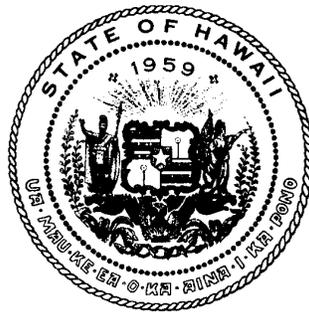


**HAWAII**  
**Individuals with Disabilities Education Act**  
**Part C Early Intervention**  
**Policies and Procedures**



**June 22, 2015**

**Early Intervention Section**  
Children with Special Health Needs Branch  
Family Health Services Division  
Department of Health  
State of Hawaii



## Acronyms

BIE	Bureau of Indian Education
CAPTA	Child Abuse Prevention and Treatment Act
CDC	Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
CSPD	Comprehensive System of Personnel Development
CHIP	Children's Health Insurance Program
DOE	Department of Education
EDGAR	Education Department General Administrative Regulations
EHDI	Early Hearing Detection and Intervention
EI	Early Intervention
EPSDT	Early Periodic Screening, Diagnosis, and Treatment
ESEA	Elementary and Secondary Education Act
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights and Privacy Act
GEPA	General Education Provisions Act
HAR	Hawaii Administrative Rules
HDOH	Hawaii Department of Health
HEICC	Hawaii Early Intervention Coordinating Council
HRS	Hawaii Revised Statutes
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
IFSP	Individualized Family Support Plan
LEA	Local Educational Agency
OT	Occupational Therapy
OTR	Registered Occupational Therapist
MOU	Memorandum of Understanding
MSW	Master of Social Work
P&A	Protection and Advocacy
PT	Physical Therapy
PTI	Parent Training and Information Center
RD	Registered Dietician
SEA	State Educational Agency
SSA	Social Security Act
USC	United States Code

# STATE POLICIES, PROCEDURES, METHODS, AND DESCRIPTIONS

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## SECTION I. INTRODUCTION

The purpose of Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) is to provide financial assistance to States to:

- (a) 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 special needs and their families;
- (b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources, including public and private insurance coverage;
- (c) Enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with special needs and their families;
- (d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and
- (e) 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.

## SECTION II. DESCRIPTION OF PART C SERVICES AND OTHER DEFINITIONS

The Hawaii Department of Health (HDOH) ensures the provision of early intervention services under Part C of IDEA to infants and toddlers with special needs and their families in accordance with the provisions of Part C through the Hawaii Early Intervention (EI) System. 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 EI System. Other applicable definitions from 34 CFR Part 303 and from the EI System are also included below.

- (a) **Act** – Act means Individuals with Disabilities Education Act (IDEA), as amended.
- (b) **At-risk infant or toddler** – In Hawaii, at-risk infants and toddlers are not eligible for Part C services.
- (c) **Central Point of Contact** – Central point of contact means the entity within the EI System that serves as a point of entry for families into the Hawaii Early Intervention System. This is called the EI Referral Line.
- (d) **Child** – Child means an individual under the age of six and may include an infant or toddler with special needs, as that term is defined in subsection (t).
- (e) **Consent** – Consent means that:
  - (1) 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 34 CFR §303.25 and subsection (x);
  - (2) 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

- (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
  - (4) 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).
- (f) **Council** – Council means the State Interagency Coordinating Council that meets the requirements of subpart G of 34 CFR Part 303. In Hawaii, this is the Hawaii Early Intervention Coordinating Council (HEICC).
- (g) **Day** – Day means calendar day, unless otherwise indicated.
- (h) **Developmental Delay** – Developmental delay, when used with respect to a child residing in Hawaii, means a child under the age of 3 years has a developmental delay if she/he is experiencing:
- (1) At least 1.4 standard deviation below the mean in any one area or sub-area of development, using a standardized evaluation instrument specified by the HDOH;
  - (2) At least 1.0 standard deviation below the mean in two or more areas or sub-areas of development, using a standardized evaluation instrument specified by the HDOH; or
  - (3) Biological risk when the multidisciplinary team receives a statement or report signed by a qualified provider that includes the diagnosis of a physical or mental condition and the team determines that the diagnosis has a high probability of resulting in delayed development if early intervention services are not provided.
- (i) **Early Intervention Service Program**, called **Early Intervention (EI) Program** in Hawaii, means an entity designated by the state lead agency for federal reporting under these policies and procedures. In Hawaii, the term EI programs mean the EI System’s provider agencies serving within a specific area within a county or island.
- (j) **Early Intervention Service Provider**, called **Early Intervention (EI) Provider** in Hawaii.
- (1) An EI provider means an individual who provides early intervention services under Part C of the Act, whether or not the individual receives Federal funds under Part C. An EI provider may be hired by or under contract with an EI program that is responsible for the supervision of the provision of early intervention services.
  - (2) An EI provider is responsible for:
    - (i) Participating in the multidisciplinary individualized family service plan (IFSP) team’s ongoing assessment of an infant or toddler with special needs 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. In Hawaii, the IFSP is called the Individualized Family Support Plan;
    - (ii) Providing early intervention services in accordance with the IFSP of the infant or toddler with special needs; and
    - (iii) 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 special needs.

(k) **Early Intervention Services**

- (1) **General.** Early intervention services mean developmental services that:
  - (i) Are provided under public supervision;
  - (ii) Are selected in collaboration with the parents;
  - (iii) Are provided at no cost, except, subject to 34 CFR §§303.520 to 303.521 and Section XX(e) to (f), where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
  - (iv) Are designed to meet the developmental needs of an infant or toddler with special needs 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:
    - (A) Physical development;
    - (B) Cognitive development;
    - (C) Communication development;
    - (D) Social or emotional development; or
    - (E) Adaptive development;
  - (v) Meet the Hawaii standards where the early intervention services are provided, including the requirements of Part C of the Act;
  - (vi) Include services identified under paragraph (2);
  - (vii) Are provided by qualified personnel (as that term is defined in 34 CFR §303.31 and subsection (ee)), including the types of personnel listed in paragraph (3);
  - (viii) To the maximum extent appropriate, are provided in natural environments, as defined in 34 CFR §303.26 and subsection (y) and consistent with 34 CFR §§303.126 and 303.344(d) and Sections III(s) and XII(h)(4); and
  - (ix) Are provided in conformity with an IFSP adopted in accordance with section 636 of the Act, 34 CFR §303.20 and subsection (s).
- (2) **Types of early intervention services.** Early intervention services include the following services as defined in this paragraph:
  - (i) Assistive technology device and service:
    - (A) 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 special needs. 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.

- (B) Assistive technology service means any service that directly assists an infant or toddler with special needs in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:
- (a) The evaluation of the needs of an infant or toddler with special needs, including a functional evaluation of the infant or toddler in the child's customary environment;
  - (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with special needs;
  - (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - (e) Training or technical assistance for an infant or toddler with special needs or, if appropriate, that child's family; and
  - (f) 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 special needs.

(ii) Audiology services include:

- (A) Identification of infants and toddlers with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;
- (B) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;
- (C) Referral for medical and other services necessary for the habilitation or rehabilitation of infants and toddlers with special needs who have an auditory impairment;
- (D) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;
- (E) Provision of services for prevention of hearing loss; and
- (F) 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.

- (iii) 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 special needs, in understanding the child's special needs and enhancing the child's development.
- (iv) Health services has the meaning given in 34 CFR §303.16 and subsection (n).
- (v) Medical services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.
- (vi) Nursing services include:
  - (A) 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;
  - (B) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
  - (C) Administration of medications, treatments, and regimens prescribed by a licensed physician.
- (vii) Nutrition services include:
  - (A) 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.
  - (B) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under Part C based on the assessment findings in clause (A); and
  - (C) Making referrals to appropriate community resources to carry out nutrition goals.
- (viii) Occupational therapy includes services to address the functional needs of an infant or toddler with special needs 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:
  - (A) Identification, assessment, and intervention;
  - (B) 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
  - (C) Prevention or minimization of the impact of initial or future

impairment, delay in development, or loss of functional ability.

- (ix) 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:
  - (A) Screening, evaluation, and assessment of children to identify movement dysfunction;
  - (B) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
  - (C) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.
- (x) Psychological services include:
  - (A) Administering psychological and developmental tests and other assessment procedures;
  - (B) Interpreting assessment results;
  - (C) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and
  - (D) 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.
- (xi) Service coordination services, called care coordination services in Hawaii, has the meaning given the term in 34 CFR §303.34 and subsection (hh).
- (xii) 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.
- (xiii) Social work services include:
  - (A) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
  - (B) Preparing a social or emotional developmental assessment of the infant or toddler, within the context of the family;
  - (C) 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;
  - (D) 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 special needs and the

family of that child that affect the child's maximum utilization of early intervention services; and

- (E) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with special needs and the family to receive maximum benefit from early intervention services.

(xiv) Special instruction includes:

- (A) 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;
- (B) 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 special needs;
- (C) Providing families with information, skills, and support related to enhancing the skill development of the child; and
- (D) Working with the infant or toddler with special needs to enhance the child's development.

(xv) Speech-language pathology services include:

- (A) 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;
- (B) 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
- (C) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

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

(xvii) Vision services mean:

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

- (3) **Qualified personnel.** The following are the types of qualified personnel in Hawaii who provide early intervention services under Part C:
- (i) Audiologists;
  - (ii) Family therapists;
  - (iii) Nurses;
  - (iv) Occupational therapists;
  - (v) Orientation and mobility specialists;
  - (vi) Pediatricians and other physicians for diagnostic and evaluation purposes;
  - (vii) Physical therapists;
  - (viii) Psychologists;
  - (ix) Registered dietitians;
  - (x) Social workers;
  - (xi) Special educators, including teachers of children with hearing impairments, including deafness and teachers of children with visual impairments, including blindness;
  - (xii) Speech and language pathologists; and
  - (xiii) Vision specialists, including Ophthalmologists and Optometrists.

(4) **Other services**

The services and personnel identified and defined in paragraphs (2) to (3) do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in 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 paragraph (1) or of another type of personnel that may provide early intervention service in accordance with these policies and procedures, provided such personnel meet the requirements in 34 CFR §303.31 and subsection (ee).

- (l) **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.
- (m) **Free Appropriate Public Education** – Free appropriate public education or FAPE, as used in 34 CFR §§303.211, 303.501, and 303.521, means special education and related services that:
  - (1) Are provided at public expense, under public supervision and direction, and without charge;
  - (2) Meet the standards of the State educational agency (SEA), including the requirements of Part B of the Act;
  - (3) Include an appropriate preschool, elementary school, or secondary school education in Hawaii; and
  - (4) Are provided in conformity with an individualized education program (IEP) that

meets the requirements under 34 CFR §300.320 to 300.324.

FAPE is not relevant in Hawaii's Part C system as, consistent with subsection (t)(3), Hawaii does not serve children with special needs who are eligible for services under Section 619 of the Act and who previously received services under Part C.

(n) **Health Services**

(1) Health services means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under Part C during the time that the child is eligible to receive early intervention services.

(2) 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 special needs that will need to be addressed in the course of providing other early intervention services.

(3) The term does not include:

(i) 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.

(a) Nothing in Part C limits the right of an infant or toddler with special needs 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.

(b) Nothing in Part C prevents the EI 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 special needs are functioning properly;

(ii) Devices, such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps, necessary to control or treat a medical condition; and

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

(o) **Home School** – Home school means the elementary school within the geographical attendance area that the child would attend, if of school age, according to the child's

legal residence or the school of origin, if residing in a homeless situation.

- (p) **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.*
- (q) **Include and Including** – Include or including means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
- (r) **Indian; Indian Tribe**
  - (1) Indian means an individual who is a member of an Indian tribe.
  - (2) 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.*
  - (3) 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.
- (s) **Individualized Family Service Plan**, called **Individualized Family Support Plan (IFSP)** in Hawaii, means a written plan for providing early intervention services to an infant or toddler with special needs under Part C and the infant’s or toddler’s family that:
  - (1) Is based on the evaluation and assessment described in 34 CFR §303.321 and Section XI(f);
  - (2) Includes the content specified in 34 CFR §303.344 and Section XII(h);
  - (3) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained, consistent with 34 CFR §303.420 and Section XIV(a); and
  - (4) Is developed in accordance with the IFSP procedures in 34 CFR §§303.342, 303.343, and 303.345 and Section XII(b) to (g) and (i).
- (t) **Infants and Toddlers with Special Needs**
  - (1) Infant or toddler with special needs means an individual under three years of age who needs early intervention services because the individual:
    - (i) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:
      - (A) Cognitive development.
      - (B) Physical development, including vision and hearing.
      - (C) Communication development.
      - (D) Social or emotional development.
      - (E) Adaptive development; or
    - (ii) Has a diagnosed physical or mental condition that:

- (A) Has a high probability of resulting in developmental delay; and
  - (B) Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; autism spectrum disorder; and other conditions specified by the HDOH.
- (2) Hawaii does not include at-risk infants or toddlers in the state’s eligibility definition.
  - (3) Hawaii does not serve children with special needs who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act.
- (u) **Lead Agency** – Lead agency means the agency designated by the Hawaii State Governor under section 635(a)(10) of the Act and 34 CFR §303.120 and Section III(m) that receives funds under section 643 of the Act to administer Hawaii’s responsibilities under Part C of the Act. In Hawaii, this is the Hawaii Department of Health (HDOH).
  - (v) **Local Educational Agency** – In Hawaii, there are no local educational agencies; the State Educational Agency (SEA) is the State agency primarily responsible for the State supervision of public elementary and secondary schools. In the state of Hawaii, the SEA and Local Educational Agency (LEA) function as one unitary system, the Hawaii Department of Education (DOE). See also State Educational Agency.
  - (w) **Multidisciplinary** – Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to:
    - (1) Evaluation of the child and assessments of the child and family as described in 34 CFR §§303.113 and 303.321(a)(1)(i) and in Sections III(f) and XI(f)(1)(i). In Hawaii, this requires the involvement of two or more service providers from separate professions or disciplines who are qualified professionals and are identified by the care coordinator in collaboration with the family.
    - (2) The IFSP Team in 34 CFR §303.340 and in Section XII(a) 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 care coordinator (consistent with 34 CFR §303.343(a)(1)(iv) and in Section XII(g)(1)(iv)).
  - (x) **Native Language**
    - (1) Native language, when used with respect to an individual who is limited English proficient or LEP, as that term is defined in section 602(18) of the Act, means:
      - (i) 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 subparagraph (ii); and
      - (ii) For evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6) and Section XI(f)(1)(v)(C) to (D), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
    - (2) 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.

- (y) **Natural Environments** – Natural environments means settings that are natural or typical for a same-aged infant or toddler without special needs, may include the home or community settings, and must be consistent with the provisions of 34 CFR §303.126 and Section III(s).
- (z) **Parent**
  - (1) Parent means:
    - (i) A biological or adoptive parent of a child;
    - (ii) A foster parent, unless Hawaii’s laws, regulations, or contractual obligations with Hawaii or local entity prohibit a foster parent from acting as a parent;
    - (iii) 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;
    - (iv) 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
    - (v) A surrogate parent who has been appointed in accordance with 34 CFR §303.422 or section 639(a)(5) of the Act and Section XV.
  - (2) Except as provided in paragraph (3), the biological or adoptive parent, when attempting to act as the parent under Part C and when more than one party is qualified under paragraph (1) 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.
  - (3) If a judicial decree or order identifies a specific person or persons under paragraph (1)(i) to (iv) to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of Part C of the Act, except that if an EI provider or a public agency provides any services to a child or any family member of that child, that EI provider or public agency may not act as the parent for that child.
- (aa) **Parent Training and Information Center** – Parent training and information center (PTI) means a center assisted under section 671 or 672 of the Act. In Hawaii, the PTI is contracted to the Learning Disabilities Association of Hawaii.
- (bb) **Part C of the Act** – Part C of the Act (or Part C) refers to Part C of IDEA, the Infants and Toddlers with Disability Program under the Individuals with Disability Education Act at 20 U.S.C. 1431-1443, as amended.
- (cc) **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 and any reference to “school” means “EI program” as used in Part C.

- (dd) **Public Agency** – As used in Part C, public agency means the lead agency and any other agency or political subdivision of Hawaii.
- (ee) **Qualified Personnel** – Qualified personnel means personnel who have met Hawaii’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.
- (ff) **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 the Act, any reference to “education activities and programs” refers to “early intervention services.”
- (gg) **Secretary** – Secretary means the Secretary of Education.
- (hh) **Service Coordination Services**, called **Care Coordination Services** in Hawaii.

(1) **General**

- (i) As used in Part C, care coordination services mean services provided by a care coordinator to assist and enable an infant or toddler with special needs and the child’s family to receive the services and rights, including procedural safeguards, required under Part C.
- (ii) Each infant or toddler with special needs and the child’s family must be provided with one care coordinator who is responsible for:
  - (A) Coordinating all services required under Part C across agency lines; and
  - (B) Serving as the single point of contact for carrying out the activities described in subparagraph (iii) and paragraph (2).
- (iii) Care coordination is an active, ongoing process that involves:
  - (A) Assisting parents of infants and toddlers with special needs in gaining access to, and coordinating the provision of, the early intervention services required under Part C; and
  - (B) Coordinating the other services identified in the IFSP under 34 CFR §303.344(e) and Section XII(h)(5) that are needed by, or are being provided to, the infant or toddler with special needs and that child’s family.

(2) **Specific care coordination services.** Care coordination services include:

- (i) Assisting parents of infants and toddlers with special needs 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 special needs and their families;
- (ii) 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;

- (iii) Coordinating evaluations and assessments;
  - (iv) Facilitating and participating in the development, review, and evaluation of IFSPs;
  - (v) Conducting referral and other activities to assist families in identifying available EI providers;
  - (vi) Coordinating, facilitating, and monitoring the delivery of services required under Part C to ensure that the services are provided in a timely manner;
  - (vii) Conducting follow-up activities to determine that appropriate Part C services are being provided;
  - (viii) Informing families of their rights and procedural safeguards, as set forth in subpart E of 34 CFR Part 303 and related resources;
  - (ix) Coordinating the funding sources for services required under Part C; and
  - (x) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.
- (3) **Use of the term care coordination or care coordination services.** HDOH or an EI provider's use of the term care coordination or care 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 34 CFR §§303.501 to 303.521 (Payor of last resort provisions) and Section XX(b) to (f).
- (ii) **State** – Except as provided in these policies and procedures, regarding State allotments under Part C, 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.
- (jj) **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 Hawaii law. The term includes the agency that receives funds under sections 611 and 619 to administer Hawaii's responsibilities under Part B of the Act.
- (kk) **Ward of the State**
- (1) General – Subject to paragraph (2), ward of the State means a child who, as determined by Hawaii, is:
    - (i) A foster child;
    - (ii) A ward of Hawaii; or
    - (iii) In the custody of a public child welfare agency.
  - (2) Exception – ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in subsection (z).

*(Reference HAR §§11-140-2, 11-140-4)*

### **SECTION III. GENERAL REQUIREMENTS**

(a) **Statewide Policy**

- (1) Hawaii ensures that all appropriate early intervention services as defined in 34 CFR §303.13 and in Section II(k)(2) are available to all Part C eligible infants and toddlers with special needs in Hawaii and their families, including:
  - (i) Indian infants and toddlers with special needs and their families residing on a reservation geographically located in the State;
  - (ii) Infants and toddlers with special needs who are homeless children and their families; and
  - (iii) Infants and toddlers with special needs who are wards of the State;
- (2) Hawaii ensures that it has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in 34 CFR §303.111 to §303.126 and in subsections (d) to (p).

(b) **State Conformity with Part C of the Act**

Hawaii ensures that any Hawaii rules, regulations, and policies relating to Part C conform to the purposes and requirements of Part C.

(c) **Efforts to Employ and Advance Qualified individuals with Special Needs**

HDOH makes positive efforts to employ and advance in employment, qualified individuals with special needs in programs assisted under Part C of the Act.

(d) **State Definition of Developmental Delay**

The EI System has a rigorous definition of developmental delay, consistent with 34 CFR §§303.10 and 303.203(c) and Section II(h) that is used by Hawaii in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with special needs who are in need of services under Part C. The definition:

- (1) Describes, for each of the areas listed in 34 CFR §303.21(a)(1) and in Section II(t)(1)(i), the evaluation and assessment procedures, consistent with 34 CFR §303.321 and Section XI(f), 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 34 CFR §303.21(a)(1) and in Section II(t)(1)(i).

(e) **Availability of Early Intervention Services**

The EI System ensures appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with special needs and their families, including:

- (1) Indian infants and toddlers with special needs and their families residing on a reservation geographically located in the State; and
- (2) Infants and toddlers with special needs who are homeless children and their families.

(f) **Evaluation, Assessment, and Nondiscriminatory Procedures**

- (1) Subject to paragraph (2), the EI System ensures the performance of:
  - (i) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with special needs in Hawaii; and
  - (ii) 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.
- (2) The evaluation and family-directed identification required in paragraph (1) meets the requirements of 34 CFR §303.321 and Section XI(f).

(g) **Individualized Family Service Plan (IFSP), called Individualized Family Support Plan in Hawaii**

The EI System ensures that for each infant or toddler with special needs and his or her family in Hawaii, that an IFSP, as defined in 34 CFR §303.20 and in Section II(s), is developed and implemented that meets the requirements of 34 CFR §§303.340 through 303.345 and Section XII(a) to (i), and that includes care coordination services, as defined in 34 CFR §303.34 and in Section II(hh).

(h) **Comprehensive Child Find System**

The EI System ensures that its comprehensive child find system meets the requirements in 34 CFR §§303.302 to 303.303 and Section XI(a) to (d).

(i) **Public Awareness Program**

The EI System ensures that its public awareness program:

- (1) Focuses on the early identification of infants and toddlers with special needs; and
- (2) Provides information to parents of infants and toddlers through primary referral sources in accordance with 34 CFR §303.301 and Section X.

(j) **Central Directory**

The EI System ensures that its central directory is accessible to the general public (i.e., through the HDOH's website and other appropriate means) and includes accurate, up-to-date information about:

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

(k) **Comprehensive System of Personnel Development (CSPD)**

- (1) The EI system ensures that its comprehensive system of personnel development includes the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in Hawaii.

- (2) The EI System's comprehensive system of personnel development includes:
  - (i) Training personnel to implement innovative strategies and activities for the recruitment and retention of EI providers;
  - (ii) Promoting the preparation of EI providers who are fully and appropriately qualified to provide early intervention services under Part C; and
  - (iii) Training personnel to coordinate transition services for infants and toddlers with special needs who are transitioning from an early intervention program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.
- (3) The EI System's comprehensive system of personnel development may include:
  - (i) Training personnel to work in rural and inner-city areas;
  - (ii) Training personnel in the emotional and social development of young children; and
  - (iii) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and
  - (iv) Training personnel who provide services under Part C using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable.

(1) **Personnel Standards**

- (1) **General.** The EI System's policies and procedures relating to the establishment and maintenance of qualification standards ensure that personnel necessary to carry out the purposes of Part C are appropriately and adequately prepared and trained.
- (2) **Qualification standards.** The policies and procedures required in paragraph (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. Following are the standards that are required for EI providers by discipline:
  - (i) **Audiology:** Hawaii license; requires Master's degree from an accredited program, passing national exam and completing internship.
  - (ii) **Dietician:** Must be a Registered Dietician (RD) with the American Dietetic Association; no Hawaii license.
  - (iii) **Nursing:** Hawaii license as Registered Nurse; requires graduation from accredited nursing program and passing national exam.
  - (iv) **Occupational Therapy (OT):** Hawaii license; requires completion of the educational requirements and supervised field work experience required for certification by the National Board for Certification in Occupational Therapy, and shall have passed a national certification examination administered by that association.

- (v) Physical Therapy (PT): Hawaii license; requires Bachelor's degree in PT from an accredited program, passing national exam and certification by the American PT Association.
  - (vi) Pediatrics: Hawaii license as a Physician and Surgeon; Board-Eligible Pediatrician by the American Academy of Pediatrics that requires completion of 3-year pediatric internship.
  - (vii) Psychology: Hawaii license as Clinical Psychologist; requires completion of a Doctoral degree from an accredited university or professional school, 1900 hours of internship and passing state exam.
  - (viii) Social Work: Completion of a M.S.W. from an accredited program or equivalent, based on the State of Hawaii Department of Personnel Services specifications. For social worker in private program, Hawaii license required; for state social worker no license required.
  - (ix) Special Education: Completion of a Master's degree in Special Education from an accredited program or equivalent, based on the State of Hawaii Department of Personnel Services specifications; no Hawaii license.
  - (x) Speech Language Pathology: Hawaii license; requires certification by the American Speech Hearing Association which requires Master's degree from an accredited program, passing national exam and completion of internship.
- (3) **Use of paraprofessionals and assistants.** Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with Hawaii 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 special needs.
- (4) **Policy to address shortage of personnel.** Hawaii makes ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with special needs, including, in a geographic area of Hawaii 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 described in paragraphs (1) and (2).
- (m) **HDOH's Role in Supervision, Monitoring, Funding, Interagency Coordination, and Other Responsibilities**
- (1) HDOH as the designated lead agency has the single line of responsibility for the following:
    - (i) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EI programs receiving assistance under Part C of the Act.
    - (ii) The monitoring of programs and activities used by Hawaii to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EI programs and providers that are receiving assistance under Part C of the Act) to ensure that Hawaii complies with Part C, including:

- (A) Monitoring agencies, institutions, organizations, and EI programs and providers used by Hawaii to carry out Part C of the Act;
  - (B) Enforcing any obligations imposed on those agencies, institutions, organizations, and EI programs and providers under Part C of the Act and these policies and procedures;
  - (C) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EI programs and providers;
  - (D) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the HDOH's identification of the noncompliance; and
  - (E) Conducting these activities in clauses (A) to (D) consistent with 34 CFR §§303.700 to 303.707 and Section XXII(a) to (h), and any other activities required by Hawaii.
- (2) The identification and coordination of all available resources for early intervention services within Hawaii, including those from Federal, State, local, and private sources, consistent with subpart F of 34 CFR Part 303.
  - (3) The assignment of financial responsibility in accordance with subpart F of 34 CFR Part 303.
  - (4) The development of procedures in accordance with subpart F of 34 CFR Part 303 to ensure that early intervention services are provided to infants and toddlers with special needs and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EI programs or providers.
  - (5) The resolution of intra- and interagency disputes in accordance with subpart F of 34 CFR Part 303.
  - (6) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with 34 CFR §303.511 and Section XX(d) that defines the financial responsibility of each agency for paying for early intervention services (consistent with Hawaii 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 34 CFR Part 303.
- (n) **Policy for Contracting or Otherwise Arranging for Services**
- The EI System ensures that its policy pertaining to the contracting or making of other arrangements with public or private individuals or EI programs to provide early intervention services in Hawaii that is consistent with the provisions under Part C of the Act, 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 Hawaii's standards and be consistent with the provisions of Part C; and
  - (2) Is consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

(o) **Reimbursement Procedures**

The EI System ensures that its procedures for securing the timely reimbursement of funds used under Part C of the Act, is in accordance with subpart F of 34 CFR Part 303.

(p) **Procedural Safeguards**

The EI System ensures that its procedural safeguards meet the requirements of subpart E of 34 CFR Part 303.

(q) **Data Collection**

(1) The EI System has a system for compiling and reporting timely and accurate data that meets the requirements of in paragraph (2), 34 CFR §§303.700 to 303.702 and Section XXII(a) to (c), and 34 CFR §303.720 to 303.724 and Section XXIII(a) to (e).

(2) The data system required in paragraph (1) includes a description of the process that Hawaii uses to compile data on infants or toddlers with special needs receiving early intervention services under Part C. As Hawaii does not utilize sampling, the process does not describe any sampling methods for reporting the data required by the Secretary under sections 616 and 618 of the Act, 34 CFR §§303.700 to 303.707, and Section XXII(a) to (h); and 34 CFR §§303.720 to 303.724 and Section XXIII.

(r) **State Interagency Coordinating Council**

The EI System has a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of 34 CFR Part 303 and Section II(f).

(s) **Early Intervention Services in Natural Environments**

The EI System ensures that its policies and procedures are consistent with 34 CFR §303.13(a)(8) and Section II(k)(1)(viii) (early intervention services), 34 CFR §303.26 and Section II(y) (natural environments), and 34 CFR §303.344(d)(1)(ii) and Section XII(h)(4)(ii) (content of an IFSP), that early intervention services for infants and toddlers with special needs 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.

#### **SECTION IV. APPLICATION REQUIREMENTS**

(a) **Definition of At-risk Infants and Toddlers and Description of Services**

Since Hawaii does not include children who are at risk in the definition of children eligible under Part C of the Act, these policies and procedures do not include a description of services that would be provided to them.

(b) **Referral Policies for Specific Children**

Hawaii ensures that its policies and procedures require the referral for early intervention services under Part C of specific children under the age of three, as described in 34 CFR §303.303(b) and in Section XI(d)(4).

(c) **Availability of Resources**

Hawaii ensures that resources are made available under Part C for all geographic areas within Hawaii.

## SECTION V. PUBLIC PARTICIPATION POLICIES AND PROCEDURES

- (a) **Application.** At least 60 days prior to being submitted to the Department, Hawaii's application for funds under Part C (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) is published in a manner that ensures circulation throughout Hawaii for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.
- (b) **State Policies and Procedures.** The application includes a description of the policies and procedures used by Hawaii to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these regulations, HDOH:
  - (1) Holds public hearings on the new policy or procedure, including any revision to an existing policy or procedure;
  - (2) Provides notice of the hearings held in accordance with subsection (a) at least 30 days before the hearings were conducted to enable public participation; and
  - (3) Provides an opportunity for the general public, including individuals with special needs, parents of infants and toddlers with special needs, EI providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these policies and procedures.

## SECTION VI. TRANSITION TO PRESCHOOL AND OTHER PROGRAMS

- (a) **Application Requirements.** Hawaii's application for funds under Part C of the Act includes:
  - (1) A description of the policies and procedures Hawaii uses to ensure a smooth transition for infants and toddlers with special needs under the age of three and their families from receiving early intervention services under Part C to:
    - (i) Preschool or other appropriate services for toddlers with special needs; or
    - (ii) Exiting the EI program for infants and toddlers with special needs.
  - (2) A description of how Hawaii meets each of the requirements in subsections (b) to (f).
  - (3) An interagency agreement (i.e., Memorandum of Understanding [MOU]) between HDOH and the SEA to ensure a seamless transition between services under Part C of the Act and Part B of the Act. The MOU addresses how the DOH and the SEA meet the requirements of subsections (b) to (f) and 34 CFR §303.344(h), and Section XII(h)(8) and 34 CFR §§300.101(b), 300.124, 300.321(f), and 300.323(b).
  - (4) Any policy HDOH has adopted under 34 CFR §303.401(d) and (e) and Section XIII(b)(4) to (5).

(b) **Notification to the SEA and the Child's Home School**

(1) HDOH ensures that, subject to paragraph (2):

- (i) Since all toddlers receiving early intervention services in Hawaii may be eligible for preschool services under Part B of the Act, for children referred to the Part C program not fewer than 90 days before the third birthday of the toddler with special needs, HDOH must notify the SEA and the child's home school that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with Hawaii law, unless the parents opt out of notification as described in paragraph (2);
- (ii) Since all toddlers receiving early intervention services in Hawaii may be eligible for preschool services under Part B of the Act, for children referred to the part C program more than 45 days but less than 90 days before that toddler's third birthday, HDOH must provide notification to the SEA and the child's home school as soon as possible after determining eligibility for part C, but no later than two working days after the Initial IFSP meeting date, that the toddler on his or her birthday will reach the age of eligibility for services for services under part B of the Act, as determined in accordance with Hawaii law, unless the parents opt out of notification as described in paragraph (2); or
- (iii) If a toddler is referred to the HDOH fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, HDOH, with parental consent required under §303.414 and Section XIII(n), must refer the toddler to the SEA and the child's home school; but the HDOH is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.
- (iv) The notification to the SEA and the child's home school is also considered a referral to Part B of the Act.
- (v) The IFSP contains confirmation that the transition notification, which required child find information to be transmitted to the SEA or other relevant agency, has occurred, unless the parents have opted out of notification as described in paragraph (2).

(2) Opt-Out Policy. HDOH has adopted the following opt-out policy under 34 CFR §§303.209(c) and subsection (c) and 34 CFR §303.401(e) and Section XIII(b)(5), permitting a parent to object to disclosure of personally identifiable information:

- (i) Families in Hawaii are provided options that allow parents to object and specify the disclosure of personally identifiable information related to Section 637(a)(9)(A)(1) of the Act, requiring that each EI program in Hawaii notify the SEA and the child's home school in the area in which the child lives that the child will shortly reach the age of eligibility and may be eligible for preschool services under Part B of the Act.
- (ii) The following options are included in the Part C Transition Notice to DOE which meets the federal regulations in subparagraph (i) on notification to the SEA and the child's home school of the child's

potential eligibility for preschool services under Part B of the Act. Families choose one of the following options related to the disclosure of personally identifiable information to DOE:

- (A) No information is sent to the DOE;
  - (B) Only federally required directory information that includes the child's name, birth date, and parent(s) contact information (i.e., parents' names, addresses, and telephone numbers) is sent to the DOE;
  - (C) The directory information in clause (B) and, with parental consent, other information which may include the child's diagnosis/area(s) of concern, the child's Part C referral date, the language spoken in the home, and copies of the most current IFSP and evaluation report, are sent to the DOE.
- (iii) For any child found eligible not fewer than 90 days before the child's third birthday, the family is provided with the opt-out policy that is part of the Part C Transition Notice, at least 90 days but no more than 6 months prior to the child's third birthday. Upon receipt of the Part C Transition Notice, parents have 10 days, but no later than 90 days before the child's third birthday, to sign the Part C Transition Notice to opt out of providing information to DOE. If parents do not sign the form within the 10-day period (but no later than 90 days before the child's third birthday) that is stated on the form, the federally required information will be sent to DOE after the 10-day period but no later than 90 days prior to the child's third birthday.
  - (iv) If an EI program determines that a toddler is eligible for early intervention services more than 45 days but less than 90 days before the toddler's third birthday, the parent must sign the Part C Transition Notice no later than at the Initial IFSP meeting. If parents do not sign the form no later than at the Initial IFSP meeting, the federally required information will be sent to DOE as soon as possible but no later than two working days after the Initial IFSP meeting date.
  - (v) If the family chooses not to provide any information to the DOE, the family must check the appropriate box and sign as indicated on the Part C Transition Notice form. In addition, the child's care coordinator will provide the parent with the DOE's "Operation Search" brochure (Part B's Child Find brochure) to ensure that the family is aware of DOE Part B services. The brochure provides information and contact numbers to the family should they have questions or concerns at a later time regarding their child's education. The parent initials receipt of the DOE brochure on the Part C Transition Notice as indicated.
- (c) **Transition Conference to Discuss Services**
- (1) HDOH ensures that:
    - (i) Since HDOH has determined that all toddlers receiving services under Part C of the Act may be eligible for preschool services under Part B of the Act, HDOH, with the approval of the family of the toddler, must convene a transition conference among HDOH, the family, a

representative from either the SEA or the child's home school and EI providers if so desired by the parents, 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 the Act; and

- (ii) If a toddler receiving services under Part C of the Act may be eligible for preschool services under Part B of the Act, but the family is not interested in pursuing Part B services, the HDOH, with the approval of the family of the toddler, makes reasonable efforts to convene a transition conference among HDOH, EI providers, the family and providers of other appropriate services for the toddler (e.g., Head Start, community preschool, etc.) to discuss appropriate services that the toddler may receive.
- (2) The transition conference shall be held in settings and times convenient for the family and in the family's primary language or other mode of communication used by the family, unless it is clearly not feasible to do so.
  - (3) Meeting arrangements for the transition conference shall be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they shall be able to attend. Other participants include, consistent with 34 CFR §303.343(a) and Section XII(g):
    - (i) The parent or parents of the child.
    - (ii) Other family members as requested by the parent, if feasible to do so.
    - (iii) An advocate or person outside of the family, if the parent requests that the person participate.
    - (iv) The care coordinator designated by the EI program to be responsible for implementing the IFSP.
    - (v) A person or persons directly involved in conducting the evaluations and assessments in 34 CFR §303.321 and Section XI(f). If a person who evaluated the child is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:
      - (A) Participating in a telephone conference call.
      - (B) Having a knowledgeable authorized representative attend the meeting.
      - (C) Making pertinent records available at the meeting.
    - (vi) A DOE representative from the SEA or the child's home school.
    - (vii) As appropriate, persons who will be providing early intervention services under Part C to the child or family.
  - (4) The contents of the IFSP must be fully explained to the parents and informed written consent, as described in 34 CFR §303.7 and Section II(e), must be obtained, as required in 34 CFR §303.420(a)(3) and Section XIV(a)(1)(ii), prior to the provision of early intervention services described in the IFSP. 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 34 CFR

§303.344(f)(1) and in Section XII(h)(6).

(d) **Transition Plan**

- (1) HDOH ensures that:
  - (i) Each infant and toddler with special needs exiting the Part C program has in place in the IFSP a transition plan;
  - (ii) Program options for all toddlers with special needs are reviewed for the period from the toddler's third birthday through the remainder of the school year;
  - (iii) Each family of a toddler with special needs who is served under Part C is included in the development of the transition plan required under this section and 34 CFR §303.344(h) and Section XII(h)(8); and
  - (iv) 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.
- (2) The transition plan in the IFSP includes, consistent with 34 CFR §303.344(h) and Section XII(h)(8), as appropriate:
  - (i) Steps for the toddler with special needs and his or her family to exit from the Part C program; and
  - (ii) Any transition services that the IFSP Team identifies as needed by the toddler and his or her family to ensure a smooth transition of the child from Part C services to:
    - (A) Preschool services under Part B of the Act, to the extent that those services are appropriate; or
    - (B) Other services as appropriate.
- (3) Services for the toddler with special needs and his or her family to exit from the Part C program must include:
  - (i) Preschool services under Part B of the Act, to the extent that those services are appropriate;
  - (ii) Part C services under 34 CFR §303.211; or
  - (iii) Other appropriate services.
- (4) Steps for the toddler with special needs and his or her family to exit from the part C program must include:
  - (i) Discussions with, and education of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
  - (ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;
  - (iii) Confirmation that child find information about the child has been transmitted to the SEA or home school or other relevant agency, in accordance with 34 CFR §303.209(b) and subsection (b) (and any policy adopted by Hawaii under 34 CFR §303.401(e) and Section XIII(b)(5)) and, with parent consent if required under 34 CFR §303.414 and Section XIII(n), transmission of additional information needed by

the SEA 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 34 CFR §§303.340 to 303.345 and Section XII(a) to (i); and

- (iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child and to support his or her family.
- (5) The meeting to develop the transition plan shall be held in settings and times convenient for the family and in the family's primary language or other mode of communication used by the family, unless it is clearly not feasible to do so.
- (6) Meeting arrangements for the development of the transition plan shall be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they shall be able to attend. Any meeting to develop the transition plan must meet the requirements in 34 CFR §§303.342(d) to (e) and 303.343(a) and Section XII(e) to (g). The required participants for a meeting to develop a transition plan include:
  - (i) The parent or parents of the child.
  - (ii) Other family members, as requested by the parents, if feasible to do so.
  - (iii) An advocate or person outside of the family, if requested by the family.
  - (iv) The designated care coordinator.
  - (v) A person or persons directly involved in evaluations and assessments. If a person who evaluated the child is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:
    - (A) Participating in a telephone conference call.
    - (B) Having a knowledgeable authorized representative attend the meeting.
    - (C) Making pertinent records available at the meeting.
  - (vi) As appropriate, persons who will be providing EI services to the child and family.
- (7) The contents of the IFSP must be fully explained to the parents and informed written consent, as described in 34 CFR §303.7 and Section II(e), must be obtained, as required in 34 CFR §303.420(a)(3) and Section XIV(a)(1)(ii), prior to the provision of early intervention services described in the IFSP. 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 34 CFR §303.344(f)(1) and in Section XII(h)(6).
- (e) **Transition Conference and Meeting to Develop Transition Plan.** Any conference consistent with 34 CFR §303.209(c) and subsection (c) or meeting to develop the transition plan consistent with 34 CFR §303.209(d) and subsection (d) (which conference and meeting may be combined into one meeting) must meet the requirements in 34 CFR §§303.342(d) to (e) and 303.343(a) and in Section XII(e) to (g).
- (f) **Applicability of Transition Requirements**

The transition requirements in subsections (b)(1)(i) to (ii), (c)(1)(i), and (d) apply to all toddlers with special needs receiving services under Part C before those toddlers turn age three.

(Reference HAR §11-140-7)

## **SECTION VII. COORDINATION WITH HEAD START AND EARLY HEAD START, EARLY EDUCATION, AND CHILD CARE**

HDOH 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 the Act through a number of activities including:

- (a) Representatives from HDOH and the HEICC are members on the Early Learning Advisory Board, which is advisory to the Executive Office of Early Learning. This Office was created in July 2012 with the passage of Act 178; the Act also renamed the Early Learning Council to the Early Learning Advisory Board. The purpose of the Board is to:
  - (1) Advise the office on how best to meet the educational needs of children, from prenatal care to entry into kindergarten;
  - (2) Provide recommendations to the office on improving the quality, availability and coordination of early childhood care and education programs;
  - (3) Promote collaboration across agencies and stakeholders serving young children; and
  - (4) Be an independent voice for children's health, safety and development and learning.
- (b) HDOH representatives are members of the Executive Office of Early Learning Action Strategy system-building efforts. Six teams are working to create a comprehensive coordinated early childhood system for children, prenatal to age 8 years.
- (c) A Memorandum of Understanding between HDOH and the Administration for Children and Families, Region IX (representing the Hawaii Head Start Grantees) to support successful transition experiences for children and families leaving early intervention services and seeking enrollment in Head Start programs.
- (d) A Memorandum of Understanding between HDOH and the Administration for Children and Families, Region IX (representing the Hawaii Early Head Start Grantees) to ensure that eligible infants and toddlers under age 3 and their families receive coordinated services and supports as defined by the applicable State and Federal laws and regulations governing the respective agencies.
- (e) Although HDOH is not a voting member with the Department of Human Services Child Care Advisory Board, an EI System representative attends these meetings to gather and share information regarding childcare concerns of families and community childcare programs.
- (f) HDOH participates in the Hawaii Careers with Young Children Core Team that looks at the professional development system, which includes professionals who work with infants and toddlers with special needs and their families.

## SECTION VIII. ADDITIONAL INFORMATION AND ASSURANCES

### Hawaii's Application Contains:

- (a) Steps taken by Hawaii that ensures equitable access to, and equitable participation in Hawaii's Part C statewide system as required by section 427(b) of General Education Provisions Act (GEPA).
  - (1) Hawaii's process to identify barriers includes regular input from:
    - (i) HEICC members at the quarterly HEICC meetings, which includes family members, legislators, state administrators, EI program administrators, EI providers, etc.;
    - (ii) Stakeholders who attend the annual EI System Stakeholders' Meeting, which includes: HEICC members; HDOH, Maternal and Health Branch staff and public health nurses; Head Start and Early Head Start providers; childcare providers; Department of Human Services providers; DOE Section 619 staff, etc.
    - (iii) EI program managers at the quarterly program manager meetings;
    - (iv) Family members through the annual statewide survey;
    - (v) Family members through the monitoring process; and
    - (vi) Action Strategy participants at workgroup meetings.
  - (2) Hawaii has developed the following strategies to address identified barriers:
    - (i) Implementation of a statewide toll free number that connects to EI Referral Line, the EI System's Central Point of Contact for referrals to the EI System, including TTY access. EI Referral Line also has access to translation support as needed.
    - (ii) EI Referral Line forwards the referral to the EI program in the geographical area the family lives within 1 workday of receipt of the referral to ensure a timely response to the referral.
    - (iii) One or more EI programs is located in each county or on each island that provides comprehensive early intervention services to eligible infants and toddlers and their families, including care coordination and evaluation and assessment services.
    - (iv) Care coordinators are available in each EI program that receives the referral from EI Referral Line or directly from the family, to ensure a timely response to referrals received at the EI program and ensure timely initial evaluation and assessment to determine eligibility.
    - (v) Each EI program includes evaluators, to ensure timely evaluation and assessment. The collection of child and family information from the initial meeting with the family supports timely initial evaluation and assessment to determine eligibility.
    - (vi) There is a minimum of one EI program in each county that provides comprehensive early intervention services to Part C eligible infants or toddlers and their families, either through an HDOH contract or a state EI program.
    - (vii) Other required EI services, not available in the EI program, are provided

by the EI System's staff (e.g., dietician, psychologists, etc.) and by contracted service vendor agencies (e.g., audiology).

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

(b) **Expenditure of Funds**

Hawaii ensures that Federal funds made available to the Hawaii under section 643 of the Act are expended in accordance with the provisions of Part C, including 34 CFR §§303.500 to 303.501 and Section XX(a) to (b).

(c) **Payor of Last Resort**

Hawaii ensures that it complies with the requirements in 34 CFR §§303.510 to 303.511 in subpart F of 34 CFR Part 303 and Section XX(c) to (d).

(d) **Control of Funds and Property**

Hawaii ensures that:

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

(e) **Reports and Records**

Hawaii ensures that it will:

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

(f) **Prohibition Against Supplanting; Indirect Costs**

- (1) The Hawaii application provides satisfactory assurance that the Federal funds made available under section 643 of the Act to Hawaii:
  - (i) Are not commingled with State funds; and
  - (ii) Are used so as to supplement the level of State and local funds expended for infants and toddlers with special needs and their families and in no case to supplant those State and local funds.
- (2) To meet the requirement in paragraph (1), the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under Part C 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. Allowances may be made for:
  - (i) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under Part C; and
  - (ii) Unusually large amounts of funds expended for such long-term

purposes as the acquisition of equipment and the construction of facilities.

(3) The EI System is not charged an indirect cost by HDOH.

(g) **Fiscal Control**

Hawaii 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 the Act.

(h) **Traditionally Underserved Groups**

Hawaii ensures that policies and practices have been adopted to ensure that:

- (1) Traditionally underserved groups, including minority, low-income, homeless, and rural families and children with special needs who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of Part C; and
- (2) That these families have access to culturally competent services within their local geographical areas.

## **SECTION IX. CHILD FIND, EVALUATIONS AND ASSESSMENTS**

The statewide comprehensive, coordinated, multidisciplinary interagency system to provide early intervention services for infants and toddlers with special needs and their families referenced in 34 CFR §303.100 and Section III(a)(1) includes the following components:

- (a) Pre-referral policies and procedures that include:
  - (1) A public awareness program as described in 34 CFR §303.301 and Section X; and
  - (2) A comprehensive child find system as described in 34 CFR §303.302 and Section XI(a) to (c).
- (b) Referral policies and procedures as described in 34 CFR §303.303 and Section XI(d);
- (c) Post-referral policies and procedures that ensure compliance with the timeline requirements in 34 CFR §303.310 and Section XI(e); and include:
  - (1) Evaluations and assessments as described in 34 CFR §§303.321 to 303.322 and Section XI(f) to (g); and
  - (2) Development, review, and implementation of IFSPs as described in 34 CFR §§303.340 to 303.346 and Section XII(a) to (i).

## **SECTION X. PUBLIC AWARENESS PROGRAM – INFORMATION FOR PARENTS**

- (a) **Preparation and Dissemination.** In accordance with §303.116 and Section III(i), the EI System ensures a public awareness program that:
  - (1) Prepares information on the availability of early intervention services under Part C, and other services, as described in subsection (b);
  - (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 34 CFR §303.303(c) and in Section XI(d)(5) in disseminating the information described in subsection (b) to parents of infants and toddlers with special needs.
- (b) **Information to be Provided.** The information required to be prepared and disseminated under subsection (a) includes:
- (1) A description of the availability of early intervention services under Part C;
  - (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 34 CFR §303.117 and in Section III(j).
- (c) **Information Specific to Infants and Toddlers with Special Needs.** The public awareness program includes a requirement that HDOH provides for informing parents of toddlers with special needs of the availability of services under section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

## SECTION XI. COMPREHENSIVE CHILD FIND SYSTEM

- (a) **General.** The EI System includes a comprehensive child find system that:
- (1) Is consistent with Part B of the Act (see 34 CFR §300.111);
  - (2) Includes a system for making referrals to the EI System or EI programs under Part C that:
    - (i) Includes timelines; and
    - (ii) Provides for participation by the primary referral sources described in 34 CFR §303.303(c) and subsection (d)(5).
  - (3) Ensures rigorous standards for appropriately identifying infants and toddlers with special needs for early intervention services under Part C that will reduce the need for future services; and
  - (4) Meets the requirements in subsections (b) and (c) and 34 CFR §303.303 and subsection (d), 34 CFR §303.310 and subsection (e), and 34 CFR §303.321 and subsection (f).
- (b) **Scope of Child Find.** HDOH, as part of the child find system, ensures that:
- (1) All infants and toddlers with special needs in Hawaii who are eligible for early intervention services under Part C are identified, located, and evaluated, including:
    - (i) Indian infants and toddlers with special needs residing on a reservation geographically located in the State (*note – in Hawaii, there are no Indian reservations*);
    - (ii) Infants and toddlers with special needs who are homeless, in foster care, and wards of the State; and
    - (iii) Infants and toddlers with special needs that are referenced in 34 CFR §303.303(b) and in subsection (d)(4).

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

(c) **Coordination**

- (1) The HDOH, with the assistance of the HEICC, as defined in 34 CFR §303.8 and in Section II(f), ensures that the child find system under Part C:
  - (i) 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; and
  - (ii) Is coordinated with the efforts of the:
    - (A) Program authorized under Part B of the Act;
    - (B) 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 (Maternal and Child Health Services Block Grant or Title V) (42 U.S.C. 701(a));
    - (C) 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));
    - (D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
    - (E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 *et seq.*);
    - (F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
    - (G) 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));
    - (H) Child care programs in the State;
    - (I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*);
    - (J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control and Prevention (CDC); and
    - (K) Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).
- (2) HDOH, with the advice and assistance of the HEICC, takes steps to ensure that:
  - (i) There will not be unnecessary duplication of effort by the programs identified in subsection (1)(ii); and
  - (ii) Hawaii makes use of the resources available through each public agency and EI program and provider in Hawaii to implement the child find

system in an effective manner.

- (iii) Hawaii's Newborn Hearing Screening Program immediately refers any newborn whose hearing evaluations appears to show a hearing loss to EI Referral Line, the EI System's Central Point of Contact, as described in Section II(c) and in subsection (d)(2)(i), for referral to the EI Program in the family's geographical area.
- (iv) All pediatricians and other physicians are aware of HDOH's eligibility for early intervention services and are knowledgeable of the referral procedure if they are concerned about the development of an infant or toddler in their practice.
- (v) Newborns with birth defects are immediately referred by their pediatrician or specialist to EI Referral Line, for referral to the EI Program in the family's geographical area.

(d) **Referral Procedures**

(1) **General**

- (i) The HDOH child find system described in 34 CFR §303.302 and in subsections (a) to (c) includes Hawaii's procedures for use by primary referral sources for referring a child under the age of three to the Part C program.
- (ii) The procedures required in subparagraph (i):
  - (A) Provide for referring a child as soon as possible to EI Referral Line, described in paragraph (2)(i), but in no case more than seven days, after the child has been identified; and
  - (B) Meet the requirements in paragraphs (4) and (5).

(2) **Central point of contact.**

- (i) Referrals to EI Referral Line, which is the Central Point of Contact for referrals by primary referral sources, as described in paragraph (5), to the EI System, can be received by phone call or by fax. Referrals by fax support timely referrals by pediatricians and other primary referral sources.
- (ii) A statewide toll free number connects the caller to EI Referral Line, which has both a TTY line and access to translation services, as necessary to support timely referrals.
- (iii) All referrals, when received by EI Referral Line, are immediately forwarded to the EI Program in the family's geographical area.
- (iv) All referral information is inputted in the EI Referral Line database.

(3) **EI program responsibilities**

As soon as the EI Program receives the referral from EI Referral Line, an EI provider contacts the family to discuss early intervention services and schedule an in-person intake meeting.

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

- (i) Is the subject of a substantiated case of child abuse or neglect; or
  - (ii) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.
- (5) **Primary referral sources**, as used in subpart D of 34 CFR Part 303, include:
- (i) Hospitals, including prenatal and postnatal care facilities;
  - (ii) Physicians;
  - (iii) Parents, including parents of infants and toddlers;
  - (iv) Child care programs and early learning programs;
  - (v) SEAs and home schools;
  - (vi) Public health facilities;
  - (vii) Other public health or social service agencies;
  - (viii) Other clinics and health care providers;
  - (ix) Public agencies and staff in the child welfare system, including child protective service and foster care;
  - (x) Homeless family shelters; and
  - (xi) Domestic violence shelters and agencies.
- (e) **Post-Referral Timeline (45 Days)**
- (1) Except as provided in paragraph (2), the initial evaluation and the initial assessments of the child and family under 34 CFR §303.321 and subsection (f), and the initial IFSP meeting under 34 CFR §303.342 and Section XII(a) to (f) must be completed within 45 days from the date the referral is received by either EI Referral Line, as Central Point of Contact, or an EI program that provides early intervention to Part C eligible children.
  - (2) The 45-day timeline described in paragraph (1) does not apply for any period when:
    - (i) 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
    - (ii) The parent has not provided consent for initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the HDOH or EI provider to obtain parental consent.
  - (3) HDOH ensures that, in the event the circumstances described in paragraph (2) exists, the EI provider must:
    - (i) Document in the child's early intervention records the exceptional family circumstances or repeated attempts by HDOH or the EI provider to obtain parental consent;
    - (ii) 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 paragraph (2)(i) no longer exist or parental consent is obtained for the initial

- evaluation and the initial assessment of the child; and
- (iii) Develop and implement an interim IFSP, to the extent appropriate and consistent with 34 CFR §303.345 and Section XII(i).
- (4) The initial family assessment must be conducted within the 45-day timeline in paragraph (1) if the parent concurs and even if other family members are unavailable.
- (f) **Evaluation of the Child and Assessment of the Child and Family**
  - (1) **General.** The HDOH ensures that, subject to obtaining parental consent in accordance with 34 CFR §303.420(a)(2) and Section XIV(a)(1)(i), each child under the age of three who is referred for evaluation or early intervention services under Part C and suspected of having a special need, receives:
    - (i) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with paragraph (2) unless eligibility is established under subparagraph (iv); and
    - (ii) If the child is determined eligible as an infant or toddler with special needs as defined in 34 CFR §303.21 and Section II(t):
      - (A) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;
      - (B) 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 paragraph (3) and these assessments may occur simultaneously with the evaluation, provided that the requirements of paragraph (2) are met.
    - (iii) As used in these policies and procedures:
      - (A) Evaluation means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of infant or toddler with special needs in 34 CFR §303.21 and Section II(t). An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under Part C;
      - (B) 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 paragraph (3)(i) and the assessment of the child's family, consistent with paragraph (3)(ii)(C); and
      - (C) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.
    - (iv) A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under Part C if those

records indicate that the child's level of functioning in one or more of the developmental areas identified in 34 CFR §303.21(a)(1) and Section II(t)(1)(i) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with special needs under 34 CFR §303.21 and Section II(t). If the child's Part C eligibility is established under this subparagraph, HDOH or the EI provider must:

- (A) Conduct assessments of the child and family in accordance with paragraph (3); and
  - (B) Administer the EI System's required standardized evaluation tool for each child to support the development of the IFSP and to collect child outcome data.
- (v) Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, HDOH ensures that informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C 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 paragraph (2).
- (A) All evaluations and assessments of the child and family are conducted by qualified personnel in the EI program where the child was referred.
  - (B) All evaluations and assessments of the child and family are conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.
  - (C) 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 34 CFR §303.25 and in Section II(x).
  - (D) 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 34 CFR §303.25 and in Section II(x).
- (2) **Procedures for evaluation of the child.** In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under Part C. Procedures must include:
- (i) Administering the EI System's standardized 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 34 CFR §303.21(a)(1) and Section II(t)(1)(i);
  - (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.

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

- (i) An assessment of each infant or toddler with special needs must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:
  - (A) A review of the results of the evaluation conducted under paragraph (2);
  - (B) Personal observations of the child; and
  - (C) The identification of the child's needs in each of the developmental areas in 34 CFR §303.21(a)(1) and Section II(t)(1)(i).
- (ii) Once eligibility has been established for the EI System, the family's care coordinator must conduct an eligibility meeting. The purpose of the eligibility meeting is to:
  - (A) Provide an overview of the evaluation results to the family;
  - (B) Explain the IFSP process to the family, if the family chooses to receive services; and
  - (C) Conduct a family-directed assessment by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with special needs. The family-directed assessment must:
    - (a) Be voluntary on the part of each family member participating in the assessment;
    - (b) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
    - (c) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.
  - (D) If the family is not interested in receiving early intervention services, the care coordinator will provide information to the family on community resources and activities to support their child's development, and invite them to contact either the EI program to which they were originally referred or EI Referral Line if they change their mind regarding early intervention services.

(g) **Determination that a Child is Not Eligible.** If, based on the evaluation conducted under 34 CFR §303.321 and subsection (f), HDOH determines that a child is not eligible under Part C, HDOH must:

- (1) Provide an overview of the evaluation results to the family;

- (2) Provide the parent with prior written notice required in 34 CFR §303.421 and Section XIV(b);
- (3) Include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under 34 CFR §303.430 and Section XVI, such as requesting a due process hearing or mediation or filing a State complaint; and;
- (4) Provide information to the family on community resources and developmental activities to support their child's development.

*(Reference HAR §11-140-5)*

## **SECTION XII. INDIVIDUALIZED FAMILY SUPPORT PLAN**

- (a) **General.** For each infant or toddler with special needs, the HDOH ensures the development, review, and implementation of an individualized family support plan or IFSP developed by a multidisciplinary team, which includes the parent, that:
  - (1) Is consistent with the definition of that term in 34 CFR §303.20 and Section II(s);
  - (2) Meets the requirements in 34 CFR §§303.342 to 303.346 and subsections (b) to (j); and
  - (3) Is documented on the state required EI System's IFSP form.
- (b) **Meeting to Develop Initial IFSP.** For a child referred to an EI program and determined to be eligible under Part C as an infant or toddler with special needs, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in 34 CFR §303.310 and Section XI(e).
- (c) **Periodic Review**
  - (1) A review of the IFSP for a child and the child's family must be conducted every six months or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:
    - (i) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and
    - (ii) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.
  - (2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.
- (d) **Annual Meeting to Evaluate the IFSP.** A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under 34 CFR §303.321 and Section XI(f) must be used in determining the early intervention services that are needed and will be provided. In Hawaii, to be considered current, an evaluation must have been conducted within three months of the annual IFSP due date.
- (e) **Accessibility and convenience of meetings.** 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.
  - (3) 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.
- (f) **Parental Consent.** The care coordinator must ensure that the contents of the IFSP are fully explained to the parents and informed written consent, as described in 34 CFR §303.7 and Section II(e), must be obtained, as required in 34 CFR §303.420(a)(3) and Section XIV(a)(1)(ii), prior to the provision of early intervention services described in the IFSP. 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 34 CFR §303.344(f)(1) and subsection (h)(6).
- (g) **Initial and Annual IFSP Meeting and Periodic Review**
- (1) Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP must include the following participants:
    - (i) The parent or parents of the child.
    - (ii) Other family members, as requested by the parent, if feasible to do so.
    - (iii) An advocate or person outside of the family, if the parent requests that the person participate.
    - (iv) The care coordinator designated by the EI program to be responsible for implementing the IFSP.
    - (v) A person or persons directly involved in conducting the evaluations and assessments in 34 CFR §303.321 and Section XI(f).
    - (vi) As appropriate, persons who will be providing early intervention services under Part C to the child or family.
  - (2) If a person listed in paragraph (1)(v) is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:
    - (i) Participating in a telephone conference call.
    - (ii) Having a knowledgeable authorized representative attend the meeting.
    - (iii) Making pertinent records available at the meeting.
  - (3) Each periodic review under 34 CFR §303.342(b) and subsection (c) must provide for the participation of persons in paragraph (1)(i) to (iv). If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (1).
- (h) **Content of the IFSP.** The IFSP must include:
- (1) **Information about the child's status.** The IFSP must include information about the child's status, including a statement of the infant or toddler with special needs' 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 34 CFR §303.321 and Section XI(f).

- (2) **Family information.** With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under 34 CFR §303.321(c)(2) and Section XI(f)(3)(ii)(C).
- (3) **Results or outcomes.** The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including 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) **Early intervention services.** 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 paragraph (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 34 CFR §303.13(a)(8) and Section II(k)(1)(viii), 34 CFR §303.26 and Section II(y), and 34 CFR §303.126 and Section III(s), or, subject to subparagraph (iii), 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 special needs, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with special needs and service, must be:
    - (A) Made by the IFSP Team (which includes the parent and other team members);
    - (B) Consistent with the provisions in 34 CFR §303.13(a)(8) and Section II(k)(1)(viii), 34 CFR §303.26 and Section II(y), and 34 CFR §303.126 and Section III(s); and
    - (C) Based on the child's outcomes that are identified by the IFSP Team in paragraph (3);
  - (iv) The location of the early intervention services; and
  - (v) The payment arrangements, if any.
  - (vi) As used in paragraph (4)(i):
    - (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 paragraph (4)(iv), *location* means the actual place or places where a service will be provided.
- (5) **Other services.** To the extent appropriate, the IFSP also must:
- (i) 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; and
  - (ii) If those services are not currently being provided, include a description of the steps the care coordinator or family may take to assist the child and family in securing those other services.
- (6) **Dates and duration of services.** The IFSP must include the projected date for the initiation of each early intervention service in paragraph (4), which date must be as soon as possible after the parent consents to the service, as required in 34 CFR §303.342(e) and subsection (f), and 34 CFR §303.420(a)(3) and Section XIV(a)(1)(ii); and the anticipated duration of each service.
- (7) **Care coordinator.** The IFSP must include the name of the care 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 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 these requirements the term "profession" includes "care coordination."
- (8) **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 34 CFR §303.209 and Section VI of these policies and procedures to:
    - (A) Preschool services under Part B of the Act, to the extent that those services are appropriate; or
    - (B) Other appropriate services.
  - (ii) The steps required in subparagraph (i) 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 SEA (as Hawaii does not have LEAs (as defined in Section II(v)), home school (as defined in Section

II(o)) or other relevant agency, in accordance with 34 CFR §303.209(b) and Section VI(b) and the Hawaii opt-out policy adopted under 34 CFR §303.401(e) and Section XIII(b)(5) and, with parental consent if required under 34 CFR §303.414 and Section XIII(n), transmission of additional information needed by the SEA and home school 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 34 CFR §§303.340 to 303.345 and subsections (a) to (i); and

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

(i) **Interim IFSPs: Provision of Services before Evaluations and Assessments are Completed**

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in 34 CFR §303.321 and Section XI(f), if the following conditions are met:

- (1) Parental consent is obtained.
- (2) An interim IFSP is developed that includes:
  - (i) The name of the care coordinator who will be responsible, consistent with 34 CFR §303.344(g) and subsection (h)(7), 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 34 CFR §303.310 and Section XI(e).

(j) **Responsibility and Accountability**

Each public agency or EI provider who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EI provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

*(Reference HAR §§11-140-6, 11-140-7)*

## **SECTION XIII. PROCEDURAL SAFEGUARDS**

(a) **General.** The HDOH ensures:

- (1) The establishment, adoption and implementation of policies and procedural safeguards that meet the requirements of subpart E of 34 CFR Part 303, including the provisions on confidentiality in 34 CFR §§303.401 through 303.417 and subsections (b) to (q), parental consent and notice in 34 CFR §§303.420 to 303.421 and Section XIV, surrogate parents in 34 CFR §303.422 and Section XV, and dispute resolution procedures in 34 CFR §303.430 and

Section XVI.

- (2) The effective implementation of the safeguards by each participating agency (including HDOH and EI programs and providers) in the EI System that provides early intervention services under Part C; and
- (3) An initial copy of the child's early intervention record is provided to parents, at no cost to the parents.

(b) **Confidentiality and Opportunity to Examine Records**

- (1) **General.** Hawaii ensures that the parents of a child referred under Part C 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.
- (2) **Confidentiality procedures.** As required under sections 617(c) and 642 of the Act, the regulations in 34 CFR §§303.401 to 303.417 and subsections (b) to (q), ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to Part C by the Secretary and by participating agencies, including the HDOH and EI programs, 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. Hawaii has procedures in effect to ensure that:
  - (i) Participating agencies (including the HDOH and EI programs) comply with the Part C confidentiality procedures in 34 CFR §§303.401 to 303.417 and this section; and
  - (ii) The parents of infants or toddlers who are referred to, or receive services under Part C, 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 the Act, including records related to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under Part C.
- (3) **Applicability and timeframe of procedures.** The confidentiality procedures described in paragraph (2) apply to the personally identifiable information of a child and the child's family that:
  - (i) Is contained in early intervention records collected, used, or maintained under Part C by the HDOH or an EI provider; and
  - (ii) Applies from the point in time when the child is referred for early intervention services under Part C 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.
- (4) **Disclosure of information**
  - (i) Subject to paragraph (5), the HDOH discloses to the SEA and the home school in the geographical area where the child resides, in accordance with 34 CFR §303.209(b)(1)(i) and (b)(1)(ii) and Section VI(b)(1)(i) to (ii), and the Transition MOU between DOE and DOH, the following personally identifiable information under the Act:

- (A) A child's name.
  - (B) A child's date of birth.
  - (C) Parent contact information, including parents' names, addresses, and telephone numbers.
- (ii) The information described in subparagraph (i) is needed to enable the HDOH, as well as SEA and home schools under Part B of the Act, to identify all children potentially eligible for services under Part B of the Act.
- (5) **Option to inform a parent about intended disclosure**
- (i) The HDOH, through its policies and procedures, requires EI providers, prior to making the limited disclosure described in paragraph (4)(i), to inform parents of a toddler with special needs of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing.
  - (ii) If a parent objects during the time period specified in the opt-out policy in Section VI(b)(2) provided by Hawaii, the HDOH and EI provider are not permitted to make such a disclosure under paragraph (4) and 34 CFR §303.209(b)(1)(i) and (b)(1)(ii) and Section VI(b)(1)(i) to (ii).

(c) **Definitions**

The following definitions apply to 34 CFR §§303.402 to 303.417 and this section in addition to the definition of personally identifiable information in 34 CFR §303.29 and Section II(cc) 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 34 CFR §303.29 and Section II(cc).
- (2) Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and its regulations.
- (3) Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and its regulations with respect to a particular child. A participating agency includes the HDOH and EI programs and providers that provides any Part C services (including care 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 (such as private insurance companies) that act solely as funding sources for Part C services.

(d) **Notice to Parents**

The HDOH ensures that it gives notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in 34 CFR §303.402 and subsection (b)(2), including:

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

- (2) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- (3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in 34 CFR §§303.401 through 303.417 and this section; and
- (4) A description of the extent that the notice is provided in the native languages of the various population groups in Hawaii.

(e) **Access Rights**

- (1) 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. 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 34 CFR §303.430(d) and Section XVI(d), and 34 CFR §§303.435 to 303.438 and Section XIX, and in no case more than 10 days after the request has been made.
- (2) The right to inspect and review early intervention records under this section includes:
  - (i) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
  - (ii) 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
  - (iii) The right to have a representative of the parent inspect and review the early intervention records.
- (3) 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.

(f) **Record of Access**

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency) including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

(g) **Records on More Than One Child**

If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(h) **List of Types and Locations of Information**

Each participating agency must provide parents, on request, a list of the types and

locations of early intervention records collected, maintained, or used by the agency.

(i) **Fees For records**

- (1) Each participating agency may charge a fee for copies of records that are made for parents under Part C if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in paragraph (3).
- (2) A participating agency may not charge a fee to search for or to retrieve information under Part C.
- (3) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

(j) **Amendment of Records at a Parent's Request**

- (1) A parent who believes that information in the early intervention records collected, maintained, or used under Part C 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.
- (2) 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.
- (3) 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 34 CFR §303.411 and subsection (k).

(k) **Opportunity for a Hearing**

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that 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 34 CFR §303.430(d)(1) and Section XVI(d)(1), provided that such hearing procedures meet the requirements of the hearing procedures in 34 CFR §303.413 and subsection (m), or may request a hearing directly under the Hawaii procedures in §303.413 and subsection (m) (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR §99.22).

(l) **Result of Hearing**

- (1) 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.
- (2) 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.
- (3) Any explanation placed in the early intervention records of the child under this section must:

- (i) 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
- (ii) 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.

(m) **Hearing Procedures**

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

(n) **Consent Prior to Disclosure or Use**

- (1) Except as provided in paragraph (2), prior parental consent must be obtained before personally identifiable information is:
  - (i) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C, subject to paragraph (2); or
  - (ii) Used for any purpose other than meeting a requirement of this group.
- (2) The HDOH or other participating agency may not disclose personally identifiable information, as defined in 34 CFR §303.29 and in Section II(cc) of these policies and procedures, to any party except participating agencies (including the HDOH and EI programs and providers) that are part of Hawaii’s Part C system without parental consent unless authorized to do so under:
  - (i) 34 CFR Sections 303.401(d) and subsection (b)(4), and 34 CFR 303.209(b)(1)(i) and (b)(1)(ii) and Section VI(b)(1)(i) to (ii); or
  - (ii) One of the exceptions enumerated in 34 CFR §99.31 (where applicable to Part C) that are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR §99.31 to Part C, participating agencies must also comply with the pertinent conditions in 34 CFR §§99.32 to 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to:
    - (A) 34 CFR §99.30 means 34 CFR §303.414(a) and paragraph (1);
    - (B) “Education records” means early intervention records under 34 CFR §303.403(b) and subsection (c)(2);
    - (C) “Educational” means early intervention under Part C;
    - (D) “Educational agency or institution” means the participating agency under 34 CFR §303.404(c) and subsection (d)(3);
    - (E) “School officials and officials of another school or school system” means qualified personnel or care coordinators under Part C;
    - (F) “State and local educational authorities” means the lead agency under 34 CFR §303.22 and Section II(u); and
    - (G) “Student” means child under Part C.
- (iii) The HDOH 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), provided that those procedures do not override a parent's right to refuse consent under 34 CFR §303.420 and Section XIV(a).

(o) **Safeguards**

- (1) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
- (2) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (3) All persons collecting or using personally identifiable information must receive training or instruction regarding Hawaii's policies and procedures under 34 CFR §§303.401 through 303.417, subsections (b) to (q), and 34 CFR part 99.
- (4) 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.

(p) **Destruction of Information**

- (1) The participating agency must inform parents when personally identifiable information collected, maintained, or used under Part C is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and Education Department General Administrative Regulations (EDGAR), 34 CFR parts 76 and 80.
- (2) Subject to paragraph (1), the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of care coordinator(s) and EI provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation, as long as it does not conflict with state policy.

