

CHAPTER 17

EARLY INTERVENTION SYSTEM

Authority

N.J.S.A. 26:1A-36.6 et seq., particularly 26:1A-36.8. See also 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).

Source and Effective Date

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Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 17, Early Intervention System, expires on October 6, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

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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.

"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.

“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.

“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 stan-

dard 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.

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 accom-

pany 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

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

cal 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 preschool 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 intervention services, 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) 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 con-

stitute 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 opportu-

nity 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 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: