

NEW JERSEY ADMINISTRATIVE CODE  
TITLE 8, CHAPTER 17  
EARLY INTERVENTION SYSTEM

SUBCHAPTER 1. GENERAL PROVISIONS

§ 8:17-1.1 Purpose

The purpose of *N.J.A.C. 8:17* is to establish the rules for the implementation of the State's early intervention system under Part C of the Individuals with Disabilities Education Act (IDEA), 34 CFR Part 303.

§ 8:17-1.2 Scope

(a) This chapter applies to:

1. The Department of Health and Senior Services (Department), in conjunction with the Departments of Education, Children and Families, and Human Services;
2. Early intervention provider agencies receiving funds through the Department to provide early intervention services, and those agencies' practitioners;
3. Practitioners identified in Individualized Family Service Plans to provide early intervention service to meet the unique needs of children and their families; and
4. Children and families served by, or potentially eligible to receive, early intervention services through, the New Jersey Early Intervention System, including homeless children and children who are wards of the State.

§ 8:17-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

"Academy for Certification of Vision Rehabilitation and Education Professionals" means the entity by that name for which the contact information is Academy for Certification of Vision Rehabilitation and Education Professionals, 3333 N. Campbell Ave, Suite 11, Tucson, AZ 85719, (520) 887-6816, telefacsimile (520) 887-6826, [www.acvrep.org](http://www.acvrep.org).

"Act" means the Individuals with Disabilities Education Act (IDEA) at 20 U.S.C. §§1431 through 1444 and the implementing regulations at 34 CFR Parts 300 and 303, incorporated herein by reference, as amended and supplemented.

"Assessment" means ongoing procedures used by an appropriate qualified practitioner throughout the

period of a child's eligibility under *N.J.A.C. 8:17-7.1* to identify:

1. The child's unique strengths and needs and the early intervention services appropriate to meet those needs; and
2. The resources, priorities and concerns of the family and the supports and services necessary to enhance the capacity of the child's family to meet the developmental needs of the child.

"At risk" means, a potentially eligible child that has biological or environmental risk factors that place a child at a higher risk of developmental delay than children without these factors.

"Battelle Developmental Inventory II" or "BDI" means the ongoing progress-monitoring instrument utilized by practitioners within the NJEIS to conduct evaluations and assessments of children to determine eligibility for early intervention services based upon requirements set forth at *N.J.A.C. 8:17-7.1*.

"Behavior specialist" means a person who:

1. Holds a bachelor's degree or higher from an accredited institution in health, human service, or education field;
2. Has taken and completed coursework from an accredited institution in behavioral methodology for children; and
3. Has at least one year of documented professional experience implementing behavioral intervention programs for individuals from birth to five years of age who have developmental delays and disabilities.

"Central directory" means a compilation of information and resources, also known as the "Resource Directory," developed by the Department of Human Services for public use in accessing services and assistance available in New Jersey including procedures for making referrals.

"Child" means an infant or toddler from birth until the third birthday.

"Child development specialist" means a person who has a bachelor's degree or higher from an accredited institution in a health, human service, or education field and:

1. At least one year of documented professional experience with individuals from birth to five years of age who have developmental delays and disabilities; or

2. At least six credits in infant or early childhood development and/or special education coursework.

"Child Find System" means the program to locate children potentially eligible to participate in the NJEIS, pursuant to Part B and the rules of the DOE, at *N.J.A.C. 6A:14-3.3*, that is jointly administered by the Department and the DOE.

"Clinical Nutrition Certification Board" means the entity by that name for which the contact information is Clinical Nutrition Certification Board, 15280 Addison Road, Suite 130, Addison, TX 75001. (972) 250-2829, telefacsimile (972) 250-0233, [www.cncb.org](http://www.cncb.org).

"Commission on Dietetic Registration" means the entity by that name for which the contact information is Commission on Dietetic Registration, 120 South Riverside Plaza, Suite 2000, Chicago, IL 60606-6995, (312) 899-0040 extension 5500 or toll-free (800) 877-1600 extension 5500, telefacsimile (312) 899-4772, [www.cdrnet.org](http://www.cdrnet.org).

"Commissioner" means Commissioner of the Department of Health and Senior Services.

"Compensatory early intervention services" means services that the NJEIS has approved for a child beyond age three to compensate for missed services that occurred, at no fault of the child or his or her parent, as a result of a failure of a practitioner to deliver such services during the child's eligibility.

"Consent" means the parent of an eligible or potentially eligible child:

1. Has been fully informed of all information relevant to the activity for which consent is sought, in the parent's primary language or by means of another appropriate mode of communication;

2. Understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that may be released and to whom;

3. Understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time, thereby canceling consent for services not yet rendered; and

4. Understands that he or she has the right to determine to accept or decline any offered early intervention service on behalf of his or her child, or other family members, and to decline such a service after first accepting it, without jeopardizing other early intervention services.

"Corrected age" means, as used relative to a prematurely born child, the age the child would be if the

pregnancy had actually proceeded to term, for a full 40-week gestation period.

"CSPD" means "comprehensive system of personnel development."

"Day" means calendar day, unless business day is expressly specified.

"Department" or "lead agency" means the New Jersey Department of Health and Senior Services, of which the mailing address is:

1. New Jersey Department of Health and Senior Services, P.O. Box 360, Trenton, NJ 08625-0360, or, when specifically used for NJEIS inquiries;

2. New Jersey Department of Health and Senior Services, New Jersey Early Intervention System, P.O. Box 364, Trenton, NJ 08625-0364.

"Department of Children and Families" or "DCF" means the New Jersey Department of Children and Families.

"Department of Education" or "DOE" means the New Jersey Department of Education.

"Department of Human Services" or "DHS" means the New Jersey Department of Human Services.

"Destruction" means physical destruction or removal of personal identifiers from information, so that information is no longer personally identifiable.

"Developmental delay" means, at a minimum, a delay of either 33 percent in one developmental area or 25 percent in two or more developmental areas, or, if appropriate standardized instruments are individually administered in the evaluation process, a score of at least 2.0 standard deviations below the mean in one functional area or a score of at least 1.5 standard deviations below the mean in each of two functional areas.

"Early intervention services" means services provided through the NJEIS that are:

1. Designed to meet the developmental needs of each eligible child and the needs of the child's family, as identified by the Individualized Family Service Plan team, related to enhancing the child's development;

2. Selected in collaboration with the parents;

3. Provided:

i. Under public supervision;

ii. By qualified personnel;

iii. In conformity with an IFSP; and

iv. At public expense, subject to the system of payments by families, including a schedule of sliding fees established by the Department; and

4. Based on peer-reviewed research, to the extent practicable.

"Eligible child" means a child who has one or more developmental delays, as described at *N.J.A.C. 8:17-7.1*, including diagnosed physical and or mental conditions enumerated at *N.J.A.C. 8:17-7.1(d)*.

"Evaluation" means the multidisciplinary procedure to determine the initial and continuing eligibility of children to receive early intervention services.

"Extraordinary expenses" means monthly or yearly expenses a household incurs to accommodate and/or address an eligible child's disability and/or the disability or long-term health issue of a member of the child's household, for which expenses the household has exhausted and/or been determined ineligible for payment assistance and/or reimbursement from all alternative sources.

1. Examples of expenses that are eligible for consideration as extraordinary expenses are current and/or ongoing expenses for equipment for, and improvements, modifications, and alterations to, the family residence or vehicle that a family has made within the previous month or year to accommodate the long-term and/or additional needs of the eligible child or other household member with a disability or long-term health issue.

2. The term "extraordinary expenses" excludes expenses:

i. That the household has not yet incurred;

ii. For which an application for payment assistance or reimbursement is pending before another agency or funding resource;

iii. For which an application for payment assistance or reimbursement may be made but has not been made; and/or

iv. For goods and/or services that another public or private agency or entity, such as an insurer, an advocacy or support group, or the Federal government can provide in a comparably suitable manner or condition at lesser or no cost to the household.

"Family Educational Rights and Privacy Act" or "FERPA" means, collectively, *20 U.S.C. §1232g* and the implementing regulations at 34 CFR Part 99, as amended and supplemented.

"Homeless child" means a child who is homeless within the meaning of section 725 of the McKinney-Vento Homeless Assistance Act at *42 U.S.C. §11434a*.

"Individualized Family Service Plan" or "IFSP" means a written plan that is developed jointly by the family and appropriate qualified professionals providing early intervention services to a child determined to be an eligible child and his or her family that is based on a multidisciplinary evaluation and assessment of the child and the child's family and includes services necessary to enhance the development of the child and the capacity of the child's family to meet the child's developmental needs.

"Informed clinical opinion" means a judgment made by a qualified practitioner, acting within his or her authorized scope of practice regarding the developmental status of a child, based upon the practitioner's education and experience, using methods and techniques that have earned mainstream recognition as valid within the practitioner's particular discipline or area of expertise, taking into consideration the child's overall development and involving a multidisciplinary approach to determining the child's developmental status.

"Multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services including evaluation and assessment activities and the development of the IFSP.

"Natural environments" means settings, that are natural or normal for an eligible child's age peers who have no disabilities, such as the child's home and community.

"New Jersey Early Intervention System" or "NJEIS" means the Statewide system for locating and determining the eligibility of children potentially eligible to receive early intervention services, and for providing early intervention services to eligible children and their families pursuant to Part C.

"Occupational therapist" means a person licensed as an occupational therapist by the Occupational Therapy Advisory Council of the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety, pursuant to *N.J.S.A. 45:9-37.51* et seq. and *N.J.A.C. 13:44K*, who preferably has at least one year of documented professional experience with individuals from birth to five years of age who have developmental delays and disabilities.

"Orientation and mobility specialist" means a person who is certified as an orientation and mobility specialist by the Academy for Certification of Vision Rehabilitation and Education Professionals.

"Parent" means:

1. A biological or adoptive parent;
2. A foster parent of a child, pursuant to the definition of a "resource parent," as defined at *N.J.S.A. 30:4C-26.4*;
3. A guardian generally authorized to act as the child's parent, or authorized to make early intervention decisions for the child (but not the State if the child is a ward of the State);
4. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
5. An individual appointed by a court having jurisdiction over the child, pursuant to *34 CFR § 300.30(b)(2)*; or
6. A surrogate parent assigned pursuant to *N.J.A.C. 8:17-5*.

"Part B" means service requirements under Part B of the Act administered by the New Jersey Department of Education pursuant to *N.J.A.C. 6A:14*.

"Part C" means service requirements under Part C of the Act administered by the Department pursuant to this chapter.

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information or from which information is obtained under the NJEIS, and includes the Department.

"Personally identifiable" means:

1. The name of a child, a child's parent, or other family member;
2. The address of the child or the child's family;
3. A personal identifier, such as the child's or parent's social security number; or
4. Any list of personal characteristics or other information that would make it possible to identify the child or the child's parents with reasonable certainty.

"Physical therapist" means a person licensed as a physical therapist by the Board of Physical Therapy of the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety, pursuant to *N.J.S.A. 45:9-37.11 et seq.* and *N.J.A.C. 13:39A*, who preferably has at least one year of documented professional experience with individuals from birth to five years of age who have developmental delays and disabilities.

"Practitioner" means a person who provides service coordination, evaluation, assessment, or services contained in an IFSP, to children and their families.

"Primary language" when used with reference to persons with limited English proficiency, means the language or mode of communication normally used by the parent of a child.

"Primary referral source" means an entity that refers children potentially eligible for early intervention services to an SPOE and includes those entities identified at *34 CFR §303.321(d)(3)* and also includes:

1. Hospitals, including prenatal and postnatal care facilities;
2. Physicians;
3. Parents;
4. Child care programs;
5. Local education agencies;
6. Local early intervention programs and practitioners;
7. Public health agencies;
8. Other social service agencies;
9. Other health care practitioners; and
10. Parent and practitioner organizations.

"Private programs" means services that a family accesses outside of the New Jersey Early Intervention System for an eligible child.

"Procedural Safeguards Office" means the office within the Department designated to coordinate dispute resolution processes involving allegations of Part C violations, of which the mailing address is Procedural Safeguards Office, New Jersey Department of Health and Senior Services, Public Health Services Branch, Division of Family Health Services, P.O. Box 364, Trenton, NJ 08625-0364.

"Provider agency" means an entity receiving funds from the Department for purposes of carrying out activities under Part C.

"Public awareness program" means the total continuous ongoing Statewide effort by the Department to prepare and disseminate materials to all primary referral sources, major State organizations and the public that focuses on the early identification of eligible children and informs the public about the NJEIS, Child Find, referrals, multidisciplinary evaluations, availability of early intervention services, family rights, and the central directory.

"Qualified" means that a person has met State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services, consistent with the provisions of N.J.A.C. 8:17-15.

"Registered dietitian" means a person who is:

1. Registered by the Commission of Dietetic Registration;
2. Board-certified as a specialist in pediatric nutrition by the Commission on Dietetic Registration; or
3. Certified as a clinical nutritionist by the Clinical Nutrition Certification Board.

"Service coordinator" means a practitioner assigned to serve as the primary point of contact with families to arrange and manage necessary service delivery to children and families served by the NJEIS.

"Special educator" means a person who has at least a bachelor's degree certified by the New Jersey Department of Education as a Teacher with an endorsement pursuant to *N.J.A.C. 6A:9-11.3* as a Teacher of Students with Disabilities, a Teacher of the Deaf or Hard of Hearing, and/or a Teacher of the Blind or Visually Impaired, and who has:

1. At least one year of documented professional experience with individuals from birth to five years of age who have developmental delays and disabilities; or
2. At least six credits in infant and toddler development or early childhood development.

"Speech and language pathologist" means a person who is licensed as a speech-language pathologist by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety, pursuant to N.J.S.A. 45:3B and *N.J.A.C. 13:44C*, who preferably has at least one year of documented professional experience with individuals from birth to five years of age who have developmental delays and disabilities.

"State Interagency Coordinating Council" or "SICC" means the entity established pursuant to Executive Order No. 94 (Governor Florio, May 21, 1993), as continued pursuant to Executive Order No. 27 (Governor Corzine, August 17, 2006).

"Surrogate parent" means an individual assigned, pursuant to *N.J.A.C. 8:17-5.1*, to serve as parent for a child served by the NJEIS.

"System point of entry" or "SPOE" means one or more entities identified by the Department through a

grant process to serve as a point of entry for families into the New Jersey Early Intervention System.

"Ward of the State" means a child who, pursuant to an order of a court of competent jurisdiction, is under the guardianship of an agency of the State, is a foster child for whom the foster parent is not the child's parent or is a child who, pursuant to an order of a court of competent jurisdiction, is in the custody of the DCF.

## SUBCHAPTER 2. CHILD FIND

### § 8:17-2.1 Identification of potentially eligible children

(a) The Department shall identify, locate, and evaluate children potentially eligible for early intervention services, including children attending private programs that are under contract with regional and local provider agencies.

(b) Private programs described in (a) above shall report to the Department those children they serve, to ensure that eligible children are identified and are receiving required early intervention services.

(c) The Department, in consultation with the SICC, shall coordinate the Child Find System under Part C conducted by regional provider agencies and State agencies responsible for administering the various education, health and social services programs and initiatives relevant to Part C, including, but not limited to, those authorized under:

1. Parts B and D;
2. The Maternal and Child Health Program under Title V of the Social Security Act, *42 U.S.C. §§709* et seq.;
3. The Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program under Title XIX of the Social Security Act (Medicaid), *42 U.S.C. §§701* et seq.;
4. The Developmental Disabilities Assistance and Bill of Rights Act, *42 U.S.C. §§15001* et seq.;
5. The Head Start Act, *42 U.S.C. §§9801* et seq.;
6. The Supplemental Security Income Program under Title XVI of the Social Security Act, *42 U.S.C. §§1381* et seq.; and
7. The Child Abuse Prevention and Treatment Act (CAPTA), *42 U.S.C. §§1501* et seq.

(d) The Department shall distribute public awareness materials to provide information on the purpose and scope of the early intervention system, how to make referrals, and how to access evaluation and early

intervention services to primary referral sources on a Statewide basis.

#### § 8:17-2.2 Referral process

(a) The Department shall maintain a list of SPOEs and shall disseminate the list to primary referral sources for their use in accordance with (d) below.

(b) Regional provider agencies shall develop materials to complement and supplement the list of SPOEs, describing specific resources available in their respective regions and shall disseminate this information and the list of SPOEs described in (a) above, within their respective regions in a manner reasonably calculated to reach populations and referral sources through which children potentially eligible for early intervention services are likely to be located.

(c) Through the Child Find System, the Department shall:

1. Provide methods for making referrals through primary referral sources;
2. Make referrals to SPOEs within two business days after a child has been identified (through regional providers);
3. Coordinate the referral for early intervention services, pursuant to Part C, of each child who is:
  - i. The subject of a substantiated case of child abuse or neglect as defined in CAPTA pursuant to 42 U.S.C. §5106(g), or who has a case in litigation pursuant to *N.J.S.A. 9:6-8.8* et seq.;
  - ii. Identified on the Birth Defects Registry, pursuant to *N.J.S.A. 26:2-110* and 111; or
  - iii. Identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure; and
4. On an annual basis, determine the effectiveness and impact of public awareness and Child Find activities.

(d) Through the Child Find System, with parental consent, each primary referral source shall refer children who are potentially eligible for early intervention services pursuant to *N.J.A.C. 8:17-7* to the SPOE serving its particular region.

(e) When an SPOE receives a referral, it shall appoint a service coordinator to serve the referred child and his or her family.

(f) During the intake process, the service coordinator shall inform the parents of the child for whom services are sought of the family cost participation re-

quirements at *N.J.A.C. 8:17-9.2.*, and shall assist the family in the completion of the Family Cost Participation Income Verification Form at chapter Appendix A, the Family Cost Participation Payment Option Form at chapter Appendix B, and, as appropriate, the Family Cost Participation Application for Income Adjustment at chapter Appendix C, all of which are incorporated herein by reference.

(g) Within 45 days of receipt of a referral, each service coordinator shall ensure the completion of the evaluation and assessment activities and hold an initial IFSP meeting consistent with Part C and *N.J.A.C. 8:17-8.3.*

### SUBCHAPTER 3. SERVICE COORDINATION, REGIONAL PROVIDER AGENCY, PROVIDER AGENCY, AND PRACTITIONER

#### § 8:17-3.1 Service coordination activities

(a) A service coordinator shall undertake the following activities:

1. Coordinating the process by which children are potentially eligible and/or determined to be eligible, and their families, to receive the services, rights, and procedural safeguards to which they are entitled pursuant to Part C, through the NJEIS;
2. Assuming responsibility for:
  - i. Coordinating all services delivered to the eligible child across agency lines; and
  - ii. Serving as a single point of contact in helping parents to obtain the services and assistance they need for each child referred and his or her family;
3. Engaging in an active ongoing process that involves:
  - i. Assisting parents of eligible children in gaining access to and coordinating the provision of early intervention services;
  - ii. Facilitating the delivery of timely services; and
  - iii. Continuously seeking the appropriate services and situations necessary to enhance the development of each child being served for the duration of the child's eligibility;
4. Coordinating the performance of evaluations and assessments;
5. Assisting families to understand and to collect information needed to complete the family cost participation documentation identified in *N.J.A.C. 8:17-9.2.*;

6. Assisting families in identifying available provider agencies;
7. Informing families of the availability of advocacy services;
8. Providing to families information related to their child's needs, including information based upon the child's diagnosis or condition;
9. Coordinating with medical and health providers;
10. Informing families of the purposes and general functions of, and the types of services that are available and potentially available to them from, the NJEIS, their rights, procedural safeguards, the requirements of this chapter, and the process for accessing services through the early intervention system;
11. Facilitating and participating in the development, review and evaluation of IFSPs;
12. Coordinating and monitoring the delivery of IFSP services; and
13. Facilitating the development of a plan of transition to preschool services, as appropriate.

#### § 8:17-3.2 Service coordinators

- (a) An SPOE shall employ service coordinators consistent with the following:
1. The service coordinator must follow all SPOE policies and procedures that are implemented, in accordance with the terms and conditions of a health services grant funded by the Department and fulfilled by the SPOE.
    - i. Each service coordinator must comply with these policies and procedures to effectively carry out the functions and services listed in *N.J.A.C. 8:17-3.1*, on an interagency basis; and
    2. While each service coordinator is responsible for ensuring the facilitation, coordination, and completion of all activities, the IFSP may identify other practitioners or family members to conduct specific activities.

- (b) Service coordinators shall demonstrate knowledge and understanding of the following:
1. The eligibility requirements for children referred to the NJEIS;
  2. The requirements of Part C and this chapter;
  3. The nature and scope of services available under the NJEIS, parent rights, guidelines developed by the NJEIS; and

4. The system of family cost participation.

#### § 8:17-3.3 Provider agency

- (a) Each provider agency rendering early intervention services, listed in *N.J.A.C. 8:17-8.5(g)*, is responsible for:
1. Demonstrating knowledge about the early intervention system including Department guidelines;
  2. Consulting with parents, other provider agencies, and representatives of community agencies to ensure the effective provision of services in the provider agency's designated area(s) of service;
  3. Training and informing parents and others regarding the provision of services to eligible children and their families;
  4. Supervising practitioners;
  5. Participating in the multidisciplinary team assessment of a child and his or her family;
  6. Participating in the development of integrated goals and outcomes for a child and his or her family as part of the IFSP; and

7. Avoiding a conflict of interest by ensuring that families are referred to the child's service coordinator if a parent inquires about additional services beyond those listed on the child's existing IFSP.

#### § 8:17-3.4 Practitioner

Provider agencies enrolled in the NJEIS shall hire only those practitioners who meet State personnel standards pursuant to *N.J.A.C. 8:17-15*, regardless of whether practitioners are hired as employees or independent contractors.

### SUBCHAPTER 4. PRIOR NOTICE AND PARENT CONSENT

#### § 8:17-4.1 Prior notice

- (a) The service coordinator shall provide written notice containing the information provided in (c) below in the form and manner provided in (d) through (f) below to the parents of an eligible child 10 calendar-days before a provider agency proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and his or her family.
- (b) Neither a practitioner providing early intervention services pursuant to an IFSP nor the practitioner's provider agency shall revise services or eligibility

without the service coordinator's issuance of the notice described in (a) above.

(c) The notice shall contain the following information:

1. The action(s) being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards to which the parents are entitled; and
4. A description of the dispute resolution options that are available pursuant to N.J.A.C. 8:17-13.

(d) The notice shall be:

1. Written in language understandable to the public; and
2. Provided in the primary language of the parents, unless it is clearly not feasible to do so, such as, for example, if the family's primary language or other mode of communication is prohibitively costly as to make it unreasonable for the NJEIS to communicate with the family in that fashion.

(e) If the service coordinator cannot reasonably provide the notice in writing or other mode of communication in the parent's primary language, the service coordinator shall ensure:

1. The translation of the notice orally or by other means to the parent in the parent's primary language or other mode of communication;
2. That the parent understands the notice; and
3. That there is written evidence in the child's early intervention record that these requirements have been met.

(f) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, Braille, or oral communication).

#### § 8:17-4.2 Parent consent

(a) Each service coordinator assigned to a family shall provide information regarding evaluation and assessment processes and service options, so that parents have a clear understanding about the purpose and impact of their consent.

(b) Each service coordinator shall obtain written parental consent prior to:

1. Conducting an initial evaluation and assessment; and

2. Arranging for the provision of early intervention services.

(c) The service coordinator shall make reasonable efforts to ensure that a parent, in granting consent, understands that:

1. The parent is agreeing to satisfy the family cost share calculated pursuant to *N.J.A.C. 8:17-9.2*; and
2. The Department shall not provide and/or shall terminate the provision of early intervention services if the family fails or refuses to pay the family's cost share calculated pursuant to *N.J.A.C. 8:17-9.2*.

(d) If a parent does not consent, the service coordinator shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment and the types of services that would be available were the parent to consent and were the child determined eligible;
2. That the child will not receive evaluation, assessment, or early intervention services;
3. That a parent may determine whether he or she, or the child, or other family members will accept or decline any early intervention service identified in the evaluation and assessment process established pursuant to N.J.A.C. 8:17-6; and
4. That a parent may decline any or all services at any time after first accepting them without jeopardizing the eligibility of the child or the child's family for other early intervention services.

(e) The Department shall respect and honor a parent's refusal to consent to participation in early intervention services.

(f) If there are circumstances that lead a service coordinator to believe reasonably that a child is the victim of child abuse or neglect, the service coordinator shall comply with *N.J.S.A. 9:6-8.10*.

### SUBCHAPTER 5. SURROGATE PARENT

#### § 8:17-5.1 Need for surrogate parent

(a) The service coordinator shall determine that the appointment of a surrogate parent for an eligible or potentially eligible child is necessary if:

1. The service coordinator, after reasonable efforts, cannot identify a parent;
2. The service coordinator, after reasonable efforts, cannot discover the whereabouts of a parent; or

3. The child is a ward of the State.

(b) In making a determination pursuant to (a) above, the service coordinator shall consider records about the child that are kept by agencies other than the service coordinator's employer, which records the service coordinator has access, in addition to information the service coordinator collects as part of his or her own investigation.

(c) The service coordinator shall document his or her investigation in making a determination in accordance with (a) above.

(d) If the child does not have a parent, the service coordinator shall appoint a surrogate parent to serve as parent, in accordance with *N.J.A.C. 8:17-5.2* and *5.3*.

(e) The service coordinator shall document in the child's record the identity and contact information of the person the service coordinator appoints to serve as surrogate parent.

#### § 8:17-5.2 Surrogate parent eligibility requirements

(a) A person shall be eligible for appointment as a surrogate parent if the person:

1. Has no interest that conflicts with the interest of the child for whom he or she seeks appointment as surrogate parent;

2. Successfully completes a training module developed by the Procedural Safeguards Office pursuant to *34 CFR §303.400*; and

3. Is not a person identified in (b) below.

(b) The person assigned as a surrogate parent shall not:

1. Be an employee of any State agency;

2. Be a person, or an employee of a person, providing early intervention services to the child or any family member of the child; or

3. Have a criminal record pursuant to *N.J.A.C. 8:17-15.2*.

(c) Paragraphs (b)1 or 2 above do not disqualify a person by virtue of the person's receipt of compensation for service as a surrogate parent.

(d) The Department or its designee shall pay a surrogate parent for his or her hours of service in that capacity.

#### § 8:17-5.3 Responsibilities of surrogate parent

(a) Once assigned, a surrogate parent is authorized and required to represent a child in all matters related to:

1. The consent to referral to the early intervention system;

2. The evaluation and assessment of the child;

3. The development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

4. The ongoing provision of early intervention services to the child; and

5. Any other rights established under Part C and this chapter establish.

#### § 8:17-5.4 Criteria for terminating appointment of a surrogate parent

(a) The Department shall terminate the appointment of a surrogate parent if:

1. The child ceases to meet the eligibility criteria identified in *N.J.A.C. 8:17-5.1* for needing a surrogate parent;

2. The child ceases to participate in the early intervention system; or

3. The surrogate parent ceases to meet the eligibility criteria identified in *N.J.A.C. 8:17-5.2* or the surrogate parent requirements in *N.J.A.C. 8:17-5.3*.