(q) **Enforcement**

HDOH ensures that its policies and procedures, including sanctions and the right to file a complaint under 34 CFR §§303.432 to 303.434 and Section XVIII, that Hawaii uses to ensure that its policies and procedures, consistent with 34 CFR §§303.401 to 303.417 and subsections (b) through (p), are followed and that the requirements of the Act and its regulations are met.

*(Reference HAR §11-140-8)*

## **SECTION XIV. PARENTAL CONSENT AND NOTICE**

(a) **Parental Consent and Ability to Decline Services.**

- (1) The HDOH ensures parental consent is obtained before:
  - (i) All evaluations and assessments of a child are conducted under 34 CFR §303.321 and Section XI(f);
  - (ii) Early intervention services are provided to the child under Part C;

- (iii) Public benefits or insurance or private insurance is used if such consent is required under 34 CFR §303.520 and Section XX(e); and
    - (iv) Disclosure of personally identifiable information consistent with 34 CFR §303.414 and Section XIII(n).
  - (2) If a parent does not give consent under paragraphs (1)(i) to (ii), the HDOH and the EI program must make reasonable efforts to ensure that the parent:
    - (i) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
    - (ii) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.
  - (3) The HDOH may not use the due process hearing procedures under Part C to challenge a parent's refusal to provide any consent that is required under paragraph (1).
  - (4) The parents of an infant or toddler with special needs:
    - (i) Determine whether they, their infant or toddler with special needs, or other family members will accept or decline any early intervention service under Part C at any time, in accordance with Hawaii law; and
    - (ii) May decline a service after first accepting it, without jeopardizing other early intervention services under Part C.
- (b) **Prior Written Notice and Procedural Safeguards Notice**
- (1) **General.** Prior written notice must be provided to parents a reasonable time before the HDOH or an EI 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 special needs and that infant's or toddler's family.
  - (2) **Content of notice.** The notice must be in sufficient detail to inform parents about:
    - (i) The action that is being proposed or refused;
    - (ii) The reasons for taking the action; and
    - (iii) All procedural safeguards that are available under subpart E of 34 CFR Part 303, including a description of mediation in 34 CFR §303.431 and Section XVII, how to file a State complaint in 34 CFR §§303.432 to 303.434 and Section XVIII, and a due process complaint in the provisions adopted under 34 CFR §303.430(d) and Section XVI(d), and any timelines under those procedures.
  - (3) **Native language.** The notice must be:
    - (i) Written in language understandable to the general public; and
    - (ii) Provided in the native language, as defined in 34 CFR §303.25 and Section II(x), of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
    - (iii) If the native language or other mode of communication of the parent is not a written language, HDOH or designated EI provider must take

steps to ensure that:

- (A) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (B) The parent understands the notice; and
- (C) There is written evidence that the requirements of this paragraph have been met.

## **SECTION XV. SURROGATE PARENTS**

- (a) **General.** The HDOH or other public agency ensures that the rights of a child are protected when:
  - (1) No parent, as defined in 34 CFR §303.27 and Section II(z), can be identified;
  - (2) The HDOH 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 Hawaii.
- (b) **Duty of HDOH and Other Public Agencies**
  - (1) The duty of the HDOH or other public agency under subsection (a) includes the assignment of an individual to act as a surrogate for the parent. The EI Program Manager is responsible for the following activities:
    - (i) Determining whether a child needs a surrogate parent;
    - (ii) Documenting efforts to make the determination in the child's record;
    - (iii) Assigning a surrogate parent to the child; and
    - (iv) Documenting in the child's record the identity and contact information of the person assigned to serve as surrogate parent.
  - (2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the EI Program Manager must consult with the public agency that has been assigned care of the child.
- (c) **Wards of the State**

In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the HDOH under subsection (b)(1), may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in subsections (d)(2)(i) and (e).
- (d) **Criteria for Selection of Surrogate Parents**
  - (1) The HDOH or other public agency may select a surrogate parent in any way permitted under State law.
  - (2) Public agencies must ensure that a person selected as a surrogate parent:
    - (i) Is not an employee of HDOH or any other public agency or EI provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
    - (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and

- (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) **Non-Employee Requirement; Compensation**  
A person who is otherwise qualified to be a surrogate parent under paragraph (d) is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (f) **Surrogate Parent Responsibilities**  
The surrogate parent has the same rights as a parent for all purposes under Part C.
- (g) **HDOH Responsibility**
  - (1) HDOH 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.
  - (2) The EI System shall terminate the appointment of a surrogate parent if:
    - (i) The child ceases to meet the eligibility criteria for needing a surrogate parent;
    - (ii) The child ceases to participate in the EI System; or
    - (iii) The surrogate parent ceases to meet the eligibility criteria as described in subsection (d)(2).
  - (3) HDOH shall not terminate a surrogate parent in retaliation for the surrogate parent exercising his or her rights or the rights of the child.

*(Reference HAR §11-140-3)*

## **SECTION XVI. DISPUTE RESOLUTION OPTIONS**

- (a) **General.** The EI System ensures implementation of the written procedures in this section for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) to (e).
- (b) **Mediation.** HDOH makes available to parties to disputes involving any matter under Part C the opportunity for mediation that meets the requirements in 34 CFR §303.431 and Section XVII.
- (c) **State complaint procedures.** HDOH has adopted written State complaint procedures to resolve any state complaints filed by any party regarding any violation of Part C that meet the requirements in 34 CFR §§303.432 to 303.434 and Section XVIII.
- (d) **Due Process Hearing Procedures.** HDOH has adopted written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in 34 CFR §303.421(a) and Section XIV(b) by adopting the Part C due process hearing procedures under section 639 of the Act that:
  - (1) Meet the requirements in 34 CFR §§303.435 to 303.438 and Section XVIII; and
  - (2) Provide a means of filing a due process complaint regarding any matter listed in 34 CFR §303.421(a) and Section XIV(b).
- (e) **Status of a Child during the Pendency of a Due Process Complaint**

- (1) During the pendency of any proceeding involving a due process complaint under subsection (d), unless HDOH and the parents of an infant or toddler with special needs otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP to which the parent consented.
- (2) If the due process complaint under subsection (d) involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

## **SECTION XVII. MEDIATION**

- (a) **General.** HDOH ensures that procedures are established and implemented to allow parties to disputes involving any matter under Part C, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.
- (b) **Requirements.**
  - (1) The procedures ensure that the mediation process:
    - (i) Is voluntary on the part of the parties;
    - (ii) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
    - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
  - (2) HDOH contracts with the Mediation Center of the Pacific to provide mediation services as needed.
    - (i) The Mediation Center of the Pacific has a list of individuals who are qualified mediators who are knowledgeable in laws and regulations relating to the provision of early intervention services.
    - (ii) The Mediation Center of the Pacific selects mediators on a random, rotational, or other impartial basis.
  - (3) Hawaii must bear the cost of the mediation process, including the costs of meetings described in subsection (d).
  - (4) 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.
  - (5) 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:
    - (i) 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
    - (ii) Is signed by both the parent and a representative of the HDOH who has the authority to bind such agency.
  - (6) A written, signed mediation agreement under this section is enforceable in any Hawaii court of competent jurisdiction or in a district court of the United States.
  - (7) Discussions that occur during the mediation process must be confidential and

may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court.

(c) **Impartiality of Mediator**

- (1) An individual who serves as a mediator under Part C:
  - (i) May not be an employee of HDOH or an EI provider that is involved in the provision of early intervention services or other services to the child; and
  - (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.
- (2) A person who otherwise qualifies as a mediator is not an employee of HDOH or an EI program solely because he or she is paid by the agency or program to serve as a mediator.

(d) **Meeting to Encourage Mediation.** HDOH has established procedures to offer to parents and EI providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

- (1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in Hawaii established under section 671 or 672 of the Act; and
- (2) Who explains the benefits of, and encourages the use of, the mediation process to the parents.

*(Reference HAR §11-140-9)*

## **SECTION XVIII. STATE COMPLAINT PROCEDURES**

(a) **Adoption of State Complaint Procedures**

- (1) **General.** HDOH has adopted written procedures for:
  - (i) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in 34 CFR §303.434 and subsection (c) by providing for the filing of a complaint with HDOH; and
  - (ii) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, Hawaii's procedures under 34 CFR §§303.432 through 303.434 and Section XVIII.
- (2) **Remedies for denial of appropriate services.** In resolving a complaint in which HDOH has found a failure to provide appropriate services, HDOH, pursuant to its general supervisory authority under Part C of the Act, addresses:
  - (i) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with special needs who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

- (ii) Appropriate future provision of services for all infants and toddlers with special needs and their families.
- (b) **Minimum State Complaint Procedures**
- (1) **Time limit; minimum procedures.** HDOH includes in its complaint procedures a time limit of 60 days after a complaint is filed under 34 CFR §303.434 and subsection (c) to:
    - (i) Carry out an independent on-site investigation, if HDOH determines that an investigation is necessary;
    - (ii) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
    - (iii) Provide HDOH, the public agency, or EI provider with an opportunity to respond to the complaint, including, at a minimum:
      - (A) At the discretion of HDOH, a proposal to resolve the complaint; and
      - (B) An opportunity for a parent who has filed a complaint and HDOH, the public agency, or EI provider to voluntarily engage in mediation, consistent with 34 CFR §303.430(b) and Section XVI(b), and 34 CFR §303.431 and Section XVII;
    - (iv) Review all relevant information and make an independent determination as to whether HDOH, the public agency, or EI provider is violating a requirement of Part C of the Act or its regulations; and
    - (v) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
      - (A) Findings of fact and conclusions; and
      - (B) The reasons for HDOH's final decision.
  - (2) **Time extension; final decision; implementation.** HDOH's procedures described in paragraph (1):
    - (i) Permit an extension of the time limit under paragraph (1) only if:
      - (A) Exceptional circumstances exist with respect to a particular complaint; or
      - (B) The parent (or individual or organization) and HDOH, the public agency or EI provider involved agree to extend the time to engage in mediation pursuant to paragraph (1)(iii)(B); and
    - (ii) Include procedures for effective implementation of HDOH's final decision, if needed, including:
      - (A) Technical assistance activities;
      - (B) Negotiations; and
      - (C) Corrective actions to achieve compliance.
  - (3) **Complaints filed under this section and due process hearings under 34 CFR 303.430(d) and Section XVI(d)**
    - (i) If a written complaint is received that is also the subject of a due process

hearing under 34 CFR §303.430(d) and Section XVI(d), or contains multiple issues of which one or more are part of that hearing, Hawaii 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 must be resolved using the time limit and procedures described in this section.

- (ii) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties:
  - (A) The due process hearing decision is binding on that issue; and
  - (B) HDOH informs the complainant to that effect.
- (iii) A complaint alleging HDOH, the public agency, or EI provider's failure to implement a due process hearing decision must be resolved by HDOH.

(c) **Filing a Complaint**

- (1) An organization or individual may file a signed written complaint under the procedures described in 34 CFR §§303.432 and 303.433 and in subsections (a) to (b).
- (2) The complaint must include:
  - (i) A statement that HDOH, the public agency, or EI provider has violated a requirement of Part C of the Act;
  - (ii) The facts on which the statement is based;
  - (iii) The signature and contact information for the complainant; and
  - (iv) If alleging violations with respect to a specific child:
    - (A) The name and address of the residence of the child;
    - (B) The name of the EI provider serving the child;
    - (C) A description of the nature of the problem of the child, including facts relating to the problem; and
    - (D) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR §303.432 and subsection (a).
- (4) The party filing the complaint must forward a copy of the complaint to the public agency or EI provider serving the child at the same time the party files the complaint with HDOH.

*(Reference HAR §11-140-10)*

## **SECTION XIX. DUE PROCESS HEARINGS**

(a) **Appointment of an Impartial Due Process Hearing Officer**

- (1) **Qualifications and duties.** Whenever a due process complaint is received

under 34 CFR §303.430(d) and Section XVI(d), a due process hearing officer must be appointed to implement the complaint resolution process in this section. The person must:

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

(2) **Definition of impartial.** Impartial means that the due process hearing officer appointed to implement the due process hearing under Part C:

- (i) Is not an employee of HDOH or an EI program or 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.
- (iii) A person who otherwise qualifies under subparagraph (i) 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.

(b) **Parental Rights in Due Process Hearing Procedures**

(1) **General.** HDOH ensures that the parents of a child referred to Part C are afforded the rights in paragraph (2) in the due process hearing carried out under 34 CFR §303.430(d) and Section XVI(d).

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

- (i) 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 special needs;
- (ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
- (iv) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
- (v) Receive a written copy of the findings of fact and decisions at no cost to the parent.

(c) **Convenience of Hearings and Timelines**

(1) Any due process hearing conducted under this section must be carried out at a

time and place that is reasonably convenient to the parents.

- (2) HDOH 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.
- (3) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (2) at the request of either party.
- (d) **Civil Action.** Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in Hawaii or Federal court under section 639(a)(1) of the Act.

*(Reference HAR §11-140-11)*

## **SECTION XX. HAWAII'S SYSTEM OF PAYMENTS AND FINANCIAL MATTERS**

### **(a) Fiscal Policies**

Following are the policies and procedures adopted by Hawaii Department of Health (HDOH) as its system of payments that meet the requirements in 34 CFR §§303.500, 303.501, 303.510, 303.511, 303.520, and 303.521 regarding the use of public insurance or benefits, private insurance, or family costs or fees.

### **(b) Permissive Use of Funds by the Lead Agency**

- (1) Consistent with 34 CFR §§303.120 to 303.122 and Section III(m) to (o), and 34 CFR §§303.220 to 303.226 and Section VIII(b) to (g), HDOH may use funds under Part C for activities or expenses that are reasonable and necessary for implementing Hawaii's EI System for infants and toddlers with special needs, including funds:
  - (i) For direct early intervention services for infants and toddlers with special needs and their families under Part C that are not otherwise funded through other public or private sources (subject to 34 CFR §§303.510 to 303.521 and subsections (c) through (e)); and
  - (ii) To expand and improve services for infants and toddlers with special needs and their families under Part C that are otherwise available.
- (2) The provision of FAPE as defined in 34 CFR §303.15 and Section II(m) is not applicable as Hawaii only provides early intervention services to infants and toddlers with special needs under age 3.
- (3) As Hawaii does not provide services under 34 CFR §303.204 and in Section IV(a) for at risk infants and toddlers, as defined in 34 CFR §303.5 and in Section II(b), Hawaii will strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of:
  - (i) Identifying and evaluating at-risk infants and toddlers;
  - (ii) Making referrals for the infants and toddlers identified and evaluated; and

- (iii) Conducting periodic follow-up on each referral to determine if the status of the infant or toddler has changed with respect to the eligibility of the infant or toddler for services under Part C.

(c) **Payor of Last Resort**

- (1) **Non-substitution of funds:** Except as provided in 34 CFR §303.510(b) and paragraph (2), funds under Part C may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under Part C may be used only for early intervention services that an infant or toddler with special needs, needs, but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to 34 CFR §§303.520 to 303.521 and subsections (e) and (f).
- (2) **Interim payments-reimbursement:** If necessary to prevent a delay in the timely provision of appropriate early intervention services to an infant or toddler or the infant or toddler's family, funds under Part C may be used to pay the provider of services (for services and functions authorized under Part C, including health services, as defined in 34 CFR §303.16 and in Section II(n) [but not medical services], functions of the child find system described in 34 CFR §§303.115 to 303.117 and Section III(h) to (j) and 34 CFR §§303.301 to 303.320 and Sections X and XI(a) to (e), and evaluations and assessments in 34 CFR §303.321 and Section XI(f)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.
- (3) **Non-reduction of benefits:** Nothing in Part C may be construed to permit Hawaii 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 special needs when those services are included in the infant or toddler's Individualized Family Support Plan (IFSP) adopted pursuant to Part C of the Act.

(d) **Methods to Ensure the Provision of and Financial Responsibility for Part C Services**

- (1) **General.** Hawaii ensures that it has in place methods for State interagency coordination that include interagency agreements and contracts. Under these methods, the Governor or Governor's designee ensures that the interagency agreements and contracts are in effect between each State public agency and HDOH in order to ensure:
  - (i) The provision of, and establishing financial responsibility for early intervention services provided under Part C; and that
  - (ii) Such services are consistent with the requirement in section 635 of the Act and Hawaii's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.
- (2) **Methods.** The methods in paragraph (1) are in place to ensure the provision of and financial responsibility for early intervention services under Part C of the

Act and meet all requirements in this section and will be set forth in one of the following:

- (i) State law or regulation;
- (ii) Signed interagency agreements that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); and
- (iii) Signed contracts between HDOH and early intervention providers.

(3) **Procedures for resolving disputes.**

(i) Each method includes procedures for achieving a timely resolution of interagency and intra-agency disputes about payments for a given service or disputes about other matters related to Hawaii's early intervention program. Those procedures include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee or HDOH to make a final determination for interagency and intra-agency disputes which determination is binding upon the agencies involved.

(ii) Each method:

- (A) Permits the agency or agencies to resolve their own internal disputes (based on the procedures that are included in the agreements), so long as the agency or agencies act in a timely manner; and
- (B) Includes the process that the lead agency will follow in achieving resolution of interagency or intra-agency disputes, if a given agency or agencies are unable to resolve its own internal disputes in a timely manner.

(iii) If, during HDOH's resolution of the dispute, the Governor, Governor's designee, or HDOH determines that the assignment of financial responsibility under this section was inappropriately made:

- (A) The Governor, Governor's designee, or HDOH, depending on the method utilized, reassigns the financial responsibility to the appropriate agency; and
- (B) HDOH makes arrangements for reimbursement of any expenditure incurred by the agency originally assigned financial responsibility.

(4) **Delivery of services in a timely manner:** The methods adopted by HDOH under this section:

- (i) Include a mechanism to ensure that no services that a child is entitled to receive under Part C are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and
- (ii) Are consistent with the written funding policies adopted by Hawaii under subpart F of 34 CFR Part 303 and include any provisions Hawaii has adopted under 34 CFR §303.520 and subsection (e) regarding the use of insurance to pay for Part C services.

- (5) **Additional components:** Each method includes any additional components necessary to ensure effective cooperation and coordination among, and HDOH's general supervision (including monitoring) of, early intervention providers (including all public agencies) involved in Hawaii's early intervention programs.

(e) **Hawaii's System of Payments for Early Intervention Services**

Hawaii's system of payments for early intervention services includes public benefits or insurance or private insurance. It does not include family fees, sliding fees, or use of Part B funds. Families do not incur any costs when using public benefits or insurance (e.g., Medicaid, CHIP, TRICARE) or private insurance. Co-payments, deductibles or other costs related to use of public benefits or insurance or private insurance are covered by HDOH. The only cost to parents when using public benefits or insurance or private insurance is the on-going payment of insurance premiums for the public benefits or insurance or private insurance policy.

(1) **Use of public benefits or public insurance to pay for Part C services**

- (i) HDOH may not use the public benefits or insurance of a child or parent to pay for Part C services unless HDOH provides written notification, consistent with 34 CFR §303.520(a)(3) and subparagraph (iii), to the child's parents and HDOH meets the no-cost protections identified in 34 CFR §303.520 (a)(2) and subparagraph (ii).
- (ii) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, HDOH:
- (A) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;
- (B) Must obtain consent, consistent with 34 CFR §§303.7 and 303.420(a)(4) and Sections II(d) and XIV(a)(1)(iii), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:
- (a) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;
- (b) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;
- (c) Result in any increase in premiums or discontinuation of public benefits for that child or that child's parents; or
- (d) Risk loss of eligibility for that child or that child's parents for home and community-based waiver programs based on aggregate health-related expenditures.

- (C) If the parent does not provide consent under 34 CFR §§303.520 (a)(2)(i) to 303.520(a)(2)(ii) and clauses (A) and (B), HDOH still makes available those Part C services on the IFSP to which the parent has provided consent.
- (iii) A copy of the HDOH System of Payment policies must be provided (at least one time) prior to using a child's or parent's public benefits or insurance to pay for Part C services. The copy of the HDOH System of Payment policies is the required written notification to the child's parents. The written notification includes:
- (A) That parental consent is obtained under 34 CFR §303.414 and Section XIII(n) before HDOH or an early intervention provider discloses, for billing purposes, a child's personally identifiable information to the Hawaii Department of Human Services, which is responsible for the administration of Hawaii's public benefits or insurance program (e.g., Medicaid);
  - (B) The no-cost protection provisions in 34 CFR §303.520(a)(2) and subparagraph (ii) and that if the parent does not provide consent under 34 CFR §303.520(a)(2) and subparagraph (ii), HDOH still makes available those Part C services on the IFSP for which the parent has provided consent;
  - (C) That the parents have the right under 34 CFR §303.414 and Section XIII(n) to withdraw their consent to disclosure of personally identifiable information to the Hawaii Department of Human Services, which is responsible for the administration of Hawaii's public benefits or insurance program (e.g., Medicaid) at any time; and
  - (D) That families are not charged fees for any early intervention service and do not incur any costs when using public benefits or insurance (e.g., Medicaid, CHIP, TRICARE) or private insurance. Co-payments, deductibles or other costs related to use of public benefits or insurance or private insurance are covered by HDOH. The only cost to parents when using public benefits or insurance or private insurance is the on-going payment of insurance premiums for the public benefits or insurance or private insurance policy.
  - (E) That families are not required to use private insurance as the primary insurance when accessing public benefits or insurance.
- (2) **Use of Private Insurance to Pay for Part C Services**
- (i) HDOH may not use the private insurance of a parent of an infant or toddler with special needs to pay for part C services unless that parent provides parental consent, consistent with 34 CFR §303.7 and Section II(e), and 34 CFR 303.420(a)(4) and Section XIV(a)(1)(iii), to use private insurance to pay for Part C services for his or her child. Parental consent is obtained:

- (A) When HDOH or an early intervention provider seeks to use the parent’s private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and
  - (B) Each time consent for services is required under 34 CFR §303.420(a)(3) and Section XIV(a)(1)(ii) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child’s IFSP.
- (ii) Parents must be provided a copy of HDOH’s system of payment policies when obtaining parent consent required under 34 CFR §303.520(b)(1)(i) and subparagraph (i). The System of Payment policies include information that families do not incur any costs when using private insurance. Co-payments, deductibles or other costs related to use of private insurance are covered by HDOH. The only cost to parents when using private insurance is the on-going payment of insurance premiums for the private insurance policy.
  - (iii) Hawaii has not enacted a statute regarding private health insurance coverage for early intervention services under Part C of the Act. The parental consent requirements in 34 CFR §303.520(b)(1) and in subparagraph (i) are, therefore, in place.
  - (iv) If a parent or family of an infant or toddler with special needs is determined unable to pay under Hawaii’s definition of inability to pay under 34 CFR §303.521(a)(3) and subparagraph (v) and does not provide consent under 34 CFR §303.520(b)(1) and subparagraph (i), the lack of consent may not be used to delay or deny any services under Part C to that child and family.
  - (v) In Hawaii, families are not charged family fees, co-payments or deductibles for any early intervention service; therefore, Hawaii is not required to have a definition of “inability to pay.”
- (3) **Proceeds or funds from public insurance or benefits or from private insurance.**
- (i) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR §80.25.
  - (ii) HDOH receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act; therefore those funds are considered neither State nor local funds under 34 CFR §303.225(b) and Section VIII(f)(2).
  - (iii) Funds spent from private insurance for services under Part C are considered neither State nor local funds under 34 CFR §303.225 and Section VIII(f).
  - (iv) HDOH does not receive funds from a parent or family member under HDOH’s system of payments established under 34 CFR §§80.25 and 303.520(e)(1) to (3); therefore this is not included in this section.
- (f) **System of Payments and Fees**

- (1) **General.** HDOH does not collect family fees and has not implemented a sliding fee schedule as part of HDOH's System of Payments. HDOH's System of Payments includes using only the family's public insurance or benefits or private insurance.
- (2) **Description of system of payments.** HDOH's System of Payments is in writing and specifies which functions or services, if any, are subject to the system of payments and includes the following:
  - (i) The functions or services that may be billed to public benefits or insurance or private insurance under the system of payments include the following:
    - (A) Private Insurance and TRICARE  
Any early intervention service, consistent with 34 CFR §303.13 and Section II(k) of these policies and procedures, and is included in the parents' benefits package of the insurance provider.
    - (B) Medicaid or QUEST (CHIP)
      - (a) Care Coordination
      - (b) Evaluation and Assessment
      - (c) IFSP Development
      - (d) Intervention services including Occupational Therapy, Physical Therapy, Speech Language Pathology, Psychology and Family Training
      - (e) Translation Services
      - (f) Interpreter Services
  - (ii) Families are not charged fees for any early intervention services and do not incur any costs when using public benefits or insurance or private insurance. Co-payments, deductibles or other costs related to use of public benefits or insurance or private insurance are covered by HDOH. The only cost to parents when using public benefits or insurance or private insurance is the on-going payment of insurance premiums for the public benefits or insurance or private insurance policy.
  - (iii) Since HDOH does not charge fees to families income information is not collected from families.
  - (iv) An assurance that fees are not charged to parents for the services that a child is otherwise entitled to receive at no cost including those costs in 34 CFR §§303.521(a)(4)(ii), (b), and (c) and in paragraphs (2)(iv), (3) and (4);
  - (v) HDOH may use Part C or other funds to pay for costs such as deductibles or co-payments.
- (3) **Functions not subject to fees.** The following are required functions that are carried out at public expense, and for which no fees may be charged to parents:
  - (i) Implementing the child find requirements in 34 CFR §§303.301 through 303.303 and Section X and Section XI(a) to (d).

- (ii) Evaluation and assessment, in accordance with §303.321 and Section XI(f), and the functions related to evaluation and assessment in 34 CFR §303.13(b) and Section II(k)(2).
  - (iii) Care coordination services, as defined in 34 CFR §§303.13(b)(11) and 303.34 and in Section II(k)(2)(xi).
  - (iv) Administrative and coordinative activities related to:
    - (A) The development, review, and evaluation of IFSPs and Interim IFSPs in accordance with 34 CFR §§303.342 to 303.345 and Section XII(b) to (i); and
    - (B) Implementation of the procedural safeguards in subpart E of 34 CFR Part 303 and the other components of the statewide system of early intervention services in subpart D of 34 CFR Part 303.
- (4) **FAPE mandate or use of funds under Part B of the Act to serve children under age three.** Hawaii does not have a state mandate to serve children over age 3 with a disability; nor does Hawaii’s Part C program use Part B funds to serve infants and toddlers with disabilities under age three.
- (5) **Procedural safeguards**
- (i) The following written procedural safeguards are in place for informing parents that a parent who wishes to contest the requirement that they pay a co-payment, premium or deductible or HDOH’s determination of the parent’s inability to pay may do one of the following:
    - (A) Participate in mediation in accordance with 34 CFR §303.431 and Section XVII;
    - (B) Request a due process hearing under 34 CFR §303.436 and Section XIX(b); or
    - (C) File a complaint under § 303.434 and Section XVIII(c).
  - (ii) HDOH shall inform parents of these procedural safeguard options by providing parents with a copy of HDOH’s System of Payments policies when obtaining consent for the provision of early intervention services under 34 CFR §303.420(a)(3) and Section XIV(a)(1)(ii).

**SECTION XXI. STATE INTERAGENCY COORDINATING COUNCIL**

(a) **Establishment of Council**

- (1) Hawaii has established a State Interagency Coordinating Council (Council) as defined in 34 CFR §303.8 and in Section II(f), called the Hawaii Early Intervention Coordinating Council (HEICC).
- (2) The Council is appointed by the Governor. The Governor ensures that the membership of the Council reasonably represents the population of Hawaii.
- (3) The Governor designates a member of the Council to serve as the chairperson and a member to serve as vice-chairperson of the Council. Any member of the Council who is a representative of HDOH may not serve as the chairperson of the Council.

(b) **Composition**

- (1) The Council is composed of 25 members as follows:
  - (i) At least twenty per cent of the members shall be parents of infants or toddlers with special needs, or children with special needs aged twelve years or younger, with knowledge of, or experience with, programs for infants and toddlers with special needs; provided that at least one parent shall be a parent of an infant or toddler with special needs, or of a child with special needs aged six years or younger;
  - (ii) At least twenty per cent of the members shall be public or private providers of early intervention services;
  - (iii) Two members shall be from the Legislature, of which one member shall be selected by the President of the Senate and one member shall be selected by the Speaker of the House of Representatives;
  - (iv) One member shall be involved in personnel preparation;
  - (v) One member shall be from the Department of Health program involved in the provision of, or payment for, early intervention services to infants and toddlers with special needs and their families who has sufficient authority to engage in policy planning and implementation on behalf of the program;
  - (vi) One member shall be from the Department of Health program responsible for children's mental health;
  - (vii) One member shall be from the Department of Education program responsible for preschool services to children with disabilities who has sufficient authority to engage in policy planning and implementation on behalf of the program;
  - (viii) One member shall be from the Department of Education program responsible for the coordination of education of homeless children and youths;
  - (ix) One member shall be from the Department of Human services program responsible for the State Medicaid program;
  - (x) One member shall be from the Department of Human services program responsible for child care;
  - (xi) One member shall be from the Department of Human services program responsible for foster care;
  - (xii) One member shall be from the Department of Commerce and Consumer Affairs program responsible for state regulation of health insurance;
  - (xiii) One member shall be from a Head Start or Early Head Start agency or program in the State; and
  - (xiv) Other members involved in or interested in services to infants and toddlers with special needs and their families who are selected by the Governor.
- (1) The Governor may appoint one member to represent more than one program or agency listed in subsection (1)(vii) to (xiii).

- (2) 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. In Hawaii, there is no representative from the BIE, from the Indian Health Service or the tribe or tribal council as they do not exist in Hawaii.
- (3) 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.

(c) **Meetings**

- (1) The Council meets, at a minimum, on a quarterly basis and in such places as it determines necessary.
- (2) The meetings:
  - (i) Are publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend, consistent with Hawaii's law.
  - (ii) Are, to the extent appropriate, open and accessible to the general public; and
  - (iii) Will have interpreters available for persons who are deaf and other necessary services for Council members and participants. HDOH may use funds under Part C to pay for those services.

(d) **Use of Funds to Support Council Activities**

- (1) Subject to the approval by the Governor, HDOH may use funds under Part C to:
  - (i) Conduct hearings and forums;
  - (ii) Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties, including travel expenses;
  - (iii) Hire staff; and
  - (iv) Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under part C of the Act.
- (2) Except as provided in paragraph (1), Council members must serve without compensation from funds available under part C of the Act.

(e) **Functions of the Council – Required Duties**

- (1) **Advising and assisting HDOH.** The Council advises and assists HDOH in the performance of its responsibilities in section 635(a)(10) of the Act, including:
  - (i) Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
  - (ii) Assignment of financial responsibility to the appropriate agency;
  - (iii) Promotion of methods (including use of interagency agreements) for interagency collaboration regarding child find under 34 CFR §§303.115 and 303.302 and Sections III(h) and XI, monitoring under 34 CFR

§§303.120 and 303.700 to 303.708 and Sections III(m) and XXII, financial responsibility and provision of early intervention services under 34 CFR §§303.202 and 303.511 and Section XX(d), and transition under 34 CFR §303.209 and Section VI; and

- (iv) Preparation of applications under Part C and amendments to those applications.
- (2) **Advising and assisting on transition.** The Council advises and assists the SEA and HDOH regarding the transition of toddlers with special needs to preschool and other appropriate services.
- (3) **Annual report to the Governor and the Secretary.** The Council:
  - (i) Prepares and submits an annual report to the Governor and to the Secretary on the status of early intervention service programs for infants and toddlers with special needs and their families under Part C of the Act operated within Hawaii; and
  - (ii) Submits the report to the Secretary by a date that the Secretary establishes.
  - (iii) Ensures that each annual report contains the information required by the Secretary for the year for which the report is made.
- (f) **Authorized Activities by the Council**

The Council may carry out the following activities:

  - (1) Advise and assist HDOH and the SEA regarding the provision of appropriate services for children with special needs from birth through age five.
  - (2) Advise appropriate agencies in Hawaii with respect to the integration of services for infants and toddlers with special needs 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 Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other State interagency early learning initiatives, as appropriate. In Hawaii, this entity is called the Early Learning Advisory Board.

*(Reference HRS §321-353)*

## **SECTION XXII. FEDERAL AND STATE MONITORING AND ENFORCEMENT**

- (a) **State Monitoring and Enforcement**
  - (1) HDOH ensures that it will:
    - (i) Monitor the implementation of Part C;
    - (ii) Make determinations annually about the performance of each EI program using the categories identified in 34 CFR §303.703(b) and subsection (d)(1);
    - (iii) Enforce Part C consistent with 34 CFR §303.704 and subsection (e), using appropriate enforcement mechanisms, which includes, if

applicable the enforcement mechanisms identified in: 34 CFR §303.704(a)(1) and subsection (e)(1)(i) (technical assistance); 34 CFR §303.704(a)(2) and subsection (e)(1)(ii) (imposing conditions on HDOH's funding of an EI program; 34 CFR §303.704(b)(2)(i) and subsection (e)(2)(ii)(A) (corrective action or improvement plan); and 34 CFR §§303.704(b)(2)(iv) and 303.704(c)(2) and subsections (e)(2)(ii)(C) and (e)(3)(ii) (withholding of funds, in whole or in part by HDOH); and

- (iv) Report annually on Hawaii's performance and of each EI program under Part C as provided in 34 CFR §303.702 and subsection (c).
- (2) The primary focus of Hawaii's monitoring activities is on:
  - (i) Improving early intervention results and functional outcomes for all infants and toddlers with special needs; and
  - (ii) Ensuring that EI programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with special needs.
- (3) As part of its responsibilities under paragraph (1), Hawaii uses quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (4), and the indicators established by the Secretary for the State performance plans.
- (4) HDOH monitors each EI program located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
  - (i) Early intervention services in natural environments.
  - (ii) Hawaii's exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services as defined in section 637(a)(9) of the Act.
- (5) In exercising its monitoring responsibilities under paragraph (4), Hawaii ensures that when it identifies noncompliance with the requirements under Part C by EI programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after Hawaii's identification of the noncompliance.
- (b) **State Performance Plans and Data Collection**
  - (1) **General.** Hawaii has in place a performance plan that meets the requirements described in section 616 of the Act; is approved by the Secretary; and includes an evaluation of Hawaii's efforts to implement the requirements and purposes of Part C of the Act, a description of how Hawaii will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR §303.700(d) and subsection (a)(4).
  - (2) **Review of State performance plan.** Hawaii reviews its State Performance Plan at least once every six years and submits any amendments to the Secretary.
  - (3) **Data collection**

- (i) Hawaii collects valid and reliable information as needed to report annually to the Secretary under 34 CFR §303.702(b)(2) and subsection (c)(2)(ii) on the indicators established by the Secretary for the State Performance Plans.
  - (ii) Hawaii collects data on specific indicators through State monitoring, as allowed by the Secretary and reports data on those indicators for each EI program at least once during the six-year period of a State performance plan. Hawaii does not utilize sampling in collecting data on any indicators.
  - (iii) Nothing in Part C of the Act or these policies and procedures may be construed to authorize the development of a statewide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.
- (c) **State Use of Targets and Reporting**
- (1) **General.** Hawaii uses the targets established in Hawaii’s performance plan under 34 CFR §303.701 and subsection (b) and the priority areas described in 34 CFR §303.700(d) and subsection (a)(4) to analyze the performance of each EI program in implementing Part C of the Act.
  - (2) **Public reporting and privacy.**
    - (i) Public report. Subject to clause (C), Hawaii:
      - (A) Reports annually to the public on the performance of each EI program located in the Hawaii on the targets in Hawaii’s State Performance Plan as soon as practicable but no later than 120 days following the submission of its annual performance report to the Secretary under subparagraph (ii); and
      - (B) Makes the State’s Performance Plan under §303.701(a) and subsection (b)(1), annual performance reports under subparagraph (ii), and the State’s annual reports on the performance of each EI program under clause (A) available through public means, including by posting on the website of HDOH, distribution to the media, and distribution to EI programs.
      - (C) In meeting the requirements of clause (A), since Hawaii collects some data through State monitoring, Hawaii includes in its public report on EI programs under clause (A) the most recently available performance data on each EI program and the date the data were collected.
    - (ii) State performance report. Hawaii reports annually to the Secretary on the performance of the State under the State’s performance plan.
    - (iii) Privacy. Hawaii 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.
- (d) **Hawaii’s Review and Determination Regarding Local Performance**

- (1) **Determination.** Based on the information provided by EI programs, information obtained through monitoring visits, and any other public information made available, the HDOH determines if the EI program:
    - (i) Meets the requirements and purposes of Part C of the Act;
    - (ii) Needs assistance in implementing the requirements of Part C of the Act;
    - (iii) Needs intervention in implementing the requirements of Part C of the Act; or
    - (iv) Needs substantial intervention in implementing the requirements of Part C of the Act.
  - (2) **Notice and opportunity for a hearing**
    - (i) For determinations made under paragraphs (1)(iii) to (iv), HDOH provides reasonable notice and an opportunity for the EI program to appeal those determinations.
    - (ii) The appeal described in paragraph (i) consists of an opportunity to meet with appropriate HDOH staff and provide any documentation to demonstrate why HDOH should not make the determination described in paragraphs (1)(iii) to (iv).
- (e) **Enforcement**
- (1) **Needs assistance.** If HDOH determines, for two consecutive years, that an EI program needs assistance under 34 CFR §303.703(b)(1)(ii) and paragraph (d)(1)(ii) in implementing the requirements of Part C of the Act, HDOH takes one or more of the following actions:
    - (i) Advises the EI program of available sources of technical assistance that may help the EI program address the areas in which the EI program needs assistance, which may include assistance from the EI System and technical assistance providers approved by the EI System including federally funded nonprofit agencies, and requires the EI program to work with appropriate entities. This technical assistance may include:
      - (A) 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;
      - (B) 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;
      - (C) Designating and using administrators, care coordinators, EI providers, and other personnel from the EI System to provide advice, technical assistance, and support; and
      - (D) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

- (ii) Identifies the EI program as a high-risk program and imposes special conditions on the provider's funding under Part C of the Act.
  - (2) **Needs intervention.** If HDOH determines, for three or more consecutive years, that an EI program needs intervention under 34 CFR §303.703(b)(1)(iii) and subsection (d)(1)(iii) in implementing the requirements of Part C of the Act, the following apply:
    - (i) HDOH may take any of the actions described in paragraph (1).
    - (ii) HDOH takes one or more of the following actions:
      - (A) Requires the EI program to prepare a corrective action plan or improvement plan if HDOH determines that the EI program should be able to correct the problem within one year.
      - (B) Requires the EI program to enter into a compliance agreement if HDOH has reason to believe that the EI program cannot correct the problem within one year.
      - (C) Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a.
      - (D) Withholds, in whole or in part, any further payments to the EI program under Part C of the Act.
      - (E) Refers the matter for appropriate enforcement action.
  - (3) **Needs substantial intervention.** Notwithstanding paragraphs (1) or (2), at any time that HDOH determines that an EI program needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by the EI program, HDOH takes one or more of the following actions.
    - (i) Recovers funds under section 452 of GEPA, 20 U.S.C. 1234a.
    - (ii) Withholds, in whole or in part, any further payments to the EI program under Part C of the Act.
    - (iii) Refers the matter for appropriate enforcement action.
  - (4) **Report to Director of Health.** If the EI System determines that funds should be withheld as the enforcement action pursuant to paragraphs (2) or (3), HDOH will inform the Director of Health within 30 days of making the determination and the reasons why an enforcement action is recommended.
- (f) **Withholding Funds**
- (1) **Opportunity for hearing.** Prior to withholding any funds to an EI program, HDOH provides reasonable notice and an opportunity for a hearing to the EI program involved.
  - (2) **Suspension.** Pending the outcome of any hearing to withhold payments under paragraph (1), HDOH may suspend payments to an EI program, after the EI program has been given reasonable notice and an opportunity to show cause why future payments should not be suspended.
  - (3) **Withholding until rectified.** Until HDOH is satisfied that the condition that caused the initial withholding has been substantially rectified, payment to that specific EI program will continue to be withheld.

(g) **Public Attention**

Whenever HDOH is proposing to take or is taking an enforcement action pursuant to 34 CFR §303.704 and subsection (e), HDOH must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act and 34 CFR §303.704 of the regulations and subsection (e) to the attention of the public within Hawaii, including by posting the notice on the Web site of HDOH and distributing the notice to the media and to EI programs.

(h) **Rule of Construction**

Nothing subpart H of 34 CFR Part 303 may be construed to restrict HDOH 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 the Act.

(i) **State Enforcement**

Nothing in subpart H of 34 CFR Part 303 may be construed to restrict HDOH from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

## **SECTION XXIII. REQUIRED REPORTS**

(a) **General**

- (1) HDOH annually reports to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.
- (2) HDOH submits the report to the Secretary in the manner prescribed by the Secretary.

(b) **Annual Report of Children Served**

- (1) For the purposes of the annual report required by section 618 of the Act and 34 CFR §303.720 and subsection (a), HDOH counts and reports the number of infants and toddlers receiving early intervention services on December 1 of each year. The report includes:
  - (i) The number and percentage of infants and toddlers with special needs in Hawaii, by race, gender, and ethnicity, who are receiving early intervention services; and
  - (ii) The number and percentage of infants and toddlers with special needs, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons.
- (2) The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

(c) **Data Reporting**

The data described in section 618(a) of the Act and in 34 CFR §303.721 and in subsection (b) is publicly reported by HDOH in a manner that does not result in disclosure of data identifiable to individual children.

(d) **Annual Report of Children Served – Certification**

HDOH includes in its report a certification signed by the Hawaii Director of Health that the information provided under 34 CFR §303.721 and in subsection (b) is an accurate and unduplicated count of infants and toddlers with special needs receiving early intervention services.

(e) **Annual Report of Children Served – Other Responsibilities of HDOH**

In addition to meeting the requirements of 34 CFR §§303.721 to 303.723 and subsections (b) to (d), the EI System uses data reported monthly by EI programs to complete its child count. The EI System established the following procedures to be used by EI programs in counting the number of children with special needs receiving early intervention services:

- (1) Established monthly dates by which all EI programs must report to the EI System;
- (2) Prior to submitting monthly data, each EI program manager reviews the data to ensure that an unduplicated and accurate count has been made;
- (3) As indicated in the EI System Data Manual, the submission of the data acts as the required certification that an unduplicated and accurate monthly count has been made;
- (4) The EI System Data Manager forwards back to each EI program manager the annual report for their final review to ensure that an unduplicated and accurate count has been made; and
- (5) Prior to HDOH's submission of the annual report of children served, the EI System's Data Manager and the EI System Supervisor complete a final review of the data submitted to ensure that an unduplicated and accurate count has been made.