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TO: Members of the State Board of Education

FROM: Nancy S. Grasmick *Nancy*

DATE: April 27-28, 2009

SUBJECT: COMAR 13A.05.01 Provision of a Free Appropriate Public Education (Amend)
COMAR 13A.05.02 Administration of Services for Students with Disabilities (Amend)
COMAR 13A.08.03 Discipline of Students with Disabilities (Amend)
COMAR 13A.08.04 Student Behavior Interventions (Amend)
COMAR 13A.13.01 Maryland Infants and Toddlers (Amend)
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this action is to request permission to amend 13A.05.01, 13A.05.02, 13A.08.03, 13A.08.04, and 13A.13.01 regulations concerning the provision of services for students with disabilities, administration of services to students with disabilities, student behavior interventions for students, and resolving disagreements for the families of infants and toddlers.

HISTORICAL BACKGROUND:

New federal regulations under the Individuals with Disabilities Education Act of 2004 (IDEA) were enacted on December 1, 2008 and became effective December 31, 2008. The Department is required to revise State policies, procedures, and regulations to the extent necessary to ensure compliance with federal law. The Department must assure the U. S. Department of Education, Office of Special Education Programs (OSEP) that the Department will revise its regulations and conduct public hearings in order to continue to be eligible for federal funds to support the provision of services to students with disabilities. Additionally, the 2009 Maryland General Assembly passed Rosa's Law, HB 20 that changes references to mental retardation to "intellectual disability."

EXECUTIVE SUMMARY:

The purposes of the amendments proposed to COMAR 13A.05.01, 13A.05.02, 13A.08.03, 13A.08.04, and 13A.13.01 include new federal requirements, clarify the use of student behavior interventions, make revisions as a result of State legislation, and make technical revisions.

ACTION:

Request permission to publish the proposed amendments to COMAR 13A.05.01, 13A.05.02, 13A.08.03, 13A.08.04, and 13A.13.01 in the **Maryland Register** using the following **TENTATIVE** timeline:

Maryland Register Issue Date	July 6, 2009
Hearing	July 8 – August 5, 2009
30-Day Open Comment	August 6, 2009
Adoption	August 27-28, 2009

NSG/CAH:drr
Attachments

Summary of Proposed COMAR Amendments

Below is a list of proposed amendments to the following COMAR Chapters:

COMAR Chapter	Reason
13A.05.01 Provision of a Free Appropriate Public Education to Students with Disabilities	New federal regulations, 34 C.F.R. §§300.9, 300.300, and 300.512, released 12/1/08, new State legislation, and technical corrections
Proposed 13A.05.01.02	Revision to reflect change in the State agency responsible for services to students with disabilities incarcerated in State adult correctional facilities.
Proposed 13A.05.01.03B(12)	New federal regulatory requirement, 34 C.F.R. §300.9, definition of “consent” expanded.
Proposed 13A.05.01.03B(36)	Revision to reflect State legislation “Rosa’s Law” (HB 20) to change references of mental retardation to “intellectual disability.”
Proposed 13A.05.01.03B(42)	Revision to reflect State legislation “Rosa’s Law” (HB 20) to change references of mental retardation to “intellectual disability.”
Proposed 13A.05.01.03B(44)	Revision to reflect State legislation “Rosa’s Law” (HB 20) to change references of mental retardation to “intellectual disability.”
Proposed 13A.05.01.03B(59)	Revision to reflect change in the State agency responsible for services to students with disabilities incarcerated in State adult correctional facilities.
Proposed 13A.05.01.06E(3)	Correction of technical error.
Proposed 13A.05.01.08A(2)(a)(i)	Deletion of administrative procedure to Chapter .02 Administration of Services to Students with Disabilities.
Proposed 13A.05.01.09C(3)	Revision to reflect change in the State agency responsible for services to students with disabilities incarcerated in State adult correctional facilities.
Proposed 13A.05.01.10C(6)(a)	Correction of technical error – correct regulatory citation.
Proposed 13A.05.01.13B(4)-(5)	New federal regulatory requirement, 34 C.F.R. §300.300, revocation of special education services after services have commenced.

Summary of Proposed COMAR Amendments

COMAR Chapter	Reason
Proposed 13A.05.01.15C(11)	Clarify when a resolution session is not required.
Proposed 13A.05.01.15C(18)	New federal regulation – 34 C.F.R. §300.512, leaves the decision as to whether or not parents may be represented by nonattorneys in due process hearings to states, based on State law. State Government Article §9-1607.1, Annotated Code of Maryland, clarifies that parents may not be represented by nonattorneys in due process hearings.
13A.05.02 Administration of Services to Students with Disabilities	New federal regulation, 34 C.F.R §300.606, released 12/1/08 and technical correction
Proposed 13A.05.02.02A	Revision to reflect change in the State agency responsible for services to students with disabilities incarcerated in State adult correctional facilities.
Proposed 13A.05.02.04D	New federal requirement – Notice to the public if the U. S. Department of Education notifies the State of enforcement actions.
Proposed 13A.05.02.13O	Addition of administrative procedure previously in 13A.05.01.08A(2)(a)(i)
13A.08.03 Discipline of Students with Disabilities	New federal regulation, 34 C.F.R. §300.300, released 12/1/08
Proposed 13A.08.03.10C(1)(b)	New federal regulation – Clarify that in the event of a disciplinary action a public agency is not “deemed to have knowledge” if a parent has revoked special education services.
13A.08.04 Student Behavior Interventions	Amendments to align regulations with State Interagency Workgroup established to address the issues of exclusion, physical restraints, seclusion and professional development
13A.08.04.02B(3)	Definition of “communicate” to clarify how an individual may express distress as a result of restraint or seclusion.
13A.08.04.04A and D	Clarify the purpose of exclusion and time limit.
13A.08.04.05A(1)(d)-(e)	Clarify the time limit for a physical restraint and what a physical restraint should not do.
13A.08.04.05B(5)	Clarify a seclusion event.

Summary of Proposed COMAR Amendments

COMAR Chapter	Reason
13A.08.04.06C(3)-(4)	Clarify the content of training for school personnel, including a written examination and physical demonstration of proficiency.
13A.13.01 Early Intervention Services to Eligible Infants and Toddlers and Their Families	Incorporate federal regulation by reference
13A.13.01.11B(1)	Incorporate due process hearing regulations by reference.
13A.13.01.12B(1)	Incorporate written State complaint regulations by reference.

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

Chapter 01 Provision of a Free Appropriate Public Education

Authority: Education Article, §§2-205, 8-301—8-307 and 8-401—8-416; Article 49D; Annotated Code of Maryland Federal Statutory Reference: 20 U.S.C. §1400 et seq.; Federal Regulatory References: 34 CFR 300, 301, 303, and 99

.02 Scope.

A. This chapter applies to public agencies that provide educational services to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, in accordance with the student's IEP, including the Maryland State Department of Education, local school systems, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, [and] the Maryland School for the Deaf, and the Department of Labor, Licensing, and Regulations.

B. (text unchanged)

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)- (11) (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(12) "Consent" means a parent:

[(a)] (i) Has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

[(b)] (ii) Understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and

[(c)] (iii) Understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) Consent includes that:

(i) If a parent revokes consent, that revocation is not retroactive and does not negate an action that occurred after the consent was given and before the consent was revoked; and

(ii) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the student's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(13) – (35) (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(36) "Intellectual disability" means general intellectual functioning, adversely affecting a student's educational performance, which:

(a) Is significantly subaverage;

(b) Exists concurrently with deficits in adaptive behavior; and

(c) Is manifested during the developmental period.

[(36)](37) – [(41)](42)

[(42)]"Mental retardation" means general intellectual functioning, adversely affecting a student's educational performance, which:

(a) Is significantly subaverage;

(b) Exists concurrently with deficits in adaptive behavior; and

(c) Is manifested during the developmental period.]

(43) (text unchanged)

(44) Multiple Disabilities.

(a) "Multiple disabilities" means concomitant impairments, such as [mental retardation] intellectual disability-blindness or [mental retardation] intellectual disability-orthopedic impairment, the combination of which causes such severe educational problems that the student cannot be accommodated in special education programs solely for one of the impairments.

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(b) "Multiple disabilities" does not include students with deaf-blindness.

(45) – (58) (text unchanged)

(59) Public Agency.

(a) (text unchanged)

(b) "Public agency" includes local school systems, the Department, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, and [adult correctional facilities] the Department of Labor, Licensing, and Regulations.

(60) – (85) (text unchanged)

.06 Evaluation, Reevaluation, and Eligibility.

A.–D. (text unchanged)

E. Reevaluation.

(1)–(2) (text unchanged)

(3) The IEP team shall review existing assessment data in accordance with §[B] C of this regulation.

(4)–(12) (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

.08 Individualized Education Program (IEP) Team Responsibilities.

A. IEP Development.

(1) (text unchanged)

(2) Transition from a Local Infants and Toddlers Program.

(a) If a child transitioning from a local infants and toddlers program is determined to be a student with a disability or developmental delay in accordance with Regulation .06B of this chapter, the public agency shall:

[(i) Ensure that a representative of the public agency attends the local infants and toddlers transition planning meeting as described in 20 U.S.C. §637(a)(9)(A)(ii)(II);]

[(ii)] (i) – [(iv)] (iii) (text unchanged)

(b) (text unchanged)

.09 Individualized Education Program Document.

A. – B. (text unchanged)

C. Students in Adult Correctional Facilities.

(1) – (2) (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(3) The Department of Labor, Licensing, and Regulations provides special education and related services to students with disabilities incarcerated in adult correctional institutions identified in §C(2) of this regulation.

(4) – (5) (text unchanged)

D.–F. (text unchanged)

.10 Least Restrictive Environment (LRE).

A.–B. (text unchanged)

C. Placements.

(1)–(5) (text unchanged)

(6) Removal of Students for Disciplinary Actions.

(a) The removal of a student with a disability from the student's current educational setting and the provision of educational services shall conform with the provisions of 34 CFR §§300.101 and [300.521—300.529] 300.530—300.536, Education Article, §7-305, Annotated Code of Maryland, and COMAR 13A.08.03.

(b) (text unchanged)

Key:
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.13 Procedural Safeguards—Consent.

A. (text unchanged)

B. Consent for Special Education Services.

(1) – (3) (text unchanged)

(4) Consistent with 34 CFR §300.300, If a parent of a student with a disability refuses to provide the initial consent as described in §B(2) of this regulation, or revokes consent as described in §B(5) of this regulation, the public agency is not:

(a) Considered to be in violation of the requirement to make FAPE available to the student for failing to provide with the special education and related services for which the public agency sought parental consent, in accordance with §B(1) of this regulation or further special education and related services in accordance with §B(5) of this regulation and consistent with 34 CFR §300.300; and

(b) (text unchanged)

(5) If, at any time subsequent to the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the public agency:

Key: —
Brackets = [Delete]
Underlined = Proposed Amendments

(a) Shall provide the parent prior written notice in accordance with 34 CFR §300.503 and regulation 12 of this chapter before ceasing the provision of special education and related services;

(b) May not continue to provide special education and related services to the student;

(c) May not use the procedures described in regulation .15B and C of this chapter to obtain agreement or a ruling that the services may be provided to the child; and

(d) Is not required to amend the student's education records to remove any references to the student's receipt of special education and related services, in accordance with 34 CFR §300.9(c)(3).

[(5)] (6) – [(9)](10) (text unchanged)

.15 Procedural Safeguards—State Complaints, Mediation, and Due Process.

A.– B. (text unchanged)

C. Due Process Complaint.

(1) – (10) (text unchanged)

(11) Resolution Session.

(a) – (c) (text unchanged)

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(d) The resolution session, described in 34 CFR §300.510(a)(3) need not be held if:

(i) The parent and the public agency agree in writing to waive the meeting;

(ii) The parent and the public agency agree to try mediation; or

(iii) The public agency initiated the due process complaint.

~~[(d)](e) – [(h)](i)~~ (text unchanged)

~~(12) – (17)~~ (text unchanged)

(18) Any party to a due process hearing, conducted in accordance with §§300.507—300.513 or §§300.530—300.536, has the right to:

(a) Represent themselves;

(b) Be represented by an attorney, in accordance with state government article §9-1607.1, Annotated Code of Maryland; and

(c) Be accompanied and advised by persons with special knowledge or training with respect to the problems of children with disabilities.

~~[(18)](19) — [(23)](24)~~ (text unchanged)

Key:

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Underlined = Proposed Amendments

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

Chapter 02 Administration of Services for Students with Disabilities

Authority: Education Article, §§2-205, 8-301—8-307 and 8-401—8-416; Article 49D;

Annotated Code of Maryland Federal Statutory Reference: 20 U.S.C. §1400 et seq. Federal

Regulatory References: 34 CFR 300, 301, and 99

.02 Scope.

A. This chapter applies to public agencies that provide educational services to students with disabilities, 3 years old through the end of the school year in which the student turns 21 years old, in accordance with the student's Individualized Education Program (IEP), including the Department, local school systems, Department of Health and Mental Hygiene, Department of Juvenile Services, the Maryland School for the Blind, [and] the Maryland School for the Deaf, and the Department of Labor, Licensing, and Regulations.

B. (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

.04 State Administration.

A.–C. (text unchanged)

D. State Performance Plan.

(1) – (4) (text unchanged)

(5) If the Department receives notice that the Secretary of the U. S. Department of Education is proposing to take or is taking an enforcement action pursuant to 34 CFR §300.604, the Department shall notify the public, in the manner as described in 34 CFR §300.606.

E (text unchanged)

.13 Local Public Agency Administration.

A.–N. (text unchanged)

O. Transition from a Local Infants and Toddlers Program.

(1) The public agency shall ensure that a representative of the public agency attends the local Infants and Toddlers transition planning meeting as described in 20 U.S.C. §637(a)(9)(a)(ii)(ii).

Key:

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Underlined = Proposed Amendments

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 03 Discipline of Students with Disabilities

Authority: Education Article, §§2-205, 7-305, 8-404, and 8-407, Annotated Code of Maryland

.10 Students Not Yet Eligible for Special Education and Related Services.

A.– B. (text unchanged)

C. A public agency is not deemed to have knowledge in accordance with §B of this regulation if:

(1) The parent of the student:

(a) Did not allow the public agency to conduct assessments in accordance with COMAR

13A.05.01.05; or

(b) Refused or revoked consent for services in accordance with COMAR 13A.05.13; or

(2) (text unchanged)

D.–G. (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 04 Student Behavior Interventions

Authority: Education Article, §§2-205, 7-301, 7-303—7-305, 7-307, 7-308 and 7-1101—7-1104, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) – (2) (text unchanged)

(3) Communicate.

(a) “Communicate” means to convey information verbally or nonverbally.

(b) “Communicate” includes, but is not limited to:

(i) Speech;

(ii) Gestures;

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(iii) Symbols; and

(iv) American Sign Language.

~~[(3)](4) — [(18)](19) (text unchanged)~~

.04 Use of Exclusion.

A. School personnel may use exclusion to address a student's behavior ~~[if the student's behavior]:~~

(1) If the student's behavior ~~[Unreasonably]~~ unreasonably interferes with the student's learning or the learning of others; ~~[or]~~

(2) If the student's behavior ~~[constitutes]~~ constitutes an emergency and exclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate~~[.]~~;

(3) When exclusion is requested by the student; or

(4) When supported by the student's behavior intervention plan.

B. – C. (text unchanged)

D. School personnel shall ensure each period of exclusion:

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(1) Is appropriate to the developmental level of the student and the severity of the behavior [may not exceed 30 minutes]; and

(2) Does not exceed 30 minutes.

(E) – (G) (text unchanged)

.05 General Requirements for the Use of Restraint or Seclusion.

A. Use of Restraint.

(1) Physical Restraint.

(a) – (c) (text unchanged)

(d) A physical restraint:

(i) Is removed as soon as the student is calm; and

(ii) Shall not exceed 30 minutes.

(e) A physical restraint shall not place a student in a face down position or any other position that will:

(i) Obstruct a student's airway or impair a student's ability to breathe;

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Underlined = Proposed Amendments

(ii) Obstruct a staff member's view of a student's face;

(iii) Restrict a student's ability to communicate distress;

(iv) Place pressure on a student's head, neck, or torso; or

(v) Straddle a student's torso.

(2) – (5) (text unchanged)

B. Use of Seclusion.

(1) – (4) (text unchanged)

(5) [At a minimum, school personnel shall reassess a student in] A seclusion event:

(a) Is appropriate to the student's developmental level and severity of the behavior;

(b) Shall not restrict the student's ability to communicate distress; and

(c) Shall not exceed [every] 30 minutes.

(6) — (8) (text unchanged)

C. (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

.06 Administrative Procedures.

A. – B. (text unchanged)

C. Professional Development.

(1) – (2) (text unchanged)

(3) The school personnel described in §C(2) of this regulation shall receive training in current professionally accepted practices and standards regarding:

(a) Positive behavior interventions strategies and supports, including methods for identifying and defusing potentially dangerous behavior;

(b)-(c) (text unchanged)

(d) Restraint and alternatives to restraint; [and]

(e) Seclusion[.]; and

(f) Symptoms of physical distress and positional asphyxia.

(4) The professional development described in §C(3) shall include a written examination and physical demonstration of proficiency in the skills and competencies.

D. (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

Title 13A STATE BOARD OF EDUCATION

Subtitle 13 MARYLAND INFANTS AND TODDLER PROGRAM

Chapter 01 Early Intervention Services to Eligible Infants and Toddlers and Their Families

Authority: Education Article, §8-416, Annotated Code of Maryland Federal Regulatory Reference: 34 CFR 99, 300, 303

.11 Procedural Safeguards.

A. General. (text unchanged)

B. Resolution of Individual Child Complaints.

(1) The Department of Education/Maryland Infants and Toddlers Program shall provide for impartial resolution of individual child complaints by parents concerning any [of the matters in 34 CFR §303.403(a) through the Office of Administrative Hearings] matter related to the provision of early intervention services in accordance with 20 USC §1439 and 34 CFR §303.

[(2) A parent may file a written complaint when a public agency or service provider proposes or refuses to initiate or change the:

(a) Identification, evaluation, or placement of an eligible child;

(b) Provision of appropriate early intervention services to the child or the child's family; or

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(c) Assignment of financial obligations for early intervention services to the parents.

(3) A written complaint shall:

(a) Be signed by the parent or surrogate parent;

(b) Contain a description of the complaint; and

(c) Be filed with the Department of Education/Maryland Infants and Toddlers Program.

(4) The Department of Education/Maryland Infants and Toddlers Program shall confirm receipt of the complaint in writing with the parent and all other parties involved in the complaint not later than 5 working days after receipt of the complaint.

(5) The Department of Education/Maryland Infants and Toddlers Program shall submit the complaint to the Office of Administrative Hearings, in compliance with the requirements of the State Government Article, §§9-1601—9-1607, Annotated Code of Maryland.

(6) An impartial person shall be appointed consistent with 34 CFR §303.421 to implement the impartial complaint resolution procedure.

(7) The impartial complaint resolution procedure shall be:

(a) Completed not later than 30 days after the Department of Education/Maryland Infants and Toddlers Program receives a parent's written complaint; and

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(b) Carried out at a time and place that is reasonably convenient to the parents.

(8) Parents involved in an administrative proceeding, consistent with 34 CFR §303.422, shall be informed of their right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children;

(b) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least 5 days before the proceeding;

(d) Obtain a written or electronic verbatim transcription of the proceeding at no cost; and

(e) Obtain written findings of fact and decisions.

(9) The Office of Administrative Hearings shall mail the written decision to each of the parties not later than 30 days after the receipt of a parent's complaint, consistent with 34 CFR §303.423.

(10) A party aggrieved by the findings and decision regarding an individual child complaint has the right to bring a civil action in State or federal court, consistent with 34 CFR §303.424.

(11) Status of the Child During Impartial Complaint Resolution Procedure.

Key:

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Underlined = Proposed Amendments

(a) During the pendency of any proceedings involving an individual child complaint, unless the local lead agency and parents of a child otherwise agree, the child shall continue to receive appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services, the child will receive those services that are not in dispute.

(12) The Department of Education/Maryland Infants and Toddlers Program shall, after removing personally identifiable information, transmit to the interagency coordinating council the decisions regarding individual child complaints, and also make decisions available to the public, in a manner consistent with State and federal confidentiality requirements.]

[(13)] (2) Mediation.

(a) Before filing a written complaint, a parent or local lead agency may request mediation to resolve a dispute involving any [of the matters in 34 CFR §303.403(a) by submitting an application to the Office of Administrative Hearings]matter related to the provision of early intervention services in accordance with 20 USC §1439 and 34 CFR §303.

[(b) When filing a written complaint in accordance with §B of this regulation, a parent may request mediation.]

C. Confidentiality. (text unchanged)

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

.12 State Administration.

A. Supervision and Monitoring. (text unchanged)

B. Procedures for Resolving Early Intervention System Complaints.

(1) The Department of Education/Maryland Infants and Toddlers Program shall [:

(a) Receive] receive and resolve any early intervention system complaint [that one or more requirements of Part C of the Act or 34 CFR 303 are not being met; and] in accordance with 34 CFR § 303.

[(b) Disseminate information on the State's procedures to receive and resolve early intervention system complaints to parents, family support and advocacy organizations, and other interested individuals and agencies throughout the State.

(2) The early intervention system complaint may concern violations by:

(a) Any public agency in the State that receives funding under 34 CFR 303;

(b) Other public agencies that are identified as being part of the State's early intervention system; or

(c) Private service providers under public supervision.

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

(3) An individual or organization, including an individual or organization from another State, may file a written signed early intervention system complaint with the Department of Education/Maryland Infants and Toddlers Program. The complaint shall include:

(a) A statement that the State has violated a requirement of Part C of the Act or 34 CFR 303; and

(b) The facts on which the early intervention system complaint is based.

(4) Alleged violations included in the written complaint shall have occurred not more than 1 year before the date that the complaint is received by the Department of Education/Maryland Infants and Toddlers Program, unless a longer period is reasonable because:

(a) The alleged violation continues for the child or other children; or

(b) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than 3 years before the date on which the complaint is received by the State lead agency.

(5) Within 60 days of the receipt of an early intervention system complaint, the Department of Education/Maryland Infants and Toddlers Program shall:

(a) Carry out an independent on-site investigation, if determined necessary by the Department of Education/Maryland Infants and Toddlers Program;

Key:

Brackets = [Delete]

Underlined = Proposed Amendments

- (b) Give the complainant and other parties to the complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (c) Review all relevant information and make an independent determination as to whether there has been a violation of a requirement of Part C of the Act or 34 CFR 303; and
- (d) Issue a written decision to the complainant and other parties to the complaint that addresses each allegation in the written complaint and contains findings of fact, conclusions, and the reasons for the final decision.
- (6) An extension of the time limit under §B(5) of this regulation shall be granted by the Superintendent of the Department of Education only if exceptional circumstances exist with respect to a particular early intervention system complaint.
- (7) If the written decision includes a finding that there was a failure to provide appropriate services, the Department of Education/Maryland Infants and Toddlers Program shall address:
- (a) How to remediate the denial of services, including, as appropriate, the awarding of monetary reimbursement or other corrective actions appropriate to the needs of the child and family; and
- (b) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

Key:

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Underlined = Proposed Amendments

(8) The Department of Education/Maryland Infants and Toddlers Program shall provide for the effective implementation of the final decision and may include technical assistance activities, negotiations, and corrective actions to achieve compliance.

(9) If a complaint is filed as an early intervention system complaint and as an individual child complaint, the Department of Education/Maryland Infants and Toddlers Program shall:

(a) Set aside any part of the early intervention system complaint that is being addressed in the impartial complaint resolution procedure until the conclusion of the procedure; and

(b) Resolve any issue in the early intervention system complaint that is not part of the impartial complaint resolution procedure within the 60 days established for early intervention system complaints.

(10) If an issue raised in an early intervention system complaint has previously been decided in an impartial complaint resolution procedure involving the same parties:

(a) The impartial complaint resolution procedure decision is binding; and

(b) The Department of Education/Maryland Infants and Toddlers Program shall inform the complainant to that effect.

Key:
Brackets = [Delete]
Underlined = Proposed Amendments

(11) The Department of Education/Maryland Infants and Toddlers Program shall resolve a complaint alleging the failure of a service provider to implement an impartial complaint resolution procedure decision.

(12) The Department of Education/Maryland Infants and Toddlers Program shall, after removing personally identifiable information, transmit to the interagency coordinating council the decisions regarding early intervention system complaints and also make decisions available to the public, in a manner consistent with State and federal confidentiality requirements.]

C. Policies Related to Payment for Services; Fees. (text unchanged)

Key:
Brackets = [Delete]
Underlined = Proposed Amendments