “informed clinical opinion” when “there are no standardized measures or the standardized procedures are not appropriate for a child’s chronological age or developmental area.” Examples of circumstances that would require the use of “informed clinical opinion” would improve the clarity of the regulation.

7. Section 4226.23. Waiver eligibility. – Clarity.

Subsection (a)

The acronyms “ICF/MR” and “ICF/ORC,” used in this subsection, should be spelled out.

Throughout Subsection (a), the phrase “applicant or recipient” is used. It is unclear who falls into these two categories. Do these terms refer to the “infant, toddler and family” as used in Subsection (b)? If so, “infant, toddler and family” should replace “applicant or recipient.” If the latter terms apply to a broader group of individuals, the terms should be defined in the final-form regulation.

Paragraph (1)(i) contains a standard of “more than two standard deviations below the mean as measurable on a standardized general intelligence test.” The basis for this standard should be explained.

Paragraph (1)(ii) refers to a standard of “performance that is *slightly* higher than two standard deviations below the mean of a standardized general intelligence test...” (Emphasis added.) How was this standard developed? Additionally, because “slightly higher” can not be objectively measured, this phrase should be deleted, and the final-form regulation should contain a justified, measurable standard.

Paragraph (3)(i) defines “significant limitations” by using the criteria of “a minimum of a 50% delay in one or 33% delay in two” developmental areas. How were these criteria determined?

Paragraphs (3)(ii)(E), (F) and (G) list the following areas to be evaluated for functional limitation: “Self-direction”; “Capacity for independent living”; and “Economic self-sufficiency.” How are these areas evaluated for a child under three years of age?

Paragraph (3)(iii) states “The applicant’s or recipient’s conditions are likely to continue indefinitely for at least 12 months.” It is contradictory to use a time frame of “indefinitely for at least 12 months.” If the minimum amount of time included in this criterion is 12 months, the word “indefinitely” should be deleted.

Subsection (b)

This provision refers to the “infant, toddler and family’s initial and continuing financial eligibility for waiver services.” Subsection (a) uses the phrase “applicant’s or recipient’s.” The final-form regulation should clarify the need for the distinction in terminology between Subsection (a) and Subsection (b). If there is no distinction, the more specific “infant, toddler and family” should be used consistently in both subsections.

8. Section 4226.24. Comprehensive child find system. – Consistency with federal regulations; Clarity.

Subsection (f)

This subsection addresses timelines imposed on a legal entity once it receives a “referral.” However, it is unclear what constitutes receipt of a referral. For example, must a referral be submitted in writing, or are telephone inquiries also considered referrals? To improve clarity, “referral” should be defined and the criteria for establishing “receipt” should be specified.

Paragraph (1) requires the legal entity to appoint a service coordinator “as soon as possible.” Although this language is consistent with the federal regulations, at 34 CFR Section 303.321(e),

the phrase “as soon as possible” is vague and open to interpretation. Clarity would be improved by adding a maximum time frame (e.g. but no later than) after “as soon as possible.”

Paragraph (2) lists items that must be completed within 45 days of referral. As written, the legal entity must complete “one” of the three actions listed in Subparagraphs (i) through (iii). This requirement should be revised to state that “all” of the applicable actions in Subparagraphs (i) through (iii) must be completed within 45 days consistent with 34 CFR Section 303.321(e).

Public awareness program

The federal regulations, at 34 CFR Section 303.20, require implementation of a public awareness program to help identify children who are eligible for early intervention services. However, this program is not addressed in the proposed regulation. The requirements for the public awareness program should be included in the final-form regulation.

9. Section 4226.25. Initial Screening. – Reasonableness; Clarity.

Subsection (b) states, “The initial screening and the evaluation specified in Section 4226.62 (relating to MDE) may be conducted *simultaneously*.” (Emphasis added.) In what situations would the initial screening and evaluation be conducted at the same time? The final-form regulation should provide examples of or include criteria for when simultaneous screening and evaluation is appropriate.

