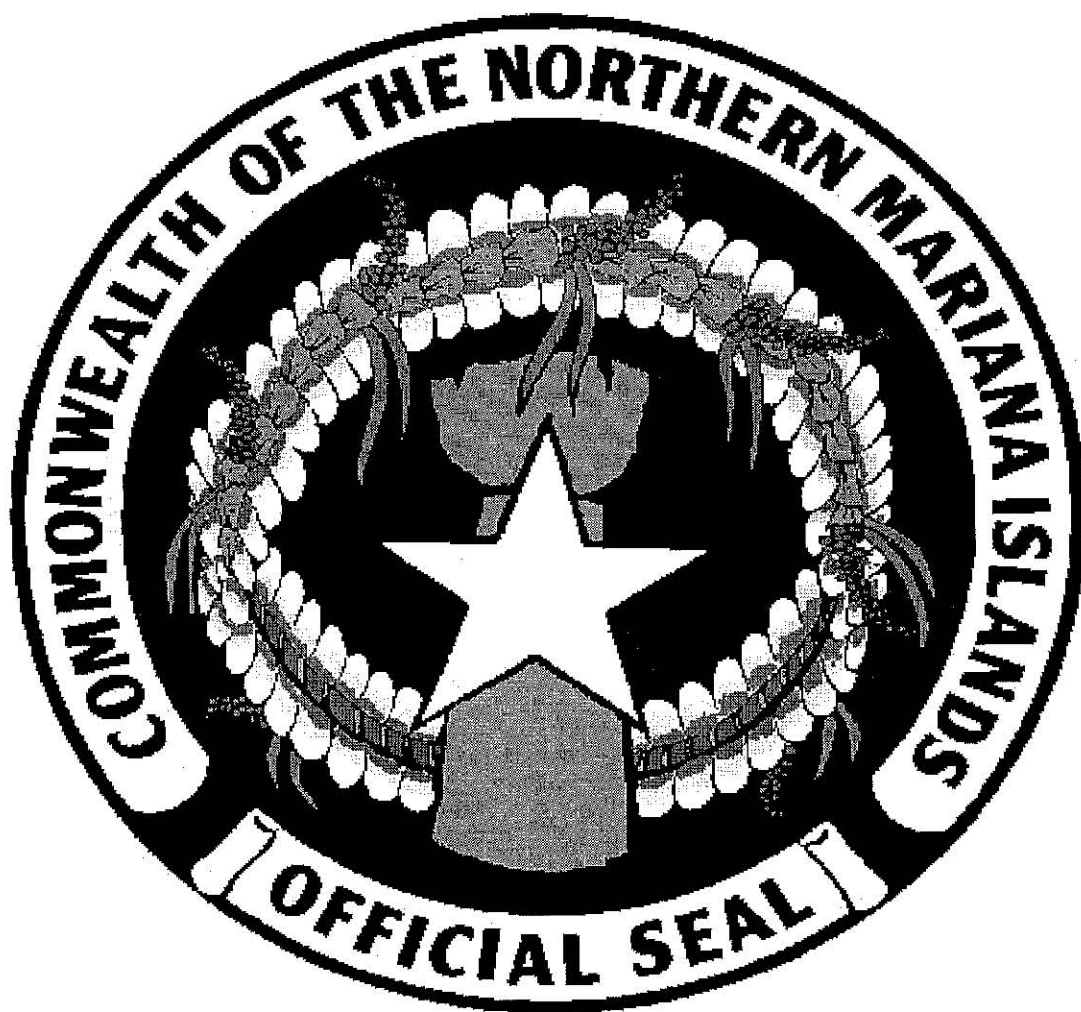


COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

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OCTOBER 29, 2012

COMMONWEALTH REGISTER

VOLUME 34
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER No. 2012-13

DECLARATION OF HEALTH EMERGENCY

WHEREAS, the Commonwealth Healthcare Corporation ("CHC") provides the bulk of necessary healthcare in the Commonwealth, as well as providing all emergency medical services; and

WHEREAS, the disruption of the provision of medical services by the CHC poses a direct threat to the health and safety of the people of the Northern Mariana Islands; and

WHEREAS, the CHC is currently in arrears to payments to vendors providing vital services and equipment and is in arrears in regards to salary payments to necessary employees; and

WHEREAS, CHC deteriorating financial condition affects its ability to maintain adequate infrastructure, equipment and personnel such that it is jeopardizing CHC's federal funding; and

WHEREAS, CHC, due to financial constraints, will have to shut down major functions of the Hospital, thus presenting an imminent threat to the public's health and welfare; and

WHEREAS, Article III §10 of the Constitution of the Commonwealth and section 5101 *et seq.* of Title Three of the Commonwealth Code provide that the Governor has the authority and duty to take the necessary steps to respond to impending disasters;

NOW THEREFORE, A State of Emergency for the Commonwealth of the Northern Mariana Islands is declared due to the imminent threat of the disruption of critical medical services in the Commonwealth and the danger that such a condition poses to the public because of the great increase in otherwise preventable deaths that would result.

In order to meet this imminent threat, the Constitutional authority provided under Article III §10 is invoked, including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and

To ensure that the suspension of regulatory provisions does not lead to financial abuse, this emergency declaration incorporates the March 19, 2012 Memorandum of Understanding (MOU) between CHC and the Department of Finance, Office Management and Budget, and Office of the Attorney General. In addition, any financial reports submitted by the CHC pursuant to the MOU must be submitted with a certification of the person submitting them stating that the reports are a full and accurate under penalty of perjury.

Done this 19th day of October, 2012.


Benigno R. Fitial
Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitiaf
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER NO. 2012-14

SUBJECT: DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH UTILITIES CORPORATION'S IMMINENT FAILURE AND THE NEED TO PROVIDE IMMEDIATE RELIABLE POWER, WATER, AND WASTEWATER SERVICES.

AUTHORITY: I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the Commonwealth of the Northern Mariana Islands.

WHEREAS, ON MAY 18, 2012, THROUGH EXECUTIVE ORDER 2012-05, I issued a Declaration of a State of Disaster Emergency regarding the Commonwealth Utilities Corporation's imminent failure and the need to provide immediate reliable power, water, and wastewater services.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;
- (2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited oil supplies for emergency generation

and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and
- (4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water and rendering unsafe the CNMI's beaches, which are also principal tourist destinations.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

- (1) CUC is owed over \$9 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC"). CUC is owed over \$4 million by residential users and is facing \$2.6 million in accounts payable to vendors who have, in good faith, provided materials and other services;
- (2) There is conflict and potential conflict between CUC and government agencies over money owed and other issues. Such conflict drains resources especially if it results in the parties going to court. Interagency cooperation and oversight is vital to ensure that government agencies can continue its operations without draining CUC's remaining resources.
- (3) The people of the Commonwealth and its government are going through severe economically distressed times. This has put a severe strain on the government to meet its obligation.
- (4) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;
- (5) A unified government approach is necessary to reconcile and resolve the fiscal crises of the government with the fiscal crises of CUC. This can only be achieved through an emergency declaration.

WHEREAS, THERE EXISTS A RENEWABLE ENERGY CRISIS:

- (1) CUC has gone through the RFP process for several renewable energy projects which would bring some relief to high utility rates, which are based on record-high oil prices;

- (2) These contracts must be brought to completion as soon as possible or the customers of CUC will continue to suffer from high oil prices.

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

- (1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;
- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;
- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;
- (4) Adequate technical staff is essential to CUC's rehabilitation work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects and to maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power;
- (5) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstituting a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law*, 4 CMC § 8123(h);
- (6) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;

- (7) CUC has made on-going attempts to train its own current employees to move up to more advanced technical positions by gaining, through classes and training, the certifications that are needed for taking the required tests. However, there are other positions which require certification that it has been unable to fill from within;
- (8) The bottom line on CUC's technical work has been a substantial increase in reliability, specifically the availability of CUC's generation. CUC's transmission and distribution have similarly improved—January 2010 saw 10 hours and 44 minutes of outages; April 2010 saw one minute. It was critical to this latter improvement that CUC had the skilled, trained work force to maintain power lines;
- (9) The impact of an inadequate workforce would be five-fold:
- a. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service.
 - b. Second, the power plants would again degrade, producing more of these outages.
 - c. Third, there would be an indirect effect, increasing rates over the longer term, because small consumers would have to shoulder more of the fixed costs of the CUC system. First, there would be loss of large customers. By contrast, if the hotels were to become part of the system, they could help pay CUC fixed costs, which would lower everyone else's rates. Hotels, businesses, and our residents need reliable, 24/7 power. With unreliable power, CUC would be unable to convince large commercial customers, particularly hotels, to join or rejoin its system. Second, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
 - d. Fourth, the loss of CUC's technical experts would shut down or, at least, cripple the company's increasingly successful efforts to cut losses, particularly theft of service.
 - e. Fifth, with the recovery of the world economy, oil prices can be expected to rise. If CUC's generators become less efficient because technical staff are unavailable to maintain CUC's engines' efficiency, that much more oil would be needed to generate a given amount of electricity. The price rise will thereby harm CUC's customers and electricity-dependent services with higher rates.
- (10) CUC has demonstrated that the required workers are available locally as nonresident workers, and cost-effectively so. CUC's renewal of contracts for

approximately two dozen essential foreign expert workers was necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.

WHEREAS, A BOARD OF DIRECTORS DOES NOT EXIST:

- (1) There is no Board of Directors. CUC has functioned without a Board because it has had to. While CUC's enabling act, reenacted as P.L. 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function.
- (2) Without a Board in place, I still must provide for the continued operations of CUC. The Director needs to be able to negotiate with federal and other agencies.

WHEREAS, BY THIS RENEWAL OF THE DISASTER EMERGENCY DECLARATION, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and
2. The reprogramming of funds necessary to meet this emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Disaster shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, notify the presiding officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. 1 CMC § 7403(a); 3 CMC § 5121(c).

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE 1: I hereby assume all of the executive power of the CUC which shall include any and all powers vested in the board of Directors and the Executive Director.

This executive authority shall be exercised either by me or by my designated Executive Director.

DIRECTIVE 2: All provisions in Title 4 of the Commonwealth Code and P.L. 17-34 that concern PUC regulation of CUC and its actions, and potentially, any oversight of renewable energy contracts are suspended under this Order.

DIRECTIVE 3: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

3 CMC §4531. Restrictions on Government Employment

~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Emergency Declaration. Accordingly, I reserve the right under this Emergency Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 19th day of October 2012.



Benigno R. Fitial
Governor,

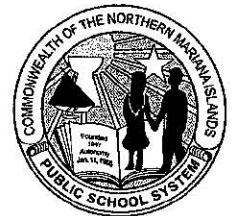
Commonwealth of the Northern Mariana Islands



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • Fax 670 664-3711



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NON PUBLIC SCHOOL REP.

PUBLIC NOTICE OF EMERGENCY REGULATIONS WHICH ARE AMENDMENTS TO THE RULES & REGULATIONS OF THE CNMI PUBLIC SCHOOL SYSTEM

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The
Commonwealth of the Northern Mariana Islands Public School System ("PSS")
finds that:

TEACHER REPRESENTATIVE (1) The attached rules and regulations for Early Intervention Program (EIP)
shall be adopted immediately on an emergency basis because the public interest so
requires, for the reasons stated below (1 CMC § 9104(b), (c); 1 CMC §
9105(b)(2)); and

(2) The same rules and regulations shall be adopted, after a proper notice and
comment period, as permanent regulations pursuant to the attached Notice of
Proposed Rules and Regulations and the Administrative Procedure Act, 1 CMC §
9104(a).

AUTHORITY: The proposed amendments to PSS regulations are promulgated
pursuant to the Board's authority as provided by Article XV of the CNMI
Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

The Administrative Procedure Act provides that an agency may adopt an
emergency regulation upon fewer than thirty (30) days' notice if it states its reasons
in writing.

(b) If an agency finds that the public interest so requires, or that an
imminent peril to the public health, safety, or welfare requires adoption of a
regulation upon fewer than 30 days' notice, and states in writing its reasons
for that finding, it may, with the concurrence of the Governor, proceed
without prior notice or hearing or upon any abbreviated notice and hearing
that it finds practicable, to adopt an emergency regulation. The regulations
may be effective for a period of not longer than 120 days, but the adoption
of an identical regulation under subsections (a)(1) and (a)(2) of this section
is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance
with this section.....

1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The purpose of these regulations is to provide procedural guidelines for providing services to the CNMI Public in need of early intervention services for children with special needs.

THE SUBJECTS AND ISSUES INVOLVED: These regulations set forth the policy and procedure which govern PSS for delivery of Infant and Toddler services.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The State Board of Education has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASON FOR EMERGENCY ADOPTION: The State Board of Education finds that the public interest requires adoption of these regulations on an emergency basis because the Federal Rules under 34 CFR Part C were recently amended and changed. In order for the PSS to stay current with its grant requirements, PSS must implement and adopt rules and regulations in conformance with the federal regulations.

In addition this regulation will allow PSS to continue to effectively serve those CNMI families with children who have special needs. The Infant and Toddler Program allows PSS to provide for therapy, training and services to the children and their families.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section(s) on emergency and proposed regulations (*see* 1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

The State Board of Education shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC § 9105(b)(2)).

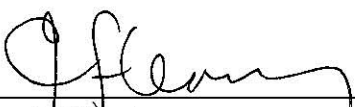
IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105(b)(2))

TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Rules and Regulations will specify comment procedures.

This emergency regulation was approved first by the Fiscal, Personnel & Administration (FPA) Committee on their meeting of April 12, 2012 and then by the full State Board of Education at a Regular Meeting of April 16, 2012.

Submitted by: 
Mary Lou S. Ada, J.D.
Chairperson, State Board of Education

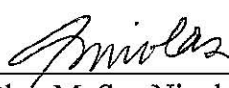
Sept 28, 2012
Date

Received by: 
Esther S. Fleming
Special Assistant for Administration

10/11/12
Date

Concurred by: 
BENIGNO R. FITIAL
Governor

10/19/12
Date

Filed and
Recorded by: 
Esther M. San Nicolas
Commonwealth Register

10.23.2012
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 4th day of October, 2012.


VIOLA ALEPUYO
Acting Attorney General

**The Public School System
Statewide System of Early Intervention Services
for
Infants and Toddlers with Disabilities**

Section A

Purpose of Early Intervention

The purpose of the Early Intervention Program for Infants and Toddlers with Disabilities is to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services to infants and toddlers with disabilities and their families and to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources. To enhance the CNMI's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families. To enhance the capacity of the CNMI service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, and rural children, and infants and toddlers in foster care.

Section B

Definitions Used in Early Intervention

The definitions of terms used in this Policy and Procedure document conform to 34 CFR Part 303; Early Intervention Program for Infants and Toddlers with Disabilities, as amended on September 28, 2011 including any reference to section numbers.

Act means the Individuals with Disabilities Education Act, as amended.

At-risk infant or toddler means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. At the CNMI's discretion, **at-risk infant or toddler** may include an infant or toddler who is at risk of experiencing developmental delays because of biological or environmental factors that can be identified (including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure).

Child means an individual under the age of six and may include an infant or toddler with a disability, as that term is defined in 34 CFR §303.21.

Consent means that;

- The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language.
- The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought and the consent form describes that activity and lists the early intervention records, if any, that will be released and to whom they will be released.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

Council means the CNMI Interagency Coordinating Council.

Day means calendar day, unless otherwise indicated.

Developmental Delay when used with respect to a child residing in the CNMI, has the meaning given that term by the CNMI in Section C of this document.

Early Intervention Service Program or EIS program means an entity designated by the Public School System for reporting under 34 CFR §§303.700 through 303.702.

Early Intervention Service Provider or EIS Provider means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives Federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the State under Part C of the Act. An EIS provider is responsible for;

- Participating in the multidisciplinary individualized family service plan (IFSP) Team's ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant's or toddler's family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;
- Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and

- Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

Early Intervention Services means developmental services that are;

- Provided under public supervision.
- Are selected in collaboration with the parents.
- Are provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees.
- Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP Team in any one or more of the following areas, including;
 - Physical development
 - Cognitive development
 - Communication development
 - Social or emotional development;
 - Adaptive development;
- Meet the standards of the CNMI in which the early intervention services are provided, including the requirements of Part C of the Act.
- Include services identified in this section.
- Are provided by qualified personnel including the types of personnel listed in this section.
- To the maximum extent appropriate, are provided in natural environments and are provided in conformity with an IFSP.

Types of Early Intervention Services include the following services;

Assistive Technology Device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

Assistive Technology Service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes;

- The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;
- Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
- Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and
- Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

Audiology Services include;

- The identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques.
- The determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedure.
- Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment.
- The provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services.
- Provision of services for prevention of hearing loss and
- Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

Family Training, Counseling, and Home Visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

Medical Services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

Nursing Services include;

- The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems.
- The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development and the administration of medications, treatments, and regimens prescribed by a licensed physician.

Nutrition Services include;

- Conducting individual assessments in nutritional history and dietary intake.
- Anthropometric, biochemical, and clinical variables.
- Feeding skills and feeding problems.
- Food habits and food preferences.
- Developing and monitoring appropriate plans to address the nutritional needs of children eligible for early intervention services based and
- Making referrals to appropriate community resources to carry out nutrition goals.

Occupational Therapy include;

- Services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, adaptive play, sensory, motor, and postural development.
- These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings and include identification, assessment, and intervention.
- Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills.
- Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

Physical Therapy include;

- Services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation.
- These services include screening, evaluation, and assessment of children to identify movement dysfunction.
- Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problem and
- Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

Psychological Services include;

- Administering psychological and developmental tests and other assessment procedures.
- Interpreting assessment results.
- Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
- Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

Service Coordination Services (case management) mean services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under this part. Each infant or toddler with a disability and the child's family must be provided with one service coordinator who is responsible for:

- Coordinating all services required under this part across agency lines and serving as the single point of contact for carrying out the activities specific service coordination services.
- Service coordination is an active, ongoing process that involves assisting parents of infants and toddlers with disabilities in gaining access to and coordinating the provision of, the early intervention services required under this part; and
- Coordinating the other services identified in the IFSP under 34 CFR §303.344(e) that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.

Specific Service Coordination Services include;

- Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for a needed services and scheduling appointments for infants and toddlers with disabilities and their families.
- Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided.
- Coordinating evaluations and assessments.
- Facilitating and participating in the development, review, and evaluation of IFSPs;.
- Conducting referral and other activities to assist families in identifying available EIS providers;.
- Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner.
- Conducting follow-up activities to determine that appropriate Part C services are being provided.
- Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources.
- Coordinating the funding sources for services required under this part; and

- Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

Use of the Term Service Coordination or Service Coordination Services The lead agency's or an EIS provider's use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act--Medicaid), for purposes of claims in compliance with the requirements of §§303.501 through 303.521 (Payor of last resort provisions).

Sign language and Cued Language Services include;

- Teaching sign language
- Cued language, and auditory/oral language
- Providing oral transliteration services, such as amplification, and
- Providing sign and cued language interpretation

Social Work Services include;

- Making home visits to evaluate a child's living conditions and patterns of parent-child interaction.
- Preparing a social or emotional developmental assessment of the infant or toddler within the family context.
- Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents.
- Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and
- Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

Special Instruction include;

- The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.
- Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability.
- Providing families with information, skills, and support related to enhancing the skill development of the child; and
- Working with the infant or toddler with a disability to enhance the child's development.

Speech-language Pathology Services include;

- Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills.
- Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills, and
- Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

Transportation and Related Costs include the cost of travel and other costs that is necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

Vision Services means the evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development. Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both and

communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

Qualified Personnel The following are the types of qualified personnel who provide early intervention services;

- Audiologists
- Family therapists
- Nurses
- Occupational therapists
- Orientation and mobility specialists
- Pediatricians and other physicians for diagnostic and evaluation purposes
- Physical therapist
- Psychologists
- Registered dietitians
- Social workers
- Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness)
- Speech and language pathologists.
- Vision specialists, including ophthalmologists and optometrists.

Other Services The services and personnel identified and defined above do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in early intervention service provider paragraph or of another type of personnel that may provide early intervention services in accordance with this part, provided such personnel meet the requirements of *qualified personnel*.

Elementary School means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under CNMI law.

Free Appropriate Public Education or FAPE, means special education and related services that are provided at public expense, under public supervision and direction, and without charge. Meet the standards of the CNMI educational agency, the Public School System, including the requirements of Part B of the Act. Include an appropriate preschool, elementary school, or secondary school education in the CNMI and are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

Health Services mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this part during the time that the child is eligible to receive early intervention services. The term includes;

- Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
- Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.
- The term does not include services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus).
- Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose) or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
- Nothing in this part limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.
- Nothing in this part prevents the EIS provider from routinely checking that either the hearing aid or the

external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly.

- Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

Homeless Children means children who meet the definition given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

Include or including means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

Indian; Indian Tribe means an individual who is a member of an Indian tribe.

Indian Tribe means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*). Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian Tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

Individualized Family Service Plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under this part and the infant's or toddler's family that is based on the evaluation and assessment described in 34 CFR §303.321, includes the content specified 34 CFR §303.344. The IFSP is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained and is developed in accordance with the IFSP procedures.

Infant or Toddler with a Disability means an individual under three years of age who needs early intervention services because the individual is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas;

- Cognitive development.
- Physical development, including vision and hearing.
- Communication development.
- Social or emotional development.
- Adaptive development; or

Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and includes;

- Conditions such as chromosomal abnormalities
- Genetic or congenital disorders
- Sensory impairments
- Inborn errors of metabolism
- Disorders reflecting disturbance of the development of the nervous system
- Congenital infections
- Severe attachment disorders; and
- Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

Infant or Toddler with a Disability may include, at the CNMI's discretion, an at-risk infant or toddler.

Infant or Toddler with a Disability may include, at the CNMI's discretion, a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part until the child enters, or is eligible under CNMI law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children ages three and older who receive Part C services pursuant to §303.211; and a written notification to parents of a child with a disability who is eligible for services under section 619 of the Act and who previously received services under this part of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619 of the Act.

Lead Agency means the agency designated by the CNMI's Governor under section 635(a)(10) of the Act and §303.120 that receives funds under section 643 of the Act to administer the CNMI's responsibilities under Part C of the Act.

Local Educational Agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

Educational Service Agencies and Other Public Institutions or Agencies: The term includes the following:

- **Educational service agency**, defined as a regional public multiservice agency authorized by State law to develop, manage, and provide services or programs to LEAs and recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.
- Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under State law.
- Entities that meet the definition of **intermediate educational unit** or **IEU** in section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition an **intermediate educational unit** or **IEU** means any public authority other than an LEA that is under the general supervision of a State educational agency;
- Is established by State law for the purpose of providing FAPE on a regional basis; and
- Provides special education and related services to children with disabilities within the State.
- **BIE-funded schools**. The term includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to evaluation of the child and assessments of the child and family may include one individual who is qualified in more than one discipline or profession. The IFSP Team must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator.

Native Language, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph below. And for evaluations and assessments conducted the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

Native Language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

Natural Environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of *early intervention services in natural environments*.

Parent means a biological or adoptive parent of a child. A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent. A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State). An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the

child lives, or an individual who is legally responsible for the child's welfare or a surrogate parent who has been appointed in accordance with §303.422 or section 639(a)(5) of the Act.

Except as provided in the paragraph above, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

Parent Training and Information Center means a center assisted under section 671 or 672 of the Act.

Personally Identifiable Information means personally identifiable information as defined in 34 CFR 99.3, as amended, except that the term "student" in the definition of personally identifiable information in 34 CFR 99.3 means "child" as used in this part and any reference to "school" means "EIS provider" as used in this part.

Public Agency means the lead agency and any other agency or political subdivision of the State.

Qualified Personnel means personnel who have met CNMI approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

Scientifically Based Research has the meaning given the term in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to "education activities and programs" refers to "early intervention services."

Secretary means the Secretary of Education.

State except as provided in §303.732(d)(3) (regarding State allotments under this part), State means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

State Educational Agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. The term includes the agency that receives funds under sections 611 and 619 of the Act to administer the State's responsibilities under Part B of the Act.

Ward of the State means a child who, as determined by the State where the child resides, is;

1. A foster child
2. A ward of the State; or
3. In the custody of a public child welfare agency

Exception: Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §303.27.

Section C

Minimum Components of the Statewide System

The minimum components of the CNMI statewide system include the CNMI definition of developmental delay, availability of early intervention services, evaluation, assessment and nondiscriminatory procedures, individualized family service plans, comprehensive child find system, public awareness program, central directory, comprehensive system of personnel development, personnel standards, the PSS role in supervision, monitoring, funding, interagency coordination and other responsibilities, the CNMI policy for contracting or otherwise arranging for services, reimbursement procedures, procedural safeguards, data collection, the CNMI interagency coordinating council, and early intervention in natural environments.

Definition of Developmental Delay

The CNMI provides early intervention services to infants and toddlers, under three years of age, who need early intervention services because the individual has a developmental delay or an established condition that has a high probability of resulting in a delay.

Developmental Delay:

Eligibility may be established for infants and toddlers, under three years of age, who are experiencing a developmental delay, who have been identified by a qualified, multidisciplinary team, as measured by appropriate diagnostic instruments and procedures, as having a 25% delay in functioning in one or more of the following areas;

- Cognitive Development.
- Physical Development, including Vision and Hearing
- Communication Development
- Social or emotional Development
- Adaptive Development

Established Condition:

Eligibility may be established by the identification of a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Included in this group are individuals under age three who will need early intervention services because of the natural history of their condition, even though they may not exhibit development delays at the time of diagnosis. Such conditions include but are not limited to:

- Conditions such as chromosomal abnormalities
- Genetic or congenital disorders
- Sensory impairments
- Inborn errors of metabolism
- Disorders reflecting disturbance of the development of the nervous system
- Congenital infections
- Severe attachment disorders; and
- Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

Informed Clinical Opinion

Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. Informed clinical opinion may be used as an independent basis to establish a child's eligibility even when other instruments do not establish or confirm eligibility. In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility. Informed Clinical Opinion is defined as procedures including clinical assessment and observation used by qualified professional under CNMI early intervention standards to document the eligibility of children whose disability or developmental delay cannot be determined solely by a standardized measure or for whom the standardized procedures are not appropriate for a given age or developmental area.

At-risk Infant or Toddler

The CNMI **does not** include individuals under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual. These include infants or toddlers who are at risk of experiencing developmental delays because of biological or environmental factors that

can be identified, including low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, a history of abuse or neglect, and being directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

Availability of Early Intervention Services

Appropriate and culturally competent Early Intervention Services, based on scientifically based research to the extent practicable, are available to all infants and toddlers with disabilities and their families including infants and toddlers with disabilities who live in all geographic locations in the CNMI, including the islands of Rota and Tinian and infants and toddlers with disabilities and their families who are homeless children and children who are wards of the State. Early Intervention Services are developmental services that are provided under public supervision, selected in collaboration with the parents, are provided at no cost to the parent, are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development. Early Intervention Services meet the CNMI standards, are provided by qualified personnel in the natural environment to the maximum extent appropriate and are provided in conformity with an Individualized Family Service Plan (IFSP). Early Intervention Services, as defined in the definition section used in Early Intervention include;

- Assistive Technology Device
- Assistive Technology Service
- Audiology Services
- Family Training, Counseling, and Home Visits
- Medical Services
- Nursing Services
- Nutrition Services
- Occupational Therapy
- Physical therapy
- Psychological Services
- Service Coordination Services (case management)
- Sign language and Cued Language Services
- Social Work Services
- Special Instruction
- Speech-language Pathology Services Transportation and Related Costs
- Vision Services
- Qualified Personnel
- Other Services (as defined in Section A of this document)

Pre-Referral Procedures: Public Awareness Program

An effective Public Awareness and Child Find system is implemented that focuses on the early identification of infants and toddlers with disabilities and provides information to parents of infants and toddlers through primary referral sources. Information includes the purpose and scope of Early Intervention Services and how to make referrals. The Early Intervention program has a rigorous standard for appropriately identifying infants and toddlers with disabilities for early intervention services that will reduce the need for future services.

Information for Parents: Preparation and Dissemination:

The Early Intervention Program prepares information on the availability of Early Intervention Services and other services in the CNMI and disseminates the information to all primary referral sources, especially hospitals, private clinics, and physicians. The information is given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications. The Early Intervention Program also disseminates the Public Awareness and Child Find procedures, including **timelines**, to all primary referral sources, especially hospitals, private clinics, and physicians.

Parent Information Packets

The information packets disseminated to primary referral sources for parents includes a description of the Early Intervention Service available in the CNMI, a description of the Child Find process, how to make a referral for children under age three for an evaluation or early intervention services, copies of the referral forms, the central

directory and contact information for the Children Developmental Assistance Center.

Welcome Baby Packets, to be disseminated to parents, includes developmental checklists, brochures on child development, new born hearing screening, autism, understanding signals of pre-mature infants, the central directory and contact and location information for the Children Developmental Assistance Center, the point of entry in Saipan and the Head Start Parent Resource Center on Rota and Tinian.

Information Specific to Toddlers with Disabilities

The Early Intervention Program informs parents of toddlers with disabilities of the availability of preschool special education services, under section 619 of IDEA, not fewer than 90 days prior to the toddler's third birthday.

Pre-Referral Procedures: Child Find System

The comprehensive child find system is consistent with Part B of the Act (see 34 CFR 300.111) and includes a system for making referrals to the Early Intervention Program under Part C including timelines and provides for the participation of the primary referral sources. The comprehensive child find system ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under Part C that will reduce the need for future services.

All infants and toddlers with disabilities in the CNMI who are eligible for early intervention services under Part C are identified, located, and evaluated, including infants and toddlers with disabilities who are homeless, in foster care, and wards of the State. Infants and toddlers under age three who are the subject of a substantiated case of child abuse or neglect or are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure are required to be referred to the Early Intervention Program.

Coordination

In order to ensure there is no unnecessary duplication of effort by various programs in the CNMI, the Early Intervention Program, with the advice and assistance of the Interagency Coordinating Council, coordinates with all other major efforts to locate and identify children by other agencies responsible for administering the various education, health, and social service programs relevant to early intervention. The Early Intervention Program makes use of the resources available through each public agency and EIS providers in the CNMI to implement the child find system in an effective manner. The effort is coordinated with the;

- o Program authorized under Part B of the Act
- o Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a));
- o Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B))
- o Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
- o Head Start Act (the CNMI does not have Early Head Start programs)
- o Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
- o The Department of Community and Cultural Affairs responsible for administering Child protection and child welfare programs, foster care, the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a)), child care programs, and the services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*)
- o Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and
- o Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*).

Referral Procedure

Primary Referral Sources are required to fill out referral forms provided to them by the Early Intervention Program. The referral forms are faxed or hand delivered to the Early Intervention Program or the Primary Referral source calls the Early Intervention Program to pick up the form.

Referral Timelines

Primary Referral sources must refer a child under the age of three as soon as possible but in no case more than seven (7) days after the child has been identified.

Referral of Specific At-Risk Infants and Toddlers

Primary Referral sources must also refer infants and toddlers under age three who are the subject of a substantiated case of child abuse or neglect or are identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure are required to be referred to the Early Intervention Program.

Primary Referral Sources

Primary Referral sources include;

- Hospitals, including prenatal and postnatal care facilities
- Physicians
- Parents, including parents of infants and toddlers
- Child care programs and early learning programs
- Schools
- Public health facilities
- Other public health or social service agencies
- Other clinics and health care providers
- Public agencies and staff in the child welfare system, including child protective service and foster care
- Homeless family shelters
- Domestic violence shelters and agencies

Central Directory

Development and revisions to the CNMI central directory is a coordinated effort among various public and private agencies in the CNMI including the Head Start Program, the Ayuda Network, the Developmental Disabilities Council, the Maternal Child Health program, Protection and Advocacy System, Department of Community and Cultural Affairs, Special Education and the Early Intervention Program. The Central Directory is accessible to the general public through hard copies and it is posted on agency websites. It includes accurate, up-to-date information about public and private early intervention services, resources, and experts available in the CNMI. Professional and other groups including parent support, and training and information centers, such as those funded under the Act, that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families and research and demonstration projects being conducted in the CNMI relating to infants and toddlers with disabilities.

Evaluation, Assessment, and Nondiscriminatory Procedures

Each infant or toddler with a disability are provided a timely, comprehensive, multidisciplinary evaluation of their functioning and a family-directed identification of the needs of their family to assist appropriately in the development of the infant or toddler. The Early Intervention program has a rigorous standard for appropriately identifying infants and toddlers with disabilities for early intervention services that will reduce the need for future services.

Post-Referral Procedures--Screenings, Evaluations, and Assessments

Post-Referral Timeline (45 days)

The initial evaluation and the initial assessments of the child and family and the initial IFSP meeting must be completed within 45 days from the date the Early Intervention Program receives the referral of the child. The 45-day timeline does not apply for any period when:

- The child or parent is unavailable to complete the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or
- The parent has not provided consent for the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the Early Intervention Program to obtain parental consent.

Exceptional Family Circumstance Documentation

The Early Intervention Program must;

- Fill out the Reason for Delay form to document the exceptional family circumstances or repeated attempts

- by the Early Intervention Program to obtain parental consent.
- File the Reason for Delay form in the child's early intervention records
- Complete the initial evaluation, the initial assessments of the child and family, and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances no longer exist or parental consent is obtained for the initial evaluation, and the initial assessment of the child.
- Develop and implement an interim IFSP, to the extent appropriate and consistent with procedures for an Interim IFSPs
- The initial family assessment must be conducted within the 45-day timeline if the parent concurs and even if other family members are unavailable.

Screening Procedures (optional)

The PSS **has not adopted** procedures to screen children under the age of three who have been referred to the Early Intervention program to determine whether they are suspected of having a disability under the Early Intervention Program.

Evaluation of the Child and Assessment of the Child and Family

Each child under the age of three who is referred for evaluation or early intervention services under Part C and suspected of having a disability, upon obtaining parental consent, receives a timely, comprehensive, multidisciplinary evaluation unless eligibility is established by medical and other records without conducting an evaluation of the child if those records indicate that the child's level of functioning in one or more of the developmental areas constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability. The multidisciplinary evaluation must include the use of evaluation instruments that will describe the child's functioning in each of the developmental areas and establish a 25% delay in one or more areas of the child's development.

If the child is determined eligible as an infant or toddler with a disability, a multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs is conducted. A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler is conducted. The assessments of the child and family are described below and these assessments may occur simultaneously with the evaluation, provided that the requirements of this section are met.

- **Evaluation** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of infant or toddler with a disability.
- **Initial evaluation** refers to the child's evaluation to determine his or her initial eligibility for Early Intervention
- **Assessment** means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility for Early Intervention and includes the assessment of the child, and the assessment of the child's family.
- **Initial assessment** refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

Medical and Other Records

A child's medical and other records may be used to establish eligibility, without conducting an evaluation of the child, under Early Intervention if those records indicate that the child's level of functioning in one or more of the developmental areas constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability. If medical and other records establish the child's Part C eligibility, the Early Intervention Program must conduct assessments of the child and family in accordance with the description above.

Informed Clinical Opinion

Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. Informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C even

when other instruments do not establish eligibility. However, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility as described above.

Qualified Personnel

All evaluations and assessments of the child and family are conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

Native Language

Unless clearly not feasible to do so, all evaluations and assessments of a child are conducted in the native language of the child, and family assessments are conducted in the native language of the family members being assessed, in accordance with the definition of native language in 34 CFR §303.25.

Procedures for Evaluation of the Child

In conducting an evaluation, no single procedure is used as the sole criterion for determining a child's eligibility under Part C. The Early Intervention Program will include the administration of an evaluation instrument that identifies the child's level of functioning in each of the developmental areas. The CNMI criteria is a 25% delay in one or more areas of development. The Early Intervention Program will also take the child's history, including interviews with the parent and gather information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs. The Early Intervention Program will review medical, educational, or other records.

Procedures for Assessment of the Child and Family

Qualified personnel conduct an assessment of each infant or toddler with a disability in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child includes a review of the results of the evaluation conducted, personal observations of the child and the identification of the child's needs in each of the developmental areas.

Qualified personnel conduct a family-directed assessment in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment is **voluntary** on the part of each family member participating in the assessment, is based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and includes the family's description of its resources, priorities, and concerns related to enhancing the child's development.

Determination That A Child Is Not Eligible

If, based on the evaluation conducted, the Early Intervention Program determines that a child is not eligible under Part C, the Early Intervention Program provides the parent with prior written notice, and includes in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms, such as requesting a due process hearing or mediation or filing a State complaint.

Individualized Family Service Plan (IFSP)

For each infant or toddler with a disability and his or her family, an Individualized Family Service Plan (IFSP), is developed, reviewed and implemented by a multidisciplinary team, which includes the parent and includes service coordination services.

Procedures for IFSP Development, Review, and Evaluation

Meeting to Develop Initial IFSP: Timelines

For a child referred to the Early Intervention Program and determined to be eligible for Early Intervention Services as an infant or toddler with a disability, a meeting to develop the initial IFSP is conducted within 45 days from the date the Early Intervention Program received the referral, unless exceptional family circumstances exists that are documented in the child's file.

Periodic Review

A review of the IFSP for a child and the child's family is conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The review may be carried out by a meeting or by

another means that is acceptable to the parents and other participants. The purpose of the periodic review is to determine the degree to which progress toward achieving the results or outcomes identified in the IFSP is being made and whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

Annual Meeting to Evaluate the IFSP

A meeting is conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted are used in determining the early intervention services that are needed and will be provided.

Accessibility and Convenience of Meetings

IFSP meetings are conducted in settings and at times that are convenient for the family and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements are made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

Parental Consent

The contents of the IFSP is fully explained to the parents and informed written consent, must be obtained, prior to the provision of early intervention services described in the IFSP. Each early intervention service is provided as soon as possible after the parent provides consent for that service but in no case later than start date indicated on the IFSP.

Participants of Initial and Annual IFSP Team Meeting and Periodic Review

Each initial meeting and each annual IFSP Team meeting to evaluate the IFSP includes the following participants:

- The parent or parents of the child
- Other family members, as requested by the parent, if feasible to do so
- An advocate or person outside of the family, if the parent requests that the person participate
- The service coordinator designated by the Early Intervention Program to be responsible for implementing the IFSP
- A person or persons directly involved in conducting the evaluations and assessments
- As appropriate, persons who will be providing early intervention services to the child or family

If a person listed above is unable to attend a meeting, arrangements are made for the person's involvement through other means, including one of the following participating in a telephone conference, having a knowledgeable authorized representative attend the meeting, making pertinent records available at the meeting.

Periodic Review: Each periodic review provides for the participation of persons listed above. If conditions warrant, provisions are made for the participation of other representatives identified in this section.

Content of an IFSP: Information About the Child's Status

The IFSP includes a statement of the infant or toddler with a disability's present levels of physical development, including vision, hearing, and health status, cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments.

Content of an IFSP: Family Information

With the concurrence of the family, the IFSP includes a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the family-directed assessment of the family.

Results or Outcomes

The IFSP includes a statement of the measurable results or measurable outcomes expected to be achieved for the child, including pre-literacy and language skills, as developmentally appropriate for the child and family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes identified in the IFSP is being made and whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

Early Intervention Services

The IFSP includes a statement of the specific early intervention services, based on peer-reviewed research, to the extent practicable, that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes including;

- The length, duration, frequency, intensity, and method of delivering the early intervention services
- The location of the early intervention services
- The payment arrangements, if any
- **Frequency and Intensity** means the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis.
- **Method** means how a service is provided
- **Length** means the length of time the service is provided during each session of that service (such as an hour or other specified time period); and
- **Duration** means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in his or her IFSP).
- **Location** means the actual place or places where a service will be provided.

Natural Environment

The IFSP includes a statement that each early intervention service is provided in the **natural environment** for that child or service to the maximum extent appropriate, or a justification as to why an early intervention service will not be provided in the natural environment. The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, is made by the IFSP Team, which includes the parent and other team members, based on the child's outcomes that are identified by the IFSP team and are consistent with the provisions in 34 CFR §§303.13(a)(8), 303.26, and 303.126 of IDEA. For children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

Other Services

To the extent appropriate, the IFSP also identifies medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded Early Intervention Program and if those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

Dates and Duration of Services

The IFSP includes the projected date for the initiation of each early intervention service which the date must be as soon as possible after the parent consents to the service and the anticipated duration of each service.

Service Coordinator

The IFSP includes the name of the service coordinator from the profession most relevant to the child's or family's needs or who is otherwise qualified to carry out all applicable responsibilities under the Early Intervention Program, who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services and coordination with other agencies and persons. In meeting this requirement, the term "profession" includes "service coordination."

Transition from Part C Services

The IFSP includes the **steps and services** to be taken to support the smooth transition of the child, from Part C services to preschool services under Part B of the Act, to the extent that those services are appropriate, to early intervention services or other appropriate services. The required "**steps**" include;

- Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
- Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting
- Confirmation that child find information about the child has been transmitted to the Part B program or other relevant agency, and the transmission of additional information needed by the Part B program to ensure continuity of services from the Part C program to the Part B program, including a copy of the

- most recent evaluation and assessments of the child and the family and most recent IFSP developed
- Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

Interim IFSPs: Provision of Services Before Evaluations and Assessments are Completed

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in, if parental consent is obtained and an interim IFSP is developed that includes;

- The name of the service coordinator who will be responsible, for implementing the interim IFSP and coordinating with other agencies and persons; and
- The early intervention services that have been determined to be needed immediately by the child and the child's family
- Evaluations and assessments are completed within the 45-day timeline

Responsibility and Accountability

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

Comprehensive System of Personnel Development (CSPD)

The comprehensive system of personnel development, includes training of paraprofessionals and primary referral sources with respect to the basic components of early intervention services available in the CNMI. The comprehensive system of personnel development includes;

- Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers
- Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and
- Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, an elementary school program under Part B of the Act, or another appropriate programs.
- Training personnel in the emotional and social development of young children
- Training personnel to support families in participating fully in the development and implementation of the child's IFSP.

Personnel Standards

The Public School System maintains qualification standards for personnel necessary to carry out the purposes of the Early Intervention Program. Personnel are appropriately and adequately prepared and trained consistent with CNMI State Board of Education approved or CNMI State Board of Education recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services. The PSS uses paraprofessionals and assistants who are appropriately trained and supervised in accordance with the Board of Education policies, to assist in the provision of Early Intervention Services under Part C of the Act to infants and toddlers with disabilities. The PSS makes an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, in all geographic areas, including the islands of Tinian and Rota where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the qualification standards.

Supervision, Monitoring, Funding, Interagency Coordination and Other Responsibilities

The Public School System (PSS), the designated Lead Agency, is responsible for;

1. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.
2. The monitoring of programs and activities used by the CNMI to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act), to ensure that the CNMI complies with Part C of the Act, including;

3. Monitoring agencies, institutions, organizations, and EIS providers used by the CNMI to carry out Part C of the Act
4. Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these regulations
5. Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers
6. Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and
7. Conducting these activities and any other activities required by the CNMI under those sections.
8. The identification and coordination of all available resources for early intervention services within the CNMI, including those from Federal, State, local, and private sources, consistent with subpart F of Part C of IDEA
9. The assignment of financial responsibility in accordance with subpart F of IDEA
10. The development of procedures in accordance with subpart F of IDEA to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.
11. The resolution of intra- and interagency disputes in accordance with subpart F of IDEA.
12. The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with 34 CFR §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with CNMI law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of IDEA.

Contracting or Otherwise Arranging for Services

The Public School System contracts or makes other arrangements with public or private individuals or agency service providers to provide Early Intervention Services when necessary. All contracts or other arrangements with public or private individuals or agency service providers include a requirement that all Early Intervention Services must meet CNMI standards and be consistent with the provisions of IDEA and the Education Department General Administrative Regulations in 34 CFR part 80.

Prior to awarding contracts the PSS determines a need for the service and circulates a Request for Proposals for a specified number of days. The RFP describes the area of need, the scope of work to be performed, PSS policies regarding the system of payment provisions, use of public and private insurance, benefits and fees, the funding source, and other general contract requirements. Public or private providers must respond to Request for Proposals as per the PSS Procurement Regulations by submitting proposals. All contracts with Early Intervention Providers include PSS policies regarding the system of payment provisions, use of public and private insurance, benefits and fees and confidentiality requirements. Contractors must acknowledge and abide by the PSS policies. Contracts are awarded to responsible contractors who meet the PSS Procurement requirements.