(b) The Department shall not terminate a surrogate parent in retaliation for the surrogate parent exercising his or her rights or the rights of the child pursuant to *N.J.A.C. 8:17-5.3*.

### SUBCHAPTER 6. EVALUATION AND ASSESSMENT

#### § 8:17-6.1 Initial and ongoing evaluation and assessment

(a) The evaluation and assessment of a potentially eligible child shall be conducted by a qualified practitioner and shall be based on informed clinical opinion.

(b) As part of the process to measure a child's eligibility, the practitioner shall use an evaluation and assessment instrument, such as the BDI, the use of which instrument the Department recommends.

(c) The evaluation and assessment process consists of:

1. A review of pertinent records related to the child's current health status and medical history;

2. An evaluation of the child's level of functioning in each of the following developmental areas:

- i. Physical, including gross motor, fine motor, vision and hearing;
- ii. Cognitive development;
- iii. Communication development;
- iv. Social and emotional development; and
- v. Adaptive development; and

3. The identification of appropriate services to meet the child's needs in the developmental areas identified in (c)2 above, through the IFSP process.

#### § 8:17-6.2 Family-directed assessment

(a) Family assessments shall be: conducted with family consent; family-directed; and designed to determine 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 the child.

(b) Family participation in an assessment is voluntary and a family or individual member's refusal to participate therein shall not affect a child's eligibility for early intervention services.

(c) If a family assessment is conducted, it shall:

1. Be conducted by a qualified practitioner;
2. Be based on information provided by the family through personal interview; and

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

#### § 8:17-6.3 Timelines

(a) The initial evaluation and assessment of each child pursuant to *N.J.A.C. 8:17-6.1*, and the family-directed assessment pursuant to *N.J.A.C. 8:17-6.2*, shall be conducted to enable the initial IFSP meeting to take place within 45 days of referral, pursuant to *N.J.A.C. 8:17-8.3*.

(b) In the event of exceptional circumstances that make it impossible to complete the evaluation and assessment of the child within 45 days of the referral (for example, if a child were ill, a family emergency which prevents participation, or declared weather emergency limiting transportation to the family's home), the service coordinator shall:

1. Document those circumstances; and

2. Develop and implement an interim IFSP, to the extent appropriate and consistent with *N.J.A.C. 8:17-8.2*.

(c) Exceptional circumstances, as used in (b) above, shall relate only to the child and family and shall not relate to the administrative convenience of the service coordinator or the provider agency.

#### § 8:17-6.4 Nondiscriminatory procedures

(a) Each practitioner conducting evaluations and assessments shall ensure nondiscrimination in the evaluation and assessment of children and their families and shall:

1. Administer tests and other evaluation materials and procedures in the primary language of the parents or by means of another mode of communication, unless it is clearly not feasible to do so, such as, for example, if using that language or other mode of communication would be so prohibitively costly as to make it unreasonable for the NJEIS to communicate with the family in that fashion;

2. Employ evaluation and assessment procedures and use materials that are not racially or culturally discriminatory; and

3. Not use any one single procedure as the sole criterion for determining a child's eligibility under *N.J.A.C. 8:17-7.1*.

### SUBCHAPTER 7. ELIGIBILITY CRITERIA AND PROCEDURES

#### § 8:17-7.1 Eligibility criteria and procedures

(a) A child is eligible to receive early intervention services from the Department if the child has a diagnosed condition described in (c) below or if:

1. The child is experiencing developmental delays, as measured using an evaluation and assessment instrument, such as the BDI, and applying procedures (including informed clinical opinion) as described in *N.J.A.C. 8:17-6.1(b)*, in one or more of the following developmental areas:

- i. Physical, including gross motor, fine motor, vision and hearing;
- ii. Cognitive;
- iii. Expressive and receptive communication;
- iv. Social or emotional; or
- v. Adaptive.

(b) In using standardized evaluations or criterion-referenced measures to determine eligibility, a developmental delay is, at a minimum, a delay of either 33 percent in one developmental area or 25 percent in two or more developmental areas, or, if appropriate standardized instruments are individually administered in the evaluation process, a score of at least 2.0 standard deviations below the mean in one functional area or a score of at least 1.5 standard deviations below the mean in each of two functional areas.

1. The evaluator or assessor shall calculate percentages based on corrected age for children born at or before 38 weeks of gestation, calculating the correction based on 40 weeks.

2. The child's corrected age shall apply until the child reaches 24 months of age.

3. For children born at or after 38 weeks of gestation, or who are evaluated at an age beyond 24 months old, there shall be no correction in age.

(c) A child is eligible for early intervention services if he or she has a diagnosed physical or mental condition in one or more of the categories that have a high probability of resulting in developmental delay, listed in (d) below.

1. This includes children who have identified conditions but who may not be exhibiting delays in development at the time of diagnosis.

(d) The categories of physical and mental conditions that have a high probability of resulting in developmental delay are:

1. Chromosomal abnormalities, or genetic or congenital disorders;
2. Severe sensory impairments, including those relating to vision and hearing;
3. Untreated inborn errors of metabolism;
4. Disorders reflecting disturbance of the development of the nervous system;
5. Congenital infections;
6. Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome;
7. Severe attachment disorders; and
8. Autism spectrum disorders.

(e) A multidisciplinary team of practitioners shall determine eligibility within a diagnosed physical or mental condition category based on a statement or report signed by a physician, advanced practice nurse or licensed clinical psychologist, as appropriate to the

suspected disability, indicating the condition that is likely to result in developmental delay.

1. The multidisciplinary team shall consider the report or statement required under (e) above with respect to the types and amounts of services that a child and/or his or her family should receive through the early intervention system but the team shall not use the report or statement as the sole basis by which it makes the developmental diagnosis or determines the services approved through the IFSP process described at *N.J.A.C. 8:17-8.3*.

(f) If a multidisciplinary evaluation team has identified one or more physical and/or mental conditions that are associated with developmental concerns, and has concluded that early intervention services would be appropriate to meet the needs of the child and that the child is eligible to receive early intervention services, then the evaluation team shall place documentation in the child's record that includes the informed clinical opinion pursuant to *N.J.A.C. 8:17-6.1* upon which the team based its determination of eligibility.

#### § 8:17-7.2 Children at risk

(a) At-risk children are not automatically eligible for services that are available pursuant to this chapter.

(b) Individual determinations of eligibility shall be made for at-risk children based upon the evaluation and assessment and eligibility requirements provided at *N.J.A.C. 8:17-6* and *7.1*.

### SUBCHAPTER 8. INDIVIDUALIZED FAMILY SERVICE PLAN

§ 8:17-8.1 Family obligations associated with access- ing services identified as necessary for an eligible child

(a) Once eligibility for a child has been established pursuant to *N.J.A.C. 8:17-7*, the service coordinator shall review with the family the family cost participation requirements at *N.J.A.C. 8:17-9.2* and, with family consent, and in accordance with *N.J.A.C. 8:17-9.2*, shall assist the family in collecting information needed to complete the cost participation documents, and, whenever appropriate, an application for income adjustment.

(b) Parents of an eligible child may determine whether they, their child, or other family members will accept or decline any early intervention service identified as necessary through the evaluation and assessment process established pursuant to *N.J.A.C. 8:17-6* and in accordance with this subchapter.

1. Parents may decline any or all services at any time after first accepting them without jeopardizing other early intervention services consistent with *N.J.A.C. 8:17-8.3(g)*.

(c) The IFSP team assembled pursuant to *N.J.A.C. 8:17-8.4* shall develop the IFSP, pursuant to *N.J.A.C. 8:17-8.3*, without regard to a family's ability to pay.

#### § 8:17-8.2 Services before completion of evaluation and assessment

(a) The service coordinator shall arrange for the provision of early intervention services for a child that has been determined to be eligible for such services, pursuant to *N.J.A.C. 8:17-7.1*, before the completion of the evaluation and assessment, described at *N.J.A.C. 8:17-6*, if:

1. The NJEIS determines that it is immediately necessary for the child and the child's family to receive certain early intervention services prior to completion of evaluation and assessment to ensure that the child's health and/or well-being are not in jeopardy pending completion of evaluation and assessment;

2. Parental consent is obtained;

3. An interim IFSP is developed that includes:

i. The name of the service coordinator who shall be responsible for the implementation of the interim IFSP and coordination 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; and

4. The evaluation and assessment are completed within the 45-day period required in *N.J.A.C. 8:17-6*.

#### § 8:17-8.3 IFSP development, review and evaluation

(a) For a child who has been evaluated for the first time and determined to be eligible for early intervention services, the service coordinator shall conduct a meeting with the IFSP team, as described at *N.J.A.C. 8:17-8.4(a)*, to develop the initial IFSP within 45 days from the date of referral and shall, as appropriate in accordance with *N.J.A.C. 8:17-8.2*, consider an interim IFSP.

(b) The IFSP team shall review the IFSP for a child and the child's family every six months, or more frequently if conditions warrant, or if the family requests such a review.

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

2. This review shall determine:

i. The degree to which progress toward achieving the goals and outcomes is being made; and

ii. Whether modification or revision of the goals and outcomes or services is necessary.

(c) The members of the IFSP team established pursuant to *N.J.A.C. 8:17-8.4(a)* shall conduct a meeting on at least an annual basis to evaluate, and as appropriate, revise the IFSP for a child and the child's family.

(d) The IFSP team shall use the results of current evaluations and assessments conducted pursuant to *N.J.A.C. 8:17-6*, and other information available from the ongoing assessment of the child and family, in determining what early intervention services the child and child's family are eligible to receive.

1. To be considered current, an evaluation or assessment shall have been conducted within six months of the most recent IFSP review.

(e) The service coordinator shall ensure IFSP meetings are conducted:

1. In settings and at times that are convenient to families; and

2. In the primary language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so, such as if communicating with them in that manner were so prohibitively costly, as to make it unreasonable for the NJEIS to communicate with the family in that fashion.

(f) The service coordinator shall ensure meeting arrangements are 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.

(g) The service coordinator shall ensure the content of the IFSP is fully explained to the parents.

1. The service coordinator shall obtain informed written consent, consistent with *N.J.A.C. 8:17-8.1(c)*, from parents prior to provision of early intervention services identified in the IFSP through the early intervention system.

2. If parents do not provide consent for a particular early intervention service, or withdraw consent, that service shall not be provided.

3. A child and his or her family shall receive only those early intervention services that the IFSP identi-

fies as needed, subject to the parent's consent to receive those services pursuant to *N.J.A.C. 8:17-4.2* and the parent's agreement to pay for those services in accordance with the family cost share and funding policies at *N.J.A.C. 8:17-9.2*.

(h) The service coordinator shall complete the IFSP development process using the IFSP form at Chapter Appendix D, incorporated herein by reference.

#### § 8:17-8.4 Participants in IFSP meetings and periodic reviews

(a) The following IFSP team participants shall be included at, and participate in, the initial meeting and each annual meeting to evaluate the IFSP:

1. The parent or parents of the child;
2. Other family members, as requested by the parent, if feasible to do so;
3. An advocate or other person outside of the family, if the parent requests the participation of such persons;
4. The service coordinator who has been working with the family since the initial referral of the child for evaluation, or another service coordinator who has been designated to be responsible for implementation of the IFSP;
5. One or more practitioners directly involved in conducting the evaluations and assessments; and
6. As appropriate, practitioners who will be providing IFSP services to the child or family.

(b) If a practitioner directly involved in conducting the evaluations and assessments is unable to attend a meeting, the service coordinator shall arrange for the practitioner's involvement through other means, including:

1. Participating in a telephone conference call;
2. Having a knowledgeable authorized representative attend the meeting on behalf of that practitioner; or
3. Making pertinent records available at the meeting.

(c) Each periodic review shall provide for the participation of persons in (a)1 through 4 above.

1. If conditions warrant, provision shall be made for participation of other representatives identified in (a) above.

#### § 8:17-8.5 Contents of IFSP

(a) Consistent with the terms and conditions of the health services grant funded by the Department and implemented by the SPOEs, service coordinators shall use forms developed by the Department to document IFSP services that a child and his or her family are eligible to receive.

(b) The IFSP shall contain a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social and/or emotional development, and adaptive development.

(c) The statement described in (b) above shall be based on professionally objective criteria.

(d) With the agreement of the family, the IFSP shall include a statement of the family's resources, priorities and concerns related to enhancing the development of the child.

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

1. The degree to which progress toward achieving the results or outcomes is being made; and
2. Whether modifications or revisions of the results, outcomes, or services are necessary.

(f) The IFSP shall contain a statement of the specific early intervention services from among those listed in (g) below, the selection of which are based on peer-reviewed research, to the extent available, necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in the statement described in (e) above, including:

1. The frequency, intensity, location, and method of delivering the services;
2. The payment arrangements, if any, in accordance with family cost participation requirements provided in *N.J.A.C. 8:17-9.2*; and
3. A statement of the natural environments in which early intervention services shall be provided, including justification of the extent, if any, to which services will not be provided in the natural environment.

(g) Early intervention services for which a child or a child's family may be eligible include, but are not limited to:

1. Assistive technology devices;

2. Assistive technology services;
3. Audiology services;
4. Developmental intervention, referred to as "special instruction" pursuant to the implementing regulations for Part C at *34 CFR § 303.12(d)(13)*;
5. Family training, counseling and home visits;
6. Health services;
7. Medical services for diagnostic or evaluation purposes only;
8. Nursing services;
9. Nutrition services;
10. Occupational therapy;
11. Physical therapy;
12. Psychological services;
13. Service coordination;
14. Social work services;
15. Speech-language pathology services, sign language, and cued language services;
16. Transportation and related services; and
17. Vision services.

(h) As used in (f)1 above:

1. "Frequency" and "intensity" mean the number of days or sessions that a service is to be provided, the length of time the service is to be provided during each session, and whether the service is to be provided on an individual or group basis;

2. "Method" means how a service is to be provided; and

3. "Location" means the actual place or places where a service is to be provided, such as at home, childcare, a center or a hospital.

(i) To the extent appropriate, the IFSP shall address:

1. Medical, and other services that the child needs, but that are not required early intervention services as described at (g) above;

2. Identification of the funding sources to be used in paying for those services; and

3. The steps that will be taken to secure those services through public and private sources.

(j) The IFSP need not include routine medical services, such as immunizations and well-baby care.

(k) The IFSP shall contain a statement of projected dates for initiation of services pursuant to (f) above, which shall be as soon as possible after the IFSP meeting.

(l) The IFSP shall contain the name of the service coordinator who is qualified to carry out all applicable responsibilities, and who is responsible for implementation of the IFSP and coordination with other agencies and persons, including transition services as described at N.J.A.C. 8:17-11.

(m) In meeting the requirements in (l) above, the SPOE shall either:

1. Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation, as the service coordinator responsible for implementing an IFSP for the child and the child's family; or

2. Appoint a new service coordinator.

(n) The IFSP shall include the steps to be taken to support the transition of the child, upon reaching age three, to:

1. Preschool services established pursuant to Part B of IDEA, consistent with *N.J.A.C. 8:17-11.1*, to the extent that those services are appropriate; and/or

2. Other services that may be available, if appropriate.

(o) The steps required in (n) above shall include:

1. Discussions with, and education of, parents regarding future services and other matters related to the child's transition;

2. Procedures to prepare the child and his or her family for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

3. With parental consent, the transmission of information about the child to the local education agency or other potential post-transition provider agency (if other than a public school), to ensure continuity of services, including evaluation and assessment information required in N.J.A.C. 8:17-6, and copies of IFSPs that have been developed and implemented.

#### § 8:17-8.6 Natural environments

The provision of early intervention services for any eligible child shall be provided in natural environments and shall occur in a setting other than a natural environment that is most appropriate, as determined by the parent and IFSP team, only when early intervention

cannot be achieved satisfactorily for the child in a natural environment.

#### § 8:17-8.7 Discipline-specific therapy

Discipline-specific therapies, including speech and language pathology services and occupational and physical therapy, shall be provided consistent with the individual needs of the eligible child and, to the extent the needs of the family relate to the needs of the child, consistent with the family's needs.

#### § 8:17-8.8 Determination of services for children with autism spectrum disorders

(a) The Department's recommended guidelines for addressing the service needs of children diagnosed with autism spectrum disorders are contained in a technical assistance manual entitled, "Service Guidelines for Children with Autism Spectrum Disorders," which publication is available upon request from the NJEIS.

(b) For a child diagnosed with an autism spectrum disorder, the composition of the assessment team shall include at least one member with knowledge and experience in the area of autism spectrum disorder.

#### § 8:17-8.9 Recommended guidelines for determination of services for children with speech and language disorders

The Department's recommended guidelines for addressing the service needs of a child with a diagnosed speech and language disorder are contained in a technical assistance manual entitled, "Service Guidelines for Speech Therapy in Early Intervention," which publication is available upon request from the NJEIS.

#### § 8:17-8.10 Responsibility and accountability

Each practitioner who has a direct role in the provision of early intervention services shall make a good faith effort to assist each eligible child and family to achieve the outcomes in the IFSP, pursuant to Part C.

### SUBCHAPTER 9. FINANCIAL MATTERS

#### § 8:17-9.1 Department responsibility for identifying and coordinating availability of resources

Pursuant to New Jersey P.L. 1993, c. 309, the Department is the lead agency responsible for establishing State policies related to the payment process for services to eligible children and their families under Part C, including the identification and coordination of all available resources for early intervention services

within the State, including those from Federal, State, local, and private sources.

#### § 8:17-9.2 Specific funding policies

(a) The Department shall carry out the following functions at public expense and without fees being charged to parents:

1. Implementation of the Child Find requirements, in accordance with N.J.A.C. 8:17-2;

2. Evaluation and assessment in accordance with N.J.A.C. 8:17-6;

3. Service coordination in accordance with N.J.A.C. 8:17-3; and

4. Administrative and coordination activities related to:

i. The development, review and evaluation of an IFSP in accordance with N.J.A.C. 8:17-8; and

ii. The implementation of procedural safeguards in accordance with N.J.A.C. 8:17-13 through 16 and all other components of the early intervention system in accordance with this chapter.

(b) Consistent with *N.J.A.C. 8:17-8.5(f)*, an eligible child's IFSP shall be developed based upon the child's developmental needs.

1. Developmental services shall be subject to a family cost share for those families with incomes at or above 350 percent of the Federal poverty level.

2. Consistent with (b)4 below, fees shall be charged to families with incomes at or above 350 percent of the Federal poverty level, for services listed at *N.J.A.C. 8:17-8.5(g)* and identified as needed on the child's IFSP.

3. The NJEIS shall determine a family's ability to pay consistent with the State family cost participation regulations set forth at (b)4 below.

i. Consistent with the terms and conditions of a health services grant funded by the Department and implemented by each SPOE, the service coordinator shall inform the family about the NJEIS family cost participation policies and procedures during the intake process.

ii. Once eligibility for the child has been established, the service coordinator shall review the family cost participation policy and procedures with the family, and with family consent, collect information needed to complete the forms at Appendices A and B for submission to the NJEIS or its designee, and, as

appropriate, assist the family to submit Appendix C to the NJEIS for processing.

iii. Written documentation, such as paid invoices or receipts for the goods or services claimed, shall accompany an application for consideration of extraordinary expenses submitted using the form at Appendix C.

iv. Families shall be informed of their rights to an administrative review by the Department if asking for special consideration of their financial status, mediation, an impartial due process hearing, or an administrative complaint to challenge their family cost share.

4. Families with an annual gross income at or above 350 percent of the Federal poverty level shall share in the cost of early intervention services provided, the amount of which shall be determined in accordance with the Family Cost Share formulas at Chapter Appendix E and the Family Cost Share Tables at Chapter Appendix E1, both of which are incorporated herein by reference, and consistent with the following:

i. The NJEIS family cost share is a progressive fee charged for each hour of early intervention services provided to the child and/or the child's family, based upon household size and gross income, as compared to the Federal poverty guidelines.

ii. The family's actual monthly cost will be either the family cost share payment determined in accordance with this subsection or the actual cost of services, whichever is less.

iii. The family cost share payment established for the family will be the same, regardless of the specific provider agencies from which services are received.

iv. In determining a household's gross income for purposes of calculating a family's cost share, the EIS shall consider written documentation that a family submits to show a change in or loss of household income, and shall deduct from a household's EIS-determined gross income the amount of the lost income if the EIS determines the documentation to be credible.

v. In determining a household's gross income for purposes of calculating a family's cost share, the EIS shall consider written documentation of expenses the household incurs associated with child care for the eligible child while the child's parents are at work and unavailable to care for the child, and shall deduct from the household's EIS-determined gross income the expenses the household incurs for child care for the eligible child to the extent by which they exceed usual and customary child care expenses for a child without special needs in a similar manner and setting, such as in a community-based child care facility or by a babysitter.

vi. For purposes of determining a family's cost share, and at a family's request, the EIS shall review information submitted using the form at Appendix C and shall deduct from a household's EIS-determined income extraordinary expenses to the extent by which they exceed five percent of the household's EIS-determined income.

5. The NJEIS shall adjust Appendices E and E1 upon the annual issuance by the US Department of Health and Human Services of revisions to the Federal Poverty Guidelines, and thereupon shall publish a notice in the New Jersey Register, usually prior to July 1 of each year, to announce the update to the Federal Poverty Guidelines at Appendix E and to update the Family Cost Share copays and monthly maximums in accordance with the updated Federal Poverty Guidelines at Appendix E1 and the effective date of the revisions, which usually will be July 1 of each year.

(c) The Department shall not charge fees for services that a child is otherwise required to receive at public expense, pursuant to (a) above.

(d) Early intervention services will not be provided in those instances in which a parent declines to pay the family cost share.

(e) A family's failure to timely satisfy family cost share obligations will result in a disruption of services and will disentitle the family to compensatory services.

#### § 8:17-9.3 Timely provision of services

(a) Provider agencies shall not delay the provision of early intervention services because of disputes between agencies regarding financial or other programmatic responsibilities.

(b) In the event of dispute among agencies, provider agencies, and/or the Department, services are to be provided to eligible children and their families in a timely manner as follows:

1. The service coordinator for the family shall contact the Procedural Safeguards Office, which shall determine the party that is to bear the financial responsibility for functions or services to be provided during the pendency of the dispute;

2. Upon resolution of an interagency dispute, in accordance with *N.J.A.C. 8:17-9.4*, the Department shall notify the provider agency determined to have financial responsibility for the early intervention functions or services provided during the pendency of the dispute;

3. The written notification shall include:

i. The name of the financially responsible agency;

- ii. The name of the eligible child for whom functions or services are to be provided;
- iii. The type of each early intervention function or service to be provided;
- iv. The date(s) on which each function or service is to be provided;
- v. The frequency and intensity of the early intervention service to be provided, the cost of the service, and the total amount of reimbursement required for each service; and
- vi. The name of the provider agency that is to be reimbursed for each function or service.

(c) Upon receipt of written notification, in accordance with (b) above, the agency determined to have financial responsibility shall have 60 days to provide reimbursement to the agency that has assumed financial responsibility for functions or services provided during the pendency of the dispute.

#### § 8:17-9.4 Resolution of interagency disputes

(a) The Department shall resolve disputes related to early intervention services pursuant to the procedures described in (b) below and shall permit each State agency to resolve its own internal disputes in accordance with the terms of its interagency agreements.

(b) The following procedures shall be enforced by the Procedural Safeguards Office to ensure that services are provided in a timely manner pending resolution:

1. Discussion between the concerned parties at the local level (such as between State agency field staff);
2. If the dispute is not resolved at the local level, transmission of a letter outlining the dispute and parties involved in the dispute to the Department representatives (Assistant Commissioner or Director, as appropriate);
3. If the dispute is not resolved within 20 working days by the Department representative, following the issuance of the letter described in (b)2 above, the representative shall forward the matter to the Commissioner at the Department's address provided at *N.J.A.C. 8:17-1.3*;
4. Pursuant to the Interagency Agreement, the Commissioner has been assigned responsibility by the Governor to issue a final decision, in writing, within 30 days of his or her receipt of the dispute referred to in (b)3 above;

5. During the pendency of the dispute, the Department shall arrange for payment of services in accordance with *N.J.A.C. 8:17-9.5* to assure that services continue to be provided without interruption to the child and family during the period that it takes for the dispute to be resolved; and/or

6. If, in resolving the dispute, it is determined that the assignment of financial responsibility was inappropriately made, the party reviewing the dispute shall reassign financial responsibility to the appropriate provider agency and arrangements for reimbursement of any expenditures incurred by that provider agency originally assigned responsibility shall be made by the party that is determined to be financially responsible.

#### § 8:17-9.5 Payer of last resort

(a) NJEIS funding shall not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of Part C.

(b) Whenever considered necessary by the Department to prevent delay in the receipt of appropriate early intervention services for a child or the child's family in a timely fashion, NJEIS funding may be used to pay for the services pending the reimbursement from the agency that has ultimate responsibility for payment.

(c) Funding described in (a) above shall not be applied to medical services or well-baby health care.

(d) NJEIS funding shall be used only for early intervention services that an eligible child needs but to which the child is not entitled from any other Federal, State, local, or private source.

(e) The availability of NJEIS funds shall not be construed to permit the State to reduce medical or other assistance available or to alter eligibility pursuant to Title V of the Social Security Act, *42 U.S.C. §§701-710* (relating to maternal and child health) or Title XIX of the Social Security Act, *42 U.S.C. §§1396-1396v* (relating to Medicaid for children with disabilities) within the State.

### SUBCHAPTER 10. SUSPENSION AND TERMINATION OF SERVICES

#### § 8:17-10.1 Suspension

(a) The Department shall suspend early intervention services for an eligible child or family if:

1. The family consistently fails to attend scheduled early intervention sessions, without providing prior notice to the provider agency or

2. The practitioner reasonably believes that his or her safety would be in jeopardy if he or she were to provide services to the child and/or family in the locations designated by the family.

(b) The NJEIS, in consultation with the practitioner, shall suspend early intervention services for a child and the child's family by sending the family a written notice of suspension and termination indicating the date of the suspension, the reason(s) for suspension, whether termination will occur as a result of a family's failure to follow instructions under the suspension, and the means by which the family may contest the suspension, as described in (c) below.

(c) Families who have been informed of an imminent suspension of services pursuant to (b) above may appeal the suspension within 21 days of the date of the notice of suspension by written request, which must be sent to the Procedural Safeguards Office.

(d) The Procedural Safeguards Office shall review appeals of suspensions, make a determination within 30 calendar days of the date of receipt of the appeal, provide a written determination to the family, and provide a copy of the determination to all relevant parties.

#### § 8:17-10.2 Termination

(a) Unless a family appeals a suspension of services pursuant to *N.J.A.C. 8:17-10.1(c)*, then, pursuant to *N.J.A.C. 8:17-10.1(a)1*, a suspension of services will lead to termination of a child's services on the effective date indicated on the suspension and termination notice described at *N.J.A.C. 8:17-10.1(b)*.

1. A termination of services pursuant to (a) above shall not affect a family's ability to receive those early intervention services that are provided at public expense pursuant to *N.J.A.C. 8:17-9.2(a)*.

(b) Upon written notice, early intervention services provided to a child or his or her family shall be terminated immediately under the following circumstances:

1. The family fails to satisfy its family cost share obligations, as determined pursuant to *N.J.A.C. 8:17-9.2*;

2. The family has acted in such a manner as to physically harm a practitioner or to place a practitioner in imminent danger of being physically harmed;

3. The family has engaged in conduct toward practitioners that is illegal or abusive; or

4. The IFSP team determines that the child is no longer eligible for early intervention services and that termination is warranted.

(c) The Department, after consultation with the family, practitioners, the service coordinator, and other persons with relevant knowledge, shall determine whether termination is warranted pursuant to (b) above.

1. If the Department determines that termination is warranted, the Department shall direct the service coordinator to process the cancellation of authorizations for early intervention services for a child and the child's family by:

i. Directing provider agencies to cease dispatching practitioners to deliver early intervention services to the child and the child's family; and

ii. Transmitting a written notice of termination to the family, with a copy to the Procedural Safeguards Office, indicating the date of termination; the reason(s) for termination; and means by which the family may contest the termination, as described in (d) below.

(d) Families who have been informed of a termination of services may appeal the termination within 21 days of the date of the notice of termination by written request, which must be sent to the Procedural Safeguards Office.

(e) The Procedural Safeguards Office shall review appeals of terminations, make a determination within 30 calendar days of the date of receipt of the appeal, provide a written determination to the family, and provide a copy to all relevant parties.

### SUBCHAPTER 11. TRANSITION

#### § 8:17-11.1 Procedures for implementation

(a) To ensure a smooth transition for children receiving services pursuant to Part C who are eligible for preschool under Part B or other appropriate services, are otherwise exiting the NJEIS, or are transitioning from one county within the State to another, the parents and the staff of both the sending and receiving agencies, as applicable, shall participate in the transition, in accordance with (b) through (e) below.

(b) The service coordinator shall ensure that the child's IFSP addresses planning for transition as follows:

1. The service coordinator shall facilitate transition beginning at least 12 months prior to the child's third birthday by holding a transition information session with the family and early intervention practitioners as agreed to by the family;

2. At the transition information session, the participants shall discuss options for community transitions, the process, where appropriate, to notify the local school district that the child may be eligible for special education, and preparation for a transition planning conference, including an opportunity for record review; and

3. If the child is between 24 to 35 months of age when determined eligible for IFSP services, the transition information session shall occur as part of the child's initial IFSP.

(c) The service coordinator, with parent consent, shall identify the child to the local school district when the child is between 24 and 32 months of age.

(d) With parental consent, the service coordinator, when appropriate, shall convene a conference with the appropriate early intervention practitioners, the family, and the local education agency to discuss any services the child may receive pursuant to Part B at *N.J.A.C. 6A:14-3.5* and *3.6*, which conference shall occur at least 90 days, and, at the discretion of all such parties, not more than nine months, prior to the child's eligibility pursuant to Part B at *N.J.A.C. 6A:14-3.5* and *3.6*, during which conference the participants at the meeting shall:

1. Review the child's program options for the period from the child's third birthday through the remainder of the school year consistent with *N.J.A.C. 6A:14-10*; and

2. Establish a transition plan, including, as appropriate, steps to exit from the program.

(e) When a child is, for any reason, not transitioning to preschool services under Part B, then, with the consent of the family, the service coordinator shall make reasonable efforts to convene a conference among the NJEIS, the family, and practitioners of any other appropriate services for children who are not eligible for preschool services pursuant to Part B, to discuss the appropriate services, if any, that the child may be eligible to receive.

(f) The Department shall promote collaboration among:

1. Early Head Start Programs established pursuant to §645A of the Head Start Act, *42 U.S.C. §§9801 et seq.*;

2. Early education and childcare programs; and

3. Services established pursuant to Part C.

## SUBCHAPTER 12. CONFIDENTIALITY OF INFORMATION

### § 8:17-12.1 Notice to parents

(a) The service coordinator shall give notice that is adequate to fully inform parents about the requirements in this subchapter, including a description of:

1. The extent to which the notice is given in the primary languages of the various population groups in the State; and

2. The children about whom personally identifiable information is maintained; the types of information maintained and sought; the methods the State intends to use in gathering the information, including the sources from whom information is gathered; and the uses to be made of the information.

(b) The Department shall publish or make an announcement, as appropriate, in major newspapers and/or other media, before any major identification, location, or evaluation activity, to notify parents of the activity.

### § 8:17-12.2 Access rights

(a) Each provider agency shall permit a parent to inspect and review any early intervention record relating to the requesting parent's child that are collected, maintained, or used by the agency pursuant to Part C.

1. Each provider agency shall afford a parent of an eligible child the opportunity to inspect and review records relating to evaluations and assessments, eligibility determination, development and implementation of IFSPs, individual complaints related to the child, and any other subject matter area involving records about the child and the child's family pursuant to Part C.

2. Each provider agency shall comply with a parent's request to inspect and review records without unnecessary delay and prior to holding the IFSP meeting or hearing related to the child's identification, evaluation, or placement, or provision of early intervention services of the child, and, in no case, later than 45 days after the request has been made.

(b) The right to inspect and review records shall include:

1. The right to a response from the provider agency to reasonable requests for explanations and interpretations of the records;

2. The right to request that the provider agency provide copies of records containing information, if failure to provide those copies would effectively pre-

vent the parent from exercising their right to inspect and review records; and

3. Consistent with *N.J.A.C. 8:17-12.6*, the right to have a representative of the parent, with the parent's consent, inspect and review records.

(c) A provider agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised, such as through receipt or notification of the existence of a court order, that the parent does not have the authority under applicable State law governing such matters as custody, guardianship, separation, and divorce.

#### § 8:17-12.3 Record of access

Each provider agency shall keep a record of parties obtaining access to early intervention records collected, maintained or used pursuant to Part C, except access by parents and authorized employees of the provider agency, including the name of the party, the date of access, and the purpose for which the party is authorized to use the record.

#### § 8:17-12.4 Records on more than one child

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

#### § 8:17-12.5 List of types and locations of information

Each provider agency shall provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

#### § 8:17-12.6 Fees

(a) A provider agency may charge reasonable fees for copies of records if the fee does not prevent the parents from exercising their right to inspect and review those records.

(b) A provider agency shall not charge a fee to search for or to retrieve information pursuant to Part C.

(c) The fee for copying records shall not exceed \$ 1.00 per page and for records that contain more than 100 pages, a copying fee of not more than \$ 0.25 per page may be charged for pages in excess of the first 100 pages, up to a maximum of \$ 200.00 for the entire record.

#### § 8:17-12.7 Amendment of records at parent's request

(a) A parent who believes that the information in early intervention records collected, maintained or used by the NJEIS is inaccurate or misleading or violates privacy or other rights of the child may request the provider agency that maintains the information to amend the information and provide supporting documents, where necessary, to effectuate the change.

(b) The provider agency shall decide whether to amend the information in accordance with the request within 30 days of receipt of the request.

(c) If the provider agency decides not to amend the information in accordance with the request, it shall inform the parent, in writing, of its refusal and the right to a hearing pursuant to *N.J.A.C. 8:17-12.8*.

(d) If a parent decides not to request a hearing, the provider agency shall inform the parent that he or she may place in the record it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency, and the statement will therefore accompany any copy of the child's record sent out in response to future requests.

#### § 8:17-12.8 Opportunity for a hearing

The Department, upon receipt of a written request to the Procedural Safeguards Office, shall provide an opportunity for a hearing to challenge information in the early intervention record to insure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

#### § 8:17-12.9 Hearing procedures

A hearing held pursuant to *N.J.A.C. 8:17-12.8* shall be conducted in accordance with procedures in FERPA at *34 CFR §99.22*.

#### § 8:17-12.10 Result of hearing

(a) If, as a result of a hearing conducted pursuant to *N.J.A.C. 8:17-12.8*, the Department decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the Department or the provider agency shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the Department decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the Department shall inform the parent of the right to place in the records a provider

agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the Department.

(c) Any explanation placed in the early intervention record of the child shall:

1. Be maintained by the provider agency as part of the records of the child, as long as the record or contested portion is maintained by the provider agency; and

2. Be disclosed, if the record or contested part of the record is disclosed to any party.

#### § 8:17-12.11 Consent

(a) Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than the officials of the provider agency collecting or using information under this section, subject to (b) below, or used for any purpose other than meeting requirements established pursuant to Part C.

(b) A provider agency shall not release information from the record to participating agencies without parental consent unless FERPA, at *34 CFR §99.31*, authorizes the release.

(c) Should there be disagreement between the provider agency and/or the practitioner and the parent regarding release of personally identifiable information, the Department shall conduct a hearing pursuant to FERPA at *34 CFR §99.22*.

#### § 8:17-12.12 Safeguards

(a) Each provider agency shall protect confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

(b) Each provider agency shall appoint a designated person to assume responsibility for insuring confidentiality of personally identifiable information.

(c) All persons collecting or using personally identifiable information shall receive training or instruction regarding this subchapter.

(d) Each provider agency shall maintain, for public inspection, a current listing of the names and positions of those employees within an agency who may have access to personally identifiable information.

#### § 8:17-12.13 Destruction of information

(a) The provider agency shall inform parents when personally identifiable information collected, main-

tained or used pursuant to Part C is no longer needed to provide early intervention services to the child.

(b) Subject to (c) below, all personally identifiable information shall be destroyed at the request of the parents.

(c) The provider agency may maintain a permanent record of the child's name, address, telephone number, attendance, and year completed without time limitations.

#### § 8:17-12.14 Enforcement

(a) Each provider agency shall have written policies and procedures that address the compilation, maintenance, access to and confidentiality of records.

(b) If compliance deficiencies are identified by the Department during a monitoring visit to the provider agency, the Department shall notify the provider agency, in writing, of the deficiencies, the corrective actions the provider agency has to take, and the timeline for implementing the corrective measures.

(c) The provider agency shall submit a written plan of corrective action to the Department within 30 days of receiving notification of the deficiencies from the Department, unless the Department specifies otherwise.

(d) If the provider agency does not undertake corrective action in the required period, the Department, at its discretion, shall terminate or not renew the grant, contract, subgrant, and/or consultant contract, with the provider agency, depending on the severity of the deficiency.

### SUBCHAPTER 13. PROCEDURAL SAFEGUARDS

#### § 8:17-13.1 Department supervisory obligation

(a) The Department holds general supervisory responsibility to administer and implement procedural safeguards that meet the requirements of Part C.

(b) The service coordinator shall provide the information concerning the dispute resolution options in this subchapter to parents in the written notice required pursuant to *N.J.A.C. 8:17-4.1*.

#### § 8:17-13.2 Dispute resolution options

(a) Options for resolving disputes include mediation, impartial due process hearings, and administrative complaints (also referred to as "complaint investigations").

(b) The Procedural Safeguards Office shall administer a Statewide mediation system available to ensure

voluntary access to a non-adversarial process for the resolution of individual disputes regarding the Early Intervention System to address identification, evaluation and assessment, eligibility determination, placement, and the provision of appropriate early intervention services, that is consistent with *34 CFR §303.419*.

(c) Through referral of cases to the Office of Administrative Law, the Procedural Safeguards Office shall ensure voluntary access to a Statewide impartial due process hearing system for the resolution of individual disputes regarding the provision of early intervention services including identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services, that is consistent with *34 CFR §§303.420 through 303.425*.

1. For a child above the age of three, an impartial due process hearing may only be requested with respect to the services provided or denied while the child is receiving compensatory early intervention services. Compensatory early intervention services are not approved for missed services as a result of family unavailability, provider agency closures, holidays, and practitioner illness.

(d) The Procedural Safeguards Office shall administer complaints as to deficiencies in the fulfillment, or violations, of the requirements of Part C of IDEA or other pertinent State or Federal early intervention laws, by public or private agencies that are or have been receiving financial funding or payment therefore, or by other public agencies involved in the State's early intervention system, that is consistent with *34 CFR §§303.510 through 303.512*.

(e) Requests for mediation, impartial due process hearings, and administrative complaints are to be submitted to the Procedural Safeguards Office using the form at Chapter Appendix F, incorporated herein by reference.

#### § 8:17-13.3 Right to request mediation

(a) Each provider agency shall promptly notify the parent in writing of any provider agency decision affecting the child. A request for mediation shall be in writing, signed and dated by the parent, the parent's representative, the local or regional provider agency, or by an authorized representative of a participating agency seeking mediation.

1. A request for mediation on behalf of a parent that is signed by an entity other than the parent shall be accompanied by the written consent of the parents to engage in mediation, which consent shall be explained

to the parent in the primary language of the parent and in a manner understandable to the parent.

(b) If a parent wishes to file a request for mediation, the service coordinator shall assist the parent in the parent's primary language and/or mode of communication to the maximum extent possible, and shall prepare the request in written form.

(c) A person requesting mediation shall transmit the request to the Procedural Safeguards Office for processing.

#### § 8:17-13.4 Procedural Safeguards Office responsibilities in mediation procedure

(a) The Procedural Safeguards Office shall:

1. Date-stamp each mediation request immediately upon receipt;

2. Maintain a log of all mediation requests (mediation log), which shall consist of:

i. The mediation request number;

ii. The date the Procedural Safeguards Office receives the mediation request;

iii. The name of the requester; and

iv. The completion date of each step in the process;

3. Create a file containing all the documents related to the mediation;

4. Determine parental consent for mediation.

i. If the parent does not consent to mediation, the Procedural Safeguards Office shall notify the provider agency seeking mediation; or

ii. If the parent consents to mediation, the Procedural Safeguards Office shall confirm that the parent has given informed consent to mediation;

5. Within two business days of a request for mediation by a parent, or confirmation of parental consent to mediation, identify an appropriate mediator, notify the mediator in writing of the request for mediation, and transmit a copy of the notice to parties to the mediation process, which notice shall contain:

i. The names, addresses, and telephone numbers of the parties to participate in the mediation;

ii. The need for interpretive or translation services, or alternative communication services, if any;

iii. The nature of the dispute that has resulted in the request for mediation;

iv. A directive to parties representing the Early Intervention System to bring to the mediation a complete copy of the child's early intervention record;

v. A statement of the right of all parties to bring any documentation or information believed relevant to the issues under discussion, and to be accompanied by any persons of their choice;

vi. A statement notifying parents that it is not necessary to have an attorney at the mediation and that if they decide not to bring an attorney, the other parties cannot bring attorneys to the mediation;

vii. A statement notifying all parties that they are not entitled to legal fees from the Early Intervention System;

viii. A description of the mediation process, including the non-adversarial nature of the process; and

ix. A statement that the parent's participation in mediation is voluntary in nature, that the parent may refuse or withdraw from the mediation process at any time, that mediation cannot be used to deny or delay a parent's right to an impartial due process hearing or any other rights afforded pursuant to Part C of IDEA, including resolution of a complaint; and that the parent has the right to request an impartial due process hearing or file a complaint at any time in the process;

6. Administer the scheduling of the mediation by making appropriate arrangements for the proceeding, by:

i. Convening the mediation within 10 calendar days of the receipt of the request for mediation on a date, and at a time and location convenient to the parties;

ii. Notifying the parties in writing of the date, time, and location of the mediation proceedings; and

iii. Ensuring, as needed and to the maximum extent possible, the provision of appropriate interpretive, translation or alternative communication services;

7. Within 30 calendar days of the receipt of the request for mediation, transmit a copy of the written mediation agreement to all parties to the mediation, the service coordinator, and the applicable local or regional provider agency, and shall document this activity in the mediation log;

8. If the parties to a mediation were unable to reach agreement as to the issues being mediated, then, within 30 calendar days of the receipt of the request for mediation, shall document this result in the mediation log and shall notify in writing all parties to the media-

tion, the service coordinator, and the applicable local or regional provider agency stating that:

i. The parties did not reach an agreement;

ii. The process is confidential;

iii. Discussions held during the mediation cannot be used as evidence in any subsequent impartial due process hearing or civil action; and

iv. The parent has the right to an impartial due process hearing or complaint investigation and the procedures for requesting these dispute resolution options; and

9. Shall maintain mediation records for at least three years or in accordance with the applicable State records retention schedule, whichever is later.

§ 8:17-13.5 Mediator responsibilities in mediation proceeding

(a) The mediator:

1. Shall conduct the mediation proceeding in an efficient, objective, and timely fashion;

2. Shall maintain the confidentiality of all personally identifiable information, as required by law;

3. Prior to the initiation of the mediation proceedings, shall inform all parties of:

i. The parent's right at any time to withdraw from mediation and initiate an impartial due process hearing;

ii. The fact that resolutions that involve monetary reimbursement to the parent must be consistent with the current provider agency letter of agreement and may become the responsibility of the provider agency; and

iii. The confidential nature of all information related to the request for mediation and mediation proceedings;

4. Shall conduct the proceedings fairly and impartially, and shall not be bound by formal rules of evidence or proceeding;

5. During the mediation proceeding, shall:

i. Explain his or her role as a facilitator to assist parents and other parties to reach agreement;

ii. Inform all parties of the confidential nature of all information related to the mediation;

iii. Inform all parties that discussions held during the mediation cannot be used as evidence in any subsequent impartial due process hearing or civil action;

iv. Allow each party to present their point of view concerning the disagreement;

v. Engage in focused discussion and problem-solving with all parties; and

vi. Work with all parties to develop the positive rapport, respect and trust needed to work in a collaborative process on behalf of the child;

6. During the mediation proceeding, may:

i. Ask questions of any and all parties;

ii. Restate each party's position in an attempt to clarify the underlying issues;

iii. Caucus with each party privately, which discussions shall be kept confidential from the other party unless the mediator receives permission to reveal the contents of the caucus discussion;

iv. Identify areas of agreement, and narrow areas of disagreement; and

v. Suggest compromises based on their knowledge of the law, facts, "best practice," and positions of the parties;

7. Complete the mediation process, including issuance of a written mediation agreement, within 30 calendar days of the receipt of the request for mediation unless the mediation was requested as a part of a impartial due process hearing or complaint investigation, in which case, the mediator shall complete the mediation process within 15 calendar days of the receipt of the request for mediation, to ensure adequate time for completion of the due process proceeding or complaint investigation;

8. When mediation has resulted in successful negotiation of a partial or full agreement on areas in dispute between the parties, shall document the terms of the negotiated agreement in writing and obtain the signatures of all parties on the written agreement before the mediation is adjourned;

i. The written agreement shall be clear, as concise as possible, and specific with regard to agreements reached and responsibility for implementation of agreement;

ii. Whenever possible, the mediator shall provide the written agreement in the primary language or mode of the communication of the parent, and if the mediator cannot fulfill this responsibility, the Procedural Safeguards Office shall ensure the translation of the written agreement, to the maximum extent possible; and

9. Shall transmit a copy of a negotiated written agreement to the Procedural Safeguards Office.

(b) When the mediator determines that a negotiated resolution of the issues being mediated is not possible, the mediator shall notify the Procedural Safeguards Office in writing that the parties were unable to reach agreement.

§ 8:17-13.6 Mediation proceeding content not to be recorded or introduced in subsequent proceedings

(a) Neither the mediator nor any party to a mediation proceeding shall record or transcribe discussions held during mediation.

(b) No party to mediation shall introduce discussions held during mediation as evidence in a subsequent impartial due process hearing or civil proceeding.

§ 8:17-13.7 Incorporation of mediation agreement into IFSP; agreement binding on EIS

(a) The service coordinator shall incorporate the terms of a written agreement negotiated as a result of mediation into the IFSP within five business-days of the service coordinator's receipt of the written agreement pursuant to *N.J.A.C. 8:17-13.4(a)7*.

(b) Upon its incorporation into the IFSP pursuant to this section, a mediation agreement is binding on the early intervention system.

§ 8:17-13.8 Impartial due process hearing request procedure

(a) An impartial due process hearing is an administrative hearing conducted by an administrative law judge, who is an impartial person and who has knowledge about the Act and this chapter and the needs of and services available for eligible and potentially eligible children and their families.

1. As used in this section, "impartial person" means a person who:

i. Is not an employee of an entity involved in the provision of early intervention services;

ii. Is not involved in the care of the child; and

iii. Does not have a personal or professional interest that would impair the person's objectivity in implementing the hearing process.

(b) The Procedural Safeguards Office shall request that the hearing be at a time and place that is reasonably convenient to the parents.

(c) An impartial due process hearing is available for the resolution of individual disputes regarding the

provision of early intervention services, including identification, evaluation and assessment, eligibility determination, placement, and/or the appropriateness of provided early intervention services.

(d) A person shall file a written request for an impartial due process hearing within one year of the date the person knew or should have known about the alleged action that forms the basis for the request.

(e) If a parent wishes to file a written request for an impartial due process hearing, the service coordinator and/or the local or regional provider agency shall assist the parent, in the parent's primary language and/or mode of communication to the maximum extent possible.

(f) A person requesting an impartial due process hearing shall use the form at Chapter Appendix F and transmit:

1. The request to the Procedural Safeguards Office; and

2. A copy of the request to other parties in interest, which transmittal shall serve as notice to the respondent of the issues in dispute;

(g) The Procedural Safeguards Office requests that a parent requesting an impartial due process hearing, and a person making a request for an impartial due process hearing on a parent's behalf, notify the Procedural Safeguards Office if the parent is to be represented by counsel at the impartial due process hearing by no later than five days after the issuance of the notice the Procedural Safeguards Office issues pursuant to *N.J.A.C. 8:17-13.9(a)8*. The failure to notify the Procedural Safeguards Office shall not preclude representation by counsel.

§ 8:17-13.9 Procedural Safeguards Office responsibilities in impartial due process hearing procedure

(a) The Procedural Safeguards Office shall:

1. Date-stamp each request for an impartial due process hearing immediately upon receipt;

2. Maintain a log of all requests for impartial due process hearings (impartial due process hearing log) that shall consist of:

i. The request number;

ii. The date the Procedural Safeguards Office receives the request;

iii. The name of the requester; and

iv. The completion date of each step in the process;

3. Create a file containing all documents related to the hearing;

4. Acknowledge receipt of the request;

5. Administer any mediation request in accordance with the procedures for mediation established in this subchapter, if requested by both parties;

6. Within one business day of its receipt of the request, transmit the case in accordance with *N.J.A.C. 1:1-8.1* to the Office of Administrative Law pursuant to (b) below;

7. Notify the parent in writing:

i. Of the availability of, and procedure to request mediation;

ii. Of the parent's right to be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to early intervention services for children and may be accompanied by other persons of their choices;

iii. That the parent has the right to inspect and review the child's early intervention record without unnecessary delay and before the hearing, and has the right to request copies of these records and that fees may be charged for copies of records if the fees do not prevent the parent from exercising the parent's right to inspect and review these records, and that fees may not be charged to search for or to retrieve records;

iv. Of the right to have an interpreter or translator to the maximum extent possible; and

v. Of legal services and advocacy organizations available to assist the parent in the impartial due process hearing process;

8. Notify the parties in writing of the following, which are subject to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and 14F-1 et seq., the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, and the Special Rules for Special Education Program, *N.J.A.C. 1:6A*, except that the following rules shall not apply: *N.J.A.C. 1:6A-1.1(b)*, 4.1, 5.1(a), 12.1, 13.1, 14.2, 14.4, 18.1, and 18.2(b); provided that the term "Procedural Safeguards Office" shall be substituted for "Special Education Program of the Department of Education" and "Department of Education" and "*N.J.A.C. 8:17*" shall replace references to "*N.J.A.C. 6A:14*" in those provisions of *N.J.A.C. 1:6A*, which are incorporated by reference.

i. That they have the right to obtain written findings of fact and decisions within 30 calendar-days of the receipt of the request for the hearing;

ii. The child must continue to receive the appropriate early intervention services being provided at the time that the request for impartial due process hearing is filed pending the decision of the administrative law judge and any appeal of such decision, unless the parent and provider agency otherwise agree, and provided that if the hearing involves an application for initial services pursuant to Part C of IDEA, the child shall continue to receive those services that are not in dispute; and

iii. That any individual representing the parent, including counsel, has the right to review, inspect and request copies of the child's records with the written consent of the parent; and

9. As necessary, ensure the availability and provision of the services of a qualified interpreter of the deaf and/or, to the maximum extent possible, an interpreter fluent in the primary language of the parents of the child at all stages of the hearing.

(b) The Procedural Safeguards Office shall notify all parties to an impartial due process hearing of a parent's decision to be represented by counsel immediately upon the Procedural Safeguards Office's receipt of notice pursuant to *N.J.A.C. 8:17-13.8(d)*.

(c) The Procedural Safeguards Office shall maintain a copy of the impartial due process hearing records and the administrative law judge's written opinion for at least three years, in accordance with the applicable State records retention schedule, or until the conclusion of all impartial due process hearing proceedings and appeals, whichever is later.

(d) The hearing shall result in a written decision, which shall be transmitted to the parties within 14 days of the issuance of the decision.

#### § 8:17-13.10 Parties' response to impartial due process hearing request

(a) Within 14 calendar-days of the filing of a request for a impartial due process hearing with the Procedural Safeguards Office and issuance of notice pursuant to *N.J.A.C. 8:17-13.8(c)2*, the party against whom a request for an impartial due process hearing is directed shall:

1. Provide a written response to the party that requested the impartial due process hearing specifically addressing the issues raised in the request for an impartial due process hearing.

(b) A response to an impartial due process hearing request shall contain at least the following:

1. An explanation of why the NJEIS, provider agency, service coordinator, or practitioner proposed or refused to take the action raised in the request for an impartial due process hearing;

2. A description of other options that the IFSP team considered and the reasons those options were rejected;

3. A description of each evaluation procedure, assessment, record, or report the NJEIS, provider agency, service coordinator or practitioner used as the basis for the proposed or refused action; and

4. A description of the factors relevant to the proposal or refusal.

#### § 8:17-13.11 Postponement or continuance of impartial due process hearings

Persons requesting postponements or continuances of scheduled hearings shall direct such requests to the Office of Administrative Law, which requests shall be governed by *N.J.A.C. 1:6A-9.2*.

#### § 8:17-13.12 Conduct of hearing

(a) An impartial due process hearing shall be closed to the public unless the parent requests an open hearing, which request shall be determined in the discretion of the administrative law judge.

(b) Impartial due process hearings shall be conducted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and 14F-1 et seq., the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, and the Special Rules for Special Education Program, *N.J.A.C. 1:6A*, except that the following rules shall not apply: *N.J.A.C. 1:6A-1.1(b)*, 4.1, 5.1(a), 12.1, 13.1, 14.2, 14.4, 18.1, and 18.2(b); provided that the term "Procedural Safeguards Office" shall be substituted for "Special Education Program of the Department of Education" and "Department of Education" and "*N.J.A.C. 8:17*" shall replace references to "*N.J.A.C. 6A:14*" in those provisions of *N.J.A.C. 1:6A*, which are incorporated by reference.

(c) Upon conclusion of the impartial due process hearing and within 30 days of the receipt of the hearing notice, the decision, consistent with *N.J.A.C. 1:1-18.3*, shall contain:

1. Findings of fact and conclusions of law;

2. A determination regarding the matters in dispute; and

3. An order of implementation of the determination.

(d) A copy of the final decision shall be transmitted to all parties to the hearing and to the service coordinator for placement in the child's early intervention record.

§ 8:17-13.13 Incorporation of written decision of impartial due process hearing into IFSP; agreement binding on EIS

(a) The service coordinator shall incorporate the terms of a written decision of the impartial due process hearing into the IFSP within seven days of the service coordinator's receipt of the written decision pursuant to *N.J.A.C. 8:17-13.12(d)*.

(b) Upon its incorporation into the IFSP, the written decision is binding on the early intervention system.

§ 8:17-13.14 Appeal of impartial due process hearing decision

Pursuant to Section 639(a)(1) of the IDEA, any party may appeal an impartial due process hearing decision to the Superior Court of New Jersey, or to a district court of the United States.

§ 8:17-13.15 Procedure to request a complaint investigation

(a) Persons who wish to file a complaint shall file the complaint in writing with the Procedural Safeguards Office, subject to (d) below.

(b) A complaint shall:

1. Identify the requirement of Federal or State early intervention law that an individual, program, or agency has violated;
2. Identify the individual, program, or agency that is alleged to have made the violation;
3. State the facts on which the complaint is based; and
4. Contain the signature of the individual filing the complaint, or the signature of an individual authorized to act on behalf of an organization.

(c) The alleged violation shall have occurred not more than one year before the date that the complainant files the complaint with the Procedural Safeguards Office, unless a longer period is reasonable because:

1. The alleged violation continues for that child or other children; or
2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more

than three years before the date on which the complainant files the complaint with the Procedural Safeguards Office.

(d) The Procedural Safeguards Office shall accept verbal complaints from a parent.

(e) If a parent wishes to file a complaint, the service coordinator and/or the local or regional provider agency shall assist the parent, in the parent's primary language and/or mode of communication, to the maximum extent possible, to prepare the complaint in written form.

(f) A parent may request assistance from the Procedural Safeguards Office in filing a complaint.

§ 8:17-13.16 Procedural Safeguards Office complaint process responsibilities

(a) The Procedural Safeguards Office shall investigate any complaint it receives including individual child complaints and those that are systemic in nature.

(b) Upon receipt of a complaint that generally affects only a single child or the child's family, and that is not directed against a policy, pattern, or practice that is alleged to be a violation of Part C of IDEA or State early intervention law or guidelines, the Procedural Safeguards Office shall notify the parent and/or the parent's authorized representative as to the availability of mediation and/or impartial due process hearing proceedings, and the procedures to request such proceedings.

(c) If a complaint addresses matters that are also the subject of a pending impartial due process hearing, or contains multiple issues, among which, one or more is the subject of a pending impartial due process hearing, the Procedural Safeguards Office shall sever the part of the complaint that is the subject of the impartial due process hearing until the conclusion of the hearing.

1. Issues in a complaint that are not the subject of the pending impartial due process hearing, including any allegations of systemic violations, shall be resolved within 60 calendar days.

(d) The Procedural Safeguards Office shall:

1. Date-stamp each written complaint immediately upon receipt;

2. Maintain a log of all complaints (complaint log) that shall consist of:

- i. The date the Procedural Safeguards Office received the complaint;
- ii. The name of the complainant,

iii. The completion date of each step in the process; and

iv. The date on which the Procedural Safeguards Office sends the complaint determination to the complainant.

3. Create a file containing all documents related to the complaint; and

4. Review the complaint and determine within seven days of the date of complaint receipt that the complaint raises issues that:

i. Constitute a matter involving Part C of IDEA that the Procedural Safeguards Office will investigate through the Part C of IDEA complaint system;

ii. Constitute a matter that does not involve Part C of IDEA; or

iii. Have previously been decided in an impartial due process hearing involving the same parties.

(e) If the Procedural Safeguards Office determines pursuant to (d)4ii above that a complaint raises no issues that are matters involving Part C of IDEA, the Procedural Safeguards Office shall notify the complainant within two business days of that determination and the matter will be closed.

(f) If the Procedural Safeguards Office determines pursuant to (d)4iii above that a complaint raises issues that an impartial due process hearing decision addresses, then the Procedural Safeguards Office shall proceed to investigate in accordance with this section only those issues the complaint raises, if any, that the impartial due process hearing decision does not address, and the Procedural Safeguards Office shall notify the complainant within two business days:

1. Of the issues as to which the impartial due process hearing decision applies;

2. That the Procedural Safeguards Office shall undertake no complaint investigation with respect to those issues already adjudicated in that hearing decision; and

3. That the Procedural Safeguards Office shall investigate, pursuant to this section, only those issues the complaint raises, if any, that the impartial due process hearing decision does not address.

(g) If the Procedural Safeguards Office determines pursuant to (d)4i above that a complaint raises issues that are matters involving Part C of IDEA that the Procedural Safeguards Office will investigate through the Part C of IDEA complaint system, the Procedural Safeguards Office shall:

1. Determine if it is possible to investigate the complaint while maintaining confidentiality of the complainant's identity, if the complainant has requested anonymity, and:

i. If so, the Procedural Safeguards Office shall remove all personally identifiable information from the complaint and any accompanying documentation throughout the complaint investigation and proceed to (g)2 below; or

ii. If not, the Procedural Safeguards Office shall notify the complainant that it is not possible to conduct the investigation without acknowledging the complainant's identity and shall determine in consultation with the complainant whether the complaint investigation shall proceed, and if not, shall close the complaint;

2. Transmit a notice to the local or regional provider agency, the person or entity whose actions or failure to act are the subject of the complaint, and the complainant within two business-days of that determination that consists of:

i. A summary of the complaint;

ii. The determination of the Procedural Safeguards Office as to the necessity of an on-site investigation;

iii. A statement that no change in the provision of services shall occur during the complaint investigation and that any retaliation against the complainant is unlawful and may lead to other proceedings;

iv. An invitation to submit to the Procedural Safeguards Office any written or verbal information responsive to the allegations in the complaint within seven business-days of receipt of the notice; and

v. The statement that failure to cooperate with the investigation shall subject non-cooperating parties to sanctions, including contract termination, cessation of payment, and other action; and

3. During the 10 days following its receipt of the complaint, notify the parties as to the availability of formal or informal mediation to resolve the complaint.

i. Should the parties agree to formal mediation, the mediation procedure in this subchapter applies.

ii. The parties shall conclude formal or informal mediation offered pursuant to this paragraph within 15 calendar days and a mediation undertaken pursuant to this paragraph shall not delay the 60-calendar-day timeline for resolution of the complaint.

iii. If formal or informal mediation undertaken pursuant to this subsection results in a resolution or a determination that the parties are unable to resolve the matter through mediation, the Procedural Safeguards

Office shall maintain the written resolution or determination in the complaint file.

iv. If mediation results in resolution of the complaint, the Procedural Safeguards Office shall request the complainant to sign a written withdrawal of the complaint, and the Procedural Safeguards Office shall close the matter.

(h) The Procedural Safeguards Office shall conduct a complaint investigation by:

1. Determining if an on-site investigation is necessary, and conducting the on-site investigation;

2. Reviewing all relevant information, including the results of any on-site investigation, pertinent written records and documents, such as forms, reports and files, and any additional information provided by the parties;

3. Conducting personal interviews with the complainant and other and any other relevant parties, as necessary;

4. Contacting other individuals, including advocates or other parties, who may have important knowledge or information relative to the complaint, or specialized expertise pertinent to the complaint, as necessary; and

5. If the complaint challenges the appropriateness of decisions regarding a child's services or placement, evaluating whether responsible parties adhered to required procedures and whether the decision they reached is consistent with Part C of IDEA, in light of the individual child's abilities and needs.

(i) The Procedural Safeguards Office shall resolve a complaint investigation and implement findings as follows:

1. Within 60 calendar days of receipt of the complaint, unless exceptional circumstances exist with respect to a particular complaint, the Procedural Safeguards Office shall issue a written determination to the complainant and the interested parties that addresses each allegation in the complaint and contains:

i. Findings of fact and conclusions and the reasons for the Procedural Safeguards Office's final decision;

ii. A directive to responsible parties to develop and implement any necessary plan of action that outlines procedures for effective implementation of the final decision;

iii. A description of any necessary technical assistance activities, negotiations, and corrective actions that any party is to undertake to achieve compliance;

iv. A directive and instructions for development, submission, and implementation of any necessary corrective action plan, specifying the dates by which corrective actions are to be implemented;

v. A statement of remedies when a denial of necessary services occurred, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family and appropriate future provision of services for all infants and toddlers with disabilities and their families; and

vi. If an agency providing services pursuant to the EIS has failed or refused to cooperate with a complaint investigation, and/or has taken retaliatory action against any complainant, a finding of failure or refusal to cooperate that outlines the specific nature of the failure or refusal to cooperate and directs the corrective actions to be taken, which actions may include cancellation of contract, cessation of payment, disqualification as a service provider, and/or action(s).

(j) As appropriate under the circumstances of the complaint, the Procedural Safeguards Office shall transmit a copy of the decision to the child's local or regional provider agency and the child's service coordinator.

(k) If the Procedural Safeguards Office determines as a result of the complaint investigation that a participating provider or provider agency is disqualified from providing EIS services, the Procedural Safeguards Office shall immediately issue written notification of cessation of services and cancellation of any applicable contract, in accordance with contract procedures.

(l) If as a result of a complaint investigation the Procedural Safeguards Office declares a participating agency to be disqualified or ineligible to continue to provide EIS services, the Department shall work with local and regional provider agencies and service coordinators to notify parents immediately by whatever means available of any change in the provision of EIS services and the parents' right to access dispute resolution procedures.

1. The Procedural Safeguards Office shall follow a notice issued pursuant to (k) above with formal written notice in the ordinary course.

2. The Department and local and regional provider agencies and service coordinators shall conclude the substitute arrangement for the provision of services by a qualified provider within 10 business days, and shall arrange for appropriate compensation to families for missed services during this period.

(m) The Procedural Safeguards Office shall provide for the periodic review of the subject of the investigation until the full implementation of a corrective action plan, and may include, as appropriate, on-site follow-up investigation and routine monitoring, which actions the Procedural Safeguards Office shall record in the complaint log.

§ 8:17-13.17 Incorporation of written decision of complaint investigation into IFSP; agreement binding on EIS

(a) As appropriate, the service coordinator shall incorporate the terms of a written decision of a complaint investigation into the IFSP within seven days of the service coordinator's receipt of the written decision pursuant to *N.J.A.C. 8:17-13.16(j)*.

(b) Upon its incorporation into the IFSP, the written decision of a complaint investigation is binding on the early intervention system.

#### SUBCHAPTER 14. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

§ 8:17-14.1 General requirements

(a) The Department has established and implemented a Comprehensive System of Personnel Development (CSPD) through a Statewide network of regional training and technical assistance coordinators who work at the regional and/or local practitioner level.

(b) The goal of the CSPD for early intervention is to enable children with special needs and their families to participate in high quality early intervention services by ensuring that services are provided by qualified, personnel in all disciplines listed in *N.J.A.C. 8:17-15*.

(c) The term "personnel" in this context does not refer to employees of the Department, but instead, refers to individuals who are employees, contractors and/or subcontractors of private and/or public entities that receive funding from the Department for the delivery of early intervention services.

(d) The CSPD shall:

1. Provide for pre-service and in-service training to be conducted on an interdisciplinary basis to the extent appropriate;

2. Provide for the training of a variety of professionals and paraprofessionals needed to meet the requirements of this chapter, including:

- i. Public and private practitioners;
- ii. Primary referral sources;

iii. Paraprofessionals; and

iv. Professionals who serve as service coordinators; and

3. Ensure that training provided relates specifically to:

i. Understanding the basic components of early intervention services available in New Jersey;

ii. Assisting families to enhance development of their child and to participate fully in the development and implementation of IFSPs; and

iii. Assisting families to understand their rights, procedural safeguards, and the process for accessing services through the early intervention system.

(e) Through regional training and technical assistant coordinators, the Department shall provide technical assistance and in-service training to local service coordinators, early intervention practitioners, and families.

1. Activities employed in this effort include site-specific monitoring and needs assessment, on-site technical assistance and training, regional networking meetings and information dissemination.

2. Training events are interdisciplinary, featuring information and skills relevant to early intervention practitioners across disciplines.

3. Parent participation, both as trainers and trainees, is strongly supported and encouraged.

§ 8:17-14.2 Needs assessment

(a) The monitoring and needs assessment process for the NJEIS, as described at *N.J.A.C. 8:17-14.1(e)*, shall include both formal and informal techniques that are responsive to the geographic, personnel and organizational differences that may exist within the State.

(b) Priority training topics for provider agencies and practitioners are identified by analyzing data obtained from:

1. State CSPD needs assessments;
2. The SICC;
3. The Statewide Parent Advocacy Network assessment of needs;
4. Local agencies' interdisciplinary needs assessments;
5. Regional needs assessments;
6. Reports from time-limited work groups and task forces;

7. Evaluations from Statewide technical assistance and/or in-service meetings; and

8. Information from quality assurance activities, including self-assessment, data collection, monitoring, family and practitioner surveys.

#### § 8:17-14.3 CSPD activities

(a) CSPD activities shall include:

1. Implementing innovative strategies and activities for the recruitment and retention of early intervention practitioners;

2. Promoting the preparation of early intervention practitioners, including paraprofessionals and assistants fully and appropriately qualified to provide early intervention services; and

3. Training personnel to coordinate transition services for children with disabilities from an early intervention program established pursuant to Part C and pursuant to Part B, other than §619 of Part B, to a pre-school program receiving funds pursuant to §619 of Part B, or another appropriate program.

(b) Other CSPD activities may include:

1. Training personnel to work in rural and inner-city areas; and

2. Training personnel in the emotional and social development of young children.

### SUBCHAPTER 15. PERSONNEL STANDARDS

#### § 8:17-15.1 Standards to serve as a practitioner within the NJEIS

(a) The following requirements are applicable to personnel that work for provider agencies and are employed as practitioners to fulfill the early intervention service needs described in this subchapter.

1. The term "personnel" in this context does not refer to employees of the Department.

(b) This subchapter identifies the procedures relating to the establishment and maintenance of qualifications to ensure that personnel carrying out the purposes of Part C are appropriately and adequately prepared and trained.

(c) Nothing in this subchapter shall be deemed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law or rules, to assist in the provision of early intervention services to children with disabilities.

(d) Each provider agency shall develop and implement written policies to require personnel providing early intervention services for eligible children and their families to meet appropriate practitioner requirements established by the Department.

(e) Early intervention services shall be provided by qualified personnel, including:

1. Audiologists, licensed pursuant to *N.J.S.A. 45:3B-1* through 24;

2. Behavior specialists;

3. Child development associates;

4. Child development specialists;

5. Family therapists, licensed pursuant to *N.J.S.A. 45:15BB-1* through 13 or *45:8B-1* through 50;

6. Nurses, licensed as registered nurses pursuant to *N.J.S.A. 45:11-23* through 52;

7. Registered dietitians;

8. Occupational therapists;

9. Occupational therapy assistants, licensed pursuant to *N.J.S.A. 45:9-37.51* through 37.75;

10. Orientation and mobility specialists;

11. Physical therapists;

12. Physical therapy assistants, licensed pursuant to *N.J.S.A. 45:9-37.11* through 37.34f;

13. Pediatricians and other physicians, licensed pursuant to *N.J.S.A. 45:9-1* through 27.9;

14. Psychologists, licensed pursuant to *N.J.S.A. 45:14B-1* through 46;

15. Service coordinators;

16. Service coordinator associates;

17. Social workers, licensed pursuant to *N.J.S.A. 45:15BB-1* through 13;

18. Special educators;

19. Speech and language pathologists; and

20. Vision specialists, including ophthalmologists licensed pursuant to *N.J.S.A. 45:9-1* through 27.9 and optometrists licensed pursuant to *N.J.S.A. 45:12-1* through 27.

#### § 8:17-15.2 Criminal background checks

(a) Existing staff members of provider agencies and individuals seeking employment therein shall be permanently disqualified from providing early inter-

vention services, it, after criminal history record background checks, conducted at the expense of provider agencies, it is revealed that the individuals have been convicted of crimes listed in (b)1 through 3 below.

(b) An agency or business is prohibited from serving or "is ineligible to serve" the NJEIS as a provider agency if the owner has a criminal record that reveals a conviction for any of the following crimes and offenses:

1. In New Jersey, any of the following crimes or disorderly persons offenses:

i. A crime against a child, including endangering the welfare of a child and child pornography pursuant to *N.J.S.A. 2C:24-4*; and child molestation as set forth in *N.J.S.A. 2C:14-1* et seq.;

ii. Abuse, abandonment or neglect of a child pursuant to *N.J.S.A. 9:6-3*;

iii. Endangering the welfare of an incompetent person pursuant to *N.J.S.A. 2C:24-7*;

iv. Sexual assault, criminal sexual contact or lewdness pursuant to *N.J.S.A. 2C:14-2* through 14-4;

v. Murder pursuant to *N.J.S.A. 2C:11-3* or manslaughter pursuant to *N.J.S.A. 2C:11-4*;

vi. Stalking pursuant to *N.J.S.A. 2C:12-10*;

vii. Kidnapping and related offenses, including criminal restraint, false imprisonment, interference with custody, criminal coercion, or enticing a child into a motor vehicle, structure or isolated area pursuant to *N.J.S.A. 2C:13-1* through 6;

viii. Arson pursuant to *N.J.S.A. 2C:17-1*, or causing or risking widespread injury or damage that would constitute a crime of the second degree pursuant to *N.J.S.A. 2C:17-2*;

ix. Terroristic threats pursuant to *N.J.S.A. 2C:12-3*; and

x. An attempt or conspiracy to commit any of the crimes or offenses listed in (a)1i through ix above.

2. A crime or offense that involves fraud and abuse as described below:

i. Knowingly or intentionally making, or causing to be made, false statements or misrepresentations of material fact in any application or reapplication for benefits available from the NJEIS or any other State- and/or Federally funded program;

ii. Knowingly or intentionally making, or causing to be made, false statements, misrepresentations of material fact, or alterations on any evaluation report,

progress note, service verification log, claim, or other document issued by or on behalf of the NJEIS or any other State- and/or Federally funded program;

iii. Intentionally misusing or abusing NJEIS benefits or the benefits of any other State- and/or Federally funded program;

iv. Engaging in forgery or attempted forgery involving the provision of eligible early intervention services, services available from any other State- and/or Federally funded program, and/or claims for such services;

v. Engaging in a course of conduct or performing an act deemed improper or abusive of the NJEIS or any other State- and/or Federally funded program following notification that this conduct should cease; or

vi. Failing to cooperate in an investigation involving claims described in (a)2i through v above.

3. In any other State or jurisdiction, conduct that, if committed in New Jersey, would constitute a crime or disorderly persons offense described in (b)1 above or an act of fraud and abuse as described in (b)2 above.

4. The existence of a cause for permanent disqualification of a practitioner for conduct described in (b)1 through 3 above may be established by:

i. A judgment of conviction for a crime, disorderly persons offense, or petty disorderly persons offense;

ii. A judgment or order of either a court of competent jurisdiction or an administrative agency; or

iii. A preponderance of the evidence.

(c) Notwithstanding the provisions of this section to the contrary, an individual shall not be disqualified from providing early intervention services pursuant to this subchapter or from ownership of a provider agency on the basis of any conviction disclosed by a criminal history record background check performed pursuant to (b) above without an opportunity to challenge the accuracy of the disqualifying criminal history record.

(d) If the owner of a provider agency or a business seeking to become a provider agency refuses to consent to, or cooperate in, the securing of a criminal history record background check, the Department shall suspend, deny, revoke, refuse to renew, or refuse to execute the provider agency's letter of agreement and/or grant, as appropriate.

(e) If a staff member of a provider agency, other than the owner, refuses to consent to, or cooperate in, the securing of a criminal history record background check, the person shall be immediately suspended,

barred, or revoked from providing early intervention services pursuant to this chapter.

(f) An applicant or staff member that has committed crimes and offenses other than those cited in (b) above may be eligible to provide early intervention services or own a provider agency, in accordance with this chapter by making an application to the NJEIS.

1. The Department will determine whether a person who has committed a crime or disorderly persons offense other than those listed in (b) above, is rehabilitated and eligible to provide early intervention services in the NJEIS, using the factors identified in (g) below.

2. If the Department determines that there is clear and convincing evidence of the person's rehabilitation pursuant to (g) below and the person meets all other CSPD standards, the Department shall declare the person eligible to provide early intervention services through a provider agency.

(g) The Department shall use the following factors to determine whether a person has affirmatively demonstrated rehabilitation:

1. The nature and responsibility of the position at the provider agency that the convicted person would hold, has held or currently holds, as the case may be;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the person when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions, which may have contributed to the offense; and

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

(h) The Department shall make the final determination regarding the rehabilitation of an applicant or staff member with a criminal conviction.

(i) If a provider agency has knowledge that criminal charges are pending against a staff member, the provider agency shall promptly notify the Department to determine whether any action concerning the staff

member is necessary in order to ensure the safety of the children and families served by the provider agency.

(j) A provider agency that has received an employment application from an individual or currently employs a staff member shall be immune from liability for acting upon or disclosing information about the disqualification or termination to another provider agency seeking to employ that person if the disclosing provider agency has:

1. Received notice from the Department that the applicant or staff member, as applicable, has been determined by the Department to be disqualified from providing early intervention services, pursuant to (a) above; or

2. Terminated the employment of a staff member because the person was disqualified from providing early intervention services on behalf of the provider agency on the basis of a conviction of a crime or disorderly persons offense pursuant to (a) above, after commencing employment at the provider agency.

(k) A provider agency that acts upon or discloses information pursuant to (j) above shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the agency acted with actual malice toward the person who is the subject of the information.

#### § 8:17-15.3 Temporary licensure

(a) The Department may permit the hiring of individuals who possess a temporary license issued by a State licensing board to address the immediate needs of eligible children and their families.

(b) Personnel who are subject to State licensure, registration, and/or certification standards to provide services as professionals listed at *N.J.A.C. 8:17-15.1(e)* and who hold only temporary or conditional licensure, registration, and/or certification, and who otherwise satisfy *N.J.A.C. 8:17-15.1*, are eligible to provide early intervention services pursuant to their licensed, registered, and/or certified scope of practice and subject to any conditions the State licensing, registering, and/or certifying entity imposes, unless and until the earlier of either of the following occur:

1. The State licensing, registering, and/or certifying entity that issues the professional's temporary and/or conditional licensure, registration, and/or certification suspends or revokes the temporary and/or conditional licensure, registration, and/or certification; or

2. The temporary and/or conditional licensure, registration, and/or certification expires.

§ 8:17-15.4 Paraprofessionals and assistants

(a) Minimum qualifications of various paraprofessionals and assistants are as follows:

1. A child development associate shall have a high school diploma or GED and documented experience working with persons with disabilities from birth to five years of age;

2. An occupational therapy assistant shall meet the licensure requirements in N.J.S.A. 45:9-37;

3. A physical therapy assistant shall meet the licensure requirements in *N.J.S.A. 45:1-14* et seq.; and

4. A service coordinator associate shall have a high school diploma or GED.

i. With Department approval, immediate family members, that is, parents or siblings, of a child with special needs or community members of an underserved population, who do not meet the education requirement at (a)4 above may be hired in accordance with a written plan for the education requirement to be met within a specified time.

ii. The service coordinator associate's roles, responsibilities, and level of supervision shall be commensurate with his or her experience.

(b) Under the supervision of a qualified and responsible practitioner or provider agency, paraprofessional staff members may perform the following functions:

1. Assist in provision of services to a child and/or his or her family in natural environments;

2. Provide supplementary services addressing goals described in the IFSP of the child and/or his or her family;

3. Serve as liaisons with organizations addressing issues of concern to the community; and

4. Provide translation and/or interpreting services, if other certified and/or trained translators or interpreters are not available despite reasonable efforts to secure their services.

SUBCHAPTER 16. CENTRAL DIRECTORY AND PUBLIC AWARENESS

§ 8:17-16.1 Central directory

(a) The central directory for New Jersey, available on the Department of Human Services' website at <http://www.state.nj.us/humanservices/dds/publications.html>, contains information about:

1. Public and private early intervention services, resources, and experts in the State;

2. Research and demonstration projects being conducted in the State; and

3. Practitioner and other groups that assist eligible children and their families pursuant to Part C.

§ 8:17-16.2 Public awareness

(a) The Department shall maintain a continuous, ongoing public awareness program throughout all areas of the State, including rural areas.

(b) The public awareness program shall include information about the State early intervention system, the Child Find System, including the purpose and scope of the system, how to make referrals, and how to access a comprehensive and multidisciplinary evaluation and other early intervention services; and the central directory.

(c) The public awareness program shall focus on the early identification of children who are eligible to receive early intervention services and include:

1. The preparation and dissemination of informational materials to all primary referral sources, especially hospitals, physicians, and DCF, to be given to parents, especially to inform parents with premature children, or children with other physical risk factors associated with learning or developmental complications, for those sources to disseminate to parents;

2. Informational materials that are disseminated to all major child services organizations, including public agencies at the State and local level, private practitioners, practitioner associations, parent groups, and advocate associations on the nature and availability of the early intervention services available pursuant to Part C and Part B, and procedures for assisting such sources in disseminating such information to parents of children with disabilities; and

3. Brochures, newsletters, fact sheets, displays, public service announcements, news stories, and other media that are used to reach the largest possible audience.

(d) Information on NJEIS can be obtained by contacting the NJEIS, or through the Department's website at available at <http://www.nj.gov/health/fhs/eis/index.shtml>.

SUBCHAPTER 17. SUPERVISION AND MONITORING OF PROGRAMS

§ 8:17-17.1 General supervision

(a) The Department shall be responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance pursuant to Part C; and monitoring programs and activities used by the State to carry out this chapter, whether or not the programs and activities are receiving assistance pursuant to Part C, to ensure compliance.

(b) The Department shall:

1. Monitor provider agencies, institutions, and organizations under contract with the Department to implement Part C;

2. Enforce obligations that Part C, its implementing regulations, and this chapter impose on provider agencies;

3. Provide technical assistance as necessary to provider agencies and practitioners; and

4. Develop and monitor compliance with corrective action plans to address deficiencies identified through monitoring.

#### § 8:17-17.2 Collection and maintenance of information

Consistent with the terms and conditions of a letter of agreement, or, as applicable, a grant funded by the Department and implemented by the provider agency, the agency shall submit to the Department activity reports, progress notes, service verification logs, and other operational information for the Department to monitor the

implementation by provider agencies of all requirements of this chapter.

### SUBCHAPTER 18. REPORTING AND DATA COLLECTION

#### § 8:17-18.1 Data reporting

(a) The NJEIS shall issue annually, in the manner specified by the U.S. Secretary of Education, an early intervention service report that addresses the delivery of services to eligible children and their families by the NJEIS.

(b) The report shall contain all of the data required by the U.S. Secretary of Education pursuant to the annual State Plan including:

1. The number of children with disabilities by race and ethnicity who are receiving early intervention services; and

2. The number of children with disabilities, by race and ethnicity, who, from birth until the third birthday, stopped receiving early intervention services because of program completion or for other reasons.

#### § 8:17-18.2 Data collection

Data collection shall be consistent with the terms and conditions of the letter of agreement or, as applicable, the grant binding the provider agency to the Department.