10. Section 4226.28. Recommendations to parents. – Consistency with federal regulations; Clarity.

Results of initial screening

This section describes the courses of action the legal entity may recommend after the initial screening process. However, there are no requirements for educating parents about what their rights to services are. For example, parents have a right to review their child’s IFSP, per federal regulations, at 34 CFR Section 303.342(e). This information would allow parents to better understand how the early intervention system operates. For clarity, this section in the final-form regulation should include a requirement that parents be informed of their rights as part of the screening results.

Paragraph (3)

Paragraph (3) states, “The child is recommended for referral to the tracking system.” The term “tracking system” as used in this section, as well as in Section 4226.31, is unclear. For clarity, this term should be defined in this section, in Section 4226.31, or in Section 4226.5, relating to definitions.

11. Section 4226.29. Notice to parent. – Clarity.

This section requires legal entities to provide parents written notices of the screening results. How will the parents receive the written notice? A number of different methods could be used to

deliver this written notice. This section should specify how the written notice must be delivered, and within what time frame after completion of screening.

12. Section 4226.30. At-risk children. – Clarity.

Paragraph (5) includes children “with confirmed dangerous levels of lead poisoning as set by the Department of Health.” For clarity, the regulation should include a citation to the Department of Health’s regulations that denotes these levels.

13. Section 4226.31. Tracking system. – Clarity.

As noted in **Issue 10**, the term “tracking system” is unclear and should be defined in the final-form regulation. Additionally, we have another concern with this section. There is no process for initiating a “tracking system,” nor any procedures to ensure uniformity among tracking systems.

Are tracking systems required to be uniform? Is there a timeline for establishing tracking systems for children who require reevaluations? This section should include the processes and procedures for the implementation of tracking systems.

14. Section 4226.32. Contacting families. – Clarity.

General

This section requires the legal entity to contact families after a child is referred to a tracking system, and outlines the required schedule for and form of contact. However, the substance of the contact is not explained. What will the contact consist of? This section should also address the substance of the contact.

Subsection (a)

Subsection (a) requires the legal entity to contact families “at least every four months after a child is referred to the tracking system....” We have two questions. First, how was the four-month time frame determined?

Second, if the MDE team recommends a shorter time frame for contact, is the legal entity required to adopt that recommendation? The final-form regulation should answer these questions.

15. Section 4226.33. Monitoring responsibilities. – Need, Reasonableness; Clarity.

Subsection (a)

This subsection allows legal entities to monitor early intervention services provided in another county or state. Why and how the legal entity would monitor early intervention services provided in another state should be explained in the final-form regulation.

Subsection (c)

This subsection requires the legal entity to “complete monitoring of each early intervention service provider at least once every 12 months.” This phrase is confusing. We understand that once every 12 months a legal entity must submit to the Department a form that evaluates each service provider. This subsection should reflect that the monitoring, in this instance, is a reporting requirement of the legal entity.

16. Section 4226.34. Community evaluations. – Reasonableness and Clarity.

This section requires legal entities to conduct an early intervention self-assessment review “at least once in every 3 years.” We have two concerns regarding this section.

First, how was the time frame of once every three years determined? The rationale for this time frame should be explained.

Second, the phrase “once in every three years” is awkward. A clearer phrase would be “at least once every three years.”

17. Section 4226.35. Training. – Need; Clarity.

This section requires that “professional and paraprofessional personnel who serve on the interdisciplinary team or who provide direct care or service to a child shall be certified, licensed or registered, as approved by the Department of State....” We have two concerns.

First, the terms “professional and paraprofessional” and the phrase “as approved” are unnecessary and should be deleted.

Second, are there specialists who are certified, licensed or registered by an entity other than the Department of State, such as the Department of Education? If so, this section should be revised to recognize other certification, licensing or registration authorities.

18. Section 4226.36. Pre-service training. – Economic and fiscal impact; Need; Clarity.

This section describes training for the service coordinator, early interventionist and other early intervention personnel who work directly with children in early intervention programs. We have three concerns with this section.

First, this section includes the areas for pre-service training, but does not specify the format or time requirement for pre-service training. Will the training be held on site during regular business hours? The exclusion of such information may prove confusing for individuals and early intervention programs. Therefore, a format and minimum time requirements for pre-service training should be included in the final-form regulation.

Second, in the Regulatory Analysis Form, the Department states that there will be no increased costs to affected parties. However, commentators disagree. This section does not specify whether the employee, the employer or the Department will pay for the pre-service training. The regulation should clarify who will fund this training.

Third, Paragraph (9) requires all personnel to undergo “Training in fire safety, emergency evacuation, first aid techniques and child cardiopulmonary resuscitation...” We have two questions. First, should this requirement be limited to those staff that work directly with children? Second, should these requirements only apply when the child is receiving services outside of the home?

19. Section 4226.37. Annual training. – Economic and fiscal impact; Clarity.

We have four concerns with this section. First, Section 4226.37 requires service coordinators, early interventionists and other early intervention personnel who work directly with children in early intervention programs to undergo at least 24 hours of annual training. The stakeholders group questioned whether the 24 hours of annual training is clock hour training or credit hour training. This issue should be clarified in the final-form regulation.

Second, Subsection (a) provides a list of general and specific program areas that are relevant to early intervention services. Does the Department approve training providers and programs? If so, the process for approval should be included in the final-form regulation.

Third, the Regulatory Analysis Form, states that there will be no increased costs to affected parties. However, commentators disagree. This section does not specify whether the employee, employer or the Department will fund the annual training. The regulation should clarify who will fund for this training.

Finally, Subsection (c) requires records of all training “shall be kept in the agency’s personnel files.” How long will the agency be required to retain these records? This section should include the timeframe for record retention.

20. Section 4226.38. Criminal history records check. – Reasonableness; Need; Clarity.

Paragraph (1) requires persons who reside inside the Commonwealth who will have direct contact with children to submit a Pennsylvania criminal history record check. Paragraph (2) requires staff persons who reside in another state who have direct contact with children to submit a Pennsylvania criminal history record check and a Federal Bureau of Investigation (FBI) criminal history record check. Why aren’t Pennsylvania residents required to submit an FBI criminal history record check?

Additionally, 55 Pa. Code Section 3490.122(a) requires persons who apply to provide a child care service to submit a completed Pennsylvania Child Abuse History Clearance form. Early intervention services for children are included under the definition of “child care service.” However, this requirement is not included in the proposed regulation. The final-form regulation should require that all persons who will have direct contact with children submit a completed Pennsylvania Child Abuse History Clearance form.

21. Section 4226.40. Reporting. – Clarity.

Subsection (a)

This subsection requires a legal entity to submit reports “in a form and contain information as the Department may require.” We have three concerns. First, the phrase “information as the Department may require” is vague. This subsection should specify the information required in these reports.

Second, it is unclear how often or when the Department will require the submission of these reports. For clarity, the time frame covered by the report and the deadline for submittal should be inserted.

Finally, does the Department provide a form for the reports? If so, this section should state the name of the form and how the form can be attained.

Subsection (b)

In this subsection, the legal entity is responsible for keeping records. How long will the legal entity be required to retain these records? This section should include a time frame for record retention.

22. Section 4226.41. Traditionally underserved groups. – Clarity.

Paragraph (2) of this section requires the legal entity to ensure that “Families have access to culturally competent services within their local geographic areas.” The phrase “culturally competent services” is unclear. This section should either include a definition or examples of “culturally competent services.”

23. Section 4226.43. Confidentiality of information. – Reasonableness; Clarity.

A legal entity, as required by this section, must ensure the protection of “a personally identifiable information collected, used or maintained...including the rights of parents to written notice of written consent to the exchange of this information among agencies consistent with Federal and State law.” We have two concerns with this section.

First, what Federal and State law applies to this exchange of information? For clarity, citations to applicable Federal and State law should be included.