Reimbursement Procedures

If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, Early Intervention funds may be used to pay the provider of services for services and functions authorized under Early Intervention, including health services, as defined in 34 CFR §303.16, but not medical services, functions of the child find system described in 34 CFR §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in 34 CFR §303.321, pending reimbursement from the agency or entity that has ultimate responsibility for the payment. Within a reasonable time after the determination that another agency or entity had ultimate responsibility for payment, the PSS will inform the agency of the reimbursable amount to PSS and an acceptable time period to submit payment not to exceed 60 days from date of notice.

Data Collection

The CNMI compiles and reports timely and accurate data that meets the requirements of section 34 CFR §§303.700 through 303.702 and 303.720 through 303.724 of IDEA. The data system includes a description of the process that the PSS uses to compile data on infants or toddlers with disabilities receiving early intervention services, including a description of the PSS's sampling methods if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the Act and §§303.700 through 303.707 and 303.720 through 303.724.

Section D

Interagency Coordinating Council

Establishment of Council

The CNMI has established an Interagency Coordinating Council (Council), appointed by the Governor. The membership of the Council reasonably represents the population of the CNMI. The Governor requires the Council to select its chairperson. Any member of the Council who is a representative of PSS may not serve as the chairperson of the Council.

Composition

The Council must be composed as follows:

1. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.
2. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.
3. At least 20 percent of the members must be public or private providers of early intervention services.
4. At least one member must be from the State legislature.
5. At least one member must be involved in personnel preparation.
6. At least one member must;
 - a. Be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and
 - b. Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.
7. At least one member must;
 - a. Be from the SEA responsible for preschool services to children with disabilities; and
 - b. Have sufficient authority to engage in policy planning and implementation on behalf of the SEA.
8. At least one member must be from the agency responsible for the State Medicaid and CHIP program.
9. At least one member must be from a Head Start or Early Head Start agency or program in the State.
10. At least one member must be from a State agency responsible for child care.
11. At least one member must be from the agency responsible for the State regulation of private health insurance.
12. At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
13. At least one member must be a representative from the State child welfare agency responsible for foster care.
14. At least one member must be from the State agency responsible for children's mental health.
15. The Governor may appoint one member to represent more than one program or agency listed in line 7 through 14.

The Council may include other members selected by the Governor. No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

Meetings

The Council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary. The meetings must;

- Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
- To the extent appropriate, be open and accessible to the general public; and
- As needed, provide for interpreters for persons who are deaf and other necessary services for Council members and participants. The Council may use funds under this part to pay for those services.

Use of funds by the Council

Subject to the approval by the Governor, the Council may use funds under this part to;

- Conduct hearings and forums;
- Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);
- Pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;
- Hire staff; and
- Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.
- Council members must serve without compensation from funds available under Part C of the Act.

Functions of the Council--required duties

The Council must advise and assist the Public School System in the performance of its responsibilities of the Act, including;

- Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
- Assignment of financial responsibility to the appropriate agency;
- Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find, monitoring, and financial responsibility and provision of early intervention services and transition and
- Preparation of applications under this part and amendments to those applications.

Advising and Assisting on Transition

The Council must advise and assist the PSS regarding the transition of toddlers with disabilities to preschool and other appropriate services.

Annual Report to the Governor and to the Secretary

The Council must;

- Prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the CNMI; and
- Submit the report to the Secretary by a date that the Secretary establishes.
- Each annual report must contain the information required by the Secretary for the year for which the report is made.

Authorized Activities by the Council

The Council may carry out the following activities:

- Advise and assist the PSS regarding the provision of appropriate services for children with disabilities from birth through age five.
- Advise appropriate agencies in the CNMI with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the CNMI.
- Coordinate and collaborate with the State Advisory Council on Early Childhood Education and Care for children, as described in section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other CNMI interagency early learning initiatives, as appropriate.

Section E

Public Participation Policies and Procedures

At least 60 days prior to being submitted to the Department, the PSS application for funds under Part C, including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application is published in a manner that will ensure circulation throughout the CNMI for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period. Before adopting any new policy or procedure, including any revision to an existing policy or procedure needed to comply with Part C of the Act, the PSS

- Holds public hearings on the new policy or procedure, including any revision to an existing policy or procedure
- Provides notice of the hearings at least 30 days before the hearings are conducted to enable public participation; and
- Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure, including any revision to an existing policy or procedure, needed to comply with Part C of the Act and these regulations.

Section F

Transition to Preschool and Other Programs Policy and Procedure

All infants and toddlers with disabilities under the age of three and their families will be provided a smooth transition from Part C to Preschool or other appropriate services for toddlers with disabilities or exiting the program for infants and toddlers with disabilities.

The method used to ensure a seamless transition between services under the Public School System Part C, Early Intervention Program, and the Public School System Part B, Special Education Program, is an intra-agency DIRECTIVE issued by the Commissioner of Education to the Coordinator of the Early Intervention Program and the Director of Special Education. The DIRECTIVE includes the following:

Notification to the Part B (Special Education) Program

Not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the Early Intervention Program notifies the Special Education Program that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act.

If the Early Intervention program determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the Early Intervention Program, as soon as possible after determining the child's eligibility, notifies the Special Education Program that the toddler, on his or her third birthday, will reach the age of eligibility for services under Special Education.

If a toddler is referred to the Early Intervention Program fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the Early Intervention program, with parental consent, refers the toddler to the Special Education Program. The Early Intervention Program is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances. If parent did not consent to the referral or the disclosure of personally identifiable information, the Early Intervention Program will provide the parent with Special Education Program contact information.

Conference to Discuss Services

If a toddler with a disability may be eligible for preschool services under Part B of the Act, the Early Intervention Program, with the approval of the family of the toddler, convenes a conference, among the Early Intervention Program, the family, and the Special Education Program not fewer than 90 days, and, at the discretion of all parties, not more than 9 months before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act.

If the Early Intervention Program determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the Early Intervention Program, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the Early Intervention Program, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

Transition Plan

For all toddlers with disabilities, the Early Intervention Program reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year. Each family of a toddler with a disability who is served in the Early Intervention Program is included in the development of the transition plan. The Early Intervention Program establishes a transition plan in the IFSP not fewer than 90 days, and, at the discretion of all parties, not more than 9 months before the toddler's third birthday. The transition plan in the IFSP includes, as appropriate, steps for the toddler with a disability and his or her family to exit from the Part C program and any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

Transition Conference and Meeting to Develop Transition Plan

The Transition Conference or meeting to develop the transition plan may be combined into one meeting. The Transition Conference or meetings must be conducted in settings and at times that are convenient for the family and

in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

Parental Consent

The contents of the Transition Plan in the IFSP must be fully explained to the parents and informed written consent, must be obtained, prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service.

The Transition Conference or Meeting Participants

The Transition Conference or meeting must include the following participants:

- The parent or parents of the child.
- Other family members, as requested by the parent, if feasible to do so.
- An advocate or person outside of the family, if the parent requests that the person participate.
- The service coordinator designated by the public agency to be responsible for implementing the IFSP.
- A person or persons directly involved in conducting the evaluations and assessments
- As appropriate, persons who will be providing early intervention services to the child or family.
- Head Start or child care representatives if appropriate.

If a person listed above is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including, participating in a telephone conference call, or having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting.

The Special Education Program will participate in the transition planning conferences arranged by the Early Intervention Program. By the third birthday of a child, an IEP or, if consistent with 34 CFR §300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b); and (c). In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Early Intervention service coordinator or other representatives of the Early Intervention Program to assist with the smooth transition of services.

Coordination with Head Start, Maternal Child Health, Developmental Disabilities Council, Autism Society, and Child Care Programs

The Early Intervention Program is an active participant and community partner on the Head Start Policy Council, and the Head Start Community Partnership Committee, the MCH Early Childhood Comprehensive Systems (ECCS) Program, *Big Steps for Little Feet*, the Autism Society, and the CNMI Council on Developmental Disabilities.

CNMI Option to NOT make Services Under Part C Available to Children Ages Three and Older

The CNMI elects to NOT include a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services. Part C, the continuation of early intervention services under Part C after the child turns three.

Section G

Procedural Safeguards

The PSS has adopted procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality in §§ 303.401 through 303.417, parental consent and notice in §§ 303.420 and 303.421, surrogate parents in § 303.422, and dispute resolution procedures in § 303.430. The PSS ensures the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part and makes available to parents an initial copy of the child's early intervention record, at no cost to the parents.

Confidentiality of Personally Identifiable Information and Early Intervention Records

Confidentiality and Opportunity to Examine Records

The CNMI ensures that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.

Confidentiality Procedures

As required under sections 617(c) and 642 of the Act, the regulations in 34 CFR §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the CNMI PSS and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. The CNMI has procedures in effect to ensure that

- Participating agencies (including the PSS and EIS providers) comply with the Part C confidentiality procedures in 34 CFR §§303.401 through 303.417; and
- The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.

Applicability and Timeframe of Procedures

The confidentiality procedures described above apply to the personally identifiable information of a child and the child's family that;

- Is contained in early intervention records collected, used, or maintained under Part C by the PSS or an EIS provider; and
- Applies from the point in time when the child is referred for early intervention services under Part C until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

Disclosure of Information

The Part C program must disclose to the Part B program and the LEA where the child resides, in accordance with 34 CFR §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:

- A child's name.
- A child's date of birth.
- Parent contact information (including parents' names, addresses, and telephone numbers).
- The information described in the above paragraph is needed to enable the Part B program, to identify all children potentially eligible for services under §303.211 and Part B of the Act.

Option to Inform A Parent About Intended Disclosure

The CNMI has not adopted a policy permitting a parent to object to the disclosure of personally identifiable information.

Confidentiality

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by PSS and EIS providers pursuant to Part C of the Act, and consistent with 34 CFR §§303.401 through 303.417. The regulations in 34 CFR §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the CNMI PSS and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

Definitions

The following definitions apply to 34 CFR §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:

- **Destruction** means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.
- **Early intervention records** mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.
- **Participating agency** means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

Notice to Parents

The PSS must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in 34 CFR §303.402, including:

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

Access Rights

Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to 34 CFR §§303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made. The right to inspect and review early intervention records under this section includes:

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
- The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The right to have a representative of the parent inspect and review the early intervention records.
- An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the

authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

Record of Access

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

Records On More Than One Child

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

List of Types and Locations of Information

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

Fees for Records

Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in the paragraph below.

- A participating agency may not charge a fee to search for or to retrieve information under this part.
- A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

Amendment of Records at A Parent's Request

A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

Opportunity for A Hearing

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in 34 CFR §303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the State's procedures in 34 CFR §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

Result of Hearing

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the early intervention records of the child under this section must;

- Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and

- If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

Hearing Procedures

A hearing held under 34 CFR §303.411 must be conducted according to the procedures under 34 CFR 99.22.

Consent Prior to Disclosure or Use

Except as provided in paragraph above, prior parental consent must be obtained before personally identifiable information is;

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or
- Used for any purpose other than meeting a requirement of this part.

A lead agency or other participating agency may not disclose personally identifiable information, as defined in 34 CFR §303.29, to any party except participating agencies, including the lead agency and EIS providers that are part of the State's Part C system without parental consent unless authorized to do so under--

- (1) Sections 34 CFR §§303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or
- (2) One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to--
 - (i) 34 CFR 99.30 means 34 CFR §303.414(a);
 - (ii) "Education records" means early intervention records under 34 CFR §303.403(b);
 - (iii) "Educational" means early intervention under this part;
 - (iv) "Educational agency or institution" means the participating agency under 34 CFR §303.404(c);
 - (v) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this part;
 - (vi) "State and local educational authorities" means the lead agency under 34 CFR §303.22; and
 - (vii) "Student" means child under this part.

The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent's right to refuse consent under §303.420.

Safeguards

Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 34 CFR §§303.401 through 303.417 and 34 CFR part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction of Information

The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80. The information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information including address and phone number, names of service coordinator(s) and EIS provider(s), and exit data including year and age upon exit, and any programs entered into upon exiting may be maintained without time limitation.

Enforcement

The PSS has in effect policies and procedures, including sanctions and the right to file a complaint under 34 CFR §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with 34 CFR §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.

Parental Consent and Notice

Parental Consent and Ability to Decline Services

The PSS must ensure parental consent is obtained before;

- Administering screening procedures under 34 CFR §303.320 that are used to determine whether a child is suspected of having a disability;
- All evaluations and assessments of a child are conducted under 34 CFR §303.321;
- Early intervention services are provided to the child under this part;
- Public benefits or insurance or private insurance is used if such consent is required under 34 CFR §303.520; and
- Disclosure of personally identifiable information consistent with 34 CFR §303.414.
- If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent —
 - Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
 - Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.
- The lead agency may not use the due process hearing procedures under this part or Part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section
- The parents of an infant or toddler with a disability;
 - Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and
 - May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

Prior Written Notice and Procedural Safeguards Notice

Prior written notice must be provided to parents a reasonable time before the PSS or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

Content of Notice

The notice must be in sufficient detail to inform parents about:

- The action that is being proposed or refused;
- The reasons for taking the action; and
- All procedural safeguards that are available under this subpart, including a description of mediation in 34 CFR §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under 34 CFR §303.430(d), and any timelines under those procedures.

Native Language

The notice must be;

- Written in language understandable to the general public; and
- Provided in the native language, as defined in 34 CFR §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that;
 - The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - The parent understands the notice; and
 - There is written evidence that the requirements of this paragraph have been met.

Surrogate Parents

The PSS or other public agency must ensure that the rights of a child are protected when

- No parent (as defined in 34 CFR §303.27) can be identified;

- The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or
- The child is a ward of the State under the laws of that State.

Duty of PSS and other Public Agencies

The duty of the PSS, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for;

- Determining whether a child needs a surrogate parent; and
- Assigning a surrogate parent to the child.
- In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child

Wards of the State

In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

Criteria for Selection of Surrogate Parents

The PSS or other public agency may select a surrogate parent in any way permitted under CNMI law. Public agencies must ensure that a person selected as a surrogate parent;

- Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
- Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- Has knowledge and skills that ensure adequate representation of the child.

Non-employee Requirement: Compensation

A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Surrogate Parent Responsibilities

The surrogate parent has the same rights as a parent for all purposes under this part.

Lead Agency (PSS) Responsibility

The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

Dispute Resolution Options

State Dispute Resolution Options

The CNMI system includes written procedures for the timely administrative resolution of complaints through mediation, CNMI complaint procedures, and due process hearing procedures, described in the paragraphs below.

Mediation

The PSS makes available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in 34 CFR §303.431.

State Complaint Procedures

PSS has adopted written CNMI complaint procedures to resolve any CNMI complaints filed by any party regarding any violation of this part that meet the requirements in 34 CFR §§303.432 through 303.434.

Due Process Hearing Procedures

The PSS has adopted written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in 34 CFR §303.421(a). The CNMI has adopted the Part B due process hearing procedures under section 615 of the Act and 34 CFR §§303.440 through 303.449 (with a 45-day timeline for resolving due process complaints, as provided in 34 CFR §303.440(c)).

Status of a Child During the Pendency of a Due Process Complaint

During the pendency of any proceeding involving a due process complaint, unless the PSS and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

Mediation

PSS ensures that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

Requirements

The procedures meet the following requirements: The procedures ensure that the mediation process—

- Is voluntary on the part of the parties;
- Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques
- The CNMI must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
- The PSS must select mediators on a random, rotational, or other impartial basis.
- The CNMI must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.
- Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—
- States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.

A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

Impartiality of Mediator

An individual who serves as a mediator under this part;

- May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
- Must not have a personal or professional interest that conflicts with the person's objectivity.
- A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

Meeting to Encourage Mediation

The PSS may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party;

- Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
- Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

State Complaint Procedures

Adoption of State Complaint Procedures

PSS adopted written procedures for;

- Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in 34 CFR §303.434 by providing for the filing of a complaint with the lead agency; and
- Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under 34 CFR §§303.432 through 303.434.

Remedies for Denial of Appropriate Services

In resolving a complaint in which the PSS has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under Part C of the Act, must address;

- The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

Minimum State Complaint Procedures

Time Limit; Minimum Procedures

The PSS includes in its complaint procedures a time limit of 60 days after a complaint is filed under 34 CFR §303.434 to;

- Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum
 - At the discretion of the lead agency, a proposal to resolve the complaint; and
 - An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;
- Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains;
 - Findings of fact and conclusions; and
 - The reasons for the lead agency's final decision.

Time Extension; Final Decision; Implementation

The PSS procedures described in this section also;

- Permit an extension of the time limit only if;
 - Exceptional circumstances exist with respect to a particular complaint; or
 - The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and
- Include procedures for effective implementation of the lead agency's final decision, if needed, including;
 - Technical assistance activities;
 - Negotiations; and
 - Corrective actions to achieve compliance

Complaints Filed Under This Section and Due Process Hearings Under 34 CFR §303.430

If a written complaint is received that is also the subject of a due process hearing under 34 CFR §303.430(d), or

contains multiple issues of which one or more are part of that hearing, the PSS must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties;

- The due process hearing decision is binding on that issue; and
- The lead agency must inform the complainant to that effect.

A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.

Filing a Complaint

An organization or individual may file a signed written complaint under the procedures described in 34 CFR §§303.432 and 303.433. The complaint must include:

- A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations with respect to a specific child;
 - The name and address of the residence of the child;
 - The name of the EIS provider serving the child;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR §303.432.
- The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.

Due Process Hearing Procedures (Part B) under Section 615 of the Act

Filing a Due Process Complaint

A parent, EIS provider, or PSS may file a due process complaint on any of the matters described in 34 CFR §303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under Part C of the Act.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the CNMI has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in 34 CFR §303.443(f) apply to the timeline in this section.

Information for Parents

The PSS must inform the parent of any free or low-cost legal and other relevant services available in the area if;

- The parent requests the information; or
- The parent or EIS provider files a due process complaint under this section.

Timeline for Resolution The PSS has adopted 45-day timeline, subject to 34 CFR §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under 34 CFR §303.421, the specific timeline it has adopted.

Due Process Complaint

The PSS has procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint which must remain confidential. The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.

Content of Complaint

The due process complaint required in the paragraph above must include;

- The name of the child;
- The address of the residence of the child;
- The name of the EIS provider serving the child;
- In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child;
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time.

Notice Required Before a Hearing on a Due Process Complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

Sufficiency of Complaint

The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in of this section.

Within five days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if;

- The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or
- The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.

Lead Agency Response to a Due Process Complaint

If the PSS has not sent a prior written notice under 34 CFR §303.421 to the parent regarding the subject matter contained in the parent's due process complaint, the PSS or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes;

- An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;
- A description of other options that the IFSP Team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; and
- A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.

A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent's due process complaint was insufficient, where appropriate.

Other Party Response to a Due Process Complaint

Except as provided in the paragraph above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Resolution Process: Resolution Meeting

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 CFR §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that—

- Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and
- May not include an attorney of the lead agency unless the parent is accompanied by an attorney.

The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.

The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if;

- The parent and lead agency agree in writing to waive the meeting; or
- The parent and lead agency agree to use the mediation process described in 34 CFR §303.431.
- The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

Resolution Period

If the PSS has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in paragraph above, the timeline for issuing a final decision under 34 CFR §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above paragraphs of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent's due process complaint.

If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

Adjustments to 30-day Resolution Period

The 45-day timeline adopted by the PSS under 34 CFR §303.440(c) for the due process hearing described in 34 CFR §303.447(a) starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting.
- After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.
- If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.

Written Settlement Agreement

If a resolution to the dispute is reached at the meeting described in paragraphs above, the parties must execute a legally binding agreement that is;

- Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and
- Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.

Agreement Review Period

If the parties execute an agreement pursuant to paragraph above, a party may void the agreement within three business days of the agreement's execution.

Impartial Due Process Hearing

Whenever a due process complaint is received consistent with 34 CFR §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.

Agency Responsible for Conducting the Due Process Hearing

The hearing described in paragraph (a) of this section must be conducted by the PSS directly responsible for the early intervention services of the infant or toddler, as determined under CNMI statute, CNMI regulation, or a written policy of the lead agency.

Impartial Hearing Officer

At a minimum, a hearing officer

- Must not be;
 - An employee of the PSS or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or
 - A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
- Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
- Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

Each lead agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Subject Matter of Due Process Hearings

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §303.441(b), unless the other party agrees otherwise.

Timeline for Requesting a Hearing

A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

Exceptions To The Timeline

The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to;

- Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or
- The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to the parent.

Hearing Rights

Any party to a hearing conducted pursuant to 34 CFR §§303.440 through 303.445, or an appeal conducted pursuant to 34 CFR §303.446, has the right to;

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants or toddlers with disabilities;

- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing
- Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- Obtain written or, at the option of the parents, electronic findings of fact and decisions.

Additional Disclosure of Information

At least five business days prior to a hearing conducted pursuant to 34 CFR §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental Rights at Hearings

Parents involved in hearings must;

- Be given the right to open the hearing to the public; and
- Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.

Decision of Hearing Officer

Subject to the paragraph below, a hearing officer's determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the Act, must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early intervention services under Part C of the Act only if the procedural inadequacies;

- Impeded the child's right to identification, evaluation, and placement or provision of early intervention services for the child and that child's family under Part C of the Act;
- Significantly impeded the parent's opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child's family under Part C of the Act; or
- Caused a deprivation of educational or developmental benefit.

Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under 34 CFR §§303.400 through 303.449.

Construction Clause

Nothing in 34 CFR §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the PSS under 34 CFR §303.446(b), if the PSS level appeal is available.

Separate Due Process Complaint

Nothing in 34 CFR §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and Decisions to General Public

The PSS, after deleting any personally identifiable information, must make the findings and decisions available to the public.

Finality of Decision; Appeal; Impartial Review

Finality of Hearing Decision

A decision made in a hearing conducted pursuant to 34 CFR §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and 34 CFR §303.448.

Appeal of Decisions: Impartial Review

The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency.

If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must;

- Examine the entire hearing record;
- Ensure that the procedures at the hearing were consistent with the requirements of due process;
- Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 34 CFR §303.444 apply
- Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- Make an independent decision on completion of the review; and
- Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.

Findings of Fact and Decision to the General Public

The PSS, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.

Finality of Review Decision

The decision made by the reviewing official is final unless a party brings a civil action under §303.448.

Timelines and Convenience of Hearings and Reviews

The PSS must ensure that not later than 45 days (consistent with the CNMI's written policies and procedures adopted under 34 CFR §303.440(c)) after the expiration of the 30-day period in 34 CFR §303.442(b), or the adjusted 30-day time periods described in §303.442(c));

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to each of the parties.

The PSS must ensure that not later than 30 days after the receipt of a request for a review;

- A final decision is reached in the review; and
- A copy of the decision is mailed to each of the parties.

A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in the above paragraphs at the request of either party.

Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Civil Action

Any party aggrieved by the findings and decision made under 34 CFR §§303.440 through 303.445 who does not have the right to an appeal under 34 CFR §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The action may be brought in any CNMI court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

Time Limitation

The party bringing the action has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part C of the Act, in the time allowed by that State law.

Additional Requirements

In any action brought under paragraph (a) of this section, the court;

- Receives the records of the administrative proceedings;
- Hears additional evidence at the request of a party; and
- Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

Jurisdiction of District Courts

The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

Rule of Construction

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under 34 CFR §§303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

State Enforcement Mechanisms

Notwithstanding 34 CFR §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the CNMI from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.

Section H

Use of Funds, Payor of Last Resort and System of Payments

Use of Funds

The PSS will use Early Intervention funds for activities or expenses that are reasonable and necessary for implementing the Early Intervention Program for infants and toddlers with disabilities including funds;

- For direct early intervention services for infants and toddlers with disabilities and their families that are not otherwise funded through other public or private sources.
- To expand and improve services for infants and toddlers with disabilities and their families that are otherwise available
- To provide FAPE as the term is defined in 34 CFR §303.15 in accordance to Part B of the Act to children with disabilities from their third birthday to the beginning of the following school year. The provision of FAPE does not apply to children who continue to receive early intervention service in lieu of FAPE provided in accordance to Part B to children with disabilities from their third birthday until those child enter kindergarten.
- To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of identifying and evaluating at-risk infants and toddlers, making referrals for at-risk infants and toddlers and conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

Payor of Last Resort

Nonsubstitution of Funds: Except as provided in the paragraph below (**Interim Payments—Reimbursement**), Early Intervention Program funds will not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, Early Intervention funds will be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source.

Interim Payments—Reimbursement: If necessary, to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, Early Intervention funds may be used to pay the provider of services for services and functions authorized under Early Intervention, including health services, as defined in 34 CFR §303.16, but not medical services, functions of the child find system described in 34 CFR §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in 34 CFR §303.321, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

Non-reduction of Benefits: Nothing in this part may be construed to permit the CNMI to reduce medical or other assistance available in the CNMI or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq. (SSA) relating to maternal and child health or Title XIX of the SSA, 42 U.S.C. 1396 relating to Medicaid, including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

System of Payments

The CNMI has not established a system of payments for early intervention services under Part C of IDEA. Fees will not be charged to parents for Early Intervention Services including services that the child is entitled to including; implementing the child find requirements, evaluation, assessment, and the functions related to evaluation and assessment, service coordination services, administrative and coordinative activities related to the development, review and evaluation of IFSP's and interim IFSP's and implementation of the procedural safeguards and the other components of the statewide system of early intervention services.

Methods to Ensure the Provision of and Financial Responsibility for Part C Services

The Public School System Commissioner of Education is the designated authority to ensure interagency coordination for the provision of and establishing financial responsibility for early intervention services provided under Part C. Such services are consistent with the requirement in section 635 of the Act and the State's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between CNMI agencies.

Listed below are the methods used to ensure coordination between CNMI agencies and the financial responsibility for the provisions of Early Intervention Services and to ensure that no services that a child is entitled to receive under Early Intervention are delayed or denied because of disputes between agencies regarding financial or other responsibilities and are consistent with the written funding policies adopted by the CNMI. The methods may include the use of an impartial hearing officer to resolve disputes necessary to ensure effective cooperation and coordination among agencies.

- Signed interagency agreements that clearly identify the financial and service provision responsibilities of each agency or entity within the agency.
- Signed Intra-agency Directive from the Commissioner of Education to the Coordinator of the Early Intervention Program and the Director of Special Education to ensure a smooth transition between the Early Intervention Program (Part C) and the Special Education Program (619 of Part B)
- Contracts with public or private individuals or agency service providers to provide Early Intervention Services.

Procedures for Resolving Disputes

Interagency Agreements:

Interagency agreements include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the CNMI's early intervention service program. Those procedures include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved. The method permits the agency to resolve its own internal disputes, based on the agency's procedures that are included in the agreement, so long as the agency acts in a timely manner and include the process that will followed in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

If, during the resolution of the dispute, the Governor, Governor's designee, or PSS determines that the assignment of financial responsibility under this section was inappropriately made, the dispute shall be referred to an impartial hearing officer. The hearing shall be informal with both parties having the opportunity to present its side of the dispute. The hearing officer's decision, which may include reimbursement, shall be final and binding. The PSS will make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

Intra-agency Agreement

Intra-agency Directives from the Commissioner of Education to the Coordinator of Early Intervention Program and the Director of Special Education Programs include procedures for achieving a timely resolution of disputes between both programs to ensure a smooth transition from Part C to Part B. The method permits the programs to resolve its own internal disputes so long as the programs act in a timely manner and include the process that will be followed in achieving resolution of disputes. The Early Intervention Program and Special Education Program shall be permitted to resolve any disputes that arise between the programs regarding service provisions, including transition service provisions within a reasonable time period. If the program coordinators or directors are unable to resolve within a reasonable time, the matter shall be handled by the Deputy Commissioner for Instructional Services. Either or both the Early Intervention Program Coordinator and Director of Special Education will submit to the Office of Instructional Services written statements summarizing the nature of the dispute and their attempts to resolve the dispute. The Deputy Commissioner of Instructional Services may either require the Early Intervention Program Coordinator and Director of Special Education to attend a meeting to discuss the dispute or render a decision which will be final and binding. If the dispute can not be resolved as a result of the meeting, the Deputy Commissioner of

Instructional Services will render a decision which will be final and binding.

Contracting For Early Intervention Services

All contracts or other arrangements with public or private individuals or agency service providers to provide Early Intervention Services in the CNMI are consistent with the provisions of Part C of the Act, including the contents of the application and the conditions of the contract or other arrangements and include a requirement that all Early Intervention Services must meet CNMI standards and the provisions of IDEA and contracts are consistent with the Education Department General Administrative Regulations in 34 CFR part 80.

Payer of Last Resort & System of Payments Provisions--Use of Insurance, Benefits, Systems of Payments, and Fees

Use of Private Insurance to Pay for Part C Services

The CNMI has not adopted a system of payments therefore will not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services, including contracts with public or private Early Intervention providers.

Inability to Pay

The CNMI has not adopted a system of payments therefore a parents in ability to pay will not be used to delay or deny any services under this part to that child or family including contracts with public or private Early Intervention providers.

Proceeds or Funds from Public Insurance or Benefits or From Private Insurance

The CNMI has not adopted a system of payments therefore proceeds or funds from public insurance or benefits or from private insurance will not be received.

Funds Received from a Parent or Family Member under a State's System of Payments

The CNMI has not adopted a system of payments therefore will not receive funds or fees from any parent or family member.

System of Payments and Fees

The CNMI has not adopted a system of payments therefore does not have system of payment policies.

Functions Not Subject to Fees

The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

- Implementing the child find requirements in 34 CFR §§303.301 through 303.303.
- Evaluation and assessment, in accordance with 34 CFR §303.320, and the functions related to evaluation and assessment in 34 CFR §303.13(b).
- Service coordination services, as defined in 34 CFR §§303.13(b)(11) and 303.33.
- Administrative and coordinative activities related to the development, review, and evaluation of IFSPs and interim IFSPs in accordance with 34 CFR §§303.342 through 303.345; and
- Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.

States with FAPE Mandates, or That Use Funds Under Part B of the Act to Serve Children Under Age Three

The CNMI does not have in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve an infant or toddler with a disability under the age of three or any subset of infants and toddlers with disabilities under the age of three.

Family Fees

The CNMI has not adopted a system of payments therefore will not receive funds or fees from any parent or family member.

Section I

Monitoring, Enforcement and Reporting

The PSS has adopted monitoring procedures to monitor the implementation of the early intervention program. The monitoring procedures include enforcement mechanisms, including, if applicable, technical assistance and imposing conditions on the Early Intervention Program and providers, corrective actions or improvement plans and withholding of funds, consistent with PSS Disciplinary policies. The Early Intervention Program reports annually on the performance of the CNMI Early Intervention Program.

In exercising its monitoring responsibilities in this section, the PSS ensures that when it identifies noncompliance with the requirements of this part by the Early Intervention Program and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the identification of the noncompliance.

The primary focus of the PSS monitoring activities are on improving early intervention results and functional outcomes for all infants and toddlers with disabilities and ensuring that the Early Intervention program and EI providers meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

As a part of its monitoring, enforcement and reporting responsibilities, the PSS uses quantifiable and qualitative indicators as are needed to adequately measure performance in the priority areas and the indicators established by the Secretary for the State performance plans. The priority areas are:

- Early intervention services in natural environments.
- State exercise of general supervision, including child find, effective monitoring, the use of resolution sessions, due process hearing procedures, mediation, and a system of transition services as defined in section 637(a)(9) of the Act.

State Performance Plans and Data Collection

The PSS has in place a performance plan that meets the requirements described in section 616 of the Act and is approved by the Secretary. It includes an evaluation of the PSS's efforts to implement the requirements and purposes of Part C of the Act, a description of how the PSS will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary. The PSS reviews its State performance plan at least once every six years and submits any amendments to the Secretary. The PSS collects valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans. If the Secretary permits CNMI to collect data on specific indicators through CNMI monitoring or sampling, and the CNMI collects data for a particular indicator through CNMI monitoring or sampling, the CNMI will collect and report data on those indicators at least once during the six-year period of a State performance plan. Nothing in Part C of the Act may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

Public Reporting and Privacy

The CNMI reports annually to the public on the performance the Early Intervention Program in the CNMI on the targets in the State's performance plan as soon as practicable but no later than 120 days following the CNMI's submission of its annual performance report to the Secretary and makes the State's performance plan and annual performance reports available through public means, including by posting on the PSS website, distribution to the media, and distribution to other agencies and programs. If the CNMI, in meeting the requirements of this section, collects data through State monitoring or sampling, the CNMI includes in its public report on the Early Intervention the most recently available performance data and the date the data were collected.

Privacy

The CNMI does not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

Section J

Public Reports: Program Information, Data Requirements

The PSS annually reports to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary. The PSS submits the report to the Secretary in the manner prescribed by the Secretary.

Annual Report of Children Served--Report Requirement

For the purposes of the annual report required by section 618 of the Act and §303.720, the PSS counts and reports the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report includes;

1. The number and percentage of infants and toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services and include in this number any children reported to it by tribes, tribal organizations, and consortia
2. The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and
3. The number and percentage of at-risk infants and toddlers, as defined in section 632(1) of the Act, by race and ethnicity, who are receiving early intervention services under Part C of the Act.
4. The number of due process complaints filed under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

Data Reporting: Protection of Identifiable Data

The Early Intervention Program in a manner that does not result in disclosure of data identifiable to individual children publicly reports the data.

Annual Report of Children Served—Certification

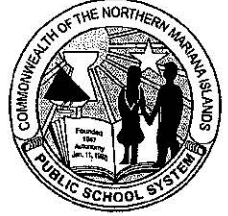
The PSS includes in its report a certification signed by an authorized official of the agency that the information provided under 34 CFR §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

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NON PUBLIC SCHOOL REP.

PUBLIC NOTICE OF EMERGENCY REGULATIONS WHICH ARE AMENDMENTS TO THE RULES & REGULATIONS OF THE CNMI PUBLIC SCHOOL SYSTEM

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The
Commonwealth of the Northern Mariana Islands Public School System ("PSS")
finds that:

TEACHER REPRESENTATIVE

- (1) The attached rules and regulations for the CNMI Special Education Program shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below (1 CMC § 9104(b), (c); 1 CMC § 9105(b)(2)); and
- (2) The attached rules and regulations for the CNMI Special Education Program shall repeal and replace in its entirety Chapter 60-50 of the Northern Mariana Islands Administrative Code (NMIAC); and
- (3) The same rules and regulations shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to the attached Notice of Proposed Rules and Regulations and the Administrative Procedure Act, 1 CMC § 9104(a).

AUTHORITY: The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

The Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than thirty (30) days' notice if it states its reasons in writing.

(b) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulations may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance with this section.....

1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The purpose of these regulations is to provide procedural guidelines for providing services to the CNMI PSS students in need of special education and related services.

THE SUBJECTS AND ISSUES INVOLVED: These regulations set forth the policy and procedure which govern PSS for the Special Education Program.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The State Board of Education has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASON FOR EMERGENCY ADOPTION: The State Board of Education finds that the public interest requires adoption of these regulations on an emergency basis because the Federal Rules under 34 CFR Part 300 the PSS must stay current with its grant requirements and, therefore, PSS must implement and adopt rules and regulations in conformance with the federal regulations.

In addition this regulation will allow PSS to continue to effectively serve those CNMI children within the PSS who have special needs. The Special Education Program allows PSS to provide Individualized Education Programs, therapy, training and services to students with special needs.

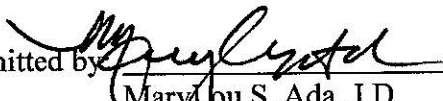
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section(s) on emergency and proposed regulations (*see* 1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

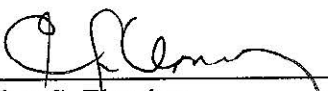
The State Board of Education shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC § 9105(b)(2)).

IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105(b)(2))

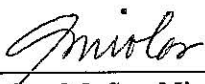
TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Rules and Regulations will specify comment procedures.

This emergency regulation was approved first by the Fiscal, Personnel & Administration (FPA) Committee on their meeting of April 12, 2012 and then by the full State Board of Education at a Regular Board Meeting of April 16, 2012.

Submitted by:  Date: Sept 26, 2012
Marylou S. Ada, J.D.
Chairperson, State Board of Education

Received by:  Date: 10/11/12
Esther S. Fleming
Special Assistant for Administration

Concurred by:  Date: 10/19/12
BENIGNO R. FITIAL
Governor

Filed and
Recorded by:  Date: 10.23.2012
Esther M. San Nicolas
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 4th day of October, 2012.


VIOLA ALEPUYO
Acting Attorney General

**NORTHERN MARIANA ISLAND ADMINISTRATIVE CODE
TITLE 60
BOARD OF EDUCATION**

**Regulation Title: Northern Mariana Islands Administrative Code
Chapter 60-50 Special Education Program; Board of Education Rules
and Regulations**

**Chapter § 60-50 is repealed in its entirety and replaced with the following emergency
regulations: § 60-50 Special Education Procedures**

**The Public School System
Special Education Program
Policies and Procedures**

DEFINITIONS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Definitions Used in This Part

§ 300.4 Act.

Act means the Individuals with Disabilities Education Act, as amended.

§ 300.5 Assistive technology device.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. (Authority: 20 U.S.C. 1401(1))

§ 300.6 Assistive technology service.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))

§ 300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.* (ESEA). (Authority: 20 U.S.C. 7221i(1))

§ 300.8 Child with a disability.

(a) General.

(1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional

disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deafblindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under CNMI standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) *Children aged three through nine experiencing developmental delays.*

Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child:

(1) Who is experiencing developmental delays, as defined by the CNMI and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- Physical development,
- Cognitive development,
- Communication development,
- social or emotional development, or
- adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows:

(1)(i) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for

children with deafness or children with blindness.

(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness.

(6) *Intellectual Disability* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) *Multiple disabilities* means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

(10) *Specific learning disability*

(i) *General.*

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included.*

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

§ 300.9 Consent.

Consent means that:

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

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

§ 300.10 Core academic subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

§ 300.11 Day; business day; school day.

(a) *Day* means calendar day unless otherwise indicated as business day or school day.

(b) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(c)(1) *School day* means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) *School day* has the same meaning for all children in school, including children with and without disabilities.

§ 300.12 Educational service agency.

Educational service agency means:

(a) A regional public multiservice agency:

(1) Authorized by CNMI law to develop, manage, and provide services or programs;

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the CNMI;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit.

§ 300.13 Elementary school.

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under CNMI law.

§ 300.14 Equipment.

Equipment means:

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

§ 300.15 Evaluation.

Evaluation means procedures used in accordance with §§ 300.304 through

300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

§ 300.16 Excess costs.

Excess costs means those costs that are in excess of the average annual per student expenditure in the PSS during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(a) Amounts received:

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA;

and

(3) Under Parts A and B of title III of the ESEA and;

(b) Any CNMI funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service.

§ 300.17 Free appropriate public education.

Free appropriate public education or *FAPE* means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the PSS, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

§ 300.19 Homeless children.

Homeless children has the meaning given the term *homeless children and youths* in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C.

§ 300.20 Include.

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

§ 300.21 Indian and Indian tribe.

(a) *Indian* means an individual who is a member of an Indian tribe.

(b) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*).

(c) Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the

Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

§ 300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

§ 300.23 Individualized education program team.

Individualized education program team or IEP Team means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

§ 300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.

§ 300.25 Infant or toddler with a disability.

Infant or toddler with a disability:

(a) Means an individual under three years of age who needs early intervention services because the individual:

- (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
- (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) May also include, at the CNMI's discretion:

- (1) At-risk infants and toddlers; and
- (2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include:
 - (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and
 - (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

§ 300.26 Institution of higher education.

Institution of higher education:

(a) Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq.* (HEA); and

(b) Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, *et seq.*

§ 300.27 Limited English proficient.

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

§ 300.29 Native language.

(a) *Native language*, when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

§ 300.30 Parent.

(a) *Parent* means:

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless CNMI law, regulations, or contractual obligations with the CNMI or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the CNMI if the child is a ward of the CNMI);

(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; or

(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

§ 300.31 Parent training and information center.

Parent training and information center means a center assisted under sections 671 or 672 of the Act.

§ 300.32 Personally identifiable.

Personally identifiable means information that contains:

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

§ 300.33 Public agency.

Public agency includes the PSS, ESAs, nonprofit public charter schools that are not otherwise included and are not a school of PSS, and any other political subdivisions of the CNMI that are responsible for providing education to children with disabilities.

§ 300.34 Related services.

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping); maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section:

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(c) *Individual related services terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes:

- (i) Identification of children with hearing loss;

- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
 - (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) *Interpreting services* includes:
- (i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
 - (ii) Special interpreting services for children who are deaf-blind.
- (5) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- (6) *Occupational therapy*:
- (i) Means services provided by a qualified occupational therapist; and
 - (ii) Includes:
 - (A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
 - (B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
 - (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (7) *Orientation and mobility services*:
- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (ii) Includes teaching children the following, as appropriate.
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques, and tools.

(8)(i) *Parent counseling and training* means assisting parents in understanding the special needs of their child;
(ii) Providing parents with information about child development; and
(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) *Physical therapy* means services provided by a qualified physical therapist.

(10) *Psychological services* includes:

- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.

(11) *Recreation* includes:

- (i) Assessment of leisure function;
- (ii) Therapeutic recreation services;
- (iii) Recreation programs in schools and community agencies; and
- (iv) Leisure education.

(12) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*

(13) *School health services and school nurse services* means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) *Social work services in schools* includes:

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.

(15) *Speech-language pathology services* includes:

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) *Transportation* includes:

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

§ 300.36 Secondary school.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under CNMI law, except that it does not include any education beyond grade 12.

§ 300.37 Services plan.

Services plan means a written statement that describes the special education and related services the PSS will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

§ 300.38 Secretary.

Secretary means the Secretary of Education.

§ 300.39 Special education.

(a) *General.* (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

- (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (ii) Instruction in physical education.

(2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section.

- (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under CNMI standards;
 - (ii) Travel training; and
 - (iii) Vocational education.
- (b) *Individual special education terms defined.* The terms in this definition are defined as follows:
- (1) *At no cost* means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
 - (2) *Physical education* means:0800
 - (i) The development of:
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.
 - (3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under Part B of IDEA, the content, methodology, or delivery of instruction—
 - (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the PSS that apply to all children.
 - (4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:
 - (i) Develop an awareness of the environment in which they live; and
 - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
 - (5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

§ 300.40 State.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

§ 300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.

§ 300.43 Transition services.

(a) *Transition services* means a coordinated set of activities for a child with a disability that:

(1) Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

§ 300.44 Universal design.

Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

§300.45 Ward of the State

(a) *General.* Subject to paragraph (b) of this section, *ward of the State* means a child who, as determined by the CNMI where the child resides, is:

(1) A foster child;

(2) A ward of the State; or

(3) In the custody of a public child welfare agency.

(b) *Exception.* Ward of the State

FREE APPROPRIATE PUBLIC EDUCATION (FAPE) POLICY

34 CFR §300.101

It is the policy of the Commonwealth of the Northern Mariana Islands (CNMI) Public School System (hereafter referred to as PSS) to make available a free appropriate public education (FAPE) to all students with disabilities ages 3 to 21 inclusive, including students who have been suspended or expelled from school. ~~If the child turns 21 prior to the end of the school year, the child shall be allowed to complete the school year.~~

The PSS policy ensures that the obligation to make FAPE available to each eligible child residing in the CNMI begins no later than the child's third birthday and an IEP is in effect for the child by that date according to the IEP requirements. If a child's third birthday occurs during the summer, the child's IEP Team determines the date when services under the IEP will begin.

Children advancing from grade to grade

The PSS ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

The determination that a child described in previous paragraph of this section is eligible under IDEA, is made on an individual basis by the group responsible within the child's school for making eligibility determinations.

Limitations and Exceptions to FAPE for certain ages

34 CFR §300.102

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

- Children aged 3, 4, 5, 18, 19, 20, or 21 in the CNMI to the extent that its application to those children would be inconsistent with CNMI law or practice, or the order of any court, respecting the provision of public education to children of those ages.
- Children aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility,
 - Were not actually identified as being a child with a disability; and
 - Did not have an IEP under Part B of the IDEA.

The exception above does not apply to children with disabilities, aged 18 through 21, who:

- Had been identified as a child with a disability and had received services in

- accordance with an IEP, but who left school prior to their incarceration; or
- Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability.

The obligation to make FAPE available does not apply to children with disabilities who have graduated from high school with a regular high school diploma. The exception above does not apply to children who have graduated from high school but have not been awarded a regular high school diploma. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice. The term regular high school diploma does not include an alternative degree that is not fully aligned with the CNMI PSS's academic standards, such as a certificate or a general educational development credential (GED).

The obligation to make FAPE available does not apply to children with disabilities who are eligible under subpart H of IDEA, but who receive early intervention services under Part C of the Act.

OTHER FAPE REQUIREMENTS

Methods and Payments

34 CFR §300.103

- The PSS uses whatever CNMI, Federal, and/or private sources of support that are available in the CNMI to meet the requirements of Part B of IDEA.
- Nothing in Part B of IDEA relieves any insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a child with a disability.
- The PSS ensures that there will be no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Residential Placement

34 CFR §300.104

It is the PSS policy that if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is provided at no cost to the parents of the child.

Assistive Technology

34 CFR §300.105

The PSS ensures that the assistive technology devices or assistive technology services, or both as defined under IDEA respectively, are made available to a child with a disability if required as part of the child's:

- Special Education;
- Related services; or
- Supplementary aids and services.

Extended school year services

34 CFR §300.106

The PSS ensures that extended school year services are available as necessary to provide FAPE, consistent with the procedures below.

The term extended school year services means special education and related services that: are provided to a child with a disability:

- Beyond the normal school year of the PSS;
- In accordance with the child's IEP;
- At no cost to the parents of the child; and
- Meet the standards of the CNMI PSS.

Nonacademic services

34 CFR §300.107

The PSS takes steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

Nonacademic and extracurricular services and activities include counseling services, athletics, transportation, health services, recreational activities, special interest groups, or clubs sponsored by the PSS, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the PSS and assistance in making outside employment available.

Physical Education

34 CFR §300.108

The PSS ensures that physical education services, specially designed if necessary, is made available to every child with a disability receiving FAPE, unless the PSS enrolls children without disabilities, and does not provide physical education to children without disabilities in the same grades.

The PSS takes responsibility for the education of a child with a disability who is enrolled in a separate facility and ensures that the child receives appropriate physical education services in compliance with this section.

FULL EDUCATIONAL OPPORTUNITY GOAL POLICY

34 CFR §300.109

The CNMI has in effect policies and procedures to demonstrate that the PSS provides a full educational opportunity to all children with disabilities, ages birth to *through* 21.

Program Options

34 CFR §300.110

The PSS ensures that each school takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the PSS, including art, music, industrial arts, consumer and homemaking education, and vocational education.

RESPONSIBILITY FOR GENERAL SUPERVISION POLICY

34 CFR §300.149

It is the policy of the PSS to ensure that:

- The Part B requirements of IDEA are carried out; and
- That each educational program for children with disabilities administered within the CNMI, including each program administered by any other CNMI agency
 - Is under the general supervision of the persons responsible for educational programs for children with disabilities in the CNMI; and
 - Meets the educational standards of the CNMI (including the requirements of Part B of IDEA).
- In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

The PSS has in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in Sections 300.600 through 300.602 and Sections 300.606 through 300.608 of Part B of IDEA.

Part B of the IDEA does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the CNMI.

The Governor (or another individual pursuant to CNMI law) may assign to any public agency in the CNMI the responsibility of ensuring that the requirements of Part B of the IDEA are met with respect to students with disabilities who are convicted as adults under CNMI law and incarcerated in adult prisons.

METHODS OF ENSURING SERVICES

34 CFR §300.154

Establishing responsibility for services

The Governor of the CNMI ensures that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and the PSS, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute.

CHILD FIND POLICY

34 CFR §300.111

It is the policy of the PSS to conduct Child find activities that is defined as the continuous process of identifying, locating, and evaluating all children (birth to **through** 21) with disabilities residing in the CNMI, including children with disabilities who are homeless children or are wards of CNMI, and children attending private schools, regardless of the severity of their disability, and who are in need of special education and related services or early intervention services for infants and toddlers with disabilities. A practical method has been developed and implemented to determine which children are currently receiving needed special education and related services.

The PSS has adopted the term developmental delay for children with disabilities aged 3 through 9.

Child find also includes:

- Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and
- Highly mobile children, including migrant children.

NOTE: Nothing in Part B of the IDEA Act requires that children be classified by their disability so long as each child who has a disability and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the IDEA.

INITIAL EVALUATIONS POLICY

34 CFR §300.301

It is the policy of PSS to conduct a full and individual initial evaluation before the provision of special education and related services for a child with a disability as defined under Part B of IDEA.

Request for initial evaluation

A parent of a child or the PSS may initiate a request for an initial evaluation.

Procedures for initial evaluation

The PSS conducts and completes the initial evaluation within 60 days of receipt of parental consent. (See exceptions to the timeline described below.)

The initial evaluation consists of procedures:

- To determine if the child is a child with a disability under IDEA; and
- To determine the educational needs of the child.

The timeframe in this section does not apply to the PSS if:

- The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- A child enrolls in a school of another public agency after the relevant timeframe in this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability.

The exception applies only if the PSS is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and PSS agree to a specific time when the evaluation will be completed.

Screening for instructional purposes is not evaluation

34 CFR §300.302

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

Evaluation Procedures

34 CFR §300.304

It is the policy of the PSS to provide prior written notice to the parents of a child with a disability, in accordance with the procedures below and a description of the evaluation procedures the PSS proposes to conduct.

Conduct of Evaluation

Evaluations are conducted through implementation of the following procedures:

- A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining
 - Whether the child is a child with a disability under IDEA; and
 - The content of the IEP, including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities);
- No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and,
- Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors.

Other evaluation procedures

The evaluation procedures also ensure that:

- Assessments and other evaluation materials used to assess a child under Part B of IDEA:
 - Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - Are provided and administered in the native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so provide or administer;
 - Are used for purposes for which the assessments or measures are valid and reliable;
 - Are administered by trained and knowledgeable personnel; and
 - Are administered in accordance with any instructions provided by the producer of the assessments.
- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Assessments are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- Assessments of children with disabilities who transfer from another public agency to the CNMI PSS in the same school year are coordinated with those children's prior

and subsequent schools, as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.

- In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
- Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

Additional requirement for evaluations

34 CFR §300.305

- Review of existing evaluation data
As part of an initial evaluation (if appropriate) under IDEA, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including:
 - Evaluations and information provided by the parents of the child;
 - Current classroom-based, local, or State assessments, and classroom-based observations; and
 - Observations by teachers and related services providers; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - Whether the child is a child with a disability and the educational needs of the child;
 - The present levels of academic achievement and related developmental needs of the child;
 - Whether the child needs special education and related services; or and
 - Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

Conduct of review

The group described in this section may conduct its review without a meeting.

Source of data

The PSS must administer such assessments and other evaluation measures as may be needed to produce the data identified in this section.

REEVALUATION POLICY

34 CFR §300.303

It is the policy of the CNMI PSS to ensure that a reevaluation of each child with a disability is conducted in accordance with IDEA requirements:

- If the PSS determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

Limitation

A reevaluation conducted in this section:

- May occur not more than once a year, unless the parent and the PSS agree otherwise; and
- Must occur at least once every 3 years, unless the parent and the PSS agree that a reevaluation is unnecessary. If a reevaluation is necessary, the reevaluation shall be conducted **according to the requirements of IDEA**.

Review of Existing evaluation data

34 CFR §300.305

As part of any reevaluation under IDEA, the IEP Team and other qualified professionals, as appropriate, must:

- Review existing evaluation data on the child, including:
 - Evaluations and information provided by the parents of the child;
 - Current classroom-based, local, or State assessments, and classroom-based observations; and
 - Observations by teachers and related services providers; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - Whether the child continues to have such a disability, and the educational needs of the child;
 - The present levels of academic achievement and related developmental needs of the child;
 - Whether the child continues to need special education and related services; and
 - Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

Conduct of review

The IEP team may conduct its review without a meeting.

Source of data

The PSS must administer such assessments and other evaluation measures as may be needed to produce the data identified in this section.

Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the PSS must notify the child's parents of:

- That determination and the reasons for the determination; and
- The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

The PSS is not required to conduct the assessment described in this section unless requested to do so by the child's parents.

Evaluations before change in eligibility

- The PSS must evaluate a child with a disability in accordance with IDEA requirements before determining that the child is no longer a child with a disability.
- The evaluation described in this section is not required before the termination of a child's eligibility under IDEA due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under CNMI law.
- For a child whose eligibility terminates due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under CNMI law, the PSS must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

Determining Eligibility Policy

34 CFR §300.306

General

It is the policy of the PSS that upon completion of the administration of assessments and other evaluation measures:

- A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as per IDEA and CNMI criteria and the educational needs of the child; and
- The PSS provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

Special rule for eligibility determination

A child is not determined to be a child with a disability under Part B of IDEA:

- If the determinant factor for that determination is:
 - Lack of appropriate instruction in reading, including the essential components of reading instruction;
 - Lack of appropriate instruction in math; or
 - Limited English proficiency; and
- If the child does not otherwise meet the eligibility criteria under IDEA and CNMI criteria.

Procedures for determining eligibility and educational need

- In interpreting evaluation data for the purpose of determining if a child is a child with a disability under IDEA, and the educational needs of the child, the PSS:
 - Draws upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
 - Ensures that information obtained from all of these sources is documented and carefully considered.
- If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance IDEA.

Additional Procedures for Identifying Children with Specific Learning Disability

34 CFR §300.307

Specific Learning Disabilities:

The PSS adopts the following procedures in the development of criteria for determining whether a child has a specific learning disability as defined by IDEA:

- Does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability;
- Permits the use of a process based on the child's response to scientific, research-based intervention; and

- Permits the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

Additional Group Members:

34 CFR §300.308

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in IDEA, is made by the child's parents and a team of qualified professionals, which include:

- The child's regular teacher; or
- If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

Determining the existence of a specific learning disability:

34 CFR §300.309

The group described above may determine that a child has a specific learning disability, as defined in IDEA, if:

- The child does not achieve adequately for the child's age or to meet CNMI-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or CNMI-approved grade-level standards:
 - Oral expression.
 - Listening comprehension.
 - Written expression.
 - Basic reading skill.
 - Reading fluency skills.
 - Reading comprehension.
 - Mathematics calculation.
 - Mathematics problem solving.
- The child does not make sufficient progress to meet age or CNMI-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; or
- The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, CNMI-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments; and
- The group determines that its findings under this section are not primarily the result of:
 - A visual, hearing, or motor disability;
 - Intellectual disability;

- Emotional disturbance;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency.
- To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described above:
 - Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.
- The PSS must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes in Evaluation section, unless extended by mutual written agreement of the child's parents and a group of qualified professionals;
 - If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section; and
 - Whenever a child is referred for an evaluation

Observation

34 CFR §300.310

- The PSS ensures that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.
- The group described in this section in determining whether a child has a specific learning disability, must decide to
 - Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
 - Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.
 - In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

Specific documentation for the eligibility determination
34 CFR §300.311

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

- Whether the child has a specific learning disability;
- The basis for making the determination, including an assurance that the determination has been made in accordance with IDEA;
- The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- The educationally relevant medical findings, if any;
- Whether:
 - The child does not achieve adequately for the child's age or to meet PSS-approved grade-level standards; and
 - The child does not make sufficient progress to meet age or PSS-approved grade-level standards ;or
 - The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, PSS-approved grade level standards or intellectual development;
- The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - The instructional strategies used and the student-centered data collected; and
 - The documentation that the child's parents were notified about:
 - The PSS's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - Strategies for increasing the child's rate of learning; and
 - The parents' right to request an evaluation.

Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

Child with a Disability

34 CFR §300.8

NOTE: The child *must meet the criteria* for have one of the following disabilities *that adversely affects educational performance* and because of that disability needs special education and related services

Autism

A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the above criteria are satisfied.

Deaf-Blindness

Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Deafness

A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

Developmental Delay

A condition in which a child up to age nine (9) is experiencing a delay below 25% in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and needs special education.

ADD: *A child has a diagnosed physical or mental condition with a high probability of resulting in a disability. Conditions include but are not limited to:*

- *Chromosomal anomalies*
- *Genetic disorders*
- *Neurological disorders*
- *Inborn errors in metabolism*
- *Sensory loss*

Emotional Disturbance

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- a) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- c) Inappropriate types of behavior or feelings under normal circumstances.
- d) A general pervasive mood of unhappiness or depression.
- e) A tendency to develop physical symptoms or fears associated with personal or school problems.
- f) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

Hearing Impairment

An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness.

ADD:

Characteristics of children with a hearing impairment include unilateral hearing loss (conductive, sensorineural, or mixed), bilateral hearing loss (conductive, sensorineural, or mixed), a fluctuating or permanent hearing loss, and/or auditory dyssynchrony (auditory neuropathy). The hearing loss results in qualitative impairments in communication/educational performance

Mental Retardation-Intellectual Disability

Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

Multiple Disability

Concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational problems that the problems cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

Orthopedic Impairment

A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

Other Health Impairments

Having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Tourette syndrome and sickle cell anemia; and that adversely affects a child's educational performance.

Specific Learning Disability

- (i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, to think, speak, read, write, spell, or to do mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance; or of environmental, cultural, or economic disadvantage.

Speech or Language Impairment

A communication disorder, such as stuttering, impaired articulation, language impairment, or voice impairment that adversely affects a child's educational performance.

Traumatic Brain Injury

An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Visual Impairments

An impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Individualized Education Program Policy

34 CFR §300.112

It is the policy of the PSS that an IEP is developed, reviewed, and revised for each child with a disability in accordance with the IDEA requirements.

Parental consent for services

The PSS ensures that it obtains informed consent from the parent of the child before the initial provision of special education and related services to the child. The PSS must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the PSS:

- May not use the mediation and due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the PSS requests consent; and
- Is not required to convene an IEP Team meeting or develop an IEP as required by IDEA for the child for the special education and related services for which the PSS requests such consent.

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the PSS:

- May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
- May not use the mediation and due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the PSS requests consent; and
- Is not required to convene an IEP Team meeting or develop an IEP as per IDEA for the child for the special education and related services for which the public agency requests such consent.

Definition of Individualized Education Program

34 CFR §300.320

The Individualized Education Program (IEP) is a written statement for each child with disability that is developed, reviewed, and revised in an IEP Team meeting that includes:

- A statement of the child's present levels of academic achievement and functional performance, including:
 - how the child's disability affects the child's involvement and progress in the general education curriculum; and
 - for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- A statement of measurable annual goals, including academic and functional goals designed to:
 - meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - meet each of the child's other educational needs that result from the child's disability;

Note: For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

- A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
 - To be educated and participate with other children with disabilities and nondisabled children in these activities;
- An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular education environment;
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on CNMI-wide assessments; and
 - If the IEP Team determines that the child must take an alternate assessment on the CNMI-wide assessments of student achievement, a statement of:
 - why the child cannot participate in the regular assessment; and
 - why the particular alternate assessment selected is appropriate for the child;

- The projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications;

Transition Services

Beginning not later than the first IEP to be in effect when the child is 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include:

- Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
- The transition services (including courses of study) needed to assist the child in reaching those goals.

Transfer of Rights At the Age of Majority

Beginning not later than one year before the child reaches the age of majority under CNMI law (i.e. 18 years old) the IEP must include a statement that the child has been informed of the child's rights under IDEA. if any, that will transfer to the child on reaching the age of majority.

Note:

Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in this section of IDEA or the IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

IEP Team

34 CFR §300.321

The PSS must ensure that the IEP Team for each child with a disability includes:

- Parents of the child with a disability.
- Not less than one regular education classroom teacher of such student (if the student is, or may be, participating in the regular education environment);
- Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of such student;
- A representative of the PSS, (Principal or designee) who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, knowledgeable about the general curriculum, and knowledgeable about the availability of resources of the PSS.
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team, other than the parent, described above;
- At the discretion of the parent or the PSS, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate; and

- Whenever appropriate the student with a disability. (See also transition requirements.)

Transition Service Participants:

- The PSS must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.
- If the child does not attend the IEP Team meeting, the PSS must take other steps to ensure the child's preferences and interests are considered.
- To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the IEP transition requirements, the CNMI must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

Determination of Knowledge and Special Expertise

The determination of the knowledge or special expertise of any individual who has been invited at the discretion of the parent or PSS, based on their knowledge or special expertise regarding the student must be made by the parent or PSS who invited them.

Designating a PSS Representative:

PSS may designate a PSS member of the IEP Team to also serve as the PSS Representative if they meet the criteria as defined above, typically the PSS Representative is the school principal or vice principal.

IEP Team Attendance (Attendance not Necessary and Excusal)

- A member of the IEP Team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the PSS agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, even when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if:
 - The parent, in writing, and the PSS consent to the excusal; and
 - The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Initial IEP Team Meeting for a Child Under Part C

In the case of a child who was previously served under Part C of IDEA, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C Service Coordinator or other representative of the Part C system to assist with the smooth transition of services.

Parent Participation

34 CFR §300.322

PSS responsibility:

The PSS takes steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including;

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- Scheduling the meeting at a mutually agreed on time and place.

Information Provided to the Parents:

- The notice required under this section must:
 - Indicate the purpose, time, and location of the meeting and who will be in attendance; and
 - Inform the parents of the provisions relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child, and section relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act.
- For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must:
 - Indicate:
 - That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with IDEA; and
 - That the PSS will invite the student; and
 - Identify any other agency that will be invited to send a representative.

Other Methods to Ensure Parent Participation

If neither parent can attend an IEP Team meeting, the PSS must use other methods to ensure parent participation. The parent of the child with a disability and the PSS may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Conducting an IEP Team Meeting Without a Parent in Attendance

A meeting may be conducted without a parent in attendance if the PSS is unable to convince the parents that they should attend. In this case, the PSS must keep a record of its attempts to arrange a mutually agreed time and place such as:

- Detailed records of telephone calls made or attempted and the results of the calls
- Copies of correspondence sent to the parents and any responses received
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Use of Interpreters or Other Action

The PSS must take whatever action necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

Parent copy of child's IEP

The PSS must give the parent a copy of the child's IEP at no cost to the parent.

When Must IEP's Be in Effect

34 CFR §300.323

- At the beginning of each school year, the PSS must have in effect an IEP for each child with a disability.
- IEP for children aged three through five: It shall be the policy of the CNMI PSS to utilize the IEP for children aged three to five.

Initial IEPs/ Provision of Services

- A meeting to develop an IEP for the child must be conducted within **30 days** of determination of eligibility that the child is in need of special education and related services.
- As soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Accessibility of the Child IEP to Teachers and Others

- The PSS ensures that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.
- Each teacher and provider is informed of:
 - His or her responsibilities related to implementing the child's IEP; and
 - The specific accommodations, modification, and supports that must be provided to the child in accordance to the child's IEP

IEP's for Children who transfer from one public school to another In the CNMI

If a child with a disability who had an IEP in effect in one public school transfers to a new public school with the CNMI and enrolls in the new public school within the same year, the new public school must provide FAPE to the child, including the same services described in the child's IEP. The new public school is responsible for ensuring timelines for review are followed.

IEP's for Children Who Transfer From Another State

If a child with a disability, who had an IEP that was in effect in a previous public agency in another state, transfers to the PSS within the same school year, the PSS in consultation with the parents, must provide the child with FAPE including services comparable to those described in the child's IEP from the previous public agency, until the PSS:

- Conducts an evaluation, if determined to be necessary by PSS;

- Develops, adopts, and implements a new IEP if appropriate, consistent with IDEA and CNMI requirements.

Transmittal of Records

To facilitate the transition for a child transferring from one PSS school to another or from out of state, the new school in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child from the previous public agency (or school) from which the child was enrolled.

The previous public agency in which the child was enrolled must take responsible steps to promptly respond to the PSS request.

Development, review, and revision of IEP

34 CFR §300.324

Development of IEP:

- In developing each child's IEP, the IEP Team must consider:
 - The strengths of the child;
 - The concerns of the parents for enhancing the education of their child;
 - The results of the initial or most recent evaluation of the child; and
 - The academic, developmental, and functional needs of the child.
- Consideration of special factors: The IEP Team must:
 - In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 - In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - Consider whether the child needs assistive technology devices and services.
- Requirement with respect to regular education teacher: A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

- Appropriate positive behavioral interventions and supports and other strategies for the child; and
- Supplementary aids and services, program modifications, and support for school personnel consistent with IDEA.
- Agreement.
 - In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
 - If changes are made to the child's IEP in accordance with this section, the PSS must ensure that the child's IEP Team is informed of those changes.
- Consolidation of IEP Team meetings. To the extent possible, the PSS must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
- Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

Review and revision of IEPs:

The PSS ensures that the IEP Team:

- Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - Revises the IEP, as appropriate, to address:
 - Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
 - The results of any reevaluation conducted;
 - Information about the child provided to, or by, the parents;
 - The child's anticipated needs; or
 - Other matters.
- Consideration of special factors: In conducting a review of the child's IEP, the IEP Team must consider the special factors in this section.
- Requirement with respect to regular education teacher: A regular education teacher of the child, as a member of the IEP Team, must participate in the review and revision of the IEP of the child.

Failure to meet transition objectives:

- Participating agency failure: If a participating agency, other than the PSS, fails to provide the transition services described in the IEP in accordance with IDEA, the PSS must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.
- Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

Children with disabilities in adult prisons:

- Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under CNMI law and incarcerated in adult prisons:
 - The requirements contained in section 612(a)(16) of the Act and Sec. 300.320(a)(6) (relating to participation of children with disabilities in general assessments).
 - The requirements relating to transition planning and transition services do not apply with respect to the children whose eligibility under IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- Modifications of IEP or placement.
 - The IEP Team of a child with a disability who is convicted as an adult under CNMI law and incarcerated in an adult prison may modify the child's IEP or placement if the CNMI has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
 - The requirements relating to IEPs, and relating to LRE, do not apply with respect to the modifications described in this section.

Private school placements by PSS

34 CFR §300.325

Developing IEPs:

- Before the PSS places a child with a disability in, or refers a child to, a private school or facility, the PSS must initiate and conduct a meeting to develop an IEP for the child in accordance with IDEA.
- The PSS must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the PSS must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

Reviewing and revising IEPs:

- After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the PSS.
- If the private school or facility initiates and conducts these meetings, the PSS must ensure that the parents and a PSS representative:
 - Are involved in any decision about the child's IEP; and
 - Agree to any proposed changes in the IEP before those changes are implemented.

Responsibility:

Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the PSS.

Least Restrictive Environment Policy

34 CFR §300.114

It is the policy of the PSS to have in effect policies and procedures to ensure that schools in the CNMI meet the LRE requirements of this section and continuum of alternative placements except for children with disabilities in adult prisons who are covered under 300.324.

The PSS ensures that:

- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Additional requirement--State funding mechanism:

- A CNMI funding mechanism does not result in placements that violate the LRE requirements; and
- The CNMI does not use a funding mechanism by which the CNMI distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.
- Assurance. If the CNMI does not have policies and procedures to ensure compliance with this section, the CNMI must provide the Secretary an assurance that the CNMI will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate the LRE requirements.

Continuum of alternative placements

34 CFR §300.115

- The PSS ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- The continuum required in this section must:
 - Include the alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
 - Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Placement

34 CFR §300.116

In determining the educational placement of a child with a disability, including a preschool child with a disability, the PSS ensures that:

- The placement decision:
 - Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - Is made in conformity with the LRE provisions of this section;
- The child's placement:
 - Is determined at least annually;
 - Is based on the child's IEP; and
 - as close as possible to the child's home;
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

Nonacademic settings

34 CFR §300.117

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, the PSS ensures that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The PSS ensures that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Children in public or private institutions

34 CFR §300.118

Except for exceptions regarding PSS's responsibility for general supervision for some individuals in adult prisons, the PSS ensures that the LRE requirement is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

Technical assistance and training activities

34 CFR §300.119

The PSS must carry out activities to ensure that teachers and administrators in all schools:

- Are fully informed about their responsibilities for implementing the LRE requirement; and
- Are provided with technical assistance and training necessary to assist them in this effort.

Monitoring activities

34 CFR §300.120

- The PSS must carry out activities to ensure that the LRE requirement is implemented by each school.
- If there is evidence that a school makes placements that are inconsistent with LRE requirement, the PSS must:
 - Review the school's justification for its actions; and
 - Assist in planning and implementing any necessary corrective action.

PROCEDURAL SAFEGUARDS

34 CFR §300.121

The CNMI PSS has adopted the Office of Special Education Program (OSEP) Model Form for Procedural Safeguards.

Below are the Procedural Safeguards:

General Information

Prior Written Notice

Notice

The CNMI PSS must give you written notice (provide you certain information in writing), whenever it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

Content of notice

The written notice must:

1. Describe the action that the CNMI PSS proposes or refuses to take;
2. Explain why the CNMI PSS is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report the CNMI PSS used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that CNMI PSS is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of the IDEA;
7. Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
8. Provide a description of other reasons why the CNMI PSS proposed or refused the action.

Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the CNMI PSS must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that the requirements in paragraph 1 and 2 have been met.

Native Language

34 CFR §300.29

Native language, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail

34 CFR §300.505

Notices related to a due process complaint.

Parental Consent - Definition

34 CFR §300.9

Consent

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the CNMI PSS is not required to amend the child's

education records to remove any references that your child's received special education and related services after your withdrawal of consent.

Parental Consent **34 CFR §300.300**

Consent for initial evaluation

The CNMI PSS cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the headings Prior Written Notice and Parental Consent.

The CNMI PSS must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the CNMI PSS to start providing special education and related services to your child. The CNMI PSS may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the CNMI PSS to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, the CNMI PSS may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under the CNMI law). The CNMI PSS will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Special rules for initial evaluation of wards of the CNMI

If a child is a ward of the CNMI and is not living with his/her parent:

The CNMI PSS does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the CNMI PSS cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with CNMI law; or
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

ward of the CNMI, as used in the IDEA, means a child who, as determined by the **CNMI** where the child lives, is:

1. A foster child;
2. Considered a ward of the CNMI under CNMI law; or
3. In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the CNMI* does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA.

Parental consent for services

The CNMI PSS must obtain your informed consent before providing special education and related services to your child for the first time.

The CNMI PSS must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, the CNMI PSS may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the CNMI PSS does not provide your child with the special education and related services for which it sought your consent, the CNMI PSS:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the CNMI PSS may not continue to provide such services to your child, but must provide prior written notice as described under the heading **Prior Written Notice** before discontinuing the notice.

Parental consent for reevaluations

The CNMI PSS must obtain your informed consent before it reevaluates your child, unless the CNMI PSS can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; and
2. You did not respond.

If you refuse to consent to your child's reevaluation, the CNMI PSS may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, the CNMI PSS does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

Documentation of reasonable efforts to obtain parental consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the CNMI for initial evaluations. The documentation must include a record of the CNMI PSS's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Other consent requirements

Your consent is not required before CNMI PSS may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

The CNMI PSS must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE).

The CNMI PSS may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the CNMI PSS do so.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the CNMI PSS may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

Independent Educational Evaluations**34 CFR §300.502****General**

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by the CNMI PSS.

If you request an independent educational evaluation, the CNMI PSS must provide you with information about where you may obtain an independent educational evaluation and about the CNMI PSS's criteria that apply to independent educational evaluations.

Definitions

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the CNMI PSS responsible for the education of your child.

Public expense means that the CNMI PSS either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA, which allow CNMI to use whatever CNMI, Federal, and private sources of support are available in the CNMI to meet the requirements of Part B of the Act.

Parent right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by the CNMI PSS, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, the CNMI PSS must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the CNMI PSS demonstrates in a hearing that the evaluation of your child that you obtained did not meet the CNMI PSS's criteria.
2. If the CNMI PSS requests a hearing and the final decision is that the CNMI PSS's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the CNMI PSS may ask why you object to the evaluation of your child obtained by the CNMI PSS. However, the CNMI PSS may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the CNMI PSS's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time the CNMI PSS conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with the CNMI PSS an evaluation of your child that you obtained at private expense:

1. The CNMI PSS must consider the results of the evaluation of your child, if it meets the CNMI PSS's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; and
2. You or the CNMI PSS may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

CNMI PSS criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the CNMI PSS uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, the CNMI PSS may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Confidentiality of Information

Definitions

34 CFR §300.611

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *CNMI PSS* means any school that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

Personally Identifiable

34 CFR §300.32

Personally identifiable means information that has:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents

34 CFR §300.612

The CNMI PSS must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the CNMI;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the CNMI intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate activity children in need of special education and related services (also known as "child find"), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the CNMI of these activities.

Access Rights **34 CFR §300.613**

The CNMI PSS must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the CNMI PSS under Part B of the IDEA. The CNMI PSS must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the CNMI PSS to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the CNMI PSS provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
3. Your right to have your representative inspect and review the records.

The CNMI PSS may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable CNMI law governing such matters as guardianship, or separation, and divorce.

Record of Access **34 CFR §300.614**

The CNMI PSS must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the CNMI PSS), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on More Than One Child **34 CFR §300.615**

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

List of Types and Locations of Information
34 CFR §300.616

On request, the CNMI PSS must provide you with a list of the types and locations of education records collected, maintained, or used by the CNMI PSS.

Fees
34 CFR §300.617

The CNMI PSS may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

The CNMI PSS may not charge a fee to search for or to retrieve information under Part B of the IDEA.

Amendment of Records at Parent's Request
34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the CNMI PSS that maintains the information to change the information.

The CNMI PSS must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the CNMI PSS refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading **Opportunity For a Hearing**.

Opportunity for a Hearing
34 CFR §300.619

The CNMI PSS must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

Hearing Procedures
34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing
34 CFR §300.620

If, as a result of the hearing, the CNMI PSS decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the CNMI PSS decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the CNMI PSS.

Such an explanation placed in the records of your child must:

1. Be maintained by the CNMI PSS as part of the records of your child as long as the record or contested portion is maintained by the CNMI PSS; **and**
2. If the CNMI PSS discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent For Disclosure of Personally Identifiable Information **34 CFR §300.622**

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under the CNMI law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the CNMI, your consent must be obtained before any personally identifiable information about your child is released between officials in the state or territory where the private school is located and officials in the CNMI PSS school where you reside.

Safeguards **34 CFR §300.623**

The CNMI PSS must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each school of the CNMI PSS must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding your school's policies and procedures regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA). The CNMI PSS must maintain, for public inspection, a current listing of the names and positions of those employees within the CNMI PSS who may have access to personally identifiable information.

Destruction of Information

34 CFR §300.624

The CNMI PSS must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

CNMI Complaint Procedures

Difference Between Due Process Hearing Complaint and CNMI Complaint Procedures

The regulations for Part B of IDEA set forth separate procedures for CNMI complaints and for due process complaints and hearings. As explained below, any individual or organization may file a CNMI complaint alleging a violation of any Part B requirement by the CNMI PSS, or any other public agency. Only you or the CNMI PSS may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the CNMI PSS generally must resolve a CNMI complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading **Resolution Process**, unless the hearing officer grants a specific extension of the timeline at your request or the CNMI PSS's request. The CNMI PSS complaint and due process complaint, resolution and hearing procedures are described more fully below. The CNMI PSS must develop model forms to help you file a due process complaint and help you or other parties to file a CNMI PSS complaint as described under the heading **Model Forms**.

Adoption of CNMI Complaint Procedures

34 CFR §300.151

General

The CNMI PSS must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another CNMI;
2. The filing of a complaint with the CNMI PSS;
3. Widely disseminating the CNMI complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services

In resolving a CNMI complaint in which the CNMI PSS has found a failure to provide appropriate services, the CNMI PSS must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursements); and
2. Appropriate future provision of services for all children with disabilities.

Minimum CNMI Complaint Procedures 34 CFR §300.152

Time limit; minimum procedures

Each school in the CNMI PSS must include in its CNMI complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the CNMI PSS determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the CNMI PSS or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the CNMI PSS or other public agency is violating a requirement of Part B of the IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the CNMI PSS's final decision.

Time extension; final decision; implementation

The CNMI PSS's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular CNMI complaint; or (b) you and the CNMI PSS or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the CNMI.
2. Include procedures for effective implementation of the CNMI PSS's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

CNMI complaints and due process hearings

If a written CNMI complaint is received that is also the subject of a due process hearing as described below under the heading **Filing a Due Process Complaint**, or the CNMI complaint contains multiple issues of which one or more are part of such a hearing, the

CNMI must set aside the CNMI complaint, or any part of the CNMI complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the CNMI complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a CNMI complaint has previously been decided in a due process hearing involving the same parties (for example, you and the CNMI PSS), then the due process hearing decision is binding on that issue and the PSS must inform the complainant that the decision is binding.

A complaint alleging the CNMI PSS's or other public agency's failure to implement a due process hearing decision must be resolved by the CNMI PSS.

Filing a Complaint

34 CFR §300.153

An organization or individual may file a signed written CNMI complaint under the procedures described above.

The CNMI complaint must include:

1. A statement that the CNMI PSS or other public agency has violated a requirement of Part B of the IDEA or its regulations;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations regarding a specific child:
 - (a) The name of the child and address of the residence of the child;
 - (b) The name of the school the child is attending;
 - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
 - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of CNMI Complaint Procedures.***

The party filing the CNMI complaint must forward a copy of the complaint to the CNMI PSS or other public agency serving the child at the same time the party files the complaint with the CNMI PSS.

Due Process Complaint Procedures

Filing a Due Process Complaint

34 CFR §300.507

General

You or the CNMI PSS may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the CNMI PSS knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The CNMI PSS specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The CNMI PSS withheld information from you that it was required to provide you under Part B of the IDEA.

Information for parents

The CNMI PSS must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the CNMI PSS file a due process complaint.

Due Process Complaint

34 CFR §300.508

General

In order to request a hearing, you or the CNMI PSS (or your attorney or the CNMI PSS's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the CNMI PSS with a copy of the complaint.

Content of the complaint

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;

5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the CNMI PSS at the time.

Notice required before a hearing on a due process complaint

You or the CNMI PSS may not have a due process hearing until you or the CNMI PSS (or your attorney or the CNMI PSS's attorney), files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the CNMI PSS) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the CNMI PSS) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the CNMI PSS in writing immediately.

Complaint amendment

You or the CNMI PSS may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading **Resolution Process**; **or**
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the CNMI PSS) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

CNMI PSS response to a due process complaint

If the CNMI PSS has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the CNMI PSS must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the CNMI PSS proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the CNMI PSS used as the basis for the proposed or refused action; **and**

4. A description of the other factors that are relevant to the CNMI PSS's proposed or refused action.

Providing the information in items 1-4 above does not prevent the CNMI CNMI PSS from asserting that your due process complaint was insufficient.

Other party response to a due process complaint

Except as provided under the sub-heading immediately above, the **CNMI PSS response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

Model Forms

34 CFR §300.509

The CNMI PSS must develop model forms to help you file a due process complaint and to help you and the other parties file a CNMI complaint. However, the CNMI PSS may not require the use of these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a CNMI complaint.

Mediation

34 CFR §300.506

General

The CNMI PSS must develop procedures that make mediation available to allow you and the CNMI PSS to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the CNMI PSS's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The CNMI PSS may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the CNMI; **and**

2. Who would explain the benefits and encourage the use of the mediation process to you.

The CNMI must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The CNMI PSS must select mediators on a random, rotational, or other impartial basis. The CNMI is responsible for the cost of the mediation process, including the costs of meetings. Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the CNMI PSS. If you and the CNMI PSS resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
2. Is signed by both you and a representative of the CNMI PSS who has the authority to bind the CNMI PSS.

A written, signed mediation agreement is enforceable in any CNMI court of competent jurisdiction (a court that has the authority under CNMI law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or CNMI court receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. May not be an employee of the CNMI PSS or the agency that is involved in the education or care of your child; and
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of the CNMI PSS or agency solely because he or she is paid by the agency or the CNMI PSS to serve as a mediator.

Resolution Process **34 CFR §300.510**

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the CNMI PSS must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the CNMI PSS who has decision-making authority on behalf of the CNMI PSS; and

2. May not include an attorney of the CNMI PSS unless you are accompanied by an attorney.

You and the CNMI PSS determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the CNMI PSS has the opportunity to resolve the dispute. The resolution meeting is not necessary if:

1. You and the CNMI PSS agree in writing to waive the meeting; or
2. You and the CNMI PSS agree to use the mediation process, as described under the heading **Mediation**.

Resolution period

If the CNMI PSS has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, **Hearing Decisions**, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the CNMI PSS have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If after making reasonable efforts and documenting such efforts, the CNMI PSS is not able to obtain your participation in the resolution meeting, the CNMI PSS may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the CNMI PSS's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the CNMI PSS fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-calendar-day resolution period

If you and the CNMI PSS agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the PSS agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the CNMI PSS agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the CNMI PSS withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the dispute is reached at the resolution meeting, you and the CNMI PSS must enter into a legally binding agreement that is:

1. Signed by you and a representative of the CNMI PSS who has the authority to bind the CNMI PSS; **and**
2. Enforceable in any CNMI court of competent jurisdiction (a CNMI court that has authority to hear this type of case) or in a district court of the United States or by the CNMI PSS, if the CNMI has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

If you and the CNMI PSS enter into an agreement as a result of a resolution meeting, either party (you or the CNMI PSS) may void the agreement within 3 business days of the time that both you and the CNMI PSS signed the agreement.

Hearings on Due Process Complaints

Impartial Due Process Hearing **34 CFR §300.511**

General

Whenever a due process complaint is filed, you or the CNMI PSS involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the CNMI PSS that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and CNMI regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and CNMI courts; **and**

4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The CNMI PSS must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the CNMI PSS) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the CNMI PSS must request an impartial hearing on a due process complaint within two years of the date you or the CNMI PSS knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. The CNMI PSS specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The CNMI PSS withheld information from you that it was required to provide to you under Part B of the IDEA.

Hearing Rights

34 CFR §300.512

General

You have the right to represent yourself at a due process hearing. In addition, any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the due process hearing by an attorney or non-attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
6. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional disclosure of information

At least five business days prior to a due process hearing, you and the CNMI PSS must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the CNMI PSS intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; and
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Hearing Decisions**34 CFR §300.513****Decision of hearing officer**

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE. In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; or
3. Caused a deprivation of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering the CNMI PSS to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision to advisory panel and general public

The CNMI PSS after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the CNMI special education advisory panel, and

2. Make those findings and decisions available to the public.

Appeals

Finality of Decision; Appeal; Impartial Review 34 CFR §300.514

The CNMI is a one-tier system.

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the CNMI PSS) may appeal the decision by bringing a civil action, as described under the heading **Civil Actions, Including the Time Period in Which to File Those Actions**.

Timelines and Convenience of Hearings and Reviews 34 CFR §300.515

The CNMI PSS must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading **Adjustments to the 30-calendar-day resolution period**, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the CNMI PSS). Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

Civil Actions, Including the Time Period in Which to File Those Actions 34 CFR §300.516

General

Any party (you or the CNMI PSS) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a CNMI court of competent jurisdiction (a CNMI court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time limitation

The party (you or the CNMI PSS) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the CNMI PSS's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

Rule of construction

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint; process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

The Child's Placement While the Due Process Complaint and Hearing are Pending 34 CFR §300.518

Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the CNMI or the CNMI PSS agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the CNMI PSS is not required to provide the Part C services that the

child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the CNMI PSS must provide those special education and related services that are not in dispute (those which you and the CNMI PSS both agree upon).

If a hearing officer in a due process hearing conducted by the CNMI PSS agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

Attorneys' Fees **34 CFR §300.517**

General

In any action or proceeding brought under Part B of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing CNMI PSS, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing the CNMI PSS to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorney's fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
 - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or CNMI-level review, at any time more than 10 calendar days before the proceeding begins;
 - b. The offer is not accepted within 10 calendar days; and
 - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting, as described under the heading **Resolution Proces**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide the CNMI PSS the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the CNMI or the CNMI PSS unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

Procedures When Disciplining Children with Disabilities

Authority of School Personnel 34 CFR §300.530

Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension.

School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the CNMI PSS must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading ***Manifestation determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

Services

The CNMI PSS does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation determination***) or who is removed under Special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and if the current removal is for **10 school days** in a row or less and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate

services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the CNMI PSS, the parent, and relevant members of the IEP Team (as determined by the parent and the PSS) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the CNMI PSS's failure to implement the child's IEP.

If the CNMI PSS, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the CNMI PSS, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the CNMI PSS's failure to implement the IEP, the CNMI PSS must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If the CNMI PSS, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the CNMI PSS had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading **Special circumstances**, the CNMI PSS must return the child to the placement from which the child was removed, unless the parent and the CNMI PSS agree to a change of placement as part of the modification of the behavioral intervention plan.

Special circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the CNMI PSS;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the CNMI PSS ;
or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the CNMI PSS.

Definitions

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the CNMI PSS must notify you of that decision, and provide the parents with a procedural safeguards notice.

Change of Placement Because of Disciplinary Removals

34 CFR §300.536

A removal of a child with a disability from the child's current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. The child has been subjected to a series of removals that constitute a pattern because:
 - a. The series of removals total more than 10 school days in a school year;
 - b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;

- c. Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another; **and**

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the CNMI PSS and, if challenged, is subject to review through due process and judicial proceedings.

Determination of Setting **34 CFR § 300.531**

The individualized education program (IEP) Team must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings **Additional authority** and **Special circumstances**, above.

Appeal **34 CFR § 300.532**

General

You may file a due process complaint (see the heading Due Process Complaint Procedures) to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

The CNMI PSS may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to the child or to others.

Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading **Impartial Hearing Officer** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that the child's behavior was a manifestation of the child's disability; **or**
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the CNMI PSS believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever you or the CNMI PSS files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the

headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. The CNMI PSS must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the CNMI PSS agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. The CNMI may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see the heading ***Appeal***).

Placement During Appeals
34 CFR §300.533

When, as described above, you or the CNMI PSS has filed a due process complaint related to disciplinary matters, your child must (unless you and the CNMI PSS agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

Protections for Children Not Yet Eligible for Special Education and Related Services
34 CFR §300.534

General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the CNMI PSS had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

The CNMI PSS will be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the CNMI PSS, or to your child's teacher that the child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; **or**

3. The child's teacher, or other CNMI PSS personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the CNMI PSS's special education program coordinator or to other supervisory personnel of the CNMI PSS.

Exception

The CNMI PSS would not be deemed to have such knowledge if:

1. The child's parent has not allowed an evaluation of the child or refused special education services; or
2. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, the CNMI PSS does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the CNMI PSS, and information provided by you, the CNMI PSS must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities **34 CFR §300.535**

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent the CNMI law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and CNMI law to crimes committed by a child with a disability.

Transmittal of records

If the CNMI PSS reports a crime committed by a child with a disability, the CNMI PSS:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and

2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

General

34 CFR §300.148

Part B of the IDEA does not require the CNMI PSS to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the CNMI PSS made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the CNMI PSS where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for private school placement

If your child previously received special education and related services under the authority of the CNMI PSS, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the CNMI PSS, a court or a hearing officer may require the CNMI PSS to reimburse you for the cost of that enrollment if the court or hearing officer finds that the CNMI PSS had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the CNMI standards that apply to education provided by the CNMI PSS.

Limitation on reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the CNMI PSS to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the CNMI PSS of that information;
2. If, prior to your removal of your child from the public school, the CNMI PSS provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; or
3. Upon a court's finding that your actions were unreasonable. However, the cost of reimbursement.

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if: (a) you are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.

Children with Disabilities Enrolled by Their Parents in Private Schools

Definition of parentally-placed private school children with disabilities

34 CFR §300.130

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined by IDEA, other than children with disabilities placed or referred by the PSS.

Child find for parentally-placed private school children with disabilities

34 CFR §300.131

- The PSS must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, and secondary schools located in the school district served by the school, in accordance with the procedures in this section, and Sections 300.111 and 300.201.
- Child find design. The child find process must be designed to ensure:
 - The equitable participation of parentally-placed private school children; and
 - An accurate count of those children.
- Activities. In carrying out the requirements of this section, the school, or, if applicable, the PSS, must undertake activities similar to the activities undertaken for the PSS's public school children.
- Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the PSS has met its obligation related to expenditures.
- Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the CNMI consistent with initial evaluation requirements.
- Out-of-State children. The PSS in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

Provision of services for parentally-placed private school children with disabilities--basic requirement

34 CFR §300.132

- To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the PSS, provision is made for the participation of those children in the program assisted or carried out

under Part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with the determination of equitable services, unless the Secretary has arranged for services to those children under the by-pass provisions in Sections 300.190 through 300.198.

- Services plan for parentally-placed private school children with disabilities. In accordance with the previous section and Sections 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the PSS in which the private school is located to receive special education and related services under IDEA.
- Record keeping. The PSS must maintain in its records the following information related to parentally-placed private school children covered under Sections 300.130 through 300.144:
 - The number of children evaluated;
 - The number of children determined to be children with disabilities; and
 - The number of children served.

Expenditures

34 CFR §300.133

- Formula. To meet the requirement of Sec. 300.132, the PSS must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
- For children aged 3 through 21, an amount that is the same proportion of the PSS's total subgrant under section 611(f) of the IDEA as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the PSS, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
- For children aged three through five, an amount that is the same proportion of the PSS's total subgrant under section 619(g) of the IDEA as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the PSS, is to the total number of children with disabilities in its jurisdiction aged three through five.
- As described in this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school.
- If the PSS has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the PSS must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
- Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the PSS, after timely and meaningful consultation with representatives of private

schools under Sec. 300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the CNMI.

- Annual count of the number of parentally-placed private school children with disabilities. The PSS must:
 - After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with Sec. 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the CNMI; and
 - Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
- The count must be used to determine the amount that the PSS must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
- Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under the IDEA.

Consultation

34 CFR §300.134

To ensure timely and meaningful consultation, the PSS must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- Child find. The child find process, including:
 - How parentally-placed private school children suspected of having a disability can participate equitably; and
 - How parents, teachers, and private school officials will be informed of the process.
- Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under Sec. 300.133(b), including the determination of how the proportionate share of those funds was calculated.
- Consultation process. The consultation process among the PSS, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--
 - The types of services, including direct services and alternate service delivery mechanisms; and

- How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
- How and when those decisions will be made;
- Written explanation by PSS regarding services. If the PSS disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the PSS will provide to the private school officials a written explanation of the reasons why the PSS chose not to provide services directly or through a contract.

Written affirmation

34 CFR §300.135

When timely and meaningful consultation, as required by Sec. 300.134, has occurred, the PSS must obtain a written affirmation signed by the representatives of participating private schools.

Compliance

34 CFR §300.136

- If the private school official is dissatisfied with the decision of the PSS, the official may submit a complaint to the U.S. Secretary of Education by providing the information on noncompliance described in this section; and
- The PSS must forward the appropriate documentation to the U.S. Secretary of Education.

Equitable services determined

34 CFR §300.137

- No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- Decisions.
 - Decisions about the services that will be provided to parentally-placed private school children with disabilities under Sections 300.130 through 300.144 must be made in accordance with this section and Sec. 300.134(c).
 - The PSS must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.
- Services plan for each child served under Sections 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from the PSS, the PSS must:
 - Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
 - Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the PSS shall use other methods to

ensure participation by the religious or other private school, including individual or conference telephone calls.

Equitable services provided

34 CFR §300.138

- General.
 - The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of Sec. 300.18.
 - Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- Services provided in accordance with a services plan.
 - Each parentally-placed private school child with a disability who has been designated to receive services under Sec. 300.132 must have a services plan that describes the specific special education and related services that the PSS will provide to the child in light of the services that the PSS has determined, through the process described in Sections 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
 - The services plan must, to the extent appropriate:
 - Meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and
 - Be developed, reviewed, and revised consistent with IEP requirements.
- Provision of equitable services.
 - The provision of services pursuant to this section and Sections 300.139 through 300.143 must be provided:
 - By employees of the PSS; or
 - Through contract by the PSS with an individual, association, agency, organization, or other entity.
 - Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Location of services and transportation

34 CFR §300.139

- Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.
- Transportation:
 - General.

- If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation:
 - ◆ From the child's school or the child's home to a site other than the private school; and
 - ◆ From the service site to the private school, or to the child's home, depending on the timing of the services.
- PSS is not required to provide transportation from the child's home to the private school.
- Cost of transportation. The cost of the transportation described in this section may be included in calculating whether the PSS has met the requirement of Sec. 300.133.

Due process complaints and State complaints

34 CFR §300.140

- Due process not applicable, except for child find. (1) Except as provided in this section, the procedures in Sections 300.504 through 300.519 do not apply to complaints that the PSS has failed to meet the requirements of Sections 300.132 through 300.139, including the provision of services indicated on the child's services plan.
- Child find complaints: To be filed with the PSS in which the private school is located.
 - The procedures in Sections 300.504 through 300.519 apply to complaints that the PSS has failed to meet the child find requirements in Sec. 300.131, including the requirements in Sections 300.300 through 300.311.
 - Any due process complaint regarding the child find requirements (as described in this section) must be filed with the PSS.
- State complaints
 - Any complaint that the PSS has failed to meet the requirements in Sections 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Sections 300.151 through 300.153.
 - A complaint filed by a private school official under Sec. 300.136(a) must be filed with the PSS in accordance with the procedures in Sec. 300.136(b).

Requirement that funds not benefit a private school

34 CFR §300.141

- The PSS may not use funds provided under section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- The PSS must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting:
 - The needs of a private school; or
 - The general needs of the students enrolled in the private school.

Use of personnel
34 CFR §300.142

- Use of public school personnel. The PSS may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities:
 - To the extent necessary to provide services under Sections 300.130 through 300.144 for parentally-placed private school children with disabilities; and
 - If those services are not normally provided by the private school.
- Use of private school personnel. The PSS may use funds available under sections 611 and 619 of the IDEA to pay for the services of an employee of a private school to provide services under Sections 300.130 through 300.144 if--
 - The employee performs the services outside of his or her regular hours of duty; and
 - The employee performs the services under public supervision and control.

Separate classes prohibited
34 CFR §300.143

The PSS may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the children if:

- The classes are at the same site; and
- The classes include children enrolled in public schools and children enrolled in private schools.

Property, equipment, and supplies

- The PSS must control and administer the funds used to provide special education and related services under Sections 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- The PSS may place equipment and supplies in a private school for the period of time needed for the IDEA Part B program.
- The PSS must ensure that the equipment and supplies placed in a private school--
 - Are used only for IDEA Part B purposes; and
 - Can be removed from the private school without remodeling the private school facility.
- The PSS must remove equipment and supplies from a private school if--
 - The equipment and supplies are no longer needed for IDEA Part B purposes; or
 - Removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA Part B purposes.
- No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities

Children with Disabilities in Private Schools Placed or Referred by the CNMI PSS

Applicability of Sections 300.146 through 300.147. 34 CFR §300.145

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by the PSS as a means of providing special education and related services.

Responsibility of PSS 34 CFR §300.146

The PSS ensures that a child with a disability who is placed in or referred to a private school or facility by the PSS:

- Is provided special education and related services--
 - In conformance with an IEP that meets the requirements of Sections 300.320 through 300.325; and
 - At no cost to the parents;
- Is provided an education that meets the standards that apply to education provided by the PSS including:
 - The requirements of IDEA except for Sec. 300.18 and Sec. 300.156(c); and
- Has all of the rights of a child with a disability who is served by the PSS.

Implementation by PSS 34 CFR §300.147

In implementing Sec. 300.146, the PSS must:

- Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- Disseminate copies of applicable standards to each private school and facility to which the PSS has referred or placed a child with a disability; and
- Provide an opportunity for those private schools and facilities to participate in the development and revision of CNMI standards that apply to them.

Children with Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue

Placement of children by parents when FAPE is at issue 34 CFR §300.148

- The PSS is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the PSS made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the PSS must include that child in the population whose needs are addressed.
- Disagreements about FAPE
Disagreements between the parents and the PSS regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures.
- Reimbursement for private school placement
If the parents of a child with a disability, who previously received special education and related services under the authority of the PSS, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the PSS, a court or a hearing officer may require the PSS to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the PSS had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the CNMI standards that apply to education provided by the PSS.
- Limitation on reimbursement
The cost of reimbursement described in this section may be reduced or denied:
 - If:
 - At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the PSS to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the PSS of the information described in this section;
 - If, prior to the parents' removal of the child from the public school, the PSS informed the parents, through the notice requirements, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
 - Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

- Exception. Notwithstanding the notice requirement in this section, the cost of reimbursement:
 - Must not be reduced or denied for failure to provide the notice if:
 - The school prevented the parents from providing the notice;
 - The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in this section; or
 - Compliance with this section would likely result in physical harm to the child; and
 - May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:
 - The parents are not literate or cannot write in English; or
 - Compliance with this section would likely result in serious emotional harm to the child.

PERSONNEL QUALIFICATIONS

34 CFR §300.156

The PSS has established and maintains qualifications to ensure that personnel necessary to carry out the Part B of IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

Qualifications for Related Services and Paraprofessionals

It is the policy of PSS that the qualifications above include qualifications for related services personnel and paraprofessionals that:

- Are consistent with any CNMI-approved or CNMI-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
- Ensure that related services personnel who deliver services in their discipline or profession:
 - Meet the requirements of this section; and
 - Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
 - Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with CNMI law, regulation, or written policy, in meeting the requirements of Part B of IDEA to be used to assist in the provision of special education and related services under this part to children with disabilities.

Qualifications for special education teachers

The qualifications described in this section ensure that each person employed as a public school special education teacher in the CNMI who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established by the Elementary and Secondary Education Act (ESEA):

It is the policy of the PSS to take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under Part B of IDEA to children with disabilities:

Notwithstanding any other individual right of action that a parent or student may maintain under Part B of IDEA, nothing in Part B shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular PSS employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the PSS as provided for under Part B of IDEA.

PERFORMANCE GOALS AND INDICATORS

34 CFR §300.157

The PSS has established goals for the performance of children with disabilities in the CNMI. The goals:

- Promote the purposes of Part B of IDEA;
- Are the same as the CNMI's objectives for progress by children in its definition of adequate yearly progress, including the PSS's objectives for progress by children with disabilities;
- Address graduation rates and dropout rates, as well as such other factors as the CNMI may determine; and
- Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the CNMI.

The PSS has established performance indicators the CNMI will use to assess progress toward achieving the goals described in this section, including measurable annual objectives for progress by children with disabilities and annually report to the Secretary and the public on the progress of the CNMI, and of children with disabilities in the CNMI, toward meeting the goals established in this section.

PARTICIPATION IN ASSESSMENTS

20 U.S.C. 1412 (a)(16)(A)-(E)

GENERAL

It is the policy of the PSS that all children with disabilities are included in all general CNMI assessment programs with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

The PSS has developed separation guidelines to support this policy for participation in CNMI-wide assessments or alternate assessments where necessary.

SUPPLEMENTATION OF CNMI AND OTHER FEDERAL FUNDS

34 CFR 300.162

Expenditures

It is the policy of the PSS to expend the funds paid to the CNMI in accordance with all the provisions of Part B of IDEA.

Prohibition against commingling

It is the policy of the PSS not to commingle funds paid to the CNMI under Part B of IDEA with other CNMI funds.

CNMI-Level Supplanting

It is the policy of the PSS that funds paid to the CNMI under Part B of IDEA is used to supplement the level of Federal and CNMI funds (including funds that are not under the direct control of the PSS) expended for special education and related services provided to children with disabilities under Part B of IDEA, and in no case supplant those Federal or CNMI funds.

MAINTENANCE OF CNMI FINANCIAL SUPPORT

34 CFR §300.163

It is policy of the PSS not to reduce the amount of financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

PUBLIC PARTICIPATION

34 CFR 300.165

It is the policy of the PSS that prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA (including any amendments to those policies

and procedures), that public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities are conducted as per IDEA requirements.

It is the policy of the PSS to comply with the public participation requirements under Part B of IDEA before submitting a State plan.

COMPLIANCE WITH SUPPLANTING AND MAINTENANCE OF EFFORT REQUIREMENTS

34 CFR 300.166

It is the policy of the PSS not to use funds under Part B of IDEA to satisfy CNMI-law mandated funding obligations to schools, including funding based on student attendance or enrollment, or inflation.

STATE ADVISORY PANEL

34 CFR 300.167

The PSS has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the CNMI.

Membership

The advisory panel consists of members appointed by the Governor and is representative of the CNMI population and is composed of individuals involved in, or concerned with the education of children with disabilities, including:

- Parents of children with disabilities (ages birth through 26);
- Individuals with disabilities;
- Teachers;
- Representatives of institutions of higher education that prepare special education and related services personnel;
- State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11431 et seq.);
- Administrators of programs for children with disabilities;
- Representatives of other CNMI agencies involved in the financing or delivery of related services to children with disabilities;
- Representatives of private schools and public charter schools;
- Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- A representative from the CNMI child welfare agency responsible for foster care; and
- Representatives from the CNMI juvenile and adult corrections agencies.

Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

Duties

The advisory panel must:

- Advise the PSS of unmet needs within the CNMI in the education of children with disabilities;
- Comment publicly on any rules or regulations proposed by the PSS regarding the education of children with disabilities;
- Advise the PSS in developing evaluations and reporting on data to the Secretary under section 618 of Part B of IDEA;
- Advise the PSS in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA; and
- Advise the PSS in developing and implementing policies relating to the coordination of services for children with disabilities.

SUSPENSION AND EXPULSION RATES

34 CFR 300.167

It is the policy of the PSS to examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities

- Among schools in the CNMI; or
- Compared to the rates for nondisabled children within those agencies.

Review and revision of policies

If the discrepancies described in this section are occurring, the PSS reviews and, if appropriate, revise (or require the affected school to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with Part B of IDEA.

ACCESS TO INSTRUCTIONAL MATERIALS

34 CFR 300.167

It is the policy of the PSS to adopt the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner.

The PSS has established a State definition of "timely manner" for purposes of this section and has established procedures for coordinating with the National Instructional Materials Access Center (NIMAC).

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Updated 7/22/2011

OVERIDENTIFICATION AND DISPROPORTIONALITY

34 CFR 300.173

The CNMI has in effect, consistent with the purposes of Part B of IDEA, policies, and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

PROHIBITION ON MANDATORY MEDICATION

34 CFR 300.174

It is the policy of the PSS to prohibit school personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation, or receiving services under Part B of IDEA.

It is the PSS policy not to prohibit teachers and other school personnel from consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under the requirements of Part B of IDEA related to child find.



**Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD**

P.O. Box 502078, #1242 Pohnpei Court

Capitol Hill, Saipan, MP 96950

Tel No: (670)664-4809 Fax: (670)664-4814

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**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF THE AMENDMENTS
TO THE HEALTH CARE PROFESSIONS LICENSING BOARD
REGULATIONS FOR SCHEDULE OF FEES**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED AMENDMENTS TO THE REGULATIONS
VOLUME 34, NUMBER 08, PP 032742-032749 OF AUGUST 29, 2012**

HCPLB Regulations Fees, initially: NMIAC \$ 140-5.3-001602

ADOPTION OF THE AMENDMENTS TO THE REGULATIONS FOR SCHEDULE OF FEES: The Health Care Professions Licensing Board (HCPLB), hereby adopts the above-referenced regulations as permanent regulations, which were published in the Commonwealth Register at pages 032742-032749 in Volume 34, No. 08 on August 29, 2012 pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Health Care Professions Licensing Board announced that it intended to adopt them as permanent and now does so. The Health Care Professions Licensing Board certifies by signature below that, as published, such adopted amendments to the HCPLB regulations for Schedule of Fees are a true, complete, and correct copy and that they are being adopted without modification or amendment.

This HCPLB Regulations for Schedule of Fees shall supersede the prior regulations adopted in Volume 30, Number 03, page 28417 on March 25, 2008 of the Commonwealth Register.

PRIOR PUBLICATION: The prior publication was as stated above. The Health Care Professions Licensing Board adopted the regulations as final as of the date of signing below.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments to the HCPLB regulations for Schedule of Fees are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a), which in this instance is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT. Pursuant to the APA, 1 CMC § 9104(a)(2), the HCPLB received no comments on the proposed amendments to these regulations during the thirty-day period. Upon this adoption of the amendments, the agency, if requested to do so by any interested person, within 30 days of adoption, will issue a concise statement of the principal reasons for and against its adoption.

ATTORNEY GENERAL APPROVAL: The adopted amendments to the HCPLB regulations for Schedule of Fees were approved for promulgation by the CNMI Attorney General in the above cited pages of the Commonwealth Register, pursuant to 1

CMC §2153(3) (to review and approve as to form and legal sufficiency all rules and regulations to be promulgated by any department or agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I declare under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 3rd day of Oct., 2012, at Saipan, Commonwealth of the Northern Mariana Islands.
Certified and Ordered by:

Ahmad Al-Alou MD

Ahmad Al-Alou, MD
Acting Chairman

10/3/12

Date

Filed and Recorded by:

Esther M. San Nicolas

Esther M. San Nicolas
Commonwealth Register

10/05/2012

Date



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

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NON PUBLIC SCHOOL REP.

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TEACHER REPRESENTATIVE

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION ON REGULATIONS OF THE COMMONWEALTH STATE BOARD OF EDUCATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 33, Number 12, pp 032156-032164, of December 29, 2011

Regulations of the State Board of Education

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, State Board of Education ("the Board"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Repeal of the Extended Day Credit ("EDC") in its entirety which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Board announced that it intended to adopt as permanent to repeal in its entirety, and now does so.

The Proposed Repeal of the Extended Day Credit as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Request to Repeal, and that they are being adopted to be repealed in its entirety.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulation as final at its Special Board meeting of March 01, 2012.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:
"None"

AUTHORITY: The Board is required by the Legislature to adopt rules and regulations regarding those matters over which the State Board of Education has jurisdiction.

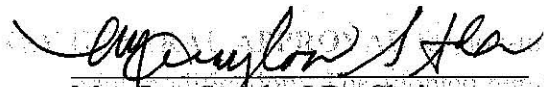
EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105 (b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§9102 and 9104 (a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

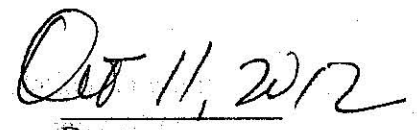
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a) (2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the _____ day of October, 2012, at Saipan, Commonwealth of the Northern Mariana Islands.

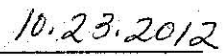
Certified and ordered by:


Mary Lou S. Ada, J.D., Chairperson
Twelfth CNMI State Board of Education


Date

Filed and
Recorded by:


Esther M. San Nicolas
Commonwealth Register


Date



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

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TEACHER REPRESENTATIVE

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING CHAPTER 60-20 PUBLIC SCHOOL SYSTEM RULES AND REGULATIONS

PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System ("PSS") finds that:

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after final adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

THE TERMS AND SUBSTANCE: The purpose of these regulations is to provide procedural guidelines for providing services to the CNMI Public in need of early intervention services for children with special needs.

THE SUBJECTS AND ISSUES INVOLVED: These regulations set forth the policy and procedure which govern PSS for delivery of Infant and Toddler services.

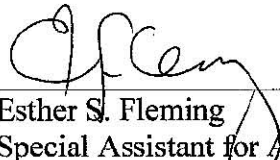
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations. (1 CMC § 9102(a) (1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104 (a) (1))

TO PROVIDE COMMENTS: All interest persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, State Board of Education, P.O. Box 501370, Saipan, MP 96950, call 670-237-3027 or fax 670-664-3711 within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC § 9104(a) (2))

This regulation was approved at the State Board of Education Meeting of April 16, 2012.

Submitted by: 
Mary Lou S. Ada, J.D.
Chairperson, State Board of Education

Sept 28, 2012
Date

Received by: 
Esther S. Fleming
Special Assistant for Administration

10/11/12
Date

Filed and
Recorded by: 
Esther M. San Nicolas
Commonwealth Register

10.11.2012
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104 (a) (3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated this 5th day of October, 2012.


VIOLA ALEPUYO
Acting Attorney General

STATE BOARD OF EDUCATION

COMMONWEALTH GI SANGKATTAN NA ISLAS MARIANAS SIHA SISTEMAN ESKUELAN PUPBLIKU
P. O. BOX 501370 SAIPAN, MP 96950 * Tel. 670 237-3027 * Fax: 670 664-3711

NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTU YAN REGULASION SIGUN I KAPITULU 60-20 NA AREKLAMENTU YAN REGULASION SIHA GI SISTEMAN ESKUELAN PUPBLIKU

MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Sistemán Eskuelan Pupblíku ("PSS") ha sodda' na:

I AKSION NI MA'INTENSIONA PARA U MA'ADÁPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islan Marianas Siha, i Sistemán Eskuelan Pupblíku ("PSS") ha intensióna para u adápta kumu petmanenti na regulasion siha ni mañechettun i Manmaproponi na Regulasion siha, sigun gi manera siha gi Áktun Administrative Procedures, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi halum i dies(10) dihas dispues di adáptasion yan publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ÁTURIDÁT: I manmaproponi na amendasion siha para i PSS na regulasion manmácho'gui sigun gi áturidát i Kuetpu kumu mapribeniyi ginin i Attikulu XV gi Konstitusion CNMI, Lai Pupblíku 6-10 yan i Áktun i CNMI Administrative Procedures.

I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA: I hinangai esti na regulasion siha na para u mapribeniyi procedural guidelines para mapribeniyin sitbisiu siha para i publikun CNMI ni numisisita early intervention na sitbisiu siha para i famagu'un ni manggai espisiát na nisisidát.

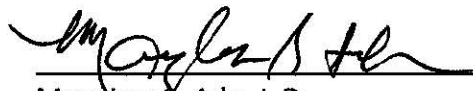
SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA SIHA: Esti na regulasion siha mapega mo'na i areklu yan manera ni ginibietna i PSS para i madiliban sitbisiun Infant yan Toddler.

DIREKSION PARA U MAPO'LU YAN PUBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni manmaproponi yan nuebu na ma'adápta na regulasion siha 1 CMC § 9102 (a) (1) yan mapega gi halum i kumbenienti na lugát siha gi haum ufisinan gubietnamentu gi kada distritun senadot, parehu English yan i dos na lingguáhen natibu. (1 CMC § 9104(a) (1))

PARA U MAPRIBENIYI OPIÑON SIHA: Todu maninterisáo na petsona siña ma'eksamina i manmaproponi na amendasion siha yan u mana'hálum i tinigi' imfotmasion, pusision, patinaksepta para pat kinentran i manmaproponi na amendasion siha guatu gi Kabiseyu, State Board of Education, P.O. Box 1370 CK, Saipan, MP 96950, ágang 237-3027 pat fax 664-3711 gi halum i trenta(30) dihas ni tinattitiyi ni fetchan kalendlariu yan gi fetchan publikasion gi halum Rehistran Commonwealth gi esti na amendasion siha. (1 CMC § 9104(a) (2))

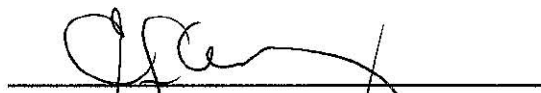
Esti na regulasion ma'apueba gi Regulât na Huntan i State Board of Edcation gi Abrit 16, 2012.

Nina'hålum as:


Mary Lou A. Ada, J. D.
Kabesiyu, Kuetpun Edukasion

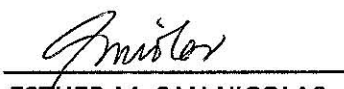
0003, 2012
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Rinisibi as:


ESTHER S. FLEMING
Espisiât Na Ayudânti Para l Atministrasion

10/11/12
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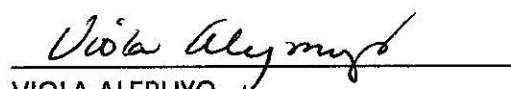
Pine'lu yan
Ninota as:


ESTHER M. SAN NICOLAS
Rehistran Commonwealth

10.11.2012
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Sigun i 1 CMC § 2153(e) (l Abugâdu Henerât ha apueban i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a) (3) (hentan inapueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (pupplikasion i areklamentu yan regulasion siha).

Mafetcha guini gi diha 5th gi Oktubri, 20102


VIOLA ALEPUYO
Acting na Abugâdu Henerât

STATE BOARD OF EDUCATION
Commonwealth of the Northern Mariana Islands-Public School System
PO Box 501370 Saipan, MP 96950*tel. 670 237-3027*Fax 670 664-3711

**ARONGORONGOL TOULAP REEL POMWOL ALLÉGH ME ATIWLIGH KKA REBWE
AMENDÁÁ NGALI ALLEGH ME ATIWLIGH REEL TÁTTÁLIL 60-20 REEL ATIWLIGHIL
ME ALLEGHUL PUBLIC SCHOOL SYSTEM.**

POMWOL ALLEGH ME ATIWLIGH: Commonwealth of the Northern Mariana Islands Public School System ("PSS") e schungi bwe:

MÁNGEMÁNGIL MWÓGHUT YEEL EBWE ADAPTÁÁLI ALLÉGH ME ATIWLIGH KKAAL:
Commonwealth of the Northern Mariana Islands Public School System emuschel ebwe adaptaali me aléghu ló pomwol atiwlig kka e appasch , sáangi mwóghutughutul Administrative Procedure Act, 1 CMC§ 9104(a). Atiwlig kkaal ebwe kkamaló 10 ráll mwiril yaar adaptááli me appascha llong lól Commonwealth Register. (1 CMC § 9105(b)).

BWÁÁNGIL: Pomwol lliwel ngáli atiwligil PSS ebwe akkatowow sáangi lemelemil Board merel Article XV reel CNMI Constitution, Public Law 6-10 me CNMI Administrative Procedure Act.

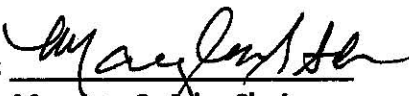
KKAPASAL ME AWEWEEL: Bwulul atiwlig kkaal nge ebwe ayora procedural guidelines reel setbisio ngaliir Toulapal CNMI ikka re nisisitay alilis reel early intervention reer olighát kka re semwaay.

KKAPASAL ME ÓUTOL: I Atiwlig kka e affatatiw policy me procedure kka e lemeli PSS reel ebwe ayoora setbisio ngalir ghóóghó me olighat.

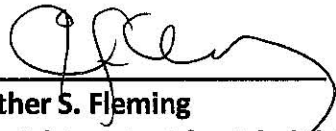
AFAL REEL AMWELIL ME ARONGOWOWUL: Pomwol atiwlig kkaal ebwe appasch llong lól Commonwealth Register llól section we e ira proposed me newly adopted regulations. (1 CMC § 9102(a)(1) me ebwe bwal appasch fetal llól bwuley kka elo civic center me bwal llól bwulasiyoo kka llól senatorial district reel kkasal English, Remeraalis me Refaluwasch. (1 CMC § 9104(a)(1)).

ATOTOOLONGOL MWALIILI: Schóó kka remuschel rebwe areghi li proposed action to repeal yeel me isisilongol mángemáng, position ngare mwaliyer reel ngare re tipiyeeew, me rese tipiyeeew ngáli proposed action to Repeal ngáli Chairperson, State Board of Education, P.O. Box 501370 CK, Saipan, MP 96950, faingi 670-237-3027 ngare fax 670-664-3711 lól (30) calendar days mwiril yaal appaschlong lól Commonwealth Register reel amendments. (1CMC§9104(a)(2))

Atiwligh kkal ra apreba li mereel State Board of Education Special Meeting wóol Saipan, Abrid
16, 2012

Isáliiyalong: 
Marylou S. Ada, Chairperson

Oct 03, 2012
Ráil

Aramas ye
E bwughi: 
Esther S. Fleming
Special Assistant for Administration

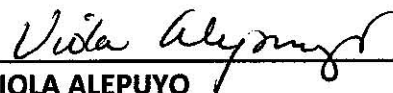
10/11/12
Ráil

File me
Rekkodliiyal: 
Esther M. San Nicolas
Commonwealth Register

10.11.2012
Ráil

Sengi 1 CMC § 2153(e) Allégh kkaal lleghló sáangi AG bwe e fil reel fféerul me
1 CMC § 9104(a)(3) (A mwir sáangi AG) Atiwligh kka a appasch a takkal amwuri fiischiy, me
angúúngú ló fféerul me legal sufficiency sáangi CNMI Attorney General me ebwele
akkatewoow, (1 CMC § 2153(f)(Arongowowul allegh me atiwligh kkaal).

Ráálil iye 5th October, 2012


VIOLA ALEPUYO
Acting Attorney General



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • Fax 670 664-3711



Marylou S. Ada, J.D.
CHAIRPERSON

D. Tanya King
VICE-CHAIRPERSON

Galvin S. Deleon Guerrero
SECRETARY/TREASURER

MEMBERS
Lucia L. Blanco-Maratita, Esq.
Herman T. Guerrero

STUDENT REPRESENTATIVE
Audrey Joy Ada

NON PUBLIC SCHOOL REP.

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING CHAPTER 60-20 PUBLIC SCHOOL SYSTEM RULES AND REGULATIONS

PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System ("PSS") finds that:

TEACHER REPRESENTATIVE **INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:** The Commonwealth of the Northern Mariana Islands Public School System intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after final adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

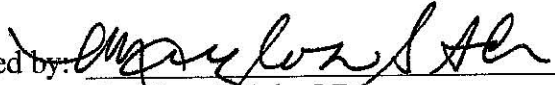
THE TERMS AND SUBSTANCE: The purpose of these regulations is to provide procedural guidelines for providing services to the CNMI PSS students in need of special education and related services.

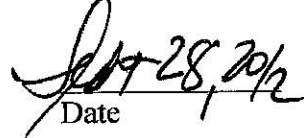
THE SUBJECTS AND ISSUES INVOLVED: These regulations set forth the policy and procedure which govern PSS for the Special Education Program.

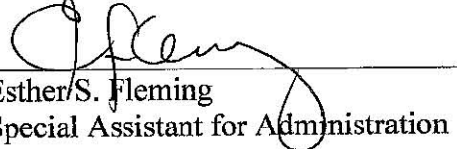
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations. (1 CMC § 9102(a) (1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104 (a) (1))

TO PROVIDE COMMENTS: All interest persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, State Board of Education, P.O. Box 501370 CK, Saipan, MP 96950, call 670-237-3027 or fax 670-664-3711 within thirty (30) calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC § 9104(a) (2))

This regulation was approved at the State Board of Education Meeting of April 16, 2012.

Submitted by: 
Mary Lou S. Ada, J.D.
Chairperson, State Board of Education

 28, 2012
Date

Received by: 
Esther S. Fleming
Special Assistant for Administration

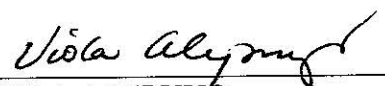
10/11/12
Date

Filed and
Recorded by: 
Esther M. San Nicolas
Commonwealth Register

10.11.2012
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104 (a) (3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated this 5th day of October, 2012.


VIOLA ALEPUYO
Acting Attorney General

STATE BOARD OF EDUCATION

COMMONWEALTH GI SANGKATTAN NA ISLAS MARIANAS SIHA SISTEMAN ESKUELAN PUPBLIKU
P. O. BOX 501370 SAIPAN, MP 96950 * Tel. 670 237-3027 * Fax: 670 664-3711

NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTU YAN REGULASION SIGUN I KAPITULU 60-20 NA AREKLAMENTU YAN REGULASION SIHA GI SISTEMAN ESKUELAN PUPBLIKU

MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Sistemán Eskuelan Pupblíku ("PSS") ha sodda' na:

I AKSION NI MA'INTENSIONA PARA U MA'ADÁPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islan Marianas Siha, i Sistemán Eskuelan Pupblíku ("PSS") ha intensióna para u adápta kumu petmanenti na regulasion siha ni mañechettun i Manmaproponi na Regulasion siha, sigun gi manera siha gi Áktun Administrative Procedures, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi halum i dies(10) dihas dispues di adáptasion yan publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ÁTURIDÁT: I manmaproponi na amendasion siha para i PSS na regulasion manmacho'gui sigun gi áturidát i Kuetpu kumu mapribeniyi ginin i Attikulu XV gi Konstitusion CNMI, Lai Pupblíku 6-10 yan i Áktun i CNMI Administrative Procedures.

I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA: I hinangai esti na regulasion siha na para u mapribeniyi procedural guidelines para mapribeniyin sitbisiu siha para i publikun CNMI ni numisisita special education yan i mana'achuli' na sitbisiu siha.

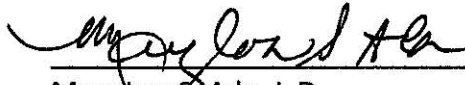
SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA SIHA: Esti na regulasion siha mapega mo'na i areklu yan manera ni ginibietna i PSS para i Prugráman Special Education.

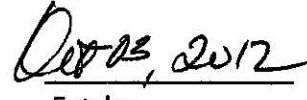
DIREKSION PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni manmaproponi yan nuebu na ma'adápta na regulasion siha 1 CMC § 9102 (a) (1) yan mapega gi halum i kumbenienti na lugát siha gi haum ufisinan gubietnamentu gi kada distritun senadot, parehu English yan i dos na lingguáhen natibu. (1 CMC § 9104(a) (1))

PARA U MAPRIBENIYI OPIÑON SIHA: Todu maninterisáo na petsona siña ma'eksamina i manmaproponi na amendasion siha yan u mana'hálum i tinigi' imfotmasion, pusision, patinaksepta para pat kinentran i manmaproponi na amendasion siha guatu gi Kabiseyu, State Board of Education, P.O. Box 1370 CK, Saipan, MP 96950, ágang 237-3027 pat fax 664-3711 gi halum i trenta(30) dihas ni tinattitiyi ni fetchan kalendlariu yan gi fetchan publikasion gi halum Rehistran Commonwealth gi esti na amendasion siha. (1 CMC § 9104(a) (2))

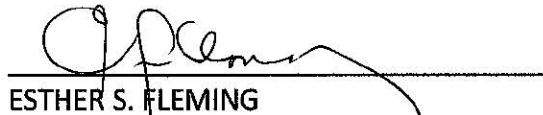
Esti na regulasion ma'apueba gi Regulât na Huntan i State Board of Edcation gi Abrit 16, 2012.

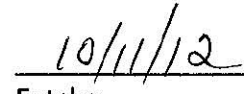
Nina'hålum as:


Mary Lou S. Ada, J. D.
Kabesiyu, Kuetpun Edukasion

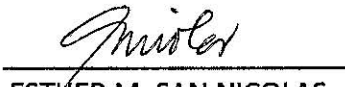

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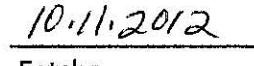
Rinisibi as:


ESTHER S. FLEMING
Espisiât Nâ Ayudânti Para l Atministrasion


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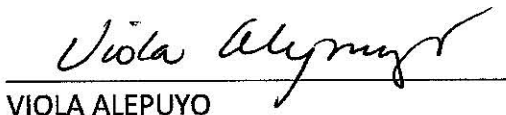
Pine'lu yan
Ninota as:


ESTHER M. SAN NICOLAS
Rehistran Commonwealth


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Sigun i 1 CMC § 2153(e) (l Abugâdu Henerât ha apueban i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a) (3) (hentan inapueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (pupublikasion i areklamentu yan regulasion siha).

Mafetcha guini gi diha 5th gi Oktubri, 20102


VIOLA ALEPUYO
Acting na Abugâdu Henerât

STATE BOARD OF EDUCATION
Commonwealth of the Northern Mariana Islands-Public School System
PO Box 501370 Saipan, MP 96950*tel. 670 237-3027*Fax 670 664-3711

**ARONGORONGOL TOULAP REEL POMWOL ALLÉGH ME ATIWLIGH KKA REBWE
AMENDÁÁ NGALI ALLEGH ME ATIWLIGH REEL TÁTTÁLIL 60-20 REEL ATIWLIGHIL
ME ALLEGHUL PUBLIC SCHOOL SYSTEM.**

POMWOL ALLEGH ME ATIWLIGH: Commonwealth of the Northern Mariana Islands Public School System (“PSS”) e schungi bwe:

MÁNGEMÁNGIL MWÓGHUT YEEL EBWE ADAPTÁÁLI ALLÉGH ME ATIWLIGH KKAAL:
Commonwealth of the Northern Mariana Islands Public School System emuschel ebwe adaptaali me aléghu ló pomwol atiwlich kka e appasch , sáangi mwóghutughutul Administrative Procedure Act, 1 CMC§ 9104(a). Atiwlich kkaal ebwe kkamaló 10 ráll mwiril yaar adaptááli me appascha llong lól Commonwealth Register. (1 CMC § 9105(b)).

BWÁÁNGIL: Pomwol lliwel ngáli atiwlichil PSS ebwe akkatowow sáangi bwáángil Board mereel Article XV reel CNMI Constitution, Public Law 6-10 me CNMI Administrative Procedure Act.

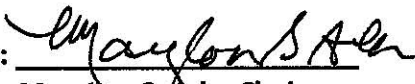
KKAPASAL ME AWEWEEL: Bwulul atiwlich kkaal nge ebwe ayora procedural guidelines reel setbisio ngaliir atel gakko lól CNMI PSS ikka re nisisitay setbisio mereel special education me related services

KKAPASAL ME ÓUTOL: I Atiwlich kka e affátatiw policy me procedure kka e lemeli PSS reel Special Education Program.

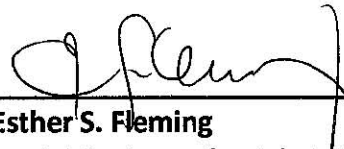
AFAL REEL AMWELIL ME ARONGOWOWUL: Pomwol atiwlich kkaal ebwe appasch llong lól Commonwealth Register llól section we e ira proposed me newly adopted regulations. (1 CMC § 9102(a)(1) me ebwe bwal appasch fetal llól bwuley kka elo civic center me bwal llól bwulasiyoo kka llól senatorial district reel kkasal English, Remeraalis me Refaluwasch. (1 CMC § 9104(a)(1)).

ATOTOOLONGOL MWALIILI: Schóó kka remuschel rebwe areghi li proposed action to repeal yeel me isisilongol mángemáng, position ngare mwaliyer reel ngare re tipiyeeew, me rese tipiyeeew ngáli proposed action to Repeal ngáli Chairperson, State Board of Education, P.O. Box 501370 CK, Saipan, MP 96950, faingi 670-237-3027 ngare fax 670-664-3711 lól (30) calendar days mwiril yaal appaschlong lól Commonwealth Register reel amendments. (1CMC§9104(a)(2))

Atiwligh kkal ra apreba li mereel State Board of Education Special Meeting wóol Saipan, Abrid
16, 2012

Isáliiyalong: 
MaryLou S. Ada, Chairperson

Oct 02, 2012
Ráil

Aramas ye
E bwughi: 
Esther S. Fleming
Special Assistant for Administration

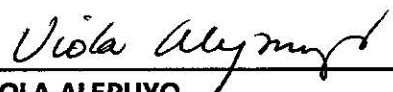
10/11/12
Ráil

File me
Rekkodliiyal: 
Esther M. San Nicolas
Commonwealth Register

10.11.2012
Ráil

Sengi 1 CMC § 2153(e) Allégh kkaal lleghló sáangi AG bwe e fil reel fféerul me
1 CMC § 9104(a)(3) (A mwir sáangi AG) Atiwligh kka a appasch a takkal amwuri fiischiy, me
angúungú ló fféerul me legal sufficiency sáangi CNMI Attorney General me ebwele
akkatewoow, (1 CMC § 2153(f)(Arongowowul allegh me atiwligh kkaal).

Rááilil iye  Ottuubre, 2012


VIOLA ALEPUYO
Acting Attorney General



STATE BOARD OF EDUCATION

Commonwealth of the Northern Mariana Islands — *Public School System*

PO Box 501370 Saipan, MP 96950 • Tel. 670 237-3027 • Fax 670 664-3711



MaryLou S. Ada, J.D.
CHAIRPERSON

D. Tanya King
VICE-CHAIRPERSON

Galvin S. Deleon Guerrero
SECRETARY/TREASURER

MEMBERS
Lucia L. Blanco-Maratita, Esq.
Herman T. Guerrero

STUDENT REPRESENTATIVE
Audrey Joy Ada

NON PUBLIC SCHOOL REP.

TEACHER REPRESENTATIVE

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS WHICH ARE AMENDMENTS TO RULES AND REGULATIONS REGARDING CHAPTER 60-20 PUBLIC SCHOOL SYSTEM RULES AND REGULATIONS

PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System ("PSS") finds that:

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands Public School System intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after final adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The proposed amendments to PSS regulations are promulgated pursuant to the Board's authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

THE TERMS AND SUBSTANCE: The proposed amendment set forth to provide procedural guidelines for Restraint and Seclusions of Students.

THE SUBJECTS AND ISSUES INVOLVED: The Proposed Regulation sets forth the regulations and procedures required for guidelines in the Restraint & Seclusions of Students within the Public School System in the CNMI.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations. (1 CMC § 9102(a) (1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104 (a) (1))

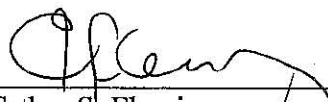
TO PROVIDE COMMENTS: All interest persons may examine the proposed amendments and submit written comments, positions, or statements for or against the proposed amendments to the Chairperson, State Board of Education, P.O. Box 501370 CK, Saipan, MP 96950, call 670-237-3027 or fax 670-664-3711 within thirty (30)

calendar days following the date of the publication in the Commonwealth Register of these amendments. (1 CMC § 9104(a) (2))

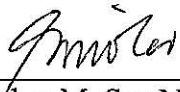
This regulation was approved at the State Board of Education Regular Meeting of January 12, 2012.

Submitted by: 
Mary Lou S. Ada, J.D.
Chairperson, State Board of Education

Sept 26, 2012
Date

Received by: 
Esther S. Fleming
Special Assistant for Administration

10/11/12
Date

Filed and
Recorded by: 
Esther M. San Nicolas
Commonwealth Register

10.11.2012
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104 (a) (3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated this 5th day of October, 2012.


VIOLA ALEPUYO
Acting Attorney General

STATE BOARD OF EDUCATION

COMMONWEALTH GI SANGKATTAN NA ISLAS MARIANAS SIHA SISTEMAN ESKUELAN PUPBLIKU
P. O. BOX 501370 SAIPAN, MP 96950 * Tel. 670 237-3027 * Fax: 670 664-3711

NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTU YAN REGULASION SIGUN I KAPITULU 60-20 NA AREKLAMENTU YAN REGULASION SIHA GI SISTEMAN ESKUELAN PUPBLIKU

MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Sistemán Eskuelan Públiku ("PSS") ha sodda' na:

I AKSION NI MA'INTENSIONA PARA U MA'ADÁPTE ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islan Marianas Siha, i Sistemán Eskuelan Públiku ("PSS") ha intensióna para u adápata kumu petmanenti na regulasion siha ni mañechettun i Manmaproponi na Regulasion siha, sigun gi manera siha gi Áktun Administrative Procedures, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi halum i dies(10) dihas dispues di adáptasion yan publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ÁTURIDÁT: I manmaproponi na amendasion siha para i PSS na regulasion manmacho'gui sigun gi áturidát i Kuetpu kumu mapribeniyi ginin i Attikulu XV gi Konstitusion CNMI, Lai Públiku 6-10 yan i Áktun i CNMI Administrative Procedures.

I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA: I maproponi na amendasion mapega mo'na para u pribeniyi ni procedural guidelines para i Restraint yan Seclussions i Estudiánti siha.

SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA SIHA: I Maproponi na Regulasion mapega mo'na i regulasion siha yan manera sina ni madimánda para i giniha siha gi i Restraint & Seclussions i Estudiánti siha gi halum i Sistemán Eskuelan Públiku gi halum CNMI.

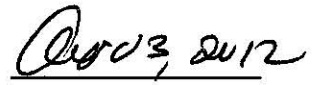
DIREKSION PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni manmaproponi yan nuebu na ma'adápata na regulasion siha (1 CMC § 9102 (a) (1) yan mapega gi halum i kumbenienti na lugát siha gi halum ufisinan gubietnamentu gi kada distritun senadot, parehu English yan i dos na linguáhen natibu. (1 CMC § 9104(a) (1))

PARA U MAPRIBENIYI OPIÑON SIHA: Todu maninterisáo na petsona siña ma'eksamina i manmaproponi na amendasion siha yan u mana'hálum i tinigi' imfotmasion, pusision, pat inaksepta para pat kinentran i manmaproponi na amendasion siha guatu gi Kabiseyu, State Board of Education, P.O. Box 501370 CK, Saipan, MP 96950, ágang 237-3027 pat fax 664-3711 gi halum i trenta(30) dihas ni tinattitiyi ni fetchan kalendliariu yan gi fetchan publikasion gi halum Rehistran Commonