

ADOPTION SECTION

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF FAMILY HEALTH SERVICES

Notice of Readoption

Early Intervention System

Readoption with Technical Changes: N.J.A.C. 8:17

Authorized By: Cathleen D. Bennett, Acting Commissioner, Department of Health.

Authority: N.J.S.A. 26:1A-36.6 through 36.8, particularly 26:1A-36.8; the Department of Children and Families Act, P.L. 2006, c. 47 (approved July 11, 2006; retroactively effective as of July 1, 2006, see § 205); and 20 U.S.C. § 1435.

Effective Date: September 6, 2015.

New Expiration Date: September 6, 2022.

Take notice that pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 8:17 was to expire on October 6, 2015. N.J.A.C. 8:17 establishes standards applicable to the New Jersey Early Intervention System.

N.J.A.C. 8:17 implements the “Individuals with Disabilities Education Act,” Pub. L. 101-476 at § 901 (approved October 30, 1990) (“IDEA 1990”), as reauthorized and amended by the “Individuals with Disabilities Education Act Amendments of 1997,” Pub. L. 105-17 (approved June 4, 1997) (“IDEA 1997”), and the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446 (approved December 3, 2004) (“IDEA 2004”). The Department collectively refers to these laws as the IDEA.

In 1999, the United States Department of Education promulgated regulations at 34 CFR Part 303 to implement Part C of the IDEA 1997. 64 Fed. Reg. 12674 (March 12, 1999) (“IDEA 1997 regulations of 1999”). In 2011, the United States Department of Education promulgated final regulations at 34 CFR Part 303 to implement Part C of the IDEA 2004. 76 Fed. Reg. 60140 (September 28, 2011) (effective October 28, 2011) (“2011 Part C regulations”).

Because the United States Department of Education had then not yet promulgated regulations implementing Part C of the IDEA 2004, the Department promulgated rules in 2008 at N.J.A.C. 8:17 to implement the IDEA 1997 and the IDEA 1997 regulations of 1999, in accordance with N.J.S.A. 26:1A-36.6 through 36.8. 39 N.J.R. 3645(a) (September 4, 2007), 40 N.J.R. 5696(a) (October 6, 2008). However, existing N.J.A.C. 8:17 incorporates by reference the IDEA and its implementing regulations “as amended and supplemented,” so the IDEA 2004 and the 2011 Part C regulations were and are part of N.J.A.C. 8:17 and applicable to the NJEIS as of their effective date. See existing definition of “Act” at N.J.A.C. 8:17-1.3.

The New Jersey Early Intervention System (NJEIS) requires the Department to interact with programs that were formerly part of the Department of Human Services. The Department of Children and Families Act, P.L. 2006, c. 47 (approved July 11, 2006; retroactively effective as of July 1, 2006, see § 205) (DCF Act), established the Department of Children and Families (DCF). The DCF Act transferred jurisdiction over certain children’s services that the Department of Human Services provided to the newly established Divisions of Developmental Disabilities and Child Protection and Permanency within the DCF. Programs remaining within the Department of Human

Services pursuant to the DCF Act continue to have a role in the implementation of early intervention in New Jersey. Therefore, pursuant to N.J.S.A. 26:1A-36.8 and the DCF Act, the Department developed this notice of readoption in consultation with the Departments of Education, Human Services, and Children and Families.

Subchapter 1 contains general provisions. Subchapter 2 addresses “child find” activities. Subchapter 3 establishes standards for service coordination, regional provider agencies, provider agencies, and practitioners. Subchapter 4 establishes standards for prior notice and parent consent. Subchapter 5 establishes standards for surrogate parents. Subchapter 6 establishes standards for evaluation and assessment. Subchapter 7 establishes eligibility criteria and procedures. Subchapter 8 establishes standards for individualized family service plans. Subchapter 9 addresses financial matters. Subchapter 10 establishes standards for suspension and termination of services. Subchapter 11 establishes standards for transition from the early intervention system. Subchapter 12 establishes standards for the confidentiality of information. Subchapter 13 establishes standards for procedural safeguards. Subchapter 14 establishes standards for a comprehensive system of personnel development. Subchapter 15 establishes personnel standards. Subchapter 16 addresses the central directory and public awareness activities. Subchapter 17 establishes standards for supervision and monitoring of programs. Subchapter 18 establishes standards for data reporting and collection. Chapter Appendix A contains the family cost participation income verification form. Chapter Appendix B contains the family cost participation payment option form. Chapter Appendix C contains the family cost participation application for income adjustment form. Chapter Appendix D contains the individualized

family service plan form. Chapter Appendix E contains the table calculating family cost share based on the 2007 Federal poverty guidelines. Chapter Appendix E1 contains the table calculating the family cost share hourly and monthly maximum co-payments based on the 2008 Federal poverty guidelines. Chapter Appendix F contains the formal dispute resolution request form.

While N.J.A.C. 8:17 is generally consistent with the IDEA 2004 and the 2011 Part C regulations governing the states' implementation of early intervention services, the Department is developing rulemaking to revise and reorganize existing N.J.A.C. 8:17 to ensure greater consistency therewith, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course. However, this rulemaking will not be effective prior to the expiration of existing N.J.A.C. 8:17.

The Commissioner has reviewed N.J.A.C. 8:17 and has determined that, subject to the technical changes described below, and pending the finalization of the anticipated rulemaking described above, the existing chapter remains necessary, proper, reasonable, efficient, understandable and responsive to the purposes for which it was originally promulgated, and should be readopted.

The Department is making the following technical changes pursuant to N.J.S.A. 52:14B-5.1 and N.J.A.C. 1:30-6.4(h).

At N.J.A.C. 8:17-1.2, Scope, and throughout the chapter, the Department is correcting references to the Department to reflect the change in the Department's name pursuant to N.J.S.A. 26:1A-2.1, and to correct the Department's contact information.

At N.J.A.C. 8:17-1.3, the Department is amending the definitions of the “Academy of Certification of Vision Rehabilitation and Education Professionals” and the “Procedural Safeguards Office” to update these entities’ respective contact information.

At N.J.A.C. 8:17-15.2, Criminal background checks, the Department is deleting the word, “it,” and adding in its stead the word “if,” to correct a typographical error and for correct grammar.

Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1) and N.J.A.C. 1:30-6.4(h), and with the technical corrections described above, N.J.A.C. 8:17 is readopted and shall continue in effect for seven years.

Full text of the adopted technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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. – 4. (No change.)

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] **4732 N. Oracle Road, Suite 217**, Tucson, AZ [85719] **85705**, (520) 887-6816, telefacsimile (520) 887-6826, www.acvrep.org.

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“Commissioner” means **the** Commissioner of the Department of Health [and Senior Services].

...

“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.] **PO** Box 360, Trenton, NJ 08625-0360[.]; or[, when specifically used for NJEIS inquiries;]
2. [New Jersey Department of Health and Senior Services,] **For NJEIS inquiries**, New Jersey Early Intervention System, [P.O.] **NJ Department of Health, PO** Box 364, Trenton, NJ 08625-0364.

...

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

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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 intervention services, [it] **if**, 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) – (k) (No change.)