Second, in the phrase “a personally identifiable information,” should the “a” be an “all”?

24. Section 4226.52. Provision of service coordination. – Reasonableness; Clarity.

Subsection (a) requires the legal entity to “provide the services of a service coordinator to the family.” This phrase is wordy and unclear. Rather than the phrase “provide the services of a,” this sentence could be rewritten to state “assign a service coordinator to the family.”

Subsection (b) establishes a ratio of one service coordinator per family. Why isn't a ratio of families to service coordinators also included? The final-form regulation should also include a service coordinator caseload ratio, or explain why such a ratio is not necessary.

25. Section 4226.54. Requirements and qualifications. – Reasonableness; Need; Clarity.

Section titles

Section 4226.54 includes the requirements and qualifications of a service coordinator. The title of this section, as well as Section 4226.56, is "Requirements and qualifications." For clarity, these titles should be changed to "Service coordinator requirements and qualifications" and "Early interventionist requirements and qualifications," respectively.

Subsection (a)

Subsection (a) states, "A minimum of one service coordinator intervention service shall be employed ... by the legal entity." It appears that the phrase "intervention service" is a typographical error and should be deleted.

Adequacy of qualifications

Subsections (c)(1) and (2) require a service coordinator to possess either a bachelor's degree or above, or an associate's degree or 60 credit hours from an accredited college or university. Additionally, a person must have one or three years of "work or volunteer experience working directly with children, families or people with disabilities, or in counseling, management or supervision."

Subsection (c)(3) allows applicants to have "Certification by the Civil Service Commission as meeting the Caseworker 2 or 3 classification." According to the State Civil Service job requirements, a Caseworker 2 requires a bachelor's degree in social welfare/social work, or a bachelor's degree that is supplemented by, or includes twelve credits in related fields. A Caseworker 3 classification requires a bachelor's degree in sociology, social welfare, psychology, gerontology, criminal justice or other related social science.

We have three concerns with the qualifications in Subsections (c)(1) and (c)(2). First, the education qualifications lack the specificity of the Civil Service Caseworker 2 and 3 classifications. There is no requirement in Subsections (c)(1) and (c)(2) that the degree or course work be in a discipline related to early intervention.

Second, the requirement for work or volunteer experience in "counseling, management or supervision" lacks specificity. There is no requirement that this "experience" be in a field that has any relevance to the provision of early intervention services.

Third, the requirements in Subsections (c)(1) and (c)(2) for one and three years of volunteer experience are unclear. For example, if a person volunteers on a part-time basis, how long must a person do volunteer work to equate to the one-year or three-year standard?

It is our understanding that the broad requirements in Subsections (c)(1) and (c)(2) are intended to provide hiring flexibility for service coordinators throughout the Commonwealth, specifically rural areas where there may be fewer qualified candidates. However, an explanation should be given as to how the broad degree, course work and work qualifications in Subsections (c)(1) and (c)(2) will ensure consistent, quality services throughout the Commonwealth. Additionally, the final-form regulation should clarify how volunteer experience will be calculated in determining if a candidate meets the one-year or three-year requirements in Subsections (c)(1) and (c)(2).

26. Section 4226.55. Early interventionist. – Consistency with statute; Need; Reasonableness; Clarity.

This section lists the responsibilities of an early interventionist. However, responsibilities appear to duplicate those of the service coordinator and qualified service providers. The position of early interventionist is not included in either the federal regulations or the Individuals with Disabilities Education Act. We have a number of concerns.

How is the early interventionist's role different from other early intervention personnel? Are specialists that work with children, such as speech therapists, psychologists and physical therapists, considered early interventionists? Given the definition of "qualified" in Section 4226.5, why is such a position needed?

The early interventionist position should either be clarified or this section and Section 4226.56 should be deleted.

Paragraph (2)

Under this paragraph, the early interventionist is required to "supervise the implementation of services provided by other early intervention personnel." Given the limited education and experience requirements for early interventionists, is it reasonable to have an early interventionist supervising services provided by a specialist, such as a physical therapist or psychologist?

Paragraph (4)

In this paragraph, the phrase "written communication reviews" is unclear. For increased clarity, the regulation should describe what a "written communication review" entails.

27. Section 4226.56. Requirements and qualifications. – Consistency with statute; Reasonableness; Clarity.

Adequacy of requirements

As noted in **Issue 25**, we have several concerns related to the lack of specificity of the qualifications in Subsections (a)(1) and (a)(2). It is our understanding that these broad requirements are intended to provide hiring flexibility for early interventionists throughout the Commonwealth, specifically in rural areas where there may be fewer qualified candidates. However, an explanation should be given as to how the broad degree, course work and work qualifications in Subsections (a)(1) and (a)(2) will ensure consistent, quality services throughout

the Commonwealth. Additionally, the final-form regulation should clarify how volunteer experience will be calculated in determining if a candidate meets the one-year or three-year requirements in Subsections (a)(1) and (a)(2).

Subsection (b)

Subsection (b) requires all early interventionists to “obtain a minimum of 6 credit hours annually.” Section 4226.37 requires service coordinators, early interventionists and other early interventionist personnel who work directly with children to undergo at least 24 hours of annual training. The “6 credit hours” requirement is redundant and should be deleted in the final-form regulation.

Children with low incidence disabilities

There is no mention of the qualifications for personnel working with children having low incidence disabilities. It is recommended that all personnel who will be working with children with low incidence disabilities be specifically trained to meet their needs. This requirement should be included.

28. Section 4226.57. Effective date of personnel qualifications. – Consistency with federal regulations.

Under this section, personnel qualifications in Subsections 4226.54(c) and 4226.56(a) will apply to service coordinators and early interventionists hired or promoted after the date of this regulation’s final publication. The federal regulations, at 34 CFR Section 303.361(g), authorize states, in areas where there is a shortage of qualified personnel, to hire people who don’t currently meet the requirements. To be consistent with the federal regulations, a new subsection should be added which includes or references this federal provision.

29. Section 4226.62. MDE. – Consistency with federal regulations; Reasonableness; Clarity.

Subsection (a)

Subsection (a)(2) requires that the “initial MDE is conducted by personnel independent of service provision.” The requirement for an independent evaluation team could be problematic in counties where there are not enough qualified personnel to provide services, as well as independent evaluations. What will happen if there are no qualified independent personnel to conduct an evaluation, or the parents are comfortable with and who have used or want to use the service provider doing the evaluation? Is there a waiver provision that can be applied in these circumstances?

Subsection (b)

Subsection (b)(1)(iii)(C)(2) lists the parties who will be involved in the annual multidisciplinary evaluation (MDE). This subsection requires that “at least one professional” be present. The definition of “multidisciplinary” includes two or more disciplines. To be consistent, the final-form regulation should require that “at least two” professionals be involved in the MDE.

30. Section 4226.63. Nondiscriminatory procedures. – Clarity.

Paragraph (1) requires that all material relevant to evaluation and assessment procedures be presented to the parents in their native language “unless it is clearly not feasible to do so.” For clarity, this section should include examples of when communication with parents in their native language would be considered “clearly not feasible.” Similar changes should be made to Subsection 4226.97(c)(2).

31. Section 4226.72. Procedures for IFSP development, review and evaluation. – Consistency with federal regulations; Clarity.

Subsection (b)

Subsection (b) states a “review may be carried out by a meeting or by *another means* that is acceptable to the parents and the other participants.” (Emphasis added.) What are examples of “another means” that parents and participants can choose instead of a meeting? For clarity, this regulation should include all methods of participation that a parent or participant may choose when evaluating the IFSP.

Additionally, federal regulations, at 34 CFR Section 303.342(b)(1), state that the family may request a review of the IFSP more frequently than every six months. The language in this section should be revised to be consistent with that in federal regulations.

Subsection (d)

The phrase “early enough” in Paragraph (3) is used to describe the time frame that should be followed when providing written notice to parents and other participants of meeting dates. For clarity, the final-form regulation should specify a minimum amount of time required for “early enough.”

32. Section 4226.73. Participants in IFSP meetings and periodic reviews. – Clarity.

Subsection (a) lists the required participants in the annual IFSP meeting. Commentators have expressed concern that the service coordinator must have the authority to commit resources to carry out the recommendations in the IFSP. Can a legal entity deny services agreed upon as part of an IFSP? If so, what happens regarding the recommendations?

33. Section 4226.74. Content of IFSP. – Consistency with federal regulations; Clarity.

Paragraph (1)

Paragraph (1) describes what information should be included in an IFSP. The last sentence states that all information should be “based on objective criteria.” Federal regulations, at 34 CFR Section 303.344(a)(2), do not include this language. This phrase is also redundant with Subparagraph (1)(ii), and should be deleted for consistency with federal regulations.

Paragraph (2)

This paragraph describes the “family information” that is to be included in the IFSP. Federal regulations, at 34 CFR Section 303.344(b), require this information “with the concurrence of the family.” For consistency with the federal regulations, the phrase “with the concurrence of the family” should be added to Paragraph (2).

Paragraph (7)

In Subsection (i) of Paragraph (7), the phrase “as soon as possible” is used to describe the projected dates for initiation of services that should begin after the development of the IFSP. Although this language is consistent with federal regulations, at 34 CFR Section 303.344(f)(1), the phrase “as soon as possible” is vague and open to interpretation. Clarity would be improved by adding a maximum time frame (e.g. but no later than) after “as soon as possible.”

Paragraph (9)

Subsection (i) lists the steps to be followed as a child transitions from early intervention services to special education services. The corresponding federal requirements, at 34 CFR Section 303.344(h)(2)(i) – (iii), specifically require: discussion with, and training of, parents; procedures to help the child adjust to a new setting and function in that setting; and transfer of evaluation and assessment information (with parental consent) to the local education agency. For consistency with federal regulations, the provisions at 34 CFR Section 303.344(h)(2)(i) – (iii) should be included or cross referenced in the final-form regulation.

Additionally, Paragraph (9)(II)(c)(B) contains a typographical error. The age requirement should be 3, not 23.

34. Section 4226.94. Mediation. – Clarity.

Subsection (d) states “the mediation process shall be scheduled *in a timely manner*.” (Emphasis added.) The final-form regulation should specify the maximum acceptable time frame and delete “in a timely manner.”

35. Section 4226.100. Administrative resolution of individual child complaints by an impartial decisionmaker. – Clarity.

The use of the word “timely” in this Section is unclear. Is there a specific time frame that a legal entity must abide by when implementing procedures for the resolution of service complaints by parents? If so, the regulation should delete “timely” and specify the maximum time frame.

36. Section 4226.103. Convenience of proceedings; timelines. – Consistency with federal regulations; Clarity.

There are no timelines included in this section, despite the reference in the title. Federal regulations, at 34 CFR Section 303.423(b), specify a 30-day timeline. This section should include the provisions outlined in the federal regulations relating to a timeline for completing the proceedings and mailing a written decision to each of the parties.

37. Section 4226.105. Surrogate parents. – Consistency with statute; Clarity.

Commentators have noted that the following three provisions, found in this section in the 1997 draft regulation given to stakeholders, have been omitted: the protection of surrogate parents from liability; authorization for the county to appoint a surrogate parent at the request of a parent; and language that stated, “a foster parent is eligible to serve as a surrogate if all requirements for surrogate are met.” Why were these provisions not included in the proposed regulation?

Subsection (f)(3) refers to a “long-term parental relationship.” What period of time qualifies as “long-term”?

Subsection (f)(5) states that a foster parent will qualify as a surrogate if, “the foster parent has no interest that would conflict with the interests of the child.” What would constitute a conflict of interest for the foster parent?