EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 120, "Early ACCESS Integrated System of Early Intervention Services," Iowa Administrative Code, and adopts a new Chapter 120 with the same title.

The sequence and format of the proposed new Chapter 120 parallel the pertinent federal regulations under Part C of the Individuals with Disabilities Education Act. Federal statutory and regulatory changes require most of the substantive revisions in proposed Chapter 120, including state monitoring and general supervision, timelines for referrals for evaluation and assessment, and the conduct and content of evaluations and assessments. The changes are necessary to allow Iowa to continue to draw down federal Part C dollars, and are family-friendly in that they streamline the process by which a family may access services under the chapter for a child under the age of three years.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the February 22, 2012, Iowa Administrative Bulletin as ARC 0018C. Public comments were allowed until 4:30 p.m. on March 15, 2012. Two public hearings were held, one on March 13 and the other on March 15, and no persons attended. No written or oral comments were received. However, rule 281—120.30(34CFR303) is being revised to add more specificity to what is meant by "public agency." Other than that change, these amendments are identical to those published under Notice.

These amendments shall become effective May 23, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement the 2004 amendments to the Individuals with Disabilities Education Act, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

The following amendment is adopted.

Rescind **281—Chapter 120** and adopt the following **new** chapter in lieu thereof:

CHAPTER 120

EARLY ACCESS INTEGRATED SYSTEM OF

EARLY INTERVENTION SERVICES

DIVISION I

PURPOSE AND APPLICABILITY

281—120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services.

120.1(1) *Establishment of Early ACCESS Integrated System of Early Intervention Services.* This chapter establishes Iowa's Early ACCESS Integrated System of Early Intervention Services, which is Iowa's implementation of Part C of the Individuals with Disabilities Education Act.

120.1(2) *Purposes.* The purposes of this chapter are as follows:

a. Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

b. Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance

coverage);

c. Enhance Iowa's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

d. Enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care.

120.1(3) *Overall outcomes.* The overall intended outcome of Early ACCESS is to provide early intervention resources, supports, and services to eligible children and their families within a coordinated, integrated system. Early ACCESS is aimed at the following four outcomes:

a. Enhancing the development of eligible children;

b. Reducing educational costs to society by minimizing the need for special education and related services after such children reach school age;

c. Preparing eligible children for school entry; and

d. Enhancing the capacity of families to meet the unique needs of their eligible children.

281—120.2(34CFR303) Applicability of this chapter. The provisions of this chapter apply to the Iowa department of education, as the state lead agency, the signatory agencies identified in subrule 120.39(15), and any early intervention service (EIS) provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act. The chapter applies to all

children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in rules 281—120.6(34CFR303) and 281—120.21(34CFR303), and their families. The provisions of this chapter do not apply to any child with a disability receiving a "free appropriate public education" or "FAPE" under 34 CFR Part 300.

281—120.3(34CFR303) Applicable federal regulations.

120.3(1) *General.* The following regulations apply to this chapter:

a. The regulations at 34 CFR Part 303.

b. The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

120.3(2) *References in EDGAR.* In applying EDGAR regulations cited in subrule 120.3(1), any reference to:

a. "State educational agency" means the Iowa department of education, the lead agency under this chapter; and

b. "Education records" or "records" means early intervention records.

DIVISION II

DEFINITIONS

281—120.4(34CFR303) Act. "Act" means the Individuals with Disabilities Education Act. Part B of the Act, 34 CFR Part 300, establishes special education for children with disabilities who are age three to the maximum age in Iowa Code section 256B.8. Part B of the Act includes early childhood special education under Section 619 of the Act. Part C of the Act, 34 CFR Part 303, establishes the infants and toddlers program for eligible individuals from birth to age three.

281—120.5(34CFR303) At-risk infant or toddler. "At-risk infant or toddler" means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

281—120.6(34CFR303) Child. "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 rule 281—120.21(34CFR303).

281—120.7(34CFR303) Consent.

120.7(1) *Obtaining consent.* "Consent" is obtained when all of the following conditions are satisfied:

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 rule 281—120.25(34CFR303);

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; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

120.7(2) *Revoking consent.* If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

281—120.8(34CFR303) Council. "Council" means the Iowa council for Early ACCESS, which is the state interagency coordinating council that meets the requirements

of Division VIII of this chapter.

281—120.9(34CFR303) Day. "Day" means calendar day, unless otherwise indicated.

281—120.10(34CFR303) Developmental delay. "Developmental delay," when used with respect to a child residing in a state, has the meaning given that term by the state under rule 281—120.111(34CFR303).

281—120.11(34CFR303) Early intervention service program. "Early intervention service program" or "EIS program" means an entity designated by the lead agency for reporting under rules 281—120.700(34CFR303) through 281—120.702(34CFR303).

281—120.12(34CFR303) Early intervention service provider.

120.12(1) *General.* "Early intervention service provider" or "EIS provider" means 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 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 Act.

120.12(2) *Responsibilities.* An EIS provider is responsible for:

a. Participating in the multidisciplinary individualized family service plan (IFSP) 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 IFSP;

b. Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and

c. Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

120.12(3) *Rule of construction.* "Early ACCESS service provider" is a synonym for "early intervention service provider."

281—120.13(34CFR303) Early intervention services.

120.13(1) *General.* "Early intervention services" means developmental services that:

a. Are provided under public supervision;

b. Are selected in collaboration with the parents;

c. Are provided at no cost, except, subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303), where federal or state law provides for a system of payments by families, including, if applicable, a schedule of sliding fees;

d. 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, as identified by the IFSP team, in any one or more of the following areas, including:

(1) Physical development;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development;

e. Meet the standards of the state in which the early intervention services are provided, including but not limited to the then-applicable version of Iowa's Early

Learning Standards and the requirements of Part C of the Act;

f. Include services identified under subrule 120.13(2);

g. Are provided by qualified personnel (as that term is defined in rule 281—120.31(34CFR303)), including the types of personnel listed in subrule 120.13(3);

h. To the maximum extent appropriate, are provided in natural environments, as defined in rule 281—120.26(34CFR303) and consistent with rule 281—120.126(34CFR303) and subrule 120.344(4); and

i. Are provided in conformity with an IFSP adopted in accordance with Section 636 of the Act and rule 281—120.20(34CFR303).

120.13(2) *Types of early intervention services.* Subject to subrule 120.13(4), early intervention services include the following services defined in this subrule:

a. Assistive technology device and assistive technology service are defined as follows:

(1) "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 an infant or toddler with a disability. "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.

(2) "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 service" includes:

1. The evaluation of the needs of an infant or toddler with a disability,

including a functional evaluation of the infant or toddler with a disability in the child's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and

6. 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.

b. "Audiology services" includes:

(1) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;

(2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(3) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

(4) Provision of auditory training, aural rehabilitation, speech reading and

listening devices, orientation and training, and other services;

(5) Provision of services for prevention of hearing loss; and

(6) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

c. "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

d. "Health services" has the meaning given the term in rule 281—120.16(34CFR303).

e. "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.

f. "Nursing services" includes:

(1) 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;

(2) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(3) The administration of medications, treatments, and regimens prescribed by a licensed physician.

g. "Nutrition services" includes:

(1) Conducting individual assessments in:

1. Nutritional history and dietary intake;

2. Anthropometric, biochemical, and clinical variables;

3. Feeding skills and feeding problems; and

4. Food habits and food preferences;

(2) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in subparagraph 120.13(2)*"g"*(1); and

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

h. "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:

(1) Identification, assessment, and intervention;

(2) 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

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

i. "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:

(1) Screening, evaluation, and assessment of children to identify movement dysfunction;

(2) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

j. "Psychological services" includes:

(1) Administering psychological and developmental tests and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and

(4) 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.

k. "Service coordination services" has the meaning given the term in rule 281—120.34(34CFR303).

l. "Sign language and cued language services" includes teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

m. “Social work services” includes:

(1) Making home visits to evaluate a child’s living conditions and patterns of parent-child interaction;

(2) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;

(3) 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;

(4) 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

(5) 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.

n. “Special instruction” includes:

(1) The design of learning environments and activities that promote the infant’s or toddler’s acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(2) 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;

(3) Providing families with information, skills, and support related to

enhancing the skill development of the child; and

(4) Working with the infant or toddler with a disability to enhance the child's development.

o. "Speech-language pathology services" includes:

(1) 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;

(2) 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

(3) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

p. "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.

q. "Vision services" means:

(1) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(3) Communication skills training, orientation and mobility training for all

environments, visual training, and additional training necessary to activate visual motor abilities.

120.13(3) *Qualified personnel.* The following are the types of qualified personnel who provide early intervention services under this chapter:

a. Audiologists.

b. Family therapists.

c. Nurses.

d. Occupational therapists.

e. Orientation and mobility specialists.

f. Pediatricians and other physicians for diagnostic and evaluation purposes.

g. Physical therapists.

h. Psychologists.

i. Registered dieticians.

j. Social workers.

k. Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness).

l. Speech and language pathologists.

m. Vision specialists, including ophthalmologists and optometrists.

120.13(4) *Other services.* The services and personnel identified and defined in subrules 120.13(2) and 120.13(3) 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 rule 281—120.13(34CFR303)

prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in subrule 120.13(1) or of another type of personnel that may provide early intervention services in accordance with this chapter, provided such personnel meet the requirements in rule 281—120.31(34CFR303).

120.13(5) *Rule of construction.* "Early ACCESS services" is a synonym for the services described in this rule.

281—120.14(34CFR303) Elementary school. "Elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—120.15(34CFR303) Free appropriate public education. "Free appropriate public education" or "FAPE," as used in rule 281—120.521(34CFR303), means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the state educational agency (SEA), including the requirements of Part B of the Act; that include an appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

281—120.16(34CFR303) Health services.

120.16(1) *General.* "Health services" means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this chapter during the time that the child is eligible to receive early intervention services.

120.16(2) *Examples of health services.* "Health services" includes:

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

b. 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.

120.16(3) *Services excluded.* "Health services" does not include:

a. Services that are:

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

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

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

1. Nothing in this chapter 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 IFSP as being needed to meet the child's developmental outcomes.

2. Nothing in this chapter 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;

b. Devices (such as heart monitors, respirators and oxygen, and gastrointestinal

feeding tubes and pumps) necessary to control or treat a medical condition; and

c. Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

281—120.17(34CFR303) Homeless children. "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, 42 U.S.C. 11431 et seq.

281—120.18(34CFR303) Include; including. "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.

281—120.19(34CFR303) Indian; Indian tribe. "Indian" means an individual who is a member of an Indian tribe. "Indian tribe" means any federal or state Indian tribe, band, rancheria, pueblo, colony, community, or settlement, 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.). 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.

281—120.20(34CFR303) Individualized family service plan. "Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an infant or toddler with a disability under this chapter and the infant's or toddler's family that is based on the evaluation and assessment described in rule 281—

120.321(34CFR303); that includes the content specified in rule 281—120.344(34CFR303); that is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with rule 281—120.420(34CFR303)); and that is developed in accordance with the IFSP procedures in rules 281—120.342(34CFR303), 281—120.343(34CFR303), and 281—120.345(34CFR303).

281—120.21(34CFR303) Infant or toddler with a disability. "Infant or toddler with a disability" means an individual under three years of age who needs early intervention services because the individual:

120.21(1) Is experiencing a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

a. Cognitive development;

b. Physical development, including vision and hearing;

c. Communication development;

d. Social or emotional development;

e. Adaptive development; or

120.21(2) Has a diagnosed physical or mental condition that:

a. Has a high probability of resulting in developmental delay; and

b. 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.

281—120.22(34CFR303) Lead agency. "Lead agency" is the Iowa department of education, as designated by the governor, to receive funds under Section 643 of the Act and to administer the state's responsibilities under Part C of the Act.

281—120.23(34CFR303) Local educational agency.

120.23(1) *General.* "Local educational agency" or "LEA" means a public board of education or other public authority legally constituted within the 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 the state, or for a combination of school districts or counties as are recognized in the state as an administrative agency for its public elementary schools or secondary schools.

120.23(2) *Educational service agencies and other public institutions or agencies.* "Educational service agencies and other public institutions or agencies" includes the following:

a. "Educational service agency," defined as a regional public multiservice agency:

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

(2) 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.

b. 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.

c. Entities that meet the definition of "intermediate educational unit" or "IEU" in Section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition, an "intermediate educational unit" or "IEU" means any public authority other than an LEA that:

(1) Is under the general supervision of the state educational agency;

(2) Is established by state law for the purpose of providing FAPE on a regional basis; and

(3) Provides special education and related services to children with disabilities within the state.

120.23(3) *BIE-funded schools.* "BIE-funded schools" includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA 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.

281—120.24(34CFR303) Multidisciplinary. "Multidisciplinary" means the involvement of two or more separate disciplines or professions and, with respect to:

1. Evaluation of the child in rule 281—120.113(34CFR303) and subrule 120.321(1) and assessments of the child and family in subrule 120.321(1), may include one individual who is qualified in more than one discipline or profession; and

2. The IFSP team in rule 281—120.340(34CFR303) 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 subrule 120.343(1)).

281—120.25(34CFR303) Native language.

120.25(1) *Limited English proficiency.* "Native language," when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of 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 paragraph 120.25(1)*"b"*; and

b. For evaluations and assessments conducted pursuant to subrule 120.321(1), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

120.25(2) *Deaf or hard of hearing; blind or visually impaired; no written language.* "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).

281—120.26(34CFR303) Natural environments. "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 rule 281—120.126(34CFR303).

281—120.27(34CFR303) Parent.

120.27(1) *General.* "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 rule 281—120.422(34CFR303) or Section 639(a)(5) of the Act.

120.27(2) *Rules of construction and application.* The following rules are to be used to determine whether a party qualifies as a "parent."

a. Except as provided in paragraph 120.27(2)*"b,"* the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under subrule 120.27(1) to act as a parent, must be presumed to be the parent for purposes of rule 281—120.27(34CFR303) unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs 120.27(1)*"a"* through *"d"* 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.

281—120.28(34CFR303) Parent training and information center. "Parent training and information center" means a center assisted under Section 671 or 672 of the Act.

281—120.29(34CFR303) Personally identifiable information. "Personally identifiable information" means personally identifiable information as defined in 34 CFR 99.3, except that the term "student" in the definition of "personally identifiable information" in 34 CFR 99.3 means "child" as used in this chapter and any reference to "school" means "EIS provider" as used in this chapter.

281—120.30(34CFR303) Public agency. As used in this chapter, "public agency" means the lead agency and any other agency or political subdivision of the state. The particular public agency serving each infant or toddler and that infant or toddler's family shall be determined by the particular Early ACCESS needs of each infant and toddler and pursuant to the interagency agreements established under this chapter. Disputes about which agency will serve a particular infant or toddler shall be resolved by the mechanisms that those agreements contain.

281—120.31(34CFR303) Qualified personnel. "Qualified personnel" means personnel who have met state-approved or state-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.

281—120.32(34CFR303) Scientifically based research. "Scientifically based research" has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965 (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to "education activities and programs" refers to "early intervention services."

281—120.33(34CFR303) Secretary. "Secretary" means the Secretary of the United States Department of Education.

281—120.34(34CFR303) Service coordination services (case management).

120.34(1) *General.*

a. As used in this chapter, "service coordination services" 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 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:

(1) Coordinating all services required under this chapter across agency lines; and

(2) Serving as the single point of contact for carrying out the activities described in this subrule and subrule 120.34(2).

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

(1) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this chapter;

(2) Using family-centered practices in all contacts with families; and

(3) Coordinating the other services identified in the IFSP under subrule 120.344(5) that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.

120.34(2) *Specific service coordination services.* Service coordination services include:

a. Explaining the system of services and resources called Early ACCESS;

b. Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

c. 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;

d. Coordinating evaluations and assessments;

e. Facilitating and participating in the development, review, and evaluation of IFSPs;

f. Conducting referral and other activities to assist families in identifying available EIS providers;

g. Coordinating, facilitating, and monitoring the delivery of services required under this chapter to ensure that the services are provided in a timely manner;

h. Conducting follow-up activities to determine that appropriate Part C services are being provided;

i. Informing families of their rights and procedural safeguards, as set forth in Division VI of this chapter and related resources;

j. Coordinating the funding sources for services required under this chapter; and

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

120.34(3) *Use of the term "service coordination" or "service coordination services."* 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 rules 281—120.501(34CFR303) through 281—120.521(34CFR303) (payor of last resort provisions).

120.34(4) *Appointment of service coordinator.* A service coordinator shall be appointed to families as soon as possible after a referral is received. Continuity of services for the child and the child's family shall be a consideration in the determination of whether a change is made in the service coordinator at any time following initial appointment.

120.34(5) *Required service coordinator qualifications.* In addition to the requirements of subrule 120.119(1), a service coordinator must be a person who has completed a competency-based training program with content related to knowledge and understanding of eligible children, these rules, the nature and scope of services in Early ACCESS in the state, and the system of payments for services, as well as service coordination responsibilities and strategies. The competency-based training program,

approved by the department, shall include different training formats and differentiated training to reflect the background and knowledge of the trainees, including those persons who are state-licensed professionals whose scope of practice includes service coordination. The department or its designee shall determine whether service coordinators have successfully completed the training.

281—120.35(34CFR303) State. "State" means each of the 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

281—120.36(34CFR303) State educational agency. "State educational agency" or "SEA" means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary schools and secondary schools or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. "State educational agency" includes the agency that receives funds under Sections 611 and 619 of the Act to administer the state's responsibilities under Part B of the Act. In Iowa, the SEA is the Iowa department of education.

281—120.37(34CFR303) Ward of the state.

120.37(1) *General.* Subject to subrules 120.37(2) and 120.37(3), "ward of the state" means a child who, as determined by the state where the child resides, is:

a. A foster child;

b. A ward of the state; or

c. In the custody of a public child welfare agency.

120.37(2) *Exception.* "Ward of the state" does not include a foster child who has a

foster parent who meets the definition of "parent" in rule 281—120.27(34CFR303).

120.37(3) *Interpretive note.* "Ward of the state" is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—120.38(34CFR303) Other definitions used in this chapter. The following terms apply to this chapter:

120.38(1) *Area education agency.* "Area education agency" or "AEA" is a political subdivision of the state organized pursuant to Iowa Code chapter 273.

120.38(2) *Board.* "Board" means the Iowa state board of education.

120.38(3) *Community partners.* "Community partners" means local providers of signatory agencies, as well as other public or private community programs or agencies, including Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS, as described in rule 281—120.803(34CFR303).

120.38(4) *Department.* "Department" means the Iowa department of education.

120.38(5) *Director of education.* "Director of education" means the state director of the Iowa department of education.

120.38(6) *Early childhood Iowa area.* "Early childhood Iowa area" means a partnership in a local community with broad representation to lead collaborative efforts involving education, health, and human services programs and services on behalf of children, families and other citizens residing in the local community's geographic area. An early childhood Iowa area mobilizes individuals and their communities to achieve desired results in order to improve the well-being and quality of life for families with

young children from birth through the age of five years.

120.38(7) *Early childhood special education.* "Early childhood special education" or "ECSE" means special education and related services under Part B of the Act for those individuals with disabilities younger than the age of six.

120.38(8) *Eligible child.* "Eligible child" is a synonym for "infant or toddler with a disability," as defined in rule 281—120.21(34CFR303).

120.38(9) *Family.* "Family" means the persons who are primarily responsible for the care and nurturing in a child's daily life, including biological or adoptive parents, grandparents, guardians, persons acting as parents, siblings, stepparents, or unmarried partners of parents.

120.38(10) *GEPA.* "GEPA" is an acronym for the General Education Provisions Act.

120.38(11) *Grantee.* "Grantee" means a recipient of funds under Part C of the Act or state funds designated for Early ACCESS that has the fiscal and legal obligation to ensure that the Early ACCESS system is implemented regionally. The term "grantee" shall not be construed in a manner that conflicts with the Act.

120.38(12) *Individualized family service plan team.* "Individualized family service plan team" or "IFSP team" includes the members described in subrule 120.343(1).

120.38(13) *Informed clinical opinion.* "Informed clinical opinion" means the integration of the results of evaluations, direct observations in various settings, and varied activities with the experience, knowledge, and skills of qualified personnel.

120.38(14) *School year.* "School year" means the period during which students

who are 3 years of age through 21 years of age attend school.

120.38(15) *Signatory agency.* "Signatory agency" means the departments of education, public health, and human services and the child health specialty clinics.

120.38(16) *Signature.* "Signature" has the meaning given the term in Iowa Code section 4.1(39).

281—120.39 to **120.99** Reserved.

DIVISION III

STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

281—120.100(34CFR303) General authority. The Secretary, in accordance with Part C of the Act, makes grants to states (from their allotments under Section 643 of the Act) to assist each state to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

281—120.101(34CFR303) State eligibility—requirements for a grant under Part C of the Act. In order to be eligible for a grant under Part C of the Act for any fiscal year, the state must meet the following conditions:

120.101(1) *Assurances regarding early intervention services and a statewide system.* The state must provide the following assurances to the Secretary that:

a. The state has adopted a policy that appropriate early intervention services, as defined in rule 281—120.13(34CFR303), are available to all infants and toddlers with disabilities in the state and their families, including:

(1) Indian infants and toddlers with disabilities and their families residing on a

reservation geographically located in the state;

(2) Infants and toddlers with disabilities who are homeless children and their families; and

(3) Infants and toddlers with disabilities who are wards of the state; and

b. The state has in effect a statewide system of early intervention services that meets the requirements of Section 635 of the Act, including policies and procedures that address, at a minimum, the components required in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

120.101(2) *State application and assurances.* The state must provide information and assurances to the Secretary, in accordance with 34 CFR §303.200 through 34 CFR §303.236, including:

a. Information that shows that the state meets the application requirements in rules 281—120.200(34CFR303) through 281—120.212(34CFR303); and

b. Assurances that the state also meets the requirements in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

120.101(3) *Approval before implementation.* The state must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the state's application in 34 CFR §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

281—120.102(34CFR303) State conformity with Part C of the Act. Each state that receives funds under Part C of the Act must ensure that any state rules, regulations, and policies relating to this chapter conform to the purposes and requirements of 34 CFR Part 303.

281—120.103 and **120.104** Reserved.

281—120.105(34CFR303) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under Part C of the Act.

281—120.106 to **120.109** Reserved.

281—120.110(34CFR303) Minimum components of a statewide system. Each statewide system (system) must include, at a minimum, the components described in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

281—120.111(34CFR303) State definition of developmental delay. The system must include the state's rigorous definition of developmental delay, consistent with rule 281—120.10(34CFR303) and subrule 120.203(3), that will be used by the state in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must:

120.111(1) Describe, for each of the areas listed in subrule 120.21(1), the evaluation and assessment procedures, consistent with rule 281—120.321(34CFR303), that will be used to measure a child's development; and

120.111(2) Specify that 25 percent is the applicable level of developmental delay in functioning or other comparable criteria to constitute a developmental delay in one or more of the developmental areas identified in subrule 120.21(1).

281—120.112(34CFR303) Availability of early intervention services. Each system must include a state policy that is in effect and that ensures that appropriate 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, including:

120.112(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state; and

120.112(2) Infants and toddlers with disabilities who are homeless children and their families.

281—120.113(34CFR303) Evaluation, assessment, and nondiscriminatory procedures.

120.113(1) *General.* Subject to subrule 120.113(2), each system must ensure the performance of the following:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the state; and

b. 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.

120.113(2) *Rule of construction.* The evaluation and family-directed identification required in subrule 120.113(1) must meet the requirements of rule 281—120.321(34CFR303).

281—120.114(34CFR303) Individualized family service plan (IFSP). Each system must ensure, for each infant or toddler with a disability and the infant's or toddler's family in the state, that an IFSP, as defined in rule 281—120.20(34CFR303), is developed and implemented that meets the requirements of rules 281—120.340(34CFR303) through 281—120.345(34CFR303), and that includes service coordination services, as defined in rule 281—120.34(34CFR303).

281—120.115(34CFR303) Comprehensive child find system. Each system must

include a comprehensive child find system that meets the requirements in rules 281—120.302(34CFR303) and 281—120.303(34CFR303).

281—120.116(34CFR303) Public awareness program. Each system must include a public awareness program that focuses on the early identification of infants and toddlers with disabilities; and provides information to parents of infants and toddlers through primary referral sources in accordance with rule 281—120.301(34CFR303).

281—120.117(34CFR303) Central directory. Each system must include a central directory that is accessible to the general public (i.e., through the department's Web site and other appropriate means) and includes accurate, up-to-date information about:

120.117(1) Public and private early intervention services, resources, and experts available in the state;

120.117(2) 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

120.117(3) Research and demonstration projects being conducted in the state relating to infants and toddlers with disabilities.

281—120.118(34CFR303) Comprehensive system of personnel development (CSPD). Each system must include a comprehensive system of personnel development (CSPD), including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state.

120.118(1) *Required elements.* A CSPD must include:

a. Training personnel to implement innovative strategies and activities for the

recruitment and retention of EIS providers;

b. Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this chapter; and

c. Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under Section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

120.118(2) *Optional elements.* A CSPD 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 this chapter 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.

281—120.119(34CFR303) Personnel standards.

120.119(1) *General.* Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained.

120.119(2) *Qualification standards.* The policies and procedures required in

subrule 120.119(1) must provide for the establishment and maintenance of qualification standards that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

120.119(3) *Use of paraprofessionals and assistants.* Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with state law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.

281—120.120(34CFR303) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. Iowa's system includes the designation of the Iowa department of education as lead agency, with a single line of responsibility for the following items:

120.120(1) *General supervision.* The department is responsible for the following:

a. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.

b. The monitoring of programs and activities used by the state to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act) to ensure that the state complies with Part C of the Act, including:

(1) Monitoring agencies, institutions, organizations, and EIS providers used by the state to carry out Part C of the Act;

(2) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these rules;

(3) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

(4) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and

(5) Conducting the activities in subparagraphs 120.120(1)*"a"*(1) through (4), consistent with rules 281—120.700(34CFR303) through 281—120.707(34CFR303), and any other activities required by the state under those rules.

120.120(2) *Identification and coordination of resources.* The identification and coordination of all available resources for early intervention services within the state, including those from federal, state, local, and private sources, consistent with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(3) *Assignment of financial responsibility.* The assignment of financial responsibility in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(4) *Procedures concerning timely provision of services.* The development of procedures in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303) to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

120.120(5) *Agency-level dispute resolution.* The resolution of intra-agency and

interagency disputes in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(6) *Methods of establishing financial responsibility.* The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with rule 281—120.511(34CFR303), that define the financial responsibility of each agency for paying for early intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.121(34CFR303) Policy for contracting or otherwise arranging for services. Each system must include 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 state, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must:

1. Include a requirement that all early intervention services must meet state standards and be consistent with the provisions of this chapter; and

2. Be consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

281—120.122(34CFR303) Reimbursement procedures. Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.123(34CFR303) Procedural safeguards. Each system must include

procedural safeguards that meet the requirements of rules 281—120.400(34CFR303) through 281—120.449(34CFR303).

281—120.124(34CFR303) Data collection.

120.124(1) *General.* Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in subrule 120.124(2) and rules 281—120.700(34CFR303) through 281—120.702(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

120.124(2) *Required description.* The data system required in subrule 120.124(1) must include a description of the process that the state uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this chapter, including a description of the state's sampling methods, if sampling is used, for reporting the data required by the Secretary under Sections 616 and 618 of the Act and rules 281—120.700(34CFR303) through 281—120.707(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

281—120.125(34CFR303) State interagency coordinating council. Each system must include a state interagency coordinating council meeting the requirements of rules 281—120.600(34CFR303) through 281—120.605(34CFR303).

281—120.126(34CFR303) Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with rule 281—120.13(34CFR303) (early intervention services), rule 281—120.26(34CFR303) (natural environments), and subrule 120.344(4) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided:

1. To the maximum extent appropriate, in natural environments; and

2. In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

281—120.127 to **120.199** Reserved.

DIVISION IV

STATE APPLICATION AND ASSURANCES

281—120.200(34CFR303) State application and assurances. Each application must contain the specific state application requirements (including certifications, descriptions, methods, and policies and procedures) required in rules 281—120.201(34CFR303) through 281—120.212(34CFR303) and the assurances required in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

281—120.201(34CFR303) Designation of lead agency. Each application must include the designation of the department as the lead agency that will be responsible for the administration of funds provided under Part C of the Act.

281—120.202(34CFR303) Certification regarding financial responsibility. Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under rule 281—120.511(34CFR303) and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in rules 281—120.500(34CFR303) through 281—120.521(34CFR303) and are current as of the date of submission of the certification.

281—120.203(34CFR303) Statewide system and description of services. Each application must include the following items:

120.203(1) *Description of services.* A description of services to be provided under this chapter to infants and toddlers with disabilities and their families through the state's system;

120.203(2) *Identification and coordination of resources.* The state's policies and procedures regarding the identification and coordination of all available resources within the state from federal, state, local, and private sources as required under Division VII of this chapter and including:

a. Policies or procedures adopted by the state as its system of payments that meet the requirements in rules 281—120.510(34CFR303), 281—120.520(34CFR303), and 281—120.521(34CFR303); and

b. Methods used by the state to implement the requirements in subrule 120.511(2); and

120.203(3) *Rigorous definition of developmental delay.* The state's rigorous definition of developmental delay, as required under rule 281—120.111(34CFR303).

281—120.204 Reserved.

281—120.205(34CFR303) Description of use of funds.

120.205(1) *General.* Each application must include a description of the uses for funds under this chapter for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the council and include the information required in subrules 120.205(2) through 120.205(5).

120.205(2) Reserved.

120.205(3) *Maintenance and implementation activities.* Each application must include a description of the nature and scope of each major activity to be carried out

under Part C of the Act, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds to be spent for each activity.

120.205(4) *Direct services.* Each application must include a description of any direct services that the state expects to provide to infants and toddlers with disabilities and their families with funds under this chapter, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds under this chapter to be used for the provision of each direct service.

120.205(5) *Activities by other public agencies.* If other public agencies are to receive funds under Part C of the Act, the application must include the name of each agency expected to receive funds, the approximate amount of funds each agency will receive, and a summary of the purposes for which the funds will be used.

281—120.206(34CFR303) Referral policies for specific children. Each application must include the state's policies and procedures that require the referral for early intervention services under this chapter of specific children under the age of three, as described in subrule 120.303(2).

281—120.207(34CFR303) Availability of resources. Each application must include a description of the procedure used by the state to ensure that resources are made available under this chapter for all geographic areas within the state.

281—120.208(34CFR303) Public participation policies and procedures.

120.208(1) *Application.* At least 60 days prior to being submitted to the department, each application for funds (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the state for at least

a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

120.208(2) *State policies and procedures.* Each application must include a description of the policies and procedures used by the state to ensure 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 Act and these rules, the lead agency:

a. Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);

b. Provides notice of the hearings held in accordance with paragraph 120.208(2)*"a"* at least 30 days before the hearings are conducted to enable public participation; and

c. Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules.

281—120.209(34CFR303) Transition to preschool and other programs.

120.209(1) *Application requirements.* The department must include the following in its application:

a. A description of the policies and procedures the state will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this chapter to:

(1) Preschool or other appropriate services (for toddlers with disabilities); or

(2) Exiting the program for infants and toddlers with disabilities.

b. A description of how the state will meet each of the requirements in subrules 120.209(2) through 120.209(6).

c. An intra-agency agreement between the department's program that administers Part C of the Act and the department's program that administers Section 619 of Part B of the Act (early childhood special education). To ensure a seamless transition between services under Parts C and B of the Act, the intra-agency agreement must address how the department will meet the requirements of subrules 120.209(2) through 120.209(6) (including any policies adopted by the lead agency under 34 CFR §303.401(d) and (e)), subrule 120.344(8), rule 281—41.124(256B,34CFR300), and 281—subrules 41.101(2) and 41.321(6).

d. Any policy the department has adopted under 34 CFR §303.401(d) and (e).

120.209(2) *Notification to the department and appropriate AEA.*

a. The department must ensure that:

(1) Subject to paragraph 120.209(2)*"b,"* not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler notifies the department and the AEA for the area in which the toddler resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law;

(2) Subject to paragraph 120.209(2)*"b,"* if the toddler is determined to be eligible for Early ACCESS services more than 45 but less than 90 days before that

toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler, as soon as possible after determining the child's eligibility, notifies the department and the AEA for the area in which the toddler with a disability resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law; or

(3) Subject to paragraph 120.209(2)*"b,"* if a toddler is referred to Early ACCESS under rules 281—120.302(34CFR303) and 281—120.303(34CFR303) fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the public agency that would be responsible for determining the child's eligibility under this chapter, with parental consent required under rule 281—120.414(34CFR303), refers the toddler to the department and the AEA for the area in which the toddler resides; however, no agency is required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

b. The department must ensure that the notification required under subparagraphs 120.209(2)*"a"*(1) and (2) is consistent with any policy that the state has adopted, under 34 CFR §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

120.209(3) *Conference to discuss services.* The department must ensure that:

a. If a toddler with a disability may be eligible for preschool services under Part B of the Act, the public agency responsible for Early ACCESS services, with the approval of the family of the toddler, convenes a conference, among that agency, the family, and the AEA of the toddler's residence not fewer than 90 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; and

b. If the public agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the public agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among that agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

120.209(4) *Transition plan.* The department must ensure that for all toddlers with disabilities:

a. The appropriate public agency reviews 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 and each family of a toddler with a disability who is served under this chapter is included in the development of the transition plan required under this rule and subrule 120.344(8);

b. The appropriate public agency establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday; and

c. The transition plan in the IFSP includes, consistent with subrule 120.344(8), as appropriate:

(1) Steps for the toddler with a disability and the toddler's family to exit from the Part C program; and

(2) Any transition services that the IFSP team identifies as needed by that toddler and the toddler's family.

120.209(5) *Transition conference and meeting to develop transition plan.* Any conference conducted under subrule 120.209(3) or meeting to develop the transition plan under subrule 120.209(4) (which conference and meeting may be combined into one meeting) must meet the requirements in subrules 120.342(4), 120.342(5), and 120.343(1).

120.209(6) *Applicability of transition requirements.* The transition requirements in subparagraphs 120.209(2)*"a"*(1) and (2), paragraph 120.209(3)*"a,"* and subrule 120.209(4) apply to all toddlers with disabilities receiving services under this chapter before those toddlers turn age three.

281—120.210(34CFR303) Coordination with Head Start and Early Head Start, early education, and child care programs. Each application must contain a description of state efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), early education and child care programs, and services under this chapter. The department must participate, consistent with Section 642B(b)(1)(C)(viii) of the Head Start Act, on the state advisory council on early childhood education and care established under the Head Start Act.

281—120.211 Reserved.

281—120.212(34CFR303) Additional information and assurances. The department's application shall describe the steps the state is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by Section 427(b) of GEPA and shall supply other information and assurances as the Secretary may reasonably require.

281—120.213 to **120.219** Reserved.

281—120.220(34CFR303) Assurances satisfactory to the Secretary. The department's

application must contain assurances satisfactory to the Secretary that the state has met the requirements in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

281—120.221(34CFR303) Expenditure of funds. The department must ensure that federal funds made available to the state under Section 643 of the Act will be expended in accordance with the provisions of this chapter, including rules 281—120.500(34CFR303) and 281—120.501(34CFR303).

281—120.222(34CFR303) Payor of last resort. The department must ensure that it will comply with the requirements in rules 281—120.510(34CFR303) and 281—120.511(34CFR303).

281—120.223(34CFR303) Control of funds and property. The department must ensure that the control of funds provided under Part C of the Act, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this chapter and that a public agency will administer the funds and property.

281—120.224(34CFR303) Reports and records. The department must ensure that it will make reports in the form and containing the information that the Secretary may require and will keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this chapter, the correctness and verification of reports, and the proper disbursement of funds provided under this chapter.

281—120.225(34CFR303) Prohibition against supplanting; indirect costs.

120.225(1) *General.* The department must provide satisfactory assurance that the federal funds made available under Section 643 of the Act to the state:

a. Will not be commingled with state funds; and

b. Will be used so as to supplement the level of state and local funds

expended for infants and toddlers with disabilities and their families and in no case to supplant those state and local funds.

120.225(2) *Additional information.* To meet the requirement in subrule 120.225(1), the total amount of state and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this chapter and their families must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

a. A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this chapter; and

b. Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment.

120.225(3) *Requirement regarding indirect costs.*

a. Except as provided in paragraph 120.225(3)*"b,"* the department may not charge indirect costs to its Part C grant.

b. If approved by the department's cognizant federal agency or by the Secretary, the department must charge indirect costs through either:

(1) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or

(2) A cost allocation plan that meets the non-supplanting requirements in subrule 120.225(2) and 34 CFR Part 76 of EDGAR.

c. In charging indirect costs under paragraph 120.225(3)*"b,"* the department may

not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

281—120.226(34CFR303) Fiscal control. The department must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, federal funds paid under Part C of the Act.

281—120.227(34CFR303) Traditionally underserved groups. The department must ensure that policies and practices have been adopted to ensure that 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 that these families have access to culturally competent services within their local geographical areas.

281—120.228(34CFR303) Subsequent state application and modifications of application.

120.228(1) *Subsequent state application.* If the state has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the state meets an application requirement in this chapter, including any policy, procedure, method, or assurance filed under this chapter (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the state to have met that requirement for purposes of receiving a grant under Part C of the Act.

120.228(2) *Modification of application.* An application submitted by the state that meets the requirements of this chapter remains in effect until the state submits to the Secretary such modifications as the state determines necessary. This rule applies to a

modification of an application to the same extent and in the same manner as this subrule applies to the original application.

120.228(3) *Modifications required by the Secretary.* The Secretary may require the state to modify its application under Part C of the Act to the extent necessary to ensure the state's compliance with Part C of the Act if:

a. An amendment is made to the Act or to a federal regulation issued under the Act;

b. A new interpretation of the Act is made by a federal court or the state's highest court; or

c. An official finding of noncompliance with federal law or regulations is made with respect to the state.

281—120.229 to **120.299** Reserved.

DIVISION V

CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

281—120.300(34CFR303) General. The statewide comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in rule 281—120.100(34CFR303) must include the following components:

120.300(1) *Pre-referral activities.* The system must contain pre-referral policies and procedures that include:

a. A public awareness program as described in rule 281—120.301(34CFR303); and

b. A comprehensive child find system as described in rule 281—120.302(34CFR303).

120.300(2) *Referral activities.* The system must contain referral policies and procedures as described in rule 281—120.303(34CFR303).

120.300(3) *Post-referral activities.* The system must contain post-referral policies and procedures that ensure compliance with the timeline requirements in rule 281—120.310(34CFR303) and include:

a. Screening, if applicable, as described in rule 281—120.320(34CFR303);

b. Evaluations and assessments as described in rules 281—120.321(34CFR303) and 281—120.322(34CFR303); and

c. Development, review, and implementation of IFSPs as described in rules 281—120.340(34CFR303) through 281—120.346(34CFR303).

281—120.301(34CFR303) Public awareness program—information for parents.

120.301(1) *Preparation and dissemination.* In accordance with rule 281—120.116(34CFR303), the system must include a public awareness program that requires the department to:

a. Prepare information on the availability of early intervention services under this chapter, and other services, as described in subrule 120.301(2) and 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

b. Adopt procedures for assisting the primary referral sources described in subrule

120.303(3) in disseminating the information described in subrule 120.301(2) to parents of infants and toddlers with disabilities.

120.301(2) *Information to be provided.* The information required to be prepared and disseminated under subrule 120.301(1) must include:

a. A description of the availability of Early ACCESS services under this chapter;

b. A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and

c. A central directory, as described in rule 281—120.117(34CFR303).

120.301(3) *Information specific to toddlers with disabilities.* The public awareness program also must include a requirement that the department provide for informing parents of toddlers with disabilities of the availability of services under Section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

281—120.302(34CFR303) Comprehensive child find system.

120.302(1) *General.* The Early ACCESS system must include a comprehensive child find system that:

a. Is consistent with Part B of the Act (see 34 CFR 300.111);

b. Includes a system for making referrals to applicable public agencies or EIS providers under this chapter that:

(1) Includes timelines; and

(2) Provides for participation by the primary referral sources described in subrule 120.303(3);

c. Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this chapter that will reduce the

need for future services; and

d. Meets the requirements in subrules 120.302(2) and 120.302(3) and rules 281—120.303(34CFR303), 281—120.310(34CFR303), 281—120.320(34CFR303), and 281—120.321(34CFR303).

120.302(2) *Scope of child find.* The department, as part of the child find system, must ensure that:

a. All infants and toddlers with disabilities in the state who are eligible for early intervention services under this chapter are identified, located, and evaluated, including:

(1) Indian infants and toddlers with disabilities residing on a reservation or settlement geographically located in the state (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the state based, in part, on the information provided by them to the department under 34 CFR §303.731(e)(1)); and

(2) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the state; and

(3) Infants and toddlers with disabilities that are referenced in subrule 120.303(2); and

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

120.302(3) *Coordination.*

a. The department, with the assistance of the council, must ensure that the child find system under this chapter:

(1) Is coordinated with 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 this chapter, including Indian tribes that receive payments under this chapter, and other Indian tribes, as appropriate; and

(2) Is coordinated with the efforts of the:

1. Program authorized under Part B of the Act;

2. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act (MCHB or Title V) (42 U.S.C. 701(a));

3. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));

4. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);

5. Head Start Act (including Early Head Start programs under Section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);

6. Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);

7. Child protection and child welfare programs, 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) (42 U.S.C. 5106(a));

8. Child care programs in the state;

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

10. Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and

11. Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

b. The department, with the advice and assistance of the council, must take steps to ensure that:

(1) There will not be unnecessary duplication of effort by the programs identified in paragraph 120.302(3)*"a"*; and

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

281—120.303(34CFR303) Referral procedures.

120.303(1) *General.* The child find system described in rule 281—120.302(34CFR303) must include the state's procedures for use by primary referral sources for referring a child under the age of three to the Part C program. The procedures required in this subrule 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 in subrules 120.303(2) and 120.303(3).

120.303(2) *Referral of specific at-risk infants and toddlers.* The procedures required in subrule 120.303(1) must provide for requiring the referral of a child under the age of three who:

a. Is the subject of a substantiated case of child abuse or neglect; or

b. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

120.303(3) *Primary referral sources.* As used in this division, 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. AEAs, LEAs 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.

281—120.304 to **120.309** Reserved.

281—120.310(34CFR303) Post-referral timeline (45 calendar days).

120.310(1) *General.* Except as provided in subrule 120.310(2), any screening under rule 281—120.320(34CFR303); the initial evaluation and the initial assessments of the child and family under rule 281—120.321(34CFR303); and the initial IFSP meeting under rule 281—120.342(34CFR303) must be completed within 45 calendar days from the date the public agency or EIS provider receives the referral of the child.

120.310(2) *Limited exceptions.* Subject to subrule 120.310(3), the 45-day timeline described in subrule 120.310(1) does not apply for any period when:

a. The child or parent is unavailable to complete the screening (if applicable), 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 (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the public agency or EIS provider to obtain parental consent.

120.310(3) *Duties when limited exceptions occur.* The department must develop procedures to ensure that in the event the circumstances described in subrule 120.310(2) exist, the public agency or EIS provider must:

a. Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the public agency or EIS provider to obtain parental consent;

b. Complete the screening (if applicable), 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 paragraph 120.310(2)*"a"* no longer exist or parental consent is obtained for the screening (if applicable), 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 rule 281—120.345(34CFR303).

120.310(4) *Initial family assessment.* The initial family assessment must be

conducted within the 45-day timeline in subrule 120.310(1) if the parent concurs and even if other family members are unavailable.

281—120.311 to **120.319** Reserved.

281—120.320(34CFR303) Screening procedures.

120.320(1) *General.*

a. The department may adopt procedures, consistent with the requirements of this rule, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this chapter. If a public agency or EIS provider proposes to screen a child, the agency or EIS provider must:

(1) Provide the parent notice under rule 281—120.421(34CFR303) of the public agency's or EIS provider's 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 rule 281—120.321(34CFR303) at any time during the screening process; and

(2) Obtain parental consent as required in subrule 120.420(1) before conducting the screening procedures.

b. If the parent consents to the screening and the screening or other available information indicates that the child is:

(1) Suspected of having a disability, after notice is provided under rule 281—120.421(34CFR303) and once parental consent is obtained as required in rule 281—120.420(34CFR303), an evaluation and assessment of the child must be conducted under rule 281—120.321(34CFR303); or

(2) Not suspected of having a disability, the public agency or EIS provider must ensure that notice of that determination is provided to the parent under rule 281—120.421(34CFR303), and that the notice describes the parent's right to request an evaluation.

c. 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 under rule 281—120.321(34CFR303), even if the public agency or EIS provider has determined under subparagraph 120.320(1)*"b"*(2) that the child is not suspected of having a disability.

120.320(2) *Definition of screening procedures.* As used in this rule, "screening procedures":

a. Means activities under subrule 120.320(1) that are carried out by, or under the supervision of, a public agency 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. Includes the administration of appropriate instruments by personnel trained to administer those instruments.

120.320(3) *Condition for evaluation or early intervention services.* For every child under the age of three who is referred to the Part C program or screened in accordance with subrule 120.320(1), the applicable agency is not required to:

a. Provide an evaluation of the child under rule 281—120.321(34CFR303) unless the child is suspected of having a disability or the parent requests an evaluation under paragraph 120.320(1)*"c"*; or

b. Make Early ACCESS services available under this chapter to the child unless a

determination is made that the child meets the definition of infant or toddler with a disability under rule 281—120.21(34CFR303).

120.320(4) *Rules of construction.*

a. This rule does not apply to activities undertaken by entities not regulated by this chapter, activities that are undertaken by grantees, signatory agencies, Early ACCESS providers prior to referral, activities undertaken after consent for an evaluation and assessment under rule 281—120.321(34CFR303) is received, or to activities taken pursuant to an IFSP.

b. As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.

281—120.321(34CFR303) Evaluation of the child and assessment of the child and family.

120.321(1) *General.* The department must ensure that, subject to obtaining parental consent in accordance with subrule 120.420(1), each child under the age of three who is referred for evaluation or early intervention services under this chapter and suspected of having a disability receives:

a. A timely, comprehensive, multidisciplinary evaluation of the child in accordance with subrule 120.321(4) unless eligibility is established in paragraph 120.321(3)*"a"*; and

b. If the child is determined eligible as an infant or toddler with a disability as

defined in rule 281—120.21(34CFR303):

(1) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(2) 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 are described in subrule 120.321(5), and these assessments may occur simultaneously with the evaluation, provided that the requirements of subrule 120.321(4) are met.

120.321(2) *Definitions.* As used in this chapter:

a. "Evaluation" means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this chapter, consistent with the definition of infant or toddler with a disability in rule 281—120.21(34CFR303);

b. "Initial evaluation" means the child's evaluation to determine the child's initial eligibility under this chapter;

c. "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 this chapter and includes the assessment of the child, consistent with paragraph 120.321(5)*"a"* and the assessment of the child's family, consistent with paragraph 120.321(5)*"b"*; and

d. "Initial assessment" means the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

120.321(3) *General procedures.*

a. A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this chapter if those records indicate that the child's level of functioning in one or more of the developmental areas identified in subrule 120.21(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under rule 281—120.21(34CFR303). If the child's Part C eligibility is established under this paragraph, the public agency or EIS provider must conduct assessments of the child and family in accordance with subrule 120.321(5).

b. Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the department must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this chapter 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 subrule 120.321(4).

c. 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.

d. Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child.

e. Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed.

120.321(4) *Procedures for evaluation of the child.* In conducting an evaluation,

no single procedure may be used as the sole criterion for determining a child's eligibility under this chapter. 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 in subrule 120.21(1);

d. Gathering information from other sources such as family members, other caregivers, 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.

120.321(5) *Procedures for assessment of the child and family.*

a. 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. The assessment of the child must include the following:

(1) A review of the results of the evaluation conducted under subrule 120.321(4);

(2) Personal observations of the child; and

(3) The identification of the child's needs in each of the developmental areas in subrule 120.21(1).

b. 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. The family-directed assessment must:

(1) Be voluntary on the part of each family member participating in the assessment;

(2) 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

(3) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

281—120.322(34CFR303) Determination that a child is not eligible. If, based on the evaluation conducted under rule 281—120.321(34CFR303), the applicable agency determines that a child is not eligible under this chapter, the agency must provide the parent with prior written notice required in rule 281—120.421(34CFR303), and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under rule 281—120.430(34CFR303), such as requesting a due process hearing or mediation or filing a state complaint.

281—120.323 to **120.339** Reserved.

281—120.340(34CFR303) Individualized family service plan—general. For each infant or toddler with a disability, the department must ensure the development, review, and implementation of an individualized family service plan developed by a multidisciplinary team, which includes the parent, that is consistent with the definition of individualized family service plan in rule 281—120.20(34CFR303) and meets the requirements in rules 281—120.342(34CFR303) through 281—120.346(34CFR303).

281—120.341 Reserved.

281—120.342(34CFR303) Procedures for IFSP development, review, and evaluation.

120.342(1) *Meeting to develop initial IFSP—timelines.* For a child referred to the Early ACCESS system and determined to be eligible under this chapter as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in rule 281—120.310(34CFR303).

120.342(2) *Periodic review.*

a. 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. The purpose of the periodic review is to determine:

(1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

(2) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

b. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

120.342(3) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under rule 281—120.321(34CFR303) must be used in determining the early intervention services that are needed and will be provided.

120.342(4) *Accessibility and convenience of meetings.*

a. IFSP meetings must be conducted:

(1) In settings and at times that are convenient for the family; and

(2) 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.

b. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

120.342(5) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent, as described in rule 281—120.7(34CFR303), must be obtained, as required in subrule 120.420(1), 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, as required in subrule 120.344(6).

281—120.343(34CFR303) IFSP team meeting and periodic review.

120.343(1) *Initial and annual IFSP team meeting.*

a. Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:

(1) The parent or parents of the child.

(2) Other family members, as requested by the parent, if feasible to do so.

(3) An advocate or person outside of the family, if the parent requests that the person participate.

(4) The service coordinator designated by the public agency to be responsible

for implementing the IFSP.

(5) A person or persons directly involved in conducting the evaluations and assessments in rule 281—120.321(34CFR303).

(6) As appropriate, persons who will be providing early intervention services under this chapter to the child or family.

b. If a person listed in subparagraph 120.343(1)*"a"*(5) is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:

(1) Participating in a telephone conference call.

(2) Having a knowledgeable authorized representative attend the meeting.

(3) Making pertinent records available at the meeting.

120.343(2) *Periodic review.* Each periodic review under subrule 120.342(2) must provide for the participation of persons in subparagraphs 120.343(1)*"a"*(1) through (4). If conditions warrant, provisions must be made for the participation of other representatives identified in subrule 120.343(1).

281—120.344(34CFR303) Content of an IFSP.

120.344(1) *Information about the child's status.* The IFSP must include a statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments conducted under rule 281—120.321(34CFR303).

120.344(2) *Family information.* With the concurrence of the family, the IFSP

must include 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 under paragraph 120.321(5)*"b."*

120.344(3) *Results or outcomes.* The IFSP must include 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.

120.344(4) *Early intervention services.*

a. The IFSP must include 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 in subrule 120.344(3), including:

(1) The length, duration, frequency, intensity, and method of delivering the early intervention services;

(2) 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 paragraph 120.13(1)*"h,"* rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303), or, subject to subparagraph 120.344(4)*"a"*(3), a justification as to why an early intervention service will not be provided in the natural environment;

(3) 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:

1. Made by the IFSP team (which includes the parent and other team members);

2. Consistent with the provisions in paragraph 120.13(1)*"h,"* rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303); and

3. Based on the child's outcomes identified by the IFSP team in subrule 120.344(3);

(4) The location of the early intervention services; and

(5) The payment arrangements, if any.

b. As used in this subrule:

(1) "Frequency and intensity" means the number of days or sessions that a service will be provided and whether the service is provided on an individual or group basis.

(2) "Method" means how a service is provided.

(3) "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).

(4) "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 the child's IFSP).

(5) "Location" means the actual place or places where a service will be

provided.

120.344(5) *Other services.* 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 this chapter; and

b. If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

120.344(6) *Dates and duration of services.* The IFSP must include:

a. The projected date for the initiation of each early intervention service in subrule 120.344(4), which date must be as soon as possible after the parent consents to the service, as required in subrules 120.342(5) and 120.420(1); and

b. The anticipated duration of each service.

120.344(7) *Service coordinator.* The IFSP must include the name of the service coordinator 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 chapter), 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 subrule, the term "profession" includes "service coordination."

120.344(8) *Transition from Part C services.*

a. The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with rule 281—120.209(34CFR303), from Part C

services to:

(1) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(2) Other appropriate services.

b. The steps required in paragraph 120.344(8)*"a"* must include:

(1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(3) Confirmation that child find information about the child has been transmitted to the AEA or other relevant agency, in accordance with subrule 120.209(2) and, with parental consent if required under rule 281—120.414(34CFR303), transmission of additional information needed by the AEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with rules 281—120.340(34CFR30) through 281—120.345(34CFR303); and

(4) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

281—120.345(34CFR303) Interim IFSPs—provision of services before evaluations and assessments are completed. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in rule 281—120.321(34CFR303), if the following conditions are met:

120.345(1) Parental consent is obtained.

120.345(2) An interim IFSP is developed that includes the name of the service coordinator who will be responsible, consistent with subrule 120.344(7), for implementing the interim IFSP and coordinating with other agencies and persons and includes the early intervention services that have been determined to be needed immediately by the child and the child's family.

120.345(3) Evaluations and assessments are completed within the 45-day timeline in rule 281—120.310(34CFR303).

281—120.346(34CFR303) Responsibility and accountability. Each public agency or EIS 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 in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP, so long as the child's IFSP was reasonably calculated to confer benefit and was implemented.

281—120.347 to **120.399** Reserved.

DIVISION VI

PROCEDURAL SAFEGUARDS

281—120.400(34CFR303) General responsibility of lead agency for procedural safeguards. Subject to subrule 120.400(3), the department must:

120.400(1) Establish or adopt the procedural safeguards that meet the requirements of this division, including the provisions on confidentiality in rules 281—120.401(34CFR303) through 281—120.417(34CFR303), parental consent and notice in rules 281—120.420(34CFR303) and 281—120.421(34CFR303), surrogate parents in rule

281—120.422(34CFR303), and dispute resolution procedures in rule 281—120.430(34CFR303);

120.400(2) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this chapter; and

120.400(3) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

281—120.401(34CFR303) Confidentiality and opportunity to examine records.

120.401(1) *General.* The state must ensure that the parents of a child referred under this chapter 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.

120.401(2) *Confidentiality procedures.* As required under Sections 617(c) and 642 of the Act, rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including the department and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99. The state must have procedures in effect to ensure that:

a. Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in rules 281—120.401(34CFR303) through

281—120.417(34CFR303); and

b. The parents of infants or toddlers who are referred to or receive services under this chapter 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 this chapter, including records related to evaluations and assessments, screening, 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 this chapter.

120.401(3) *Applicability and timeframe of procedures.* The confidentiality procedures described in subrule 120.401(2) apply to the personally identifiable information of a child and the child's family that:

a. Is contained in early intervention records collected, used, or maintained under this chapter by the department or an EIS provider; and

b. Applies from the point in time when the child is referred for early intervention services under this chapter until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

120.401(4) *Disclosure of information: transition from Part C to Part B.*

a. The department shall disclose to the AEA where the child resides, in accordance with subrule 120.209(2), the following personally identifiable information under the Act:

(1) A child's name.

(2) A child's date of birth.

(3) Parent contact information (including parents' names, addresses, and telephone numbers).

b. The information described in this subrule is needed to enable the department, as well as LEAs and AEAs under Part B of the Act, to identify all children potentially eligible for services under Part B of the Act.

281—120.402(34CFR303) Confidentiality. The Secretary takes appropriate action, in accordance with Section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by all lead agencies and EIS providers pursuant to Part C of the Act and consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303). Rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including state lead agencies and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR Part 99.

281—120.403(34CFR303) Definitions. The following definitions apply to rules 281—120.402(34CFR303) through 281—120.417(34CFR303) in addition to the definition of "personally identifiable information" in rule 281—120.29(34CFR303) and the definition of "disclosure" in 34 CFR 99.3:

120.403(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 under rule 281—120.29(34CFR303).

120.403(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 the rules in this chapter.

120.403(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 the rules in this chapter with respect to a particular child. A participating agency includes the department and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments), but does not include primary referral sources, or public agencies (such as the state Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

281—120.404(34CFR303) Notice to parents. The relevant agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in rule 281—120.402(34CFR303), including:

120.404(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;

120.404(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;

120.404(3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in rules

281—120.401(34CFR303) through 281—120.417(34CFR303); and

120.404(4) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

281—120.405(34CFR303) Access rights.

120.405(1) *General.* Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to subrule 120.430(4) and rules 281—120.435(34CFR303) through 281—120.439(34CFR303), and in no case more than ten days after the request is made.

120.405(2) *Inspect and review.* The right to inspect and review early intervention records under this rule 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.

120.405(3) *Rule of construction.* An agency may presume that the parent has authority to inspect and review records relating to the parent's 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.

281—120.406(34CFR303) 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 and employees 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.

281—120.407(34CFR303) Records on more than one child. If any early intervention record includes information on more than one child, the parents 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.

281—120.408(34CFR303) 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.

281—120.409(34CFR303) Fees for records.

120.409(1) *General.* Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in subrule 120.409(3).

120.409(2) *No fees to search or retrieve.* A participating agency may not charge a fee to search for or to retrieve information under this chapter.

120.409(3) *Copies of certain documents at no cost.* 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.

281—120.410(34CFR303) Amendment of records at a parent's request.

120.410(1) *Parent permitted to request amendment.* A parent who believes that information in the early intervention records collected, maintained, or used under this chapter is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

120.410(2) *Agency to act on parent's request.* 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.

120.410(3) *Agency to inform parent of hearing rights.* If the participating agency refuses to amend the information in accordance with the request, the participating agency must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—120.411(34CFR303).

281—120.411(34CFR303) Opportunity for a hearing. The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in subrule 120.430(4), provided that such hearing procedures meet the requirements of the hearing procedures in rule 281—120.413(34CFR303), or may request a hearing directly under rule 281—

120.413(34CFR303).

281—120.412(34CFR303) Result of hearing.

120.412(1) *Information to be amended.* If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, the participating agency must amend the information accordingly and so inform the parent in writing.

120.412(2) *Information not to be amended.* If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the agency must inform the parent of the right to place in the early intervention records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

120.412(3) *Explanation placed in records.* Any explanation placed in the early intervention records of the child under this rule must be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency. 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 to the party.

281—120.413(34CFR303) Hearing procedures. A hearing held under rule 281—120.411(34CFR303) must be conducted according to the procedures under 34 CFR 99.22.

281—120.414(34CFR303) Consent prior to disclosure or use.

120.414(1) *General.* Except as provided in subrule 120.414(2), 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 chapter, subject to subrule 120.414(2); or

b. Used for any purpose other than meeting a requirement of this chapter.

120.414(2) *Exceptions.* The department or other participating agency may not disclose personally identifiable information, as defined in rule 281—120.29(34CFR303), to any party except participating agencies (including the department and EIS providers) that are part of the state's Part C system without parental consent unless authorized to do so under:

a. Subrules 120.401(1) and 120.209(2); or

b. One of the exceptions enumerated in 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 34 CFR 99.31 to this chapter, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39. In applying these provisions in 34 CFR Part 99 to Part C, the reference to:

(1) 34 CFR 99.30 means subrule 120.414(1);

(2) "Education records" means early intervention records under subrule 120.403(2);

(3) "Educational" means early intervention under this chapter;

(4) "Educational agency or institution" means the participating agency under subrule 120.403(3);

(5) "School officials and officials of another school or school system" means

qualified personnel or service coordinators under this chapter;

(6) "State and local educational authorities" means the department and EIS providers and grantees; and

(7) "Student" means child under this chapter.

120.414(3) *Policies and procedures regarding refusal to provide consent.* The department must provide policies and procedures to be used when a parent refuses to provide consent under this rule (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this chapter), provided that those procedures do not override a parent's right to refuse consent under rule 281—120.420(34CFR303).

281—120.415(34CFR303) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under rules 281—120.401(34CFR303) through 281—120.417(34CFR303) and 34 CFR Part 99. 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.

281—120.416(34CFR303) Destruction of information.

120.416(1) *Notification to parent.* The participating agency must inform parents when personally identifiable information collected, maintained, or used under this chapter

is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR Parts 76 and 80.

120.416(2) *Mandatory and permissive destruction of personally identifiable information.* Subject to subrule 120.416(1), 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 telephone number), names of service coordinator(s) 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.

120.416(3) *Rule of construction—"no longer needed to provide services."* For purposes of this rule, "no longer needed to provide services" means that a record is no longer relevant to the provision of Early ACCESS services and is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes must be retained for five years after completion of the activity for which funds were used.

281—120.417(34CFR303) Enforcement. The department must have in effect the policies and procedures, including sanctions and the right to file a complaint under rules 281—120.432(34CFR303) through 281—120.434(34CFR303), that the department uses to ensure that its policies and procedures, consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303), are followed and that the requirements of the Act and the rules in this chapter are met.

281—120.418 and **120.419** Reserved.

281—120.420(34CFR303) Parental consent and ability to decline services.

120.420(1) *General.* The relevant agency must ensure parental consent is obtained

before:

a. Administering screening procedures under rule 281—120.320(34CFR303) 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 rule 281—120.321(34CFR303);

c. Early intervention services are provided to a child under this chapter;

d. Public benefits or insurance or private insurance is used if such consent is required under rule 281—120.520(34CFR303); and

e. Disclosure of personally identifiable information consistent with rule 281—120.414(34CFR303).

120.420(2) *Parent refusal to consent.* If a parent does not give consent under paragraph 120.420(1)*"a," "b,"* or *"c,"* the agency must make reasonable efforts to ensure that the parent:

a. Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that may be available; and

b. Understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.

120.420(3) *Due process procedures unavailable.* The agency may not use the due process hearing procedures under this chapter to challenge a parent's refusal to provide any consent that is required under subrule 120.420(1).

120.420(4) *Parent rights.* 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 ACCESS service under this chapter 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 this chapter.

281—120.421(34CFR303) Prior written notice and procedural safeguards notice.

120.421(1) *General.* Prior written notice must be provided to parents a reasonable time before an agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the parents' 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.

120.421(2) *Content of notice.* The notice must be in sufficient detail to inform parents about:

a. The action that is being proposed or refused;

b. The reasons for taking the action; and

c. All procedural safeguards that are available under this chapter, including a description of mediation in rule 281—120.431(34CFR303), how to file a state complaint in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) and a due process complaint in the provisions adopted under subrule 120.430(4), and any timelines under those procedures.

120.421(3) *Native language.*

a. The notice must be:

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

(2) Provided in the native language, as defined in rule 281—120.25(34CFR303), of the parent or other mode of communication used by the parent,

unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that:

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

(2) The parent understands the notice; and

(3) There is written evidence that the requirements of this subrule have been met.

281—120.422(34CFR303) Surrogate parents.

120.422(1) *General.* The department or other public agency must ensure that the rights of a child are protected when:

a. No parent (as defined in rule 281—120.27(34CFR303)) can be identified;

b. The department or AEA, after reasonable efforts, cannot locate a parent; or

c. The child is a ward of the state under the laws of the state.

120.422(2) *Duty of other public agencies.*

a. The duty of the AEA under subrule 120.422(1) includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for:

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

b. In implementing the provisions under this rule for children who are wards of the state or placed in foster care, the AEA must consult with the public agency that has been

assigned care of the child.

120.422(3) *Wards of the state.* In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the AEA under subrule 120.422(2), may be appointed by the judge presiding over the infant's or toddler's case provided that the surrogate parent meets the requirements in subrules 120.422(4) and 120.422(5).

120.422(4) *Criteria for selection of surrogate parents.*

a. The AEA may select a surrogate parent in any way permitted under state law.

b. The AEA must ensure that a person selected as a surrogate parent:

(1) Is not an employee of the department 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;

(2) Has no personal or professional interest that conflicts with the interest of the child the person represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

120.422(5) *Nonemployee requirement; compensation.* A person who is otherwise qualified to be a surrogate parent under subrule 120.422(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

120.422(6) *Surrogate parent responsibilities.* The surrogate parent has the same rights as a parent for all purposes under this chapter.

120.422(7) *Department responsibility.* The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

281—120.423 to **120.429** Reserved.

281—120.430(34CFR303) State dispute resolution options.

120.430(1) *General.* Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, state complaint procedures, and due process hearing procedures, described in subrules 120.430(2) through 120.430(6).

120.430(2) *Mediation.* The department must make available to parties to disputes involving any matter under this chapter the opportunity for mediation that meets the requirements in rule 281—120.431(34CFR303).

120.430(3) *State complaint procedures.* The department must adopt written state complaint procedures that meet the requirements in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) to resolve any state complaints filed by any party regarding any violation of this chapter.

120.430(4) *Due process hearing procedures.* The department must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in subrule 120.421(1). The department adopts the Part C due process hearing procedures under Section 639 of the Act.

120.430(5) *Status of a child during the pendency of a due process complaint.* During the pendency of any proceeding involving a due process complaint under subrule 120.430(4), unless the agency 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 subrule 120.430(4) involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

120.430(6) *Status of a child during the pendency of mediation.* During the pendency of any request for mediation under subrule 120.430(2) and for ten days after any such mediation conference at which no agreement is reached, unless the agency and the parents of the child agree otherwise, the child involved in any such mediation conference must continue to receive the appropriate early intervention services identified in the IFSP in the setting that is consented to by the parents. If the mediation involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

281—120.431(34CFR303) Mediation.

120.431(1) *General.* The department must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

120.431(2) *Requirements.* The procedures must meet the following requirements:

a. The procedures must ensure that the mediation process:

(1) Is voluntary on the part of the parties;

(2) Is not 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

(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. The department must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The department must select mediators on a random, rotational, or other

impartial basis.

c. The department must bear the cost of the mediation process, including the costs of meetings described in subrule 120.431(4).

d. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

e. 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:

(1) 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

(2) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.

f. A written, signed mediation agreement under this subrule is enforceable in any state court of competent jurisdiction or in a district court of the United States.

g. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under Part C of the Act.

120.431(3) *Impartiality of mediator.*

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the department or an EIS provider that is involved in the provision of early intervention services or other services to the child; and

(2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. An individual who otherwise qualifies as a mediator is not an employee of the department or an early intervention provider solely because the individual is paid by the agency or provider to serve as a mediator.

120.431(4) *Meeting to encourage mediation.* The department may establish procedures to offer to parents 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:

a. Who is under contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

b. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

281—120.432(34CFR303) Adoption of state complaint procedures.

120.432(1) *General.* The department must adopt written procedures for:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements in rule 281—120.434(34CFR303) by providing for the filing of a complaint with the department; and

b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other appropriate entities, the procedures under rules 281—120.432(34CFR303) through 281—120.434(34CFR303).

120.432(2) *Remedies for denial of appropriate services.* In resolving a complaint in which the department has found a failure to provide appropriate services, the

department, 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.

281—120.433(34CFR303) Minimum state complaint procedures.

120.433(1) *Time limit; minimum procedures.* The department must include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 281—120.434(34CFR303) to:

a. Carry out an independent, on-site investigation, if the department determines that 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 agency or EIS provider named in the complaint an opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the department, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with subrule 120.430(2) and rule 281—120.431(34CFR303);

d. Review all relevant information and make an independent determination as to whether the agency or EIS provider named in the complaint is violating a requirement of Part C of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the department's final decision.

120.433(2) *Time extension; final decision; implementation.* The department's procedures described in subrule 120.433(1) must:

a. Permit an extension of the time limit under subrule 120.433(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent (or individual or organization, if mediation is available to the individual or organization under state procedures) and agency or EIS provider named in the complaint agree to extend the time to engage in mediation pursuant to subparagraph 120.433(1)*"c"*(2); and

b. Include procedures for effective implementation of the department's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

120.433(3) *Complaints filed under this rule and due process hearings under subrule 120.430(4).* If a written complaint is received that is also the subject of a due process hearing under subrule 120.430(4), or contains multiple issues of which one or

more are part of that hearing, the department must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in subrules 120.433(1) and 120.433(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue, and the department must inform the complainant to that effect. A complaint alleging the department's, other public agency's, or EIS provider's failure to implement a due process hearing decision must be resolved by the department.

281—120.434(34CFR303) Filing a complaint.

120.434(1) *Complainant.* An organization or individual may file a signed written complaint under the procedures described in rules 281—120.432(34CFR303) and 281—120.433(34CFR303).

120.434(2) *Contents of complaint.* The complaint must include:

a. A statement that an agency or EIS provider has violated a requirement of Part C of the Act or of this chapter;

b. The facts on which the statement is based;

c. The signature and contact information for the complainant; and

d. If alleging violations with respect to a specific child:

(1) The name and address of the residence of the child;

(2) The name of the EIS provider serving the child;

(3) A description of the nature of the problem of the child, including facts relating to the problem; and

(4) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

120.434(3) *Time limit.* The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with rule 281—120.432(34CFR303).

120.434(4) *Providing copies to parties named in the complaint.* The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the department.

120.434(5) *Failure to comply with mediation agreement or due process decision.* A complainant may allege a party has failed to comply with a due process hearing decision, a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the department will grant appropriate relief.

281—120.435(34CFR303) Appointment of an administrative law judge.

120.435(1) *Qualifications and duties.* Whenever a due process complaint is received under subrule 120.430(4), the department will appoint an impartial administrative law judge (ALJ) to implement the complaint resolution process in this chapter. The person must:

a. Have knowledge about the provisions of Part C of the Act and of this chapter and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

b. Perform the following duties:

(1) Listen to the presentation of relevant viewpoints about the due process complaint;

(2) Examine all information relevant to the issues;

(3) Seek to reach a timely resolution of the due process complaint; and

(4) Provide a record of the proceedings, including a written decision.

120.435(2) *Definition of "impartial."*

a. "Impartial" means that the administrative law judge appointed to implement the due process hearing under this chapter:

(1) Is not an employee of the department or other agency or EIS provider involved in the provision of early intervention services or care of the child; and

(2) Does not have a personal or professional interest that would conflict with the ALJ's objectivity in implementing the process.

b. A person who otherwise qualifies under this subrule is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this chapter.

281—120.436(34CFR303) Parental rights in due process hearing proceedings.

120.436(1) *General.* The department must ensure that the parents of a child referred to or receiving Part C services are afforded the rights in subrule 120.436(2) in the due process hearing carried out under subrule 120.430(4).

120.436(2) *Rights of parents.* Any parent involved in a due process hearing has the right to:

a. 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;

b. Present evidence and confront, cross-examine, and compel the attendance of

witnesses;

c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;

d. Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

e. Receive a written copy of the findings of fact and decisions at no cost to the parent.

120.436(3) *Other party rights.* Any public agency or EIS provider that is a party to a due process hearing under subrule 120.430(4) has each of the rights listed in subrule 120.436(2).

281—120.437(34CFR303) Convenience of hearings and timelines.

120.437(1) *Time and place.* Any due process hearing conducted under this chapter must be carried out at a time and place that is reasonably convenient to the parents.

120.437(2) *Timeline for ALJ decision.* The department must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this chapter is completed and a written decision mailed to each of the parties.

120.437(3) *Extension of ALJ timeline.* An ALJ may grant specific extensions of time beyond the period set out in subrule 120.437(2) at the request of either party.

281—120.438(34CFR303) Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in state or federal court under Section 639(a)(1) of the Act.

281—120.439(34CFR303) Limitation of actions.

120.439(1) *Limitation: due process complaints.* A parent, agency, or EIS provider must request an impartial hearing on the due process complaint within two years of the date the parent, agency, or provider knew or should have known about the alleged action that forms the basis of the due process complaint.

120.439(2) *Exceptions to timeline.* The timeline described in subrule 120.439(1) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

a. Specific misrepresentations by an agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or

b. The agency's or EIS provider's withholding of information from the parent that was required under this chapter to be provided to the parent.

120.439(3) *Limitation: civil action.* The party bringing the civil action under rule 281—120.438(34CFR303) shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

281—120.440(34CFR303) Rule of construction. Nothing in this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that, before the filing of a civil action under these laws seeking relief that is also available under Section 639 of the Act, the procedures under this chapter must be exhausted to the same extent as would be required had the action been brought under Section 639 of the Act.

281—120.441(34CFR303) Attorney fees. Reasonable attorney fees are available to a

prevailing party (parent or, in certain circumstances, public agency or EIS provider) in a due process hearing or a mediation conference to the extent those fees are available under the Act. No fees are available under the state complaint procedure in subrule 120.430(3).

281—120.442 to **120.448** Reserved.

281—120.449(34CFR303) State enforcement mechanisms. Notwithstanding subrule 120.431(2), which provides for judicial enforcement of a written agreement reached as a result of a mediation, there is nothing in this chapter that would prevent the state from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—120.450 to **120.499** Reserved.

DIVISION VII

USE OF FUNDS; PAYOR OF LAST RESORT

281—120.500(34CFR303) Use of funds, payor of last resort, and system of payments.

120.500(1) *Statewide system.* The statewide system must include written policies and procedures that meet the requirements of the:

a. Use of funds provisions in rule 281—120.501(34CFR303); and

b. Payor of last resort provisions in rules 281—120.510(34CFR303) through 281—120.521(34CFR303) (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the state).

120.500(2) *System of payments.* The state may establish, consistent with subrules 120.13(1) and 120.203(2), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as copayments, premiums, or deductibles) required to be paid under federal, state, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of rules 281—120.520(34CFR303) and 281—120.521(34CFR303).

281—120.501(34CFR303) Permissive use of funds by the department. Consistent with rules 281—120.120(34CFR303) through 281—120.122(34CFR303) and 281—120.220(34CFR303) through 281—120.226(34CFR303), the department may use funds under this chapter for activities or expenses that are reasonable and necessary for implementing Early ACCESS, including funds:

120.501(1) For direct early intervention services for infants and toddlers with disabilities and their families under this chapter that are not otherwise funded through other public or private sources (subject to rules 281—120.510(34CFR303) through 281—120.521(34CFR303));

120.501(2) To expand and improve services for infants and toddlers with disabilities and their families under this chapter that are otherwise available; and

120.501(3) In any state that does not provide services under 34 CFR 303.204 for at-risk infants and toddlers, as defined in rule 281—120.5(34CFR303), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of:

a. Identifying and evaluating at-risk infants and toddlers;

b. Making referrals for the infants and toddlers identified and evaluated under paragraph 120.501(3)*"a"*; and

c. Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this chapter.

281—120.502 to **120.509** Reserved.

281—120.510(34CFR303) Payor of last resort.

120.510(1) *Nonsubstitution of funds.* Except as provided in subrule 120.510(2), funds under this chapter 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 this chapter 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 rules 281—120.520(34CFR303) and 281—120.521(34CFR303)).

120.510(2) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281—120.16(34CFR303) (but not medical services); functions of the child find system described in rules 281—120.115(34CFR303) through 281—120.117(34CFR303) and rules 281—120.301(34CFR303) through 281—120.320(34CFR303); and evaluations

and assessments in rule 281—120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

120.510(3) *Nonreduction of benefits.* Nothing in this chapter 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. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), 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 Act.

281—120.511(34CFR303) Methods to ensure the provision of, and financial responsibility for, Early ACCESS services.

120.511(1) *General.* The state must ensure that it has in place methods for interagency coordination. Under these methods, the governor must ensure that the interagency agreement or other method for interagency coordination is in effect between the department and each signatory agency in order to ensure:

a. The provision of, and establishing financial responsibility for, early intervention services provided under this chapter; and

b. Such services are consistent with the requirement in Section 635 of the Act and the state's application under Section 637 of the Act, including the provision of such services during the pendency of any dispute between state agencies.

120.511(2) *Methods.* The methods in subrule 120.511(1) must meet all requirements in this rule and be set forth in one of the following:

a. State law or rule;

b. Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or

c. Other appropriate written methods determined by the governor, or the governor's designee, and approved by the Secretary through the review and approval of the state's application.

120.511(3) *Procedures for resolving disputes.*

a. Each method must include 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 Early ACCESS. Those procedures must include a mechanism for resolution of disputes within agencies and for the governor, governor's designee, or the department to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

b. The method must:

(1) Permit the 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; and

(2) Include the process that the department 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.

c. If, during the department's resolution of the dispute, the governor, governor's designee, or department determines that the assignment of financial responsibility under this rule was inappropriately made:

(1) The governor, governor's designee, or department must reassign the financial responsibility to the appropriate agency; and

(2) The department must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

120.511(4) *Delivery of services in a timely manner.* The methods adopted by the state under this rule must:

a. Include a mechanism to ensure that no services that a child is entitled to receive under this chapter are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

b. Be consistent with the written funding policies adopted by the state under this division and include any provisions the state has adopted under rule 281—120.520(34CFR303) regarding the use of insurance to pay for Part C services.

120.511(5) *Additional components.* Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the department's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in Early ACCESS.

281—120.512 to **120.519** Reserved.

281—120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.

120.520(1) *Use of public benefits or public insurance to pay for Early ACCESS services.*

a. The state may not use the public benefits or insurance of a child or parent to pay for Part C services unless the state provides written notification, consistent with

paragraph 120.521(1)*"c,"* to the child's parents, and the state meets the no-cost protections identified in paragraph 120.520(1)*"b."*

b. With regard to the state's using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

4. Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1)*"b,"* the state must still make available those Part C services on the IFSP to which the parent has provided consent.

c. Prior to the state's using a child's or parent's public benefits or insurance to pay

for Part C services, the state must provide written notification to the child's parents. The notification must include:

(1) A statement that parental consent must be obtained under rule 281—120.414(34CFR303), if that rule applies, before the department or EIS provider discloses, for billing purposes, a child's personally identifiable information to the department of human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid);

(2) A statement of the no-cost protection provisions in subrule 120.520(1) and that if the parent does not provide the consent under that subrule, the agency must still make available those Part C services on the IFSP for which the parent has provided consent;

(3) A statement that the parents have the right under rule 281—120.414(34CFR303), if that rule applies, to withdraw their consent to disclosure of personally identifiable information to the department of human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as copayments or deductibles, or the required use of private insurance as the primary insurance).

d. If a state requires a parent to pay any costs that the parent would incur as a result of the state's using a child's or parent's public benefits or insurance to pay for Part C services (such as copayments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the state's system of payments

policies under rule 281—120.521(34CFR303) and included in the notification provided to the parent under paragraph 120.520(1)*"c"*; otherwise, the state cannot charge those costs to the parent.

120.520(2) *Use of private insurance to pay for Part C services.*

a. The state may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use private insurance to pay for Part C services for the parent's child or the state meets one of the exceptions in paragraph 120.520(2)*"d."* This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained:

(1) When an agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(2) Each time consent for services is required under subrule 120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

b. If a state requires a parent to pay any costs that the parent would incur as a result of the state's use of private insurance to pay for early intervention services (such as copayments, premiums, or deductibles), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303); otherwise, the state may not charge those costs to the parent.

c. When obtaining parental consent required under paragraph 120.520(2)*"a"* or

initially using benefits under a child's or parent's private insurance policy to pay for an early intervention service under paragraph 120.520(2)*"d,"* the state must provide to the parent a copy of the state's system of payments policies that identifies the potential costs that the parent may incur when the parent's private insurance is used to pay for early intervention services under this chapter (such as copayments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

d. The parental consent requirements in paragraphs 120.520(2)*"a"* through *"c"* do not apply if the state has enacted a state statute regarding private health insurance coverage for early intervention services under Part C of the Act that expressly provides that:

(1) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(2) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

(3) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a

disability, the parent, or the child's family members covered under that health insurance policy.

e. If the state has enacted a state statute that meets the requirements in paragraph 120.520(2)*"d,"* regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the state may reestablish a new baseline of state and local expenditures under subrule 120.225(2) in the next federal fiscal year following the effective date of the statute.

120.520(3) *Inability to pay.* If a parent or family of an infant or toddler with a disability is determined unable to pay under the state's definition of inability to pay under subrule 120.521(1) and does not provide consent under paragraphs 120.520(2)*"a"* and *"b,"* the lack of consent may not be used to delay or deny any services under this chapter to that child or family.

120.520(4) *Proceeds or funds from public insurance or benefits or from private insurance.*

a. Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

b. If the state receives reimbursements from federal funds (e.g., Medicaid reimbursements attributable directly to federal funds) for services under Part C of the Act, those funds are considered neither state nor local funds under subrule 120.225(2).

c. If the state spends funds from private insurance for services under this chapter, those funds are considered neither state nor local funds under rule 281—120.225(34CFR303).

120.520(5) *Funds received from a parent or family member under the state's*

system of payments. Funds received by the state from a parent or family member under the state's system of payments established under rule 281—120.521(34CFR303) are considered program income under 34 CFR 80.25. These funds:

a. Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

b. Must be used for the state's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

c. Are considered neither state nor local funds under subrule 120.225(2).

281—120.521(34CFR303) System of payments and fees.

120.521(1) *General.* If a state elects to adopt a system of payments in subrule 120.500(2), the state's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include:

a. The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this chapter;

b. The basis and amount of payments or fees;

c. The state's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the state makes its determination of the ability or inability to pay;

d. An assurance that:

(1) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under this

subrule and subrules 120.521(2) and 120.521(3));

(2) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this chapter to the child or the child's family such that, if the parent or family meets the state's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost;

(3) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and

(4) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

e. Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

f. Provisions that permit, but do not require, the department or other relevant agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or copayments.

120.521(2) *Functions not subject to fees.* The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

a. Implementing the child find requirements in rules 281—120.301(34CFR303) through 281—120.303(34CFR303).

b. Evaluation and assessment, in accordance with rule 281—120.320(34CFR303), and the functions related to evaluation and assessment in subrule 120.13(2).

c. Service coordination services, as defined in subrule 120.13(2) and rule 281—120.33(34CFR303).

d. Administrative and coordinative activities related to:

(1) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with rules 281—120.342(34CFR303) through 281—120.345(34CFR303); and

(2) Implementation of the procedural safeguards in Division VI of this chapter and the other components of the statewide system of early intervention services in Division V of this chapter and this division.

120.521(3) *FAPE mandates or use of funds under Part B of the Act to serve children under age three.* If the state has in effect a state law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the state may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this chapter that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.

120.521(4) *Family fees.*

a. Fees or costs collected from a parent or the child's family to pay for early intervention services under the state's system of payments are program income under 34 CFR 80.25. The state may add this program income to its Part C grant funds, rather than

deducting the program income from the amount of the state's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

b. Fees collected under a system of payments are considered neither state nor local funds under subrule 120.225(2).

120.521(5) *Procedural safeguards.*

a. The state's system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the state's determination of the parent's ability to pay, may do one of the following:

(1) Participate in mediation in accordance with rule 281—120.431(34CFR303).

(2) Request a due process hearing under rule 281—120.436(34CFR303).

(3) File a state complaint under rule 281—120.434(34CFR303).

(4) Use any other procedure established by the state for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this chapter, including the right to pursue, in a timely manner, the redress options described in this subrule.

b. The state must inform parents of these procedural safeguard options by either:

(1) Providing parents with a copy of the state's system of payments policies when obtaining consent for provision of early intervention services under subrule 120.420(1); or

(2) Including this information with the notice provided to parents under rule 281—120.421(34CFR303).

281—120.522 to **120.599** Reserved.

DIVISION VIII

STATE INTERAGENCY COORDINATING COUNCIL

281—120.600(34CFR303) Establishment of council.

120.600(1) *General.* The state establishes a state interagency coordinating council, as defined in rule 281—120.8(34CFR303).

120.600(2) *Appointment.* The council must be appointed by the governor. The governor must ensure that the membership of the council reasonably represents the population of the state.

120.600(3) *Chairperson.* The governor must designate a member of the council to serve as the chairperson of the council or delegate that responsibility to the members of the council. Any member of the council who is a representative of the lead agency designated under rule 281—120.201(34CFR303) may not serve as the chairperson of the council.

120.600(4) *Name of council.* The council established by this division shall be known as the Iowa council for Early ACCESS (council).

281—120.601(34CFR303) Composition.

120.601(1) *General.* The council must be composed as follows:

a. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged 6 years or younger.

b. At least 20 percent of the members must be public or private providers of early

intervention services.

c. At least one member must be from the state legislature.

d. At least one member must be involved in personnel preparation.

e. At least one member must:

(1) Be from each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

f. At least one member must:

(1) Be from the unit of the department responsible for preschool services to children with disabilities; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of the department.

g. At least one member must be from the agency responsible for the state Medicaid and CHIP program.

h. At least one member must be from a Head Start or Early Head Start agency or program in the state.

i. At least one member must be from a state agency responsible for child care.

j. At least one member must be from the agency responsible for the state regulation of private health insurance.

k. At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.

l. At least one member must be a representative from the state child welfare agency responsible for foster care.

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

120.601(2) *Members serving more than one role.* The governor may appoint one member to represent more than one program or agency listed in paragraphs 120.601(1)*"g"* through *"m."*

120.601(3) *Additional members permitted.* The council may include other members selected by the governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the state, from the Indian Health Service or the tribe or tribal council.

120.601(4) *Limitation on voting: conflict of interest.* No member of the council 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 under state law.

120.601(5) *Executive committee; other committees.* The executive committee shall consist of the council chairperson; the vice-chairperson; at least two council members, one of whom is a parent; and a council representative from each of the signatory agencies. The department's Early ACCESS program coordinator shall be an ex officio member of the executive committee. The executive committee is responsible for initially reviewing and discussing information and issues that will be addressed by the full council; establishing the framework for overall council business, including the calendar of meetings and the agenda for council meetings; and facilitating the implementation of the interagency agreement among the signatory agencies. The council

may establish or dissolve other standing or ad hoc committees from time to time and in the furtherance of its work.

281—120.602(34CFR303) Meetings.

120.602(1) *Minimum number of meetings.* The council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.

120.602(2) *Requirements for meetings.* The meetings must:

a. Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;

b. To the extent appropriate, be open and accessible to the general public; and

c. As needed, provide for interpreters for persons who are deaf and other necessary services for council members and participants. The council may use funds under this chapter to pay for those services.

281—120.603(34CFR303) Use of funds by the council.

120.603(1) *General.* Subject to the approval by the governor, the council may use funds under this chapter 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.

120.603(2) *No compensation for members.* Except as provided in subrule 120.603(1), council members must serve without compensation from funds available under Part C of the Act.

281—120.604(34CFR303) Functions of the council; required duties.

120.604(1) *Advising and assisting the department.* The council must advise and assist the department in the performance of the department's responsibilities in Section 635(a)(10) of the Act, 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 intra-agency and interagency collaboration regarding child find under rules 281—120.115(34CFR303) and 281—120.302(34CFR303), monitoring and enforcement under rules 281—120.120(34CFR303) and 281—120.700(34CFR303) through 281—120.708(34CFR303), financial responsibility and provision of early intervention services under rules 281—120.202(34CFR303) and 281—120.511(34CFR303), and transition under rule 281—120.209(34CFR303); and

d. Preparation of applications under this chapter and amendments to those applications.

120.604(2) *Advising and assisting on transition.* The council must advise and assist the department regarding the transition of toddlers with disabilities to preschool and other appropriate services.

120.604(3) *Annual report to the governor and to the Secretary.*

a. The council must:

(1) Prepare and submit an annual report to the governor and to the Secretary 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

(2) Submit the report to the Secretary by a date that the Secretary establishes.

b. Each annual report must contain the information required by the Secretary for the year for which the report is made.

281—120.605(34CFR303) Authorized activities by the council. The council may carry out the following activities:

120.605(1) Advise and assist the department regarding the provision of appropriate services for children with disabilities from birth through age five.

120.605(2) 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.

120.605(3) 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.

281—120.606 to **120.699** Reserved.

DIVISION IX

FEDERAL AND STATE MONITORING AND ENFORCEMENT; REPORTING; AND ALLOCATION OF FUNDS

281—120.700(34CFR303) State monitoring and enforcement.

120.700(1) *General.* The department must:

a. Monitor the implementation of this chapter;

b. Make determinations annually about the performance of each EIS program, using the categories identified in subrule 120.703(2);

c. Enforce this chapter consistent with rule 281—120.704(34CFR303), using appropriate enforcement mechanisms listed therein; and

d. Report annually on the performance of the state and of each EIS program under this chapter as provided in rule 281—120.702(34CFR303).

120.700(2) *Primary focus of monitoring activity.* The primary focus of the state's monitoring activities must be on:

a. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and

b. Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

120.700(3) *Indicators of performance and compliance.* As a part of its responsibilities under subrule 120.700(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 120.700(4), and the indicators established by the

Secretary for the state performance plans.

120.700(4) *Monitoring; priority areas.* The department must monitor each EIS program located in the state, 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:

a. Early intervention services in natural environments.

b. State exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services as defined in Section 637(a)(9) of the Act.

120.700(5) *Correction of noncompliance.* In exercising its monitoring responsibilities under subrule 120.700(4), the state must ensure that when it identifies noncompliance with the requirements of this chapter by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the state's identification of the noncompliance.

281—120.701(34CFR303) State performance plans and data collection.

120.701(1) *General.* The state must have in place a performance plan that meets the requirements described in Section 616 of the Act; is approved by the Secretary; and includes an evaluation of the state's efforts to implement the requirements and purposes of Part C of the Act, a description of how the state will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR 303.700(d).

120.701(2) *Review of state performance plan.* The state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

120.701(3) *Data collection.*

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects data for a particular indicator through state monitoring or sampling, the state must collect and report data on those indicators for each EIS program at least once during the six-year period of a state performance plan.

c. Nothing in Part C of the Act or this chapter may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

281—120.702(34CFR303) State use of targets and reporting.

120.702(1) *General.* The state must use the targets established in the state's performance plan under rule 281—120.701(34CFR303) and the priority areas described in subrule 120.700(4) to analyze the performance of each EIS program in implementing Part C of the Act.

120.702(2) *Public reporting and privacy.*

a. Public report. The state must:

(1) Report annually to the public on the performance of each EIS program located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report to the Secretary under paragraph 120.702(2)*"b"*; and

(2) Make the state's performance plan under subrule 120.701(1), annual

performance reports under this subrule, and the state's annual reports on the performance of each EIS program under this subrule available through public means, including by posting on the department's Web site, distribution to the media, and distribution to EIS programs.

(3) If the state, in meeting the requirements of this subrule, collects data through state monitoring or sampling, the state must include in its public report on EIS programs under this subrule the most recently available performance data on each EIS program and the date the data were collected.

b. State performance report. The state must report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

281—120.703(34CFR303) Department review and determination regarding EIS program performance.

120.703(1) *Review.* The department shall annually review the performance of each EIS provider, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

120.703(2) *Determination.* Based on the information provided in subrule 120.703(1) to the department, the department shall determine if each EIS provider:

a. Meets the requirements and purposes of Part C of the Act;

b. Needs assistance in implementing the requirements of Part C of the Act;

c. Needs intervention in implementing the requirements of Part C of the Act; or

d. Needs substantial intervention in implementing the requirements of Part C of the Act.

120.703(3) *Notice and opportunity for a hearing.* For determinations made under paragraphs 120.703(2)*"c"* and *"d,"* the department shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to the EIS provider; however, if withholding of funds is a remedy associated with any particular determination, the department shall provide a hearing under rule 281—120.705(34CFR303). Under any hearing granted under this subrule or rule 281—120.705(34CFR303), the EIS provider must demonstrate that the department abused its discretion in making the determination described in subrule 120.703(2).

120.703(4) *Criteria for determinations.* The department shall develop criteria for making the determinations required by subrule 120.703(2).

120.703(5) *Adjustment or variance of determination.* In making the determination required by subrule 120.703(2), the department in its discretion may adjust or vary from the criteria described in subrule 120.703(4) based on unusual, unanticipated, or extraordinary aggravating or mitigating measures, on a case-by-case basis.

281—120.704(34CFR303) Enforcement.

120.704(1) *Needs assistance.* If the department determines, for two consecutive years, that an EIS provider needs assistance under paragraph 120.703(2)*"b"* in implementing the requirements of Part C of the Act, the department shall take one or more of the following actions:

a. Advise the EIS provider of available sources of technical assistance that may help the EIS provider address the areas in which the provider needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the U.S. Department of Education, other federal agencies, technical assistance providers approved by the Secretary or the department, and other federally funded nonprofit agencies, and requires the EIS provider to work with appropriate entities. This technical assistance may include:

(1) The provision of advice by experts to address the areas in which the EIS provider needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

(3) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the EIS provider as a high-risk grantee and impose special conditions on the provider's grant under this chapter.

120.704(2) *Needs intervention.* If the department determines, for three or more

consecutive years, that an EIS provider needs intervention under paragraph 120.703(2)*"c"* in implementing the requirements of Part C of the Act, the following apply:

a. The department may take any of the actions described in subrule 120.704(1).

b. The department shall take one or both of the following actions:

(1) Require the EIS provider to prepare a corrective action plan or improvement plan if the department determines that the EIS provider should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act.

120.704(3) *Needs substantial intervention.* Notwithstanding subrules 120.704(1) and 120.704(2), at any time that the department determines that an EIS provider needs substantial intervention in implementing the requirements 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 an EIS program, the department shall withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act. In addition, the department may refer the matter to appropriate authorities, which include but are not limited to the Iowa department of justice or the auditor of state.

120.704(4) *Rule of construction.* The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the department's disposal in its enforcement of this rule or any other rule in this chapter.

281—120.705(34CFR303) Withholding funds.

120.705(1) *General.* As a consequence of a determination made under rule 281—

120.703(34CFR303) or enforcement of any provision of Part C of the Act and this chapter, the department may withhold some or all of the funds from an EIS provider or a program or service of an EIS provider.

120.705(2) *Hearing.* If the department intends to withhold funds, it shall provide notice and an opportunity for a hearing to an EIS provider. If a hearing is requested, the department may suspend payments to the EIS provider, suspend the authority of the EIS provider to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part C of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 120.705(1).

120.705(3) *Reinstatement.* If the EIS provider substantially rectifies the condition that prompted the initial withholding under subrule 120.705(1), then the department may reinstate payments. If an EIS provider disagrees with the department's decision that the provider has not substantially rectified the condition that prompted the initial withholding under subrule 120.705(1), the provider may request a hearing under subrule 120.705(2).

281—120.706(34CFR303) Public attention. Whenever the state receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to 34 CFR §303.704, the state must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to Section 616(e) of the Act and 34 CFR §303.704 to the attention of the public within the state, including by posting the

notice on the department's Web site and distributing the notice to the media and to EIS programs.

281—120.707 Reserved.

281—120.708(34CFR303) State enforcement. Nothing in this division may be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

281—120.709(34CFR303) State consideration of other state or federal laws. In making the determinations required by subrule 120.703(2), in taking actions pursuant to rule 281—120.704(34CFR303), and in taking any other action under this chapter, the department may consider whether any agency or provider has complied with any other applicable state or federal law, including but not limited to education law or disability law, or with any corrective action ordered by any competent authority for violation of such a law.

281—120.710 to **120.719** Reserved.

281—120.720(34CFR303) Data requirements—general.

120.720(1) *General requirements.* The department must annually report to the Secretary and to the public on the information required by Section 618 of the Act at the times specified by the Secretary.

120.720(2) *Manner of reporting.* The department must submit the report to the Secretary in the manner prescribed by the Secretary.

281—120.721(34CFR303) Annual report of children served—report requirement.

120.721(1) *Date of count.* For the purposes of the annual report required by Section 618 of the Act and rule 281—120.720(34CFR303), the department must count

and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year.

120.721(2) *Information in report.* The report must include:

a. The number and percentage of infants and toddlers with disabilities in the state, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to the department by tribes, tribal organizations, and consortia under 34 CFR 303.731(e)(1));

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; and

c. The number and percentage of at-risk infants and toddlers (as defined in Section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.

120.721(3) Reserved.

120.721(4) *Dispute prevention and resolution data.* The report shall include the number of due process complaints filed under Section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

281—120.722(34CFR303) Data reporting.

120.722(1) *Protection of identifiable data.* The data described in Section 618(a) of the Act and in rule 281—120.721(34CFR303) must be publicly reported by the state in a manner that does not result in disclosure of data identifiable to individual children.

120.722(2) *Sampling.* If permitted by the Secretary, the state may obtain data in

Section 618(a) of the Act through sampling.

281—120.723(34CFR303) Annual report of children served—certification. The department must include in its report a certification signed by an authorized official of the department that the information provided under rule 281—120.721(34CFR303) is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

281—120.724(34CFR303) Annual report of children served—other responsibilities of the department. In addition to meeting the requirements of rules 281—120.721(34CFR303) through 281—120.723(34CFR303), the department must conduct its own child count or use EIS providers to complete its child count. If the department uses EIS providers to complete its child count, then the department must establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services; establish dates by which those EIS providers must report to the department to ensure that the state complies with subrule 120.721(1); obtain certification from each EIS provider that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each EIS provider and prepare the report required under rules 281—120.721(34CFR303) through 281—120.723(34CFR303); and ensure that documentation is maintained to enable the department and the Secretary to audit the accuracy of the count.

281—120.725 to **120.800** Reserved.

DIVISION X

OTHER PROVISIONS

281—120.801(34CFR303) Early ACCESS system—state level.

120.801(1) *Lead agency.* The Iowa department of education was appointed lead agency on June 24, 1987. Responsibilities of the lead agency include:

a. Developing and implementing policies and procedures regarding the types of information to be gathered and the policies and parameters for sharing of information across agencies and programs, as well as such information that might be necessary for an annual report to the governor and the U.S. Department of Education;

b. Monitoring the agencies, institutions and organizations that provide early intervention services and supports;

c. Enforcing any obligations imposed under Part C of the Act on the agencies listed in paragraph 120.801(1)*"b"*;

d. Providing technical assistance, if necessary, to the agencies, institutions and organizations listed in paragraph 120.801(1)*"b"*;

e. Correcting deficiencies that are identified through monitoring;

f. Adopting and carrying out complaint procedures;

g. Mediating any interagency disputes regarding early intervention services;

h. Establishing policies related to how early intervention services to eligible children and their families shall be paid for;

i. Establishing procedures to ensure the timely provision of services;

j. Ensuring that the following functions and services are provided at public expense:

(1) Child find requirements;

(2) Evaluation and assessment functions;

(3) Service coordination;

(4) Development and review of IFSPs;

(5) Implementation of procedural safeguards; and

(6) Other components of the statewide system of Early ACCESS;

k. Maintaining a data system to be utilized for gathering information regarding early intervention services provided for eligible children in Early ACCESS; and

l. Monitoring use of funds.

120.801(2) *Signatory agencies.* The departments of education, public health, and human services and the child health specialty clinics shall enter into an interagency agreement to formalize their joint commitments to the establishment and ongoing implementation and evaluation of a comprehensive, integrated, interagency Early ACCESS system. The Iowa department of education is responsible for providing education programs and services for preschool and school-age students, including children with disabilities, from birth through 21 years of age. The Iowa department of human services administers social service programs in order to help and empower individuals and families to become increasingly self-sufficient and productive. The Iowa department of public health administers public health programs in order to promote and protect the health of Iowans. The child health specialty clinics are the statewide public health program for children with special health care needs, as designated by the legislature.

120.801(3) *Interagency agreement.* In addition to the requirements set forth

elsewhere in this chapter, the agreement between signatory agencies shall outline the commitment of these agencies to the implementation of an interagency, integrated system of Early ACCESS and:

a. Reflect the interagency vision and guiding principles of Early ACCESS;

b. Define the population to be served;

c. Identify roles, responsibilities and expectations of the signatory agencies;

d. Outline financial responsibilities of the signatory agencies;

e. Describe parameters for policy development and management decisions;

f. Describe procedures for resolving disputes;

g. Identify transition activities from Part C services;

h. Describe child find efforts; and

i. Describe the roles and responsibilities of the signatory agencies and assigned staff.

281—120.802(34CFR303) Interagency service planning. An IFSP process shall be developed by the lead agency and shall be reviewed and approved by the signatory agencies. The process shall be used by all signatory agencies to document the ongoing work between families and providers across all agencies that are providing a service or resource to meet identified needs.

281—120.803(34CFR303) System-level disputes. System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency

agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes.

281—120.804(34CFR303) Early ACCESS system—regional and community levels.

120.804(1) *Early ACCESS grantees.* Early ACCESS grantees shall have the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally. Early ACCESS grantees shall be designated by the department and shall exist, at a minimum, in geographic areas that ensure statewide coverage as determined by the department.

a. Policies. Each grantee shall establish in accordance with this chapter the policies pertinent to a regional Early ACCESS system and shall make such policies available to the department upon request. At a minimum, such policies shall include the following:

(1) Policy to ensure that appropriate early intervention services are available to all eligible children in the state and their families, including Indian infants and toddlers and their families residing on a reservation or settlement geographically located in the state;

(2) Policy to ensure that all infants and toddlers in the state who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(3) Policy regarding the development and implementation of individualized family service plans;

(4) Policy for the establishment and maintenance of standards to ensure that

personnel necessary to carry out the requirements of this chapter are appropriately and adequately prepared and trained;

(5) Policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services and service coordination;

(6) Policy to ensure a smooth transition to preschool or other appropriate services for children receiving early intervention services under this chapter; and

(7) Any other policy required to carry out the purposes of this chapter.

b. Procedures. Each grantee shall develop, in accordance with this chapter, written procedures pertinent to the implementation of a regional Early ACCESS system, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include the following:

(1) Procedures to ensure that all infants and toddlers who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(2) Procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for evaluation and assessment or, as appropriate, the provision of services;

(3) Procedures to ensure provision of early intervention services and service coordination, including the appointment of service coordinators;

(4) Procedures to ensure documentation and the development and implementation of an interim IFSP, when circumstances warrant under this chapter;

(5) Procedures for conducting nondiscriminatory evaluation and assessment;

(6) Procedures for the development and implementation of individualized family service plans;

(7) Procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained;

(8) Procedures for ensuring procedural safeguards that meet the requirements of this chapter;

(9) Procedures for ensuring maintenance and confidentiality of records;

(10) Procedures to allow parties to disputes to resolve the disputes through a mediation process;

(11) Procedures for providing mediation for the timely administrative resolution of complaints by parents regarding an individual child;

(12) Procedures for resolving a complaint that any public agency is violating a requirement of Part C of the Act;

(13) Procedures related to how services to eligible children and their families will be paid for under the state's Early ACCESS program;

(14) Procedures for the timely provision of services, ensuring that no service to which a child is entitled is delayed or denied because of disputes between agencies regarding financial or other responsibilities;

(15) Procedures for resolving intra-agency and interagency disputes about payments for a given service or about other matters related to the state's Early ACCESS program in accordance with any applicable interagency agreement and with this chapter;

(16) Procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes among public agencies or service providers;

(17) Procedures for securing the timely reimbursement of funds; and

(18) Any other procedures required to carry out the purposes of this chapter.

c. Collaboration. Early ACCESS grantees shall collaborate with local representatives of signatory agencies, community partners, and families in the development, implementation and monitoring of policies and procedures described in this rule. Early ACCESS grantees shall designate an individual who has primary responsibility for coordinating regional implementation and serving as a liaison to the department.

120.804(2) *Community partners.* Community partners include state and local representatives of signatory agencies, as well as other regional and community agencies and providers, public and private, including physicians, Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS when providing early intervention services or other supports such as supporting family participation in improving the Early ACCESS system, early identification of eligible children, service coordination, provision of other needed services or resources, and other efforts to improve the Early ACCESS system.

281—120.805(34CFR303) Provision of year-round services. Each Early ACCESS grantee shall ensure that Early ACCESS components and services are available 12 months a year to meet the needs of eligible children and their families.

281—120.806(34CFR303) Evaluation and improvement. Each grantee, in conjunction

with signatory agencies or the department, or both, shall implement activities designed to evaluate and improve the Early ACCESS system. These activities shall document the performance of eligible children who receive early intervention services.

281—120.807(34CFR303) Research. Each grantee shall cooperate in research activities designed to evaluate and improve the Early ACCESS system when such activities are sponsored by the department, or a signatory agency when approved by the department, to assess and ensure the effectiveness of efforts to serve eligible children.

281—120.808(34CFR303) Records and reports. Each signatory agency or grantee shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

1. State-approved or state-recognized certification, licensing, registration, or other comparable requirements for all personnel providing early intervention services.
2. All IFSP meetings and annual or periodic reviews for each eligible child.
3. Data required for federal and state reporting.

281—120.809(34CFR303) Information for department. Each signatory agency or grantee shall provide the department with information necessary to enable the department to carry out its duties under Part C of the Act and this chapter. This information, including such quantitative and qualitative data as the department may require, shall be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 281—120.703(34CFR303) or in taking any other action to enforce Part C of the Act or this chapter.

281—120.810(34CFR303) Public information. Each agency must make available to

parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part C of the Act.

281—120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges. Unless otherwise provided by this chapter, any mediation conference or due process hearing under Division VI of this chapter shall be conducted according to the rules contained in 281—41.1000(256B,34CFR300) through 281—41.1016(256B,34CFR300).

281—120.812(34CFR303) References to federal law. All references in this chapter to provisions of the United States Code or the Code of Federal Regulations are to those provisions in effect on September 28, 2011.

281—120.813(34CFR303) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity shall remain valid.

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.