West Virginia Department of Health

WV Birth to Three Early Intervention System State Plan under Part C of the Individuals with Disabilities Education Act (IDEA)

State Plan Revision 2025

DESCRIPTIONS, STATE POLICIES, PROCEDURES, METHODS

Introduction

The purpose of Part C of the Individuals with Disabilities Education Act (IDEA) is to provide financial assistance to States to:

Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers, birth to three years of age, with disabilities and their families.

Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources, including public and private insurance coverage.

Enhance State 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.

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; and

Encourage States to expand opportunities for children under three years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

1. General Requirements

1.1 Lead Agency

Effective January 1, 2024, the West Virginia Department of Health (DH) is the Governor appointed lead agency for WV Birth to Three (WVBTT), the Part C Early Intervention System for West Virginia. Previously, the WV Department of Health and Human Resources was the designated lead agency since 1991.

1.2 West Virginia has in effect a statewide system of early intervention services that meets the requirements of section 635 of IDEA, including policies and procedures that address, at a minimum, the components required in §303.111 through §303.126.

1.3. State Conformity with Part C of IDEA

(a) West Virginia ensures that any State rules, regulations, and policies relating to Part C conform to the purposes and requirements of Part C.

1.4 Availability of Early Intervention Services

(a) West Virginia has a state policy that is in effect that ensures 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:

(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and
(2) Infants and toddlers with disabilities who are homeless children and their families.
(3) Infants and toddlers with disabilities who are wards of the State.

1.5. State Definition of Developmental Delay

(a) West Virginia has a rigorous definition of developmental delay, consistent with §303.10 and §303.203(c), that is used by the State in carrying out programs under Part C of IDEA to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of IDEA. The definition:

(1) Describes, for each of the areas listed in §303.21(a)(1), the evaluation and assessment procedures, consistent with §303.321, that are used to measure a child's development; and
(2) Specifies the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1).

1.6. Central Directory

(a) West Virginia has a central directory that is accessible to the public (i.e., through the DH/WVBTT Web site and other appropriate means) and includes accurate, up-to-date information about:

(1) Public and private early intervention services, resources, and experts available in the State.
(2) Professional and other groups, including parent support, and training and information centers, such as those funded under Part C of IDEA, that provide assistance to infants and toddlers with disabilities eligible under Part C of IDEA and their families; and
(3) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities.

1.7. Public Awareness Program

(a) West Virginia has a public awareness program that:

(1) Focuses on the early identification of infants and toddlers with disabilities; and
(2) Provides information to parents of infants and toddlers through primary referral sources in accordance with §303.301.

1.8 Comprehensive Child Find System

(a) West Virginia has a comprehensive child find system that meets the requirements in §§303.302 and 303.303.

1.9. Evaluation, Assessment, and Nondiscriminatory Procedures

(a) West Virginia ensures the performance of:

(1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and
(2) 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.

(b) The required evaluation and family-directed identification meets the requirements of §303.321.

1.10. Individualized Family Service Plan (IFSP)

(a) West Virginia ensures that for each infant or toddler with a disability and his or her family in the State, that an IFSP, as defined in §303.20, is developed and implemented that meets the requirements of §§303.340 through 303.345, and that includes service coordination services, as defined in §303.34.

1.11. Early Intervention Services in Natural Environments

(a) West Virginia has policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (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.

1.12. Comprehensive System of Personnel Development (CSPD)

(a) West Virginia has a comprehensive system of personnel development, 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.
(b) West Virginia's comprehensive system of personnel development includes:

(1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers.
(2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under Part C of IDEA; and
(3) 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 IDEA to a preschool program under section 619 of IDEA, Head Start, Early Head Start, an elementary school program under Part B of IDEA, or another appropriate program.

(c) West Virginia's comprehensive system of personnel development may include:

(1) Training personnel to work in rural and inner-city areas.
(2) Training personnel in the emotional and social development of young children; and
(3) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and
(4) Training personnel who provide services under Part C of IDEA to use standards that are consistent with early learning personnel development standards funded under the State Early Childhood Advisory Council established under the Head Start Act, if applicable.

1.13. Personnel Standards

(a) West Virginia has policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of Part C of IDEA are appropriately and adequately prepared and trained. These standards:

(1) Are consistent with 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.
(2) Use of paraprofessionals and assistants. Nothing in Part C of IDEA 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.
(3) Include making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards.

1.14. Procedural Safeguards

West Virginia has procedural safeguards that meet the requirements of subpart E of Part C of IDEA.

1.15. Lead Agency Role in Supervision, Monitoring, Funding, Interagency Coordination, and Other Responsibilities

(a) DH/WVBTT as the designated lead agency has the single line of responsibility for the following:

(1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of IDEA.
(2) The monitoring of programs and activities used by the State to carry out Part C of IDEA, whether the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving

assistance under Part C of IDEA, to ensure that the State complies with Part C of IDEA, including:

i. Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out Part C of IDEA.
ii. Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of IDEA and these regulations.
iii. Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers.
iv. 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
v. Conducting these activities consistent with §§303.700 through 303.707, and any other activities required by the State.

(3) 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 subpart F of Part C of IDEA.
(4) The assignment of financial responsibility in accordance with subpart F of Part C of IDEA.
(5) The development of procedures in accordance with subpart F of Part C of IDEA to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of IDEA in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.
(6) The resolution of intra- and interagency disputes in accordance with subpart F of Part C of IDEA.
(7) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with §303.511, that define the financial responsibility of each agency for paying for early intervention services, consistent with West Virginia law, and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of Part C of IDEA.

1.16. Reimbursement Procedures

West Virginia has procedures for securing the timely reimbursement of funds used under Part C of IDEA, in accordance with subpart F of Part C of IDEA.

1.17 Policy for Contracting or Otherwise Arranging for Services

(a) West Virginia has 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 IDEA, including the contents of the application, and the conditions of the contract or other arrangements. The policy:

(1) Includes a requirement that all early intervention services meet State standards and be consistent with the provisions of Part C of IDEA; and

(2) Is consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

(b) Approved contracted agencies must make positive efforts to employ and advance in employment, qualified individuals with disabilities in programs assisted under Part C of IDEA.

1.18. Data Collection

(a) West Virginia has a system for compiling and reporting timely and accurate data that meets the requirements in Part C of IDEA. This system includes:

(1) A description of the process that the State uses to compile data on infants or toddlers with disabilities receiving early intervention services under Part C of IDEA, 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 IDEA and §§303.700 through 303.707 and 303.720 through 303.724.

1.19. State Interagency Coordinating Council

West Virginia has a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of Part C of IDEA.

2. Application Requirements

2.1. West Virginia Application Contains:

(a) Steps taken by DH/WVBTT that ensure equitable access to, and equitable participation in, the West Virginia Part C statewide system as required by section 427(b) of GEPA, include:

(1) State Statute, Chapter 16, Section 5K established a statewide system of coordinated, comprehensive, multidisciplinary interagency program for the provision of early intervention services.
(2) Establishment of Regional Administrative Units (RAUs) with identified geographic areas of responsibility for development of interagency relationships, EIS provider recruitment, public awareness and child find plans and activities, and family support components to link families to community resources.
(3) Implementation of a statewide toll-free number that routes callers to the appropriate regional RAU for their geographic region.
(4) RAU Interim Service Coordinators are available in each region to respond timely to referrals and ensure timely initial evaluation and assessment to determine eligibility.
(5) A centralized EIS provider enrollment structure that provides professionals options for enrollment type and geographic area.
(6) A centralized reimbursement process that assures timely payment for delivered services, regardless of funding source.

(7) A dedicated Service Coordinator structure to provide each eligible infant and toddler and their family with initial and annual evaluation and on-going service coordination.

(b) Other information and assurances as the Secretary may reasonably require.

2.2. Availability of Resources

(a) The West Virginia application includes a description of the procedures used by the State to ensure that resources are made available under Part C of IDEA for all geographic areas within the State.

2.3. Referral Policies for Specific Children

(a) West Virginia has policies and procedures that require the referral for early intervention services under Part C of IDEA of specific children under the age of three, as described in §303.303(b).

2.4 Definition of At-risk Infants and Toddlers and Description of Services

(a) West Virginia includes infants and toddlers who are at risk in the definition of children eligible under Part C of IDEA. West Virginia defines at-risk children as those who are experiencing a combination of five or more significant environmental and biological risk factors as defined in policy. Children who become eligible under the at-risk category are eligible for needed Part C services.

2.5 Traditionally Underserved Groups

(a) West Virginia ensures that policies and practices have been adopted to ensure:

(1) 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 Part C of IDEA; and
(2) That these families have access to culturally competent services within their local geographical areas.

3.0 Transition to Preschool and Other Programs

West Virginia's Application for Funds under Part C of IDEA includes:

(a) A description of the policies and procedures the State uses 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 Part C of IDEA 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 West Virginia meets each of the requirements in 3.1-3.6 below.

(c) An interagency agreement between DH/WVBTT and the West Virginia State Educational Agency (SEA) to ensure:

(1) A seamless transition between services under Part C of IDEA and under Part B of IDEA, an interagency agreement addresses how DH/WVBTT, and the SEA meet the requirements of 4.2-4.6 below and §303.344(h), and 34 CFR 300.101(b), 300.124,300.321(f), and 300.323(b).

(d) Any policy the lead agency has adopted under §303.401(d) and (e).

3.1. Notification to the SEA and Appropriate Local Education Agency (LEA)

(a) Subject to (b) below, DH/WVBTT ensures that:

(1) Since all toddlers receiving services under early intervention may be eligible for preschool services under Part B of IDEA, not fewer than 90 days before the third birthday of the toddler with a disability, WV Birth to Three notifies the SEA and the LEA for the county in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of IDEA, as determined in accordance with West Virginia law;

(2) Since all toddlers receiving services under early intervention may be eligible for preschool services under Part B of IDEA, WV Birth to Three, as soon as possible after determining the child's eligibility less than 90 days before that toddler's third birthday, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of IDEA, as determined in accordance with West Virginia law; or

(3) If a toddler is referred to WV Birth to Three fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of IDEA, WV Birth to Three, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the county in which the toddler resides and assists the family with referrals to other appropriate resources; but, WV Birth to Three does not conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

(b) West Virginia has not implemented an opt-out policy as identified under §303.401(e).

3.2 Conference to Discuss Services

(a) DH/WVBTT ensures that:

(1) Since DH/WVBTT has determined that all toddlers receiving services under Part C of IDEA may be eligible for preschool services under Part B of IDEA, WV Birth to Three, with the approval of the family of the toddler, convenes a conference, among WV Birth to Three EIS program, EIS providers, the family, and the LEA not fewer than 90 days,

and, at the discretion of all parties, not more than 9 months, before the toddler's third birthday to discuss any services the toddler may receive under Part B of IDEA or other appropriate services; and

3.3. Transition Plan

(a) DH/WVBTT ensures that:

(1) Program options for all toddlers with disabilities are reviewed for the period from the toddler's third birthday through the remainder of the school year; and
(2) Each family of a toddler with a disability who is served under Part C of IDEA is included in the development of the transition plan required under this section and §303.344(h).
(3) A transition plan is established in the IFSP not fewer than 90 days, and, at the discretion of all parties, not more than 9 months before the toddler's third birthday; and

(b) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate:

(1) Steps for each toddler with a disability and his or her family to exit from the Part C program; and
(2) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

3.4. Transition Conference and Meeting to Develop Transition Plan

(a) Any conference conducted under 3.2 or meeting to develop the transition plan under 3.3 which conference and meeting may be combined into one meeting, must meet the requirements in §§303.342(d) and (e) and 303.343(a).

3.5. Applicability of Transition Requirements

(a) The transition requirements in 3.0 -3.4 apply to all toddlers with disabilities receiving services under Part C of IDEA before those toddlers turn age three.

3.6 Coordination with Head Start and Early Head Start, Early Education, and Childcare Programs

(a) DH/WVBTT promotes collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq, as amended), early education and childcare programs, and services under Part C of IDEA.
(b) WV Birth to Three coordinates statewide activities with the WV Department of Education Special Education and Pre-K Programs, WV Division of Early Care and Education, WV Home Visitation Programs, and the Head Start State Collaboration Office, through the Early Childhood Advisory Council. The Head Start State Collaboration Office and local Head Start grantee are members of the Early Intervention Interagency Coordinating Council.

(c) The Director of WV Birth to Three is a Governor appointed member of the Early Childhood Advisory Council, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act.

4. Public Participation Policies and Procedures

4.1 At least 60 days prior to being submitted to the Department, West Virginia's application for funds under Part C of IDEA, including any policies, procedures, descriptions, methods, certifications, assurances, and other information required in the application, is published in a manner that ensures 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.

4.2. The application includes a description of the policies and procedures used by West Virginia 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 IDEA and these regulations, DH/WVBTT:

(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 (a) above at least 30 days before the hearings were 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 IDEA and these regulations.

5. Additional Information and Assurances

5.1. Expenditure of Funds

West Virginia ensures that Federal funds made available to the State under section 643 of IDEA are expended in accordance with the provisions of Part C of IDEA, including §§303.500 and 303.501.

5.2. Payor of Last Resort

West Virginia ensures that it complies with the requirements in §§303.510 and 303.511 in subpart F of Part C of IDEA.

5.3. Control of Funds and Property

(a) West Virginia ensures that:

(1) The control of funds provided under Part C of IDEA, and title to property acquired with those funds, are in a Public Agency for the uses and purposes provided in Part C of IDEA; and
(2) A Public Agency administers the funds and property.

5.4. Reports and Records

(a) West Virginia ensures that it:

(1) Makes reports in the form and containing the information that the Secretary may require; and
(2) Keeps records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of Part C of IDEA, the correctness and verification of reports, and the proper disbursement of funds provided under this Part C of IDEA.

5.5. Prohibition Against Supplanting; Indirect Costs

(a) The West Virginia application provides satisfactory assurance that the Federal funds made available under section 643 of IDEA to the State:

(1) Are not commingled with State funds; and
(2) Are used 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.

(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under Part C of IDEA 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:

(1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under Part C of IDEA; and
(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(c) DH/WVBTT does not charge indirect costs to its Part C grant.

5.6. Fiscal Control

(a) West Virginia ensures that fiscal control and fund accounting procedures have been adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under Part C of IDEA.

6. Description of Part C Services and Other Definitions

The Department of Health ensures the provision of early intervention services under Part C of IDEA to infants and toddlers with disabilities and their families in accordance with the provisions of Part C through the West Virginia Early Intervention System (WV Birth to Three). These services are defined below and are consistent with Part C of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR Part 303 for use

in implementing the State's early intervention system. Other applicable definitions from 34 CFR Part 303 are included below.

6.1. Act - Act means Individuals with Disabilities Education Act (IDEA), as amended.

6.2. Child - Child means an individual under the age of three and may include an infant or toddler with a disability, as that term is defined in this section.

6.3. Consent - Consent means that:

(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 this section.
(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.
(d) 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).

6.4. Council - Council means the Governor's Early Intervention Interagency Coordinating Council that meets the requirements of these policies and procedures.

6.5. Day - Day means calendar day, unless otherwise indicated.

6.6. Developmental Delay - Developmental delay, when used with respect to a child residing in West Virginia means a child has a developmental delay if she/he is experiencing:

(a) Diagnosed physical or mental condition that has a high probability of resulting in developmental delay, OR
(b) a substantial developmental delay equivalent to 40% delay in one or more developmental areas; OR
(c) developmental delay equivalent to 25% delay in two or more developmental areas; OR
(d) atypical delay in two or more developmental areas; OR
(e) five or more risk factors from a list of 20 environmental and biological risks.

6.7. Early Intervention Service Program - Early intervention service program or EIS program means an entity designated by the state lead agency for federal reporting under these policies and procedures. In West Virginia, EIS program is defined as the Regional Administrative Unit (RAU) geographic area that includes RAU staff and individuals enrolled with WV Birth to Three either independently or through a payee agency.

6.8. Early Intervention Service Provider - Early intervention service provider or EIS provider:

(a) Means an entity, whether public, private, or nonprofit or an individual enrolled through WV Birth to Three that provides early intervention services under Part C of the IDEA, whether or not the entity or individual receives Federal funds under Part C of the IDEA, and may include, where appropriate, the state lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in West Virginia under Part C of the IDEA. In West Virginia, an EIS provider is defined as an individual that is enrolled to provide interim service coordination, ongoing service coordination or direct early intervention services whether employed through an agency or enrolled as an independent contractor.

(b) An EIS provider agency/EIS provider is responsible for:

(1) 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.
(2) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
(3) 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.

6.9. Early Intervention Services

(a) Early intervention services mean developmental services that:

(1) Are provided under public supervision.
(2) Are selected in collaboration with the parents.
(3) Are provided at no cost, except, subject to these policies and procedures, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees.
(4) 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:

i. Physical development,
ii. Cognitive development,
iii. Communication development,
iv. Social or emotional development, or
v. Adaptive development.

(5) Meet the West Virginia standards where the early intervention services are provided, including the requirements of Part C of the IDEA;
(6) Include services identified under this section;
(7) Are provided by qualified personnel, as defined in this section, including the types of personnel listed in this section;

(8) To the maximum extent appropriate, are provided in natural environments, as defined in this section and consistent with these policies and procedures; and

(9) Are provided in conformity with an IFSP adopted in accordance with IDEA and this section.

(b) Early intervention services include the following services as defined in this section:

(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 infants and toddlers with disabilities. The term 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 services include:

i. The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler in the child's customary environment.

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

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

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

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

vi. 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.

(3) Audiology Services includes:

i. Identification of infants and toddlers with auditory impairment, using at risk criteria and appropriate audiologic screening techniques.

ii. Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures.

iii. Referral for medical and other services necessary for the habilitation or rehabilitation of infants and toddlers with disabilities who have an auditory impairment.

iv. Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services.
v. Provision of services for prevention of hearing loss; and
vi. Determination of the infant's or toddler's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(4) 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 child's special needs and enhancing the child's development.

(5) Health services means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under Part C of IDEA during the time that the child is eligible to receive early intervention services. The term includes:

i. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
ii. 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 while providing other early intervention services.
iii. The term does not include services that are:

(A) Surgical in nature, such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus,
(B) Purely medical in nature, such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose; or
(C) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
(D) Nothing in Part C of IDEA 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.
(E) Nothing in Part C of IDEA 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.
(F) Devices, such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps, necessary to control or treat a medical condition; and

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

(6) Medical services mean services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

(7) Nursing services include:

i. 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.
ii. Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
iii. Administration of medications, treatments, and regimens prescribed by a licensed physician.

(8) Nutrition services include:

i. Conducting individual assessments in:
(A) Nutritional history and dietary intake,
(B) Anthropometric, biochemical, and clinical variables,
(C) Feeding skills and feeding problems, and
(D) Food habits and food preferences.

ii. Developing and monitoring appropriate plans to address the nutritional needs of children eligible under Part C of IDEA based on the assessment findings in this subsection; and
iii. Making referrals to appropriate community resources to carry out nutrition goals.

(9) 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:

i. Identification, assessment, and intervention,
ii. 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
iii. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(10) 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:

i. Screening, evaluation, and assessment of children to identify movement dysfunction,
ii. Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems, and
iii. Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(11) Psychological services include:

i. Administering psychological and developmental tests and other assessment procedures,
ii. Interpreting assessment results,
iii. Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development, and
iv. 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.

(12) Service Coordination Services has the meaning given the term as described in section 6.31.

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

(14) Social work services include:

i. Making home visits to evaluate a child's living conditions and patterns of parent-child interaction.
ii. Preparing a social or emotional developmental assessment of the infant or toddler, within the context of the family.
iii. 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.
iv. 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
v. 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.

(15) Special instruction includes:

i. The design of learning environments and activities that promote the infant or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.
ii. 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.
iii. Providing families with information, skills, and support related to enhancing the skill development of the child; and
iv. Working with an infant or toddler with a disability to enhance the child's development.

(16) Speech-language pathology services include:

i. 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.
ii. 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
iii. Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

(17) Transportation and related costs include the cost of travel and costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

(18) Vision services means:

i. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development.
ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
iii. Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

(c) The following are the types of qualified personnel who provide early intervention services under Part C of IDEA:

(1) Audiologists
(2) Family therapists

(3) Nurses
(4) Occupational therapists
(5) Orientation and mobility specialists
(6) Pediatricians and other physicians for diagnostic and evaluation purposes
(7) Physical therapists
(8) Psychologists
(9) Registered dietitians
(10) Social workers
(11) Special educators, including teachers of children with hearing impairments, including deafness and teachers of children with visual impairments, including blindness, Board Certified Behavior Analysts (BCBA) and Board-Certified Assistant Behavior Analyst (BCaBA) and American Sign Language Specialists
(12) Speech and language pathologists
(13) Vision specialist, including Ophthalmologists and Optometrists

(d) Other services.

(1) The services and personnel identified and defined in this section 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.
(2) Nothing in this section 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 this section or of another type of personnel that may provide early intervention services in accordance with Part C of IDEA, provided such personnel meet the requirements in these policies and procedures.

6.10. 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.

6.11. Free Appropriate Public Education - Free appropriate public education or FAPE, as used in these policies and procedures means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge,
(b) Meet the standards of the State educational agency (SEA), including the requirements of Part B of IDEA,
(c) Include an appropriate preschool, elementary school, or secondary school education in West Virginia, and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements under regulations for Part B of IDEA.

6.12. 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, as amended, 42 U.S.C. 11431 et seq.

6.13. Include and Including - Include or including means that the items named are not all the possible items that are covered, whether like or unlike the ones named.

6.14. Indian; Indian Tribe

(a) Indian means an individual who is a member of an Indian tribe.
(b) Indian tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, 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.
(c) 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.

6.15. Individualized Education Program - Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Part B of IDEA.

6.16. Individualized Family Service Plan (IFSP) - See Section on IFSP for definition.

6.17. Infants and Toddlers with Disabilities

(a) Infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual:

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

i. Cognitive development.
ii. Physical development, including vision and hearing.
iii. Communication development.
iv. Social or emotional development.
v. Adaptive development; or

(2) Has a diagnosed physical or mental condition that:
i. Has a high probability of resulting in developmental delay; and
ii. 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; or

(3) Is experiencing multiple environmental and biological risks.

6.18. Lead Agency - Lead agency means the agency designated by the West Virginia State Governor under Part C of IDEA and that receives funds under Part C of Act to

administer the State's responsibilities under Part C of IDEA. In West Virginia this is the Department of Health (DH).

6.19. Local Educational Agency

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

(b) Educational service agencies and other public institutions or agencies. The term includes the following:

(1) Educational service agency, defined as a regional public multiservice agency:

i. Authorized by State law to develop, manage, and provide services or programs to LEAs; and

ii. Recognized as an administrative agency for the purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.

(2) 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.

(3) Entities that meet the definition of intermediate educational unit or IEU in IDEA, 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:

i. Is under the general supervision of a State educational agency,

ii. Is established by State law for the purpose of providing FAPE on a regional basis, and

iii. Provides special education and related services to children with disabilities within the State.

(4) BIE-funded schools. The term 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 IDEA with the smallest student population.

6.20. Multidisciplinary - Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to:

(a) Evaluation of the child and assessments of the child and family in accordance with these policies and procedures, requires two or more separate disciplines; and
(b) The IFSP Team 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 these policies and procedures.

6.21. Native Language (West Virginia uses the term Primary Language)

(a) Native language, when used with respect to an individual who is limited English proficient or LEP, as that term is defined in IDEA, means:

(1) 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 this section; and
(2) For evaluations and assessments conducted pursuant to these policies and procedures, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(b) 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.

6.22. 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 these policies and procedures.

6.23. Parent -

(a) Parent means:

(1) A biological or adoptive parent of a child
(2) 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.
(3) 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.

(4) 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

(5) A surrogate parent who has been appointed in accordance with these policies and procedures or Part C of IDEA.

(b) Except as provided in this section, the biological or adoptive parent, when attempting to act as the parent under Part C and when more than one party is qualified under this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

(c) If a judicial decree or order identifies a specific person or persons under this section 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 IDEA, 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.

6.24. Parent Training and Information Center - Parent training and information center means a center assisted under IDEA. In West Virginia this is the West Virginia Parent and Training Information Center.

6.25. Part C of IDEA - Infants and Toddlers with Disabilities Program under the Individuals with Disabilities Education Act at 20 U.S.C. 1431-1443, as amended.

6.26. Personally Identifiable Information - Personally identifiable information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in Part C of IDEA and any reference to "school" means "EIS provider" as used in Part C of IDEA.

6.27. Public Agency - As used in Part C of IDEA, public agency means the lead agency and any other agency or political subdivision of the State.

6.28. Qualified Personnel - Qualified personnel means personnel who have met West Virginia's approved or 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.

6.29. 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, as amended (ESEA). In applying the ESEA to the regulations under Part C of IDEA, any reference to "education activities and programs" refers to "early intervention services."

6.30. Secretary - Secretary means the Secretary of Education.

6.31. Service Coordination Services

(a) General. As used in Part C of IDEA, service coordination services mean 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 Part C of IDEA.

(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 Part C of IDEA across agency lines; and

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

(3) Service coordination is an active, ongoing process that involves:

i. Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under Part C of IDEA; and

ii. Coordinating the other services identified in the IFSP that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.

iii. Specific service coordination services include:

(A) 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.

(B) 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.

(C) Coordinating evaluations and assessments.

(D) Facilitating and participating in the development, review, and evaluation of IFSPs.

(E) Conducting referral and other activities to assist families in identifying available EIS providers.

(F) Coordinating, facilitating, and monitoring the delivery of services required under Part C of IDEA to ensure that the services are provided in a timely manner.

(G) Conducting follow-up activities to determine that appropriate Part C services are being provided.

(H) Informing families of their rights and procedural safeguards, as set forth in these policies and procedures and related resources.
(I) Coordinating the funding sources for services required under this Part C of IDEA; and
(J) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

iv. 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 policies and procedures related to payor of last resort provisions.

6.32. State - Except as provided in these policies and procedures, regarding State allotments under Part C of IDEA, 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.

6.33. 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. The term includes the agency that receives funds under Part B of IDEA to administer the State's responsibilities under Part B of IDEA.

6.34. Ward of the State –

(a) General - Subject to (b) below, ward of the State means a child who, as determined by West Virginia, is:

(1) A foster child,
(2) A ward of West Virginia, or
(3) In the custody of a public child welfare agency.

(b) Exception - Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in this section.

7. Child Find, Evaluations and Assessments

7.1. General

The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in §303.100 includes the following components:

(a) Pre-referral policies and procedures that include:

(1) A public awareness program as described in §303.301; and
(2) A comprehensive child find system as described in §303.302.

(b) Referral policies and procedures as described in §303.303.
(c) Post-referral policies and procedures that ensure compliance with the timeline requirements in §303.310 and include:

(1) Screening, if applicable, as described in §303.320.
(2) Evaluations and assessments as described in §§303.321 and 303.322; and
(3) Development, review, and implementation of IFSPs as described in §§303.340 through 303.346.

8. Public Awareness Program--Information for Parents

8.1. Preparation and Dissemination.

(a) In accordance with §303.116, the DH/WVBTT ensures a public awareness program that:

(1) Prepares information on the availability of early intervention services under Part C of IDEA, and other services, as described in paragraph (b) of this section; and
(2) Disseminates 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
(3) Adopts procedures for assisting the primary referral sources described in §303.303(c) in disseminating the information described in paragraph (b) of this section to parents of infants and toddlers with disabilities.

(b) The information required to be prepared and disseminated under (a) above includes:

(1) A description of the availability of early intervention services under Part C of IDEA.
(2) 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
(3) A central directory, as described in §303.117.
(4) The public awareness program includes a requirement that WV Birth to Three provides for informing parents of toddlers with disabilities of the availability of services under section 619 of IDEA not fewer than 90 days prior to the toddler's third birthday.

9. Comprehensive Child Find System

9.1. General.

The DH/WVBTT includes a comprehensive child find system that:

(a) Is consistent with Part B of IDEA (see 34 CFR 300.111).
(b) Includes a system for making referrals to WV Birth to Three under Part C of IDEA that:
    (1) Includes timelines; and
    (2) Provides for participation by the primary referral sources described in §303.303(c).

(c) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under Part C of IDEA that will reduce the need for future services; and

(d) Meets the requirements in paragraphs (b) and (c) of this section and §§303.303, 303.310,303.320, and 303.321.

9.2. Scope of Child Find. The DH/WVBTT, as part of the child find system, ensures that:

(a) All infants and toddlers with disabilities in the State who are eligible for early intervention services under Part C of IDEA are identified, located, and evaluated, including:

    (1) Indian infants and toddlers with disabilities residing on a reservation 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 lead agency under §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 §303.303(b).

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

9.3. Coordination.

(a) The DH/WVBTT, with the assistance of the Council, as defined in §303.8, ensures that the child find system under Part C of IDEA:

    (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 Part C of IDEA, including Indian tribes that receive payments under Part C of IDEA, and other Indian tribes, as appropriate; and
    (2) Is coordinated with the efforts of the:

        i. Program authorized under Part B of IDEA
        ii. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a))

iii. 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))
iv. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.)
v. Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.)
vi. Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381)
vii. 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))
viii. Childcare programs in the State
ix. The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.)
x. Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC) and
xi. Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.)

(b) The DH/WVBTT, with the advice and assistance of the Council, takes steps to ensure that:

(1) There will not be unnecessary duplication of effort by the programs identified in paragraph (a)(2) of this section; and
(2) The State makes 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.

9.4. Referral Procedures

(a) General.

(1) The DH/WVBTT child find system described in §303.302 includes the State's procedures for use by primary referral sources for referring a child under the age of three to the Part C program.
(2) The procedures required in (a)(1) above:

i. Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and
ii. Meet the requirements in paragraphs (b) and (c) below.

(b) A statewide toll-free number connects to:

(1) A regional administrative unit (RAU) for referrals to WV Birth to Three including access to language translation when needed.
(2) An RAU Interim Service Coordinator that:

i. Responds timely to the referral.
ii. Informs the parent about WV Birth to Three policies and procedures during the initial referral contact and
iii. Ensures timely initial evaluation and assessment to determine eligibility.

(c) Referral of specific at-risk infants and toddlers. The procedures required in (a) above provide for requiring the referral of a child under the age of three who:

(1) Is the subject of a substantiated case of child abuse or neglect; or
(2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(d) Primary referral sources, as used in Part C of IDEA, include:

(1) Hospitals, including prenatal and postnatal care facilities.
(2) Physician
(3) Parents, including parents of infants and toddlers.
(4) Childcare programs and early learning programs
(5) LEAs and schools
(6) Public health facilities
(7) Other public health or social service agencies
(8) Other clinics and health care providers
(9) Public agencies and staff in the child welfare system, including child protective service and foster care.
(10) Homeless family shelters
(11) Domestic violence shelters and agencies.

9.5. Post-Referral Timeline

(a) Except as provided in (b) below, the initial evaluation and the initial assessments of the child and family under §303.321; and the initial IFSP meeting under §303.342 must be completed within 45 days from the date the WV Birth to Three receives the referral of the child.
(b) The 45-day timeline described in (a) above does not apply for any period when:

(1) The child or parent is unavailable to complete the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or
(2) The parent has not provided consent for initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or the RAU Interim Service Coordinator provider to obtain parental consent.

(c) The DH/WVBTT ensures that, in the event the circumstances described in (b) above exist, the RAU Interim Service Coordinator and/or the EIS provider must:

(1) Document in the child's early intervention record the exceptional family circumstances or repeated attempts by the EIS provider to obtain parental consent.
(2) Complete the initial evaluation, the initial assessments, of the child and family, and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in (b) above no longer exist or parental consent is obtained for the initial evaluation, and the initial assessment of the child; and
(3) Develop and implement an interim IFSP, to the extent appropriate and consistent with §303.345.
(4) Conduct the initial family assessment within the 45-day timeline in (a) above if the parent concurs and even if other family members are unavailable.

10. Evaluation of the Child and Assessment of the Child and Family

(a) The DH/WVBTT ensures that, subject to obtaining parental consent in accordance with §303.420(a)(2), each child under the age of three who is referred for evaluation or early intervention services under Part C of IDEA and suspected of having a disability, receives:

(1) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with this section unless eligibility is established under (a)(4) and (a)(5) below; and
(2) If the child is determined eligible as an infant or toddler with a disability as defined in §303.21:

i. A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs.
ii. 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 (a)(11) - (a)(14) and these assessments may occur simultaneously with the evaluation, provided that the requirements of (a)(10) are met.

(3) As used in Part C of IDEA:
i. Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C of IDEA, consistent with the definition of infant or toddler with a disability in §303.21. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under Part C of IDEA.
ii. Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under Part C and includes the assessment of the child, consistent with (a)(11) and

(a)(12) below and the assessment of the child's family, consistent with (a)(13) and (a)(14) below; and

iii. Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

(4) A child's medical and other records may be used to establish eligibility, without conducting an evaluation of the child, under Part C of IDEA if those records indicate that the child's level of functioning in one or more of the developmental areas identified in §303.21(a)(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under §303.21. In accordance with the following West Virginia procedures:

i. A multidisciplinary team of EIS providers must determine eligibility within a diagnosed physical or mental condition category based on a statement or report signed by a licensed health care provider, as appropriate to the suspected disability, indicating the condition that is likely to result in developmental delay.

ii. The multidisciplinary team must consider the report or statement required under (i) above with respect to the types and amounts of services that a child and/or his or her family should receive through the early intervention system, but the team shall not use the report or statement as the sole basis by which it makes the developmental diagnosis or determines the services approved through the IFSP process.

iii. If a multidisciplinary evaluation team has identified one or more physical and/or mental conditions that are associated with developmental concerns, and has concluded that early intervention services would be appropriate to meet the needs of the child and that the child is eligible to receive early intervention services, then the evaluation team must place documentation in the child's record that includes the informed clinical opinion upon which the team based its determination of eligibility.

iv. If the child's Part C eligibility is established under (4) above, the EIS provider must conduct assessments of the child and family in accordance with (a)(11) - (a)(14).

(5) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, WV Birth to Three ensures that informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C of IDEA even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under (a)(10).

(6) 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.

(7) Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child, in accordance with the definition of native language in §303.25.

(8) Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed, in accordance with the definition of native language in §303.25.

(9) In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under Part C of IDEA. Procedures must include:

i. Administering an evaluation instrument,
ii. Taking the child's history (including interviewing the parent),
iii. Identifying the child's level of functioning in each of the developmental areas in §303.21(a)(1),
iv. 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
v. Reviewing medical, educational, or other records.

(10) An assessment of each infant or toddler with a disability must be conducted by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs.

(11) The assessment of the child must include the following:
i. A review of the results of the evaluation conducted under (a)(10),
ii. Personal observations of the child, and
iii. The identification of the child's needs in each of the developmental areas in §303.21(a)(1).

(12) A family-directed assessment must be conducted by qualified personnel 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.

(13) The family-directed assessment must:

i. Be voluntary on the part of each family member participating in the assessment.
ii. Be based on information obtained through an assessment tool and through an interview with those family members who elect to participate in the assessment; and

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

(b) As a part of the process to determine continuing eligibility and the child's ongoing developmental status and to report child outcome data, the WV Birth to Three EIS programs and EIS providers shall annually use evaluation and assessment instruments and reporting tools as designated by the WV Birth to Three.

11. Individualized Family Service Plans

(a) For each infant or toddler with a disability, the DH/WVBTT ensures the development, review, and implementation of an individualized family service plan or IFSP developed by a multidisciplinary team, which includes the parent, that:

(1) Is consistent with the definition of that term in §303.20.
(2) Meets the requirements in §§303.342 through 303.346; and
(3) Is documented on the state required WV Birth to Three IFSP form.

(b) For a child referred to WV Birth to Three and determined to be eligible under Part C of IDEA as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day period described in §303.310.

(c) 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.

(d) 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.

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

(f) 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 §303.321 must be used in determining the early intervention services that are needed and will be provided.

(1) In West Virginia, to be considered current, an evaluation or assessment must have been conducted within six months of the most recent IFSP review.

(g) 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. 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.

(h) The service coordinator must ensure that the contents of the IFSP are fully explained to the parents.

(i) Informed written consent, as described in §303.7, must be obtained, as required in §303.420(a)(3), prior to the provision of early intervention services described in the IFSP.

(j) Each early intervention service must be provided as soon as possible but no later than 30 days after the parent provides consent for that service, as required in §303.344(f)(1).

(k) For each initial meeting and each annual IFSP Team meeting to evaluate the IFSP, WV Birth to Three requires 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 WV Birth to Three to be responsible for implementing the IFSP.
(5) A person or persons directly involved in conducting the evaluations and assessments in §303.321.
(6) As appropriate, persons who will be providing early intervention services under Part C to the child or family.

(l) If a person listed in (k) 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.
(4) Each periodic review under §303.342(b) must provide for the participation of persons in (k)(1) - (k)(4). If conditions warrant, provisions must be made for the participation of other representatives identified in (k).

(m) The IFSP must include:

(1) 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 §303.321.

(2) 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 §303.321(c)(2).

(3) The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child, including pre-literacy and language skills, as developmentally appropriate for the child, and family, and the criteria, procedures, and timelines used to determine:

i. The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
ii. Whether modifications or revisions of the expected results or outcomes or early intervention services identified in the IFSP are necessary.

(4) 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 (m) 3, including:

i. The length, duration, frequency, intensity, and method of delivering the early intervention services.
ii. 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 §§303.13(a)(8), 303.26 and 303.126, or, subject to (iii) below, a justification as to why an early intervention service will not be provided in the natural environment.
iii. 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:

(A) Made by the IFSP Team, which includes the parent and other team members.
(B) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and
(C) Based on the child's outcomes that are identified by the IFSP Team in (m) 3 above.

iv. The location of the early intervention services; and
v. And discussion of how services will be paid for by WV Birth to Three.
vi. As used in (i) above:

(A) Frequency and intensity mean the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis.
(B) Method means how a service is provided.
(C) 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; and
(D) 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 his or her IFSP.

vii. As used in (4) (iv) above, location means the actual place or places where a service is provided.

(5) To the extent appropriate, the IFSP also must:

1. 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 Part C of IDEA; and
2. 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.

(6) The IFSP must include the projected date for the initiation of each early intervention service in (m)(4) above, which date must be as soon as possible after the parent consents to the service, as required in §§303.342(e) and 303.420(a)(3); and

(7) The anticipated duration of each service.

(8) 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 Part C of IDEA, 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, the term "profession" includes "service coordination."

(9) Transition from Part C Services.

i. The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with §§303.209 and 303.211(b)(6), from Part C services to:

(A) Preschool services under Part B of IDEA, to the extent that those services are appropriate; or
(B) Other appropriate services.

ii. The steps required in (i) above must include:

(A) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition.
(B) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting.
(C) Confirmation that child find information about the child has been transmitted to the LEA or other relevant agency, in accordance with §303.209(b) and, with parental consent if required under §303.414, transmission of additional information needed by the LEA 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 §§303.340 through 303.345; and
(D) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

11.1. Interim IFSPs: Provision of Services Before Evaluations and Assessments are completed.

(a) Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in §303.321, if the following conditions are met:

(1) Parental consent is obtained.
(2) An interim IFSP is developed that includes:

i. The name of the service coordinator who will be responsible, consistent with §303.344(g), for implementing the interim IFSP and coordinating with other agencies and persons; and
ii. The early intervention services that have been determined to be needed immediately by the child and the child's family.

(3) Evaluations and assessments are completed within the 45-day timeline in §303.310.

11.2. Responsibility and Accountability

(a) 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 IDEA 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.

12. Procedural Safeguards

12.1. General. The DH/WVBTT:

(a) Ensures the establishment and implementation of policies and procedural safeguards that meet the requirements of Part C of IDEA, including the provisions on confidentiality in §§303.401 through 303.417, parental consent and notice in §§303.420 and 303.421, surrogate parents in §303.422, and dispute resolution procedures in §303.430.

(b) Ensures the effective implementation of the safeguards by each participating agency, including DH/WVBTT and EIS providers, in the statewide system that is involved in the provision of early intervention services under Part C of IDEA; and

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

12.2. Confidentiality and Opportunity to Examine Records

(a) The DH/WVBTT ensures that the parents of a child referred under Part C of IDEA 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.

(b) As required under IDEA, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to Part C of IDEA by the Secretary and by participating agencies, including the DH/WVBTT 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.

(c) West Virginia has procedures in effect to ensure that:

(1) Participating agencies, including the DH/WVBTT, EIS Programs, and EIS providers, comply with the Part C confidentiality procedures in §§303.401 through 303.417; and
(2) The parents of infants or toddlers who are referred to, or receive services under Part C of IDEA, 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 Part C of IDEA, including records related to evaluations of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under Part C of IDEA.

(d) The confidentiality procedures described in this section apply to the personally identifiable information of a child and the child's family that:

(1) Is contained in early intervention records collected, used, or maintained under Part C of IDEA by the DH/WVBTT, EIS Program or an EIS provider; and
(2) Applies from the point in time when the child is referred for early intervention services under Part C of IDEA 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.

(e) DH/WVBTT discloses, through Notifications, to the SEA and the LEA where the child resides, in accordance with §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the IDEA:

(1) A child's name.
(2) A child's date of birth.
(3) Parent contact information, including parents' names, addresses, and telephone numbers; and
(4) The service coordinator's name and contact information.

(f) The information described in (e) above is needed to enable the WV Birth to Three, as well as LEAs and SEAs under Part B of the IDEA, to identify all children potentially eligible for services under §303.211 and Part B of the IDEA.

12.3. Definitions

(a) The following definitions apply to §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:

(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 §303.29.

(2) Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and the regulations in Part C.

(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 IDEA and the regulations in Part C of IDEA with respect to a particular child. A participating agency includes DH/WVBTT, RAUs, EIS Programs, and EIS providers and any individual or entity that provides any Part C services, including service coordination, evaluations and assessments, and other Part C services,

but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities that act solely as funding sources for Part C services.

12.4. Notice to Parents

(a) DH/WVBTT must give notice when a child is referred under Part C of IDEA that is adequate to fully inform parents about the requirements in §303.402, including:

(1) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods West Virginia intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information.

12.5 Access Rights

(a) 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 Part C of IDEA. 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 §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.

(b) The right to inspect and review early intervention records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records.
(2) 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
(3) The right to have a representative of the parent inspect and review the early intervention records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her 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.

12.6. Record of Access

(a) Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the IDEA, 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.

12.7. Records on More Than One Child

(a) 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.

12.8. List of Types and Locations of Information

(a) 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.

12.9. Fees For Records

(a) DH/WVBTT does not charge parents a fee for an initial copy of their child's record under Part C of IDEA but does reserve the right to charge a fee for additional copies if determined appropriate, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in (c) below.

(b) DH/WVBTT may not charge a fee to search for or to retrieve information under Part C of IDEA.

(c) Each service coordinator is responsible for providing the parent with a paper or secure electronic copy of the initial/annual IFSP and/or IFSP review at no cost to the parent. Each EIS provider is responsible for providing a paper or secure electronic copy of all evaluations and/or assessments prior to the initial and annual eligibility/IFSP meeting or an IFSP review at no cost to the parent. In addition, each service coordinator and EIS provider must provide the parent and/or caregiver with a paper or secure electronic copy of their service delivery notes following each service provision.

12.10. Amendment of Records at a Parent's Request

(a) A parent who believes that information in the early intervention records collected, maintained, or used under Part C of IDEA 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.

(b) 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.

(c) If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

12.11. Opportunity for a Hearing

(a) 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 it 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 §303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the West Virginia procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

12.12. Result of Hearing

(a) 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, it must amend the information accordingly and so inform the parent in writing.

(b) 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, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the early intervention records of the child under (b) above must:

(1) 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; and
(2) 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.

12.13. Hearing Procedures

(a) A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.

12.14. Consent Prior to Disclosure or Use

(a) Except as provided in (b) below, prior parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C of IDEA, subject to (b) below; or
(2) Used for any purpose other than meeting a requirement of Part C of IDEA.

(b) The DH/WVBTT or other participating agency may not disclose personally identifiable information, as defined in §303.29, to any party except participating agencies, including WV Birth to Three, RAUs and EIS providers, that are part of the State's Part C system without parental consent unless authorized to do so under:

(1) Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or

(2) 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 Part C of IDEA, 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:

i. 34 CFR 99.30 means §303.414(a).
ii. "Education records" means early intervention records under §303.403(b).
iii. "Educational" means early intervention under Part C of IDEA.
iv. "Educational agency or institution" means the participating agency under §303.404(c).
v. "School officials and officials of another school or school system" means qualified personnel or service coordinators under Part C of IDEA.
vi. "State and local educational authorities" means the lead agency under §303.22; and
vii. "Student" means child under Part C of IDEA.

(3) The DH/WVBTT provides policies and procedures to be used when a parent refuses to provide consent under this section, such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under Part C of IDEA, provided that those procedures do not override a parent's right to refuse consent under §303.420.

12.15. Safeguards

(a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§303.401 through 303.417 and 34 CFR part 99.

(d) 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.

12.16. Destruction of Information

(a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under Part C of IDEA is no longer needed to provide services to the child under Part C of IDEA, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.

(b) Subject to (a) above, 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 phone 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.

12.17. Enforcement

(a) DH/WVBTT has in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of IDEA and the regulations in Part C are met.

13. Procedural Safeguards - Prior Written Notice and Procedural Safeguards Notice

(a) Prior written notice must be provided to parents a reasonable time before the DH/WVBTT or an EIS program or EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their 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.

(b) The notice must be in sufficient detail to inform parents about:
(1) The action that is being proposed or refused.
(2) The reasons for taking the action; and
(3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a state complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.

(c) The notice must be:
(1) Written in language understandable to the general public; and
(2) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(d) 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 paragraph have been met.

14. Procedural Safeguards - Parental Consent and Ability to Decline Services

(a) DH/WVBTT ensures parental consent is obtained before:

(1) All evaluations and assessments of a child are conducted under §303.321.
(2) Early intervention services are provided to the child under Part C of IDEA.
(3) Public benefits or insurance is used if such consent is required under §303.520; and
(4) Disclosure of personally identifiable information consistent with §303.414.

(b) If a parent does not give consent under (a)(1) or (a)(2) above, the EIS provider must make reasonable efforts to ensure that the parent:

(1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
(2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(c) DH/WVBTT may not use the due process hearing procedures under Part C or Part B of IDEA to challenge a parent's refusal to provide any consent that is required under (a) above.

(d) The parents of an infant or toddler with a disability:

(1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under Part C at any time, in accordance with West Virginia law; and
(2) May decline a service after first accepting it, without jeopardizing other early intervention services under Part C of IDEA.

15. Procedural Safeguards - Surrogate Parents

15.1. General

(a) The DH/WVBTT or other public agency ensures that the rights of a child are protected when:

(1) No parent, as defined in §303.27, can be identified.

(2) The DH/WVBTT or other public agency, after reasonable efforts, cannot locate a parent; or
(3) The child is a ward of the State under the laws of West Virginia.

15.2. Duty of Lead Agency and Other Public Agencies

(a) The duty of DH/WVBTT or other public agency includes the assignment of an individual to act as a surrogate for the parent. The WV Birth to Three Interim or Ongoing Service Coordinator completes the following steps for assigning a surrogate parent:
(1) Determines whether a child needs a surrogate parent.
(2) Document efforts to make the determination in the child's record.
(3) Identifies a surrogate parent to the child; and
(4) Documents in the child's record the identity and contact information of the person assigned to serve as surrogate parent.

(b) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the service coordinator must consult with the public agency that has been assigned care of the child.

15.3. Wards of the State

(a) In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the DH/WVBTT, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in 15.4(b)(1) and 15.4 (c).

15.4. Criteria for Selection of Surrogate Parents

(a) DH/WVBTT or other public agency may select a surrogate parent in any way permitted under State law.

(b) Public agencies must ensure that a person selected as a surrogate parent:
(1) Is not an employee of DH/WVBTT or any other public agency, EIS Program 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 he or she represents.
(3) Does not have a criminal record; and
(4) Has knowledge and skills that ensure adequate representation of the child.

(c) A person who is otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

15.5. Surrogate Parent Responsibilities

(a) The surrogate parent has the same rights as a parent for all purposes under Part C of IDEA.

15.6. Lead Agency Responsibility

(a) DH/WVBTT 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.

(b) DH/WVBTT will terminate the appointment of a surrogate parent if:
(1) The child ceases to meet the eligibility criteria for needing a surrogate parent.
(2) The child ceases to participate in WV Birth to Three; or
(3) The surrogate parent no longer meets the requirements for a surrogate.

16. Procedural Safeguards - Dispute Resolution

16.1. State Dispute Resolution Options

(a) DH/WVBTT ensures implementation of the procedures in this section for the timely administrative resolution of complaints through mediation, state complaint procedures, and due process hearing procedures, described (b) through (f) below.

(b) The DH/WVBTT Continuous Quality Improvement Coordinator (CQI) has oversight responsibility for coordination of dispute resolution options.

(c) DH/WVBTT makes available to parties to disputes involving any matter under Part C the opportunity for mediation that meets the requirements in §303.431.

(d) DH/WVBTT has adopted written state complaint procedures to resolve any state complaints filed by any party regarding any violation of Part C of IDEA that meet the requirements in §§303.432 through 303.434.

(e) DH/WVBTT has adopted written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a) by adopting the Part C due process hearing procedures under section 639 of IDEA that:

(1) Meet the requirements in §§303.435 through 303.438; and
(2) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a).

(f) During the pendency of any proceeding involving a due process complaint under (d) above, unless DH/WVBTT 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.

(g) If the due process complaint under (d) above involves an application for initial services under Part C of IDEA, the child must receive those services that are not in dispute.

16.2. Mediation

(a) DH/WVBTT has procedures established and implemented to allow parties to disputes involving any matter under Part C of IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

(b) The procedures 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 IDEA; and
(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) DH/WVBTT maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

(d) DH/WVBTT selects mediators on a random, rotational, or other impartial basis.

(e) DH/WVBTT bears the cost of the mediation process, including the costs of meetings described (l) below.

(f) Each session in the mediation process is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.

(g) 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 DH/WVBTT who has the authority to bind such agency.

(h) A written, signed mediation agreement under this section is enforceable in any West Virginia court of competent jurisdiction or in a district court of the United States.

(i) 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 West Virginia court.

(j) An individual who serves as a mediator under Part C of IDEA:

(1) May not be an employee of DH/WVBTT 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.

(k) A person who otherwise qualifies as a mediator is not an employee of DH/WV BTT or EIS program solely because he or she is paid by the agency or provider to serve as a mediator.

16.3. State Complaint Procedures

(a) DH/WVBTT has adopted written procedures for:

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the filing of a complaint with DH/WVBTT; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the West Virginia procedures under §§303.432 through 303.434.

(b) In resolving a complaint in which DH/WVBTT has found a failure to provide appropriate services, DH/WVBTT, pursuant to its general supervisory authority under Part C of IDEA, addresses:

(1) 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

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

(c) DH/WVBTT includes in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to:

(1) Carry out an independent on-site investigation, if DH/WVBTT determines that an investigation is necessary.

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(3) Provide DH/WVBTT, the public agency, EIS program or EIS provider with an opportunity to respond to the complaint, including, at a minimum:

i. At the discretion of DH/WVBTT, a proposal to resolve the complaint; and
ii. An opportunity for a parent who has filed a complaint and DH/WVBTT, the public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431.

(4) Review all relevant information and make an independent determination as to whether DH/WVBTT, the public agency, EIS Program, or EIS provider is violating a requirement of Part C of IDEA or of the regulations implementing Part C; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

i. Findings of fact and conclusions; and
ii. The reasons for DH/WVBTT's final decision.

(d) DH/WVBTT's procedures described in (c) above:

(1) Permit an extension of the time limit under (c) above only if:
i. Exceptional circumstances exist with respect to a particular complaint; or
ii. The parent, or individual or organization, and DH/WVBTT, the public agency or EIS provider involved agree to extend the time to engage in mediation; and

(2) Include procedures for effective implementation of DH/WVBTT's final decision, if needed, including:
i. Technical assistance activities,
ii. Negotiations, and
iii. Corrective actions to achieve compliance.

(e) If a written complaint is received that is also the subject of a due process hearing under §303.430(d) or contains multiple issues of which one or more are part of that hearing, DH/WVBTT sets 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 is resolved using the time limit and procedures described in this section.

(f) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties:

(1) The due process hearing decision is binding on that issue; and
(2) DH/WVBTT informs the complainant of that effect.

(g) A complaint alleging DH/WVBTT, the public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by WV Birth to Three.

(h) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.

(i) The complaint must include:
(1) A statement that DH/WVBTT, the public agency, or EIS provider has violated a requirement of Part C of IDEA.
(2) The facts on which the statement is based.

(3) The signature and contact information for the complainant; and
(4) If alleging violations with respect to a specific child:
   i. The name and address of the residence of the child.
   ii. The name of the EIS provider serving the child.
   iii. A description of the nature of the problem of the child, including facts relating to the problem; and
   iv. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(j) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint was received in accordance with §303.432.

(k) The party filing the complaint must forward a copy of the complaint to the public agency and EIS provider serving the child at the same time the party files the complaint with DH/WVBTT.

16.4. Due Process Hearings

(a) Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this section. The person must:

(1) Have knowledge about the provisions of Part C of IDEA and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
(2) Perform the following duties:
   i. Listen to the presentation of relevant viewpoints about the due process complaint.
   ii. Examine all information relevant to the issues.
   iii. Seek to reach a timely resolution of the due process complaint.
   iv. Provide a record of the proceedings, including a written decision.

(3) Impartial means that the due process hearing officer appointed to implement the due process hearing under Part C of IDEA:
   i. Is not an employee of DH/WVBTT or an EIS provider involved in the provision of early intervention services or care of the child; and
   ii. Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(4) A person who otherwise qualifies under (a)(3) above 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 Part C of IDEA.

(b) DH/WVBTT ensures that the parents of a child referred to Part C are afforded the rights in the due process hearing carried out under §303.430(d). Any parent involved in a due process hearing has the right to:

(1) 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.
(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.
(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parents at least five days before the hearing.
(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
(5) Receive a written copy of the findings of fact and decisions at no cost to the parent.

(c) Any due process hearing conducted under this section must be carried out at a time and place that is reasonably convenient to the parents.
(d) DH/WVBTT ensures that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this section is completed and a written decision mailed to each of the parties.
(e) A hearing officer may grant specific extensions of time beyond the period set out in above at the request of either party.
(f) Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in West Virginia or Federal court under section 639(a)(1) of IDEA.

17. Finance

17.1. Methods to Ensure the Provision of, and Financial Responsibility for Part C Services

(a) DH/WVBTT ensures it has in place methods for state coordination of the funding and provision of services.

(b) Under these methods, the Governor has appointed WV DH as the lead agency responsible for:

(1) The provision of, and establishing financial responsibility for, early intervention services provided under Part C of IDEA; and
(2) Such services are consistent with the requirement in section 635 of IDEA and the West Virginia application under section 637 of IDEA, including the provision of such services during the pendency of any dispute between state agencies.

(c) The methods in (a) and (b) above meet all requirements in this section and be set forth in one of the following:

(1) State law or regulation,
(2) 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
(3) Other appropriate written methods determined by the Governor, or the Governor’s designee, and approved by the Secretary through the review and approval of West Virginia’s application.

(d) Each method includes 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 the West Virginia early intervention system. Those procedures include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or DH to make a final determination for interagency disputes, which determination is binding upon the agencies involved.

(e) The method:

(1) Permits 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) Includes the process that DH 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.

(f) If, during the DH'S resolution of the dispute, the Governor, Governor's designee, or DH determines that the assignment of financial responsibility under this section was inappropriately made:
(1) The Governor, Governor's designee, or DH reassigns the financial responsibility to the appropriate agency; and
(2) The DH makes arrangements for reimbursement of any expenditure incurred by the agency originally assigned financial responsibility.

(g) The methods adopted by West Virginia under this section:
(1) Include a mechanism to ensure that no services that a child is entitled to receive under Part C of IDEA are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and
(2) Are consistent with the written funding policies adopted by West Virginia under this section and include any provisions West Virginia has adopted under §303.520 regarding the use of public insurance to pay for Part C services.

(h) Each method includes any additional components necessary to ensure effective cooperation and coordination among, and the DH's general supervision, including monitoring, of, EIS programs or EIS providers, including all public agencies, involved in the West Virginia early intervention system.

17.2. Permissive Use of Funds by the Lead Agency

(a) Consistent with §§303.120 through 303.122 and §§303.220 through 303.226, DH/WVBTT may use funds under Part C for activities or expenses that are reasonable and necessary for implementing the West Virginia early intervention program for infants and toddlers with disabilities including funds:

(1) For direct early intervention services for infants and toddlers with disabilities and their families under Part C of IDEA that are not otherwise funded through other public or private sources, subject to §§303.510 through 303.521.

(2) To expand and improve services for infants and toddlers with disabilities and their families under Part C of IDEA that are otherwise available.
(3) West Virginia does not provide FAPE as that term is defined in §303.15, in accordance with Part B of IDEA, to children with disabilities from their third birthday to the beginning of the following school year.

17.3. Use of Funds, Payor of Last Resort, and System of Payments

(a) DH/WVBTT ensures written policies and procedures meet the requirements of the:
(1) Use of funds provisions in §303.501; and
(2) Payor of last resort provisions in §§303.510 through 303.521, regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of IDEA within West Virginia.

(b) West Virginia has established, consistent with §§303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of IDEA that meets the requirements of §§303.520 and 303.521.

17.4 Payor of Last Resort--General Provisions

(a) Except as provided in (b) below of this section, funds under Part C of IDEA 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 IDEA. Therefore, funds under Part C 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 source, subject to §§303.520 and 303.521.

(b) 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 IDEA may be used to pay the provider of services, for services and functions authorized under Part C of IDEA, including health services, as defined in §303.16, but not medical services, functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(c) Nothing in Part C of IDEA may be construed to permit the State to reduce medical or other assistance available in the State or to alter eligibility under Title V of the Social Security Act (SSA), 42 U.S.C. 701, et seq. 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 IDEA.

17.5. Policies Related to Use of Public Benefits or Insurance or Private Insurance to Pay for Part C Services

(a) West Virginia may not use the public benefits or insurance of a child or parent to pay for Part C services unless DH/WVBTT provides written notification, consistent with §303.520(a)(3), to the child's parents, and West Virginia meets the no-cost protections identified in (b) below.

(b) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, West Virginia:
   (1) Does 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 obtains 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) Assures that the use of a child or family's public insurance to pay for Part C services will not result in any of the following:
      i. Decrease in available lifetime coverage or any other insured benefit for that child or parent under that program,
      ii. The child's parents paying any fees, copays or deductibles for services that would otherwise be covered by the public benefits or insurance program,
      iii. Any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents,
      iv. The use of, or claim against, the child's private insurance; or
      v. Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

(c) Prior to using a child's or parent's public benefits or insurance to pay for Part C services, DH/WVBTT provides written notification to the child's parents. The notification includes:
   (1) A statement that the DH, as the agency responsible for the administration West Virginia public benefits or insurance programs and the lead agency for Part C of IDEA, utilizes public insurance as a funding source for provision of Part C early intervention services, including the use of a child's personally identifiable information for billing purposes.
   (2) A statement of the no-cost protection provisions in §303.520(a)(2).

(d) DH/WVBTT does not require a parent to pay any costs 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 fees, co-payments or deductibles, or the required use of private insurance as the primary insurance), which is clarified in the State's system of payments policies under §303.521 and included in the notification provided to the parent under (a)(3) above.

(e) DH/WVBTT does not require a parent to pay any costs as a result of the State's using a child's or parents public benefits or insurance to pay for Part C services (such as fees, co-payments or deductibles, or the required use of private insurance as the primary insurance, which is clarified in the State's system of payments polices under 303.521 and included in the notification provided to the parent under (a)(3) above.

(f) Third Party Liability (TPL) and Public Insurance
  (1) TPL refers to an individual with both public and private insurance.
  (2) DH/WVBTT claims will be processed without regard to private health insurance when the parent/child is dually enrolled.
  (3) This policy will not impact insurance coverage or policy caps for participating children or their families.

(g) West Virginia does not include the use of private insurance in its System of Payments.

(h) DH/WVBTT does not request a parent or family of an infant or toddler receiving Part C services to pay a fee or incur a cost for Part C services, therefore there is no determination of a family's inability to pay under 303.521(a)(3). If a parent does not provide consent under 303.520(a)(2)(i) or 303.520(a)(2)(ii) the state must still, make available those Part C services on the IFSP to which the parent has provided consent.

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

(j) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of IDEA, those funds are considered neither State nor local funds under §303.225(b).

(k) The State does not generate funds from private insurance for services under Part C of IDEA, therefore those funds are considered neither State nor local funds under §303.225.

(l) West Virginia does not implement a system of family fees under §303.521, and therefore does not have any such income to consider as program income under 34 CFR 80.25.

17.6. System of Payments and Fees
(a) A DH/WVBTT System of Payments policy is provided to each family in WV Birth to Three.

(b) West Virginia has adopted a system of payments in accordance with §303.500(b), the State's system of payments policies are in writing and specify which functions or services, if any, are subject to the system of payments, including that fees, deductibles or copayments are not charged to the family, and that no cost to the family is incurred as a result of using the family's public insurance or benefits to pay for Part C services.

(c) The following are required functions that are carried out at public expense, and for which no fees, copayments or deductibles will be charged to parents:
  (1) Implementing the child find requirements in §§303.301 through 303.303.
  (2) Evaluation and assessment, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).

(3) Service coordination services, as defined in §§303.13(b)(11) and 303.33.
(4) Administrative and coordinative activities related to:
i. The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345.
ii. Implementation of the procedural safeguards in subpart E of Part C of IDEA and the other components of the statewide system of early intervention services in subpart D of Part C of IDEA and this subpart.
(5) The provision of services as identified on an eligible child's Individualized Family Service Plan (IFSP).

(d) West Virginia's system of payments includes written statement to inform a parent who wishes to contest the State's implementation of the System of Payments policy, of the following options:
(1) Participating in mediation in accordance with §303.431.
(2) Requesting a due process hearing under §303.436 or 303.441, whichever is applicable.
(3) Filing a State complaint under §303.434.
(4) Using 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 Part C of IDEA, including the right to pursue, in a timely manner, the redress options described in this section.

(e) DH/WVBTT informs parents of these procedural safeguard options by including this information with the written notice provided to parents under §303.421.

18. State Interagency Coordinating Council

18.1. Establishment of Council

(a) West Virginia has established a State Interagency Coordinating Council (Council) as defined in §303.8.

(b) The Council has been appointed by the Governor. The Governor ensures that the membership of the Council reasonably represents the population of West Virginia.

(c) The Governor has designated a member of the Council to serve as the chair and Council members select a co-chair. Any member of the Council who is a representative of the lead agency designated under §303.201 may not serve as the chairperson of the Council.

18.2. Composition

(a) The Council is composed as follows:
(1) At least 20 percent of the members are 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.

i. At least one parent member is a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.

(2) At least 20 percent of the members are public or private providers of early intervention services.
(3) At least one member is from the West Virginia legislature.
(4) At least one member is involved in personnel preparation.
(5) At least one member is:
   i. 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
   ii. Has sufficient authority to engage in policy planning and implementation on behalf of these agencies.
(6) At least one member is:
   i. From the SEA responsible for preschool services to children with disabilities; and
   ii. Has sufficient authority to engage in policy planning and implementation on behalf of the SEA.
(7) At least one member is from the agency responsible for the State Medicaid and CHIP program.
(8) At least one member is from a Head Start or Early Head Start agency or program in the State.
(9) At least one member is from a State agency responsible for childcare.
(10) At least one member is from the agency responsible for the State regulation of private health insurance.
(11) At least one member is a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
(12) At least one member is a representative from the State child welfare agency responsible for foster care.
(13) At least one member is from the State agency responsible for children's mental health.
(14) Other at-large members as needed to conduct the Council's business.

(b) The Governor may appoint one member to represent more than one program or agency listed in (a)(7) through (a)(13) above.

(c) 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.

(d) 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.

18.3. Meetings

(a) The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.

(b) The meetings must:
(1) 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.
(2) To the extent appropriate, be open and accessible to the general public; and
(3) As needed, provide interpreters for people who are deaf and other necessary services for Council members and participants. The Council may use funds under Part C of IDEA to pay for those services.

18.4. Use of funds by the Council

(a) Subject to the approval by the Governor, the Council may use funds under Part C of IDEA to:
(1) Conduct hearings and forums.
(2) Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties, including childcare for parent representatives.
(3) 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.
(4) Hire staff; and
(5) 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 IDEA.
(6) Except as provided in this section, Council members must serve without compensation from funds available under Part C of IDEA.

(b) The Council is provided annual funding to adopt a budget and expend funds as permitted under Part C of IDEA.

18.5. Functions of the Council - Required Duties

(a) The Council must advise and assist the lead agency in the performance of its responsibilities in section 635(a)(10) of IDEA, including:
(1) Identification of sources of fiscal and other support for services for early intervention service programs under Part C of IDEA.
(2) Assignment of financial responsibility to the appropriate agency.
(3) Promotion of methods, including use of intra-agency and interagency agreements, for intra-agency and interagency collaboration regarding child find under §§303.115 and 303.302, monitoring under §303.120 and §§303.700 through 303.708, financial responsibility and provision of early intervention services under §§303.202 and 303.511, and transition under §303.209; and
(4) Preparation of applications under Part C of IDEA and amendments to those applications.

(b) The Council must advise and assist the SEA and the lead agency regarding the transition of toddlers with disabilities to preschool and other appropriate services.

(c) 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 IDEA operated within the State; and
(2) Submit the report to the Secretary by a date that the Secretary establishes.

(d) Each annual report must contain the information required by the Secretary for the year for which the report is made.

18.6. Authorized Activities by the Council

(a) The Council may carry out the following activities:
(1) Advise and assist the lead agency and the SEA regarding the provision of appropriate services for children with disabilities from birth through age five.
(2) Advise appropriate agencies in West Virginia 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.
(3) Coordinate and collaborate with the state Early Childhood Advisory Council 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.

19. Federal and State Monitoring and Enforcement

19.1. State Monitoring and Enforcement

(a) DH/WVBTT:
(1) Monitors the implementation of Part C of IDEA.
(2) Makes determinations annually about the performance of each EIS program using the categories identified in §303.703(b).
(3) Enforces Part C of IDEA consistent with §303.704, using appropriate enforcement mechanisms, which includes, if applicable, the enforcement mechanisms identified in §303.704(a)(1) (technical assistance) and §303.704(a)(2) (imposing conditions on the lead agency's funding of an EIS program or, if the lead agency does not provide Part C funds to the EIS program, an EIS provider), §303.704(b)(2)(i) (corrective action or improvement plan) and §303.704(b)(2)(iv) (withholding of funds, in whole or in part by the lead agency), and §303.704(c)(2) (withholding of funds, in whole or in part by the lead agency); and
(4) Reports annually on the performance of the State and of each EIS program under Part C of IDEA as provided in §303.702.

(b) The primary focus of West Virginia monitoring activities is on:
(1) Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and

(2) Ensuring that EIS programs meet the program requirements under Part C of IDEA, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

(c) As a part of its responsibilities under (a) above, West Virginia uses quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in (d) below, and the indicators established by the Secretary for the State performance plans.

(d) DH/WVBTT monitors each EIS program in West Virginia, 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:
(1) Early intervention services in natural environments.
(2) 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 IDEA.

(e) In exercising its monitoring responsibilities under (d) above, West Virginia ensures that when it identifies noncompliance with the requirements of Part C of IDEA by EIS programs, the noncompliance is corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance.

19.2. State Performance Plans and Data Collection

(a) West Virginia has in place a performance plan that meets the requirements described in section 616 of IDEA; is approved by the Secretary; and includes an evaluation of West Virginia's efforts to implement the requirements and purposes of Part C of IDEA, a description of how West Virginia will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).

(b) West Virginia reviews its State Performance Plan (SPP) at least once every six years and submits any amendments to the Secretary.

(c) Data collection
(1) West Virginia collects valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State Performance Plans.
(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and West Virginia collects data for a particular indicator through State monitoring or sampling, West Virginia collects and reports data on those indicators for each EIS program once during the six-year period of a State Performance Plan.
(3) Nothing in Part C of IDEA or these regulations 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 IDEA.

19.3. State Use of Targets and Reporting

(a) West Virginia uses the targets established in the State's performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of IDEA.

(b) Subject to (b)(3) below, West Virginia:
  (1) Reports annually to the public on the performance of each EIS program in the State on the targets in the West Virginia Annual Performance Report as soon as practicable but no later than 120 days following the submission of the West Virginia Annual Performance Report to the Secretary under (c) below; and
  (2) Makes the State's Performance Plan under §303.701(a), annual performance reports, and the State's annual reports on the performance of each EIS program available through public means, including by posting on the WV Birth to Three website and distribution to EIS programs.
  (3) In meeting the requirements of this section, since West Virginia collects some data through State monitoring or sampling, West Virginia includes in its public report on EIS programs the most recently available performance data and the date the data was collected.

(c) West Virginia reports annually to the Secretary on the performance of the State under the State's performance plan.

(d) West Virginia does 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.

19.4. West Virginia Review and Determination Regarding Local Performance

(a) Based on the information provided by provider agencies, information obtained through monitoring visits, and any other public information made available, the WV Birth to Three determines if the EIS program:
  (1) Meets the requirements and purposes of Part C of IDEA.
  (2) Needs assistance in implementing the requirements of Part C of IDEA.
  (3) Needs intervention in implementing the requirements of Part C of IDEA; or
  (4) Needs substantial intervention in implementing the requirements of Part C of IDEA.

(b) For determinations made under (a)(2), (a)(3) and (a)(4) above, DH/WVBTT provides reasonable notice and an opportunity to appeal those determinations.

(c) The appeal described in (b) above consists of a review of a written statement of appeal and any documentation submitted with the appeal that demonstrates why DH/WVBTT should not make the determination described in (a)(2), (a)(3) or (a)(4) above.

19.5. Enforcement

(a) If DH/WVBTT determines, for two consecutive years, that a EIS program needs assistance under §303.703(b)(1)(ii) in implementing the requirements of Part C of IDEA, DH/WVBTT takes one or more of the following actions:

(1) Advises the EIS program of available sources of technical assistance that may help the agency address the areas in which the agency needs assistance, which may include assistance from DH/WVBTT and technical assistance providers including federally funded nonprofit agencies and requires the agency to work with appropriate entities. This technical assistance may include:

i. The provision of advice by experts to address the areas in which the agency needs assistance, including explicit plans for addressing the areas of concern within a specified period of time.

ii. 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.

iii. Designating and using administrators, service coordinators, service providers, and other personnel to provide advice, technical assistance, and support; and

iv. 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 IDEA, and private providers of scientifically based technical assistance.

(2) Identifies the provider agency as a high-risk grantee and imposes special conditions on the provider's grant under Part C of IDEA.

(b) If DH/WVBTT determines, for three or more consecutive years, that a EIS program needs intervention under §303.703(b)(1)(iii) in implementing the requirements of Part C of IDEA, the following apply:

(1) DH/WVBTT may take any of the actions described in paragraph (a) of this section.

(2) DH/WVBTT takes one or more of the following actions:

i. Requires the EIS program to prepare a corrective action plan or improvement plan if DH/WVBTT determines that the EIS program should be able to correct the problem within one year.

ii. Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a.

iii. Withholds, in whole or in part, any further payments to the EIS program under Part C of IDEA.

iv. Refers to the matter for appropriate enforcement action.

(c) Notwithstanding (a) or (b) above, at any time that DH/WVBTT determines that a EIS program needs substantial intervention in implementing the requirements of Part C of IDEA or that there is a substantial failure to comply with any requirement under Part C of IDEA by the provider agency, DH/WVBTT takes one or more of the following actions.

(1) Recovers funds under section 452 of GEPA, 20 U.S.C. 1234a.

(2) Withholds, in whole or in part, any further payments to the EIS program under Part C of IDEA.

(3) Refers to the matter for appropriate enforcement action.

19.6. Public Attention

(a) Whenever West Virginia receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §303.704, West Virginia 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 IDEA and §303.704 of the regulations to the attention of the public within West Virginia, including by posting the notice on the Web site of DH/WVBTT and distributing the notice to the media and EIS program.

19.7. Rule of Construction

(a) Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 et seq., and its regulations in 34 CFR parts 76,77,80, and 81, including the imposition of special conditions under 34 CFR 80.12, to monitor and enforce the requirements of IDEA.

19.8. State Enforcement

(a) Nothing in this subpart may be construed to restrict West Virginia from utilizing any other authority available to it to monitor and enforce the requirements of IDEA.

20. Data Requirements

20.1. General

(a) DH/WVBTT annually reports to the Secretary and to the public on the information required by section 618 of IDEA at the times specified by the Secretary.

(b) DH/WVBTT submits the report to the Secretary in the manner prescribed by the Secretary.

20.2. Annual Report of Children Served

(a) For the purposes of the annual report required by section 618 of IDEA and §303.720, DH/WVBTT counts and reports the number of infants and toddlers receiving early intervention services on December 1 of each year. The report includes:

(1) The number and percentage of infants and toddlers with disabilities in West Virginia, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organizations, and consortia under §303.731(e)(1)).

(2) 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

(3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of IDEA), by race and ethnicity, who are receiving early intervention services under Part C of IDEA.

(4) The number of due process complaints filed under section 615 of IDEA, the number of hearings conducted, and the number of mediations held, and the number of settlement agreements reached through such mediations.

20.3. Data Reporting

(a) The data described in section 618(a) of IDEA and in §303.721 is publicly reported by West Virginia in a manner that does not result in disclosure of data identifiable to individual children.

(b) The Secretary may permit States and outlying areas to obtain data in section 618(a) of IDEA through sampling.

20.4. Annual Report of Children Served—Certification

(a) DH/WVBTT includes in its report a certification signed by an authorized official of DH/WVBTT that the information provided under §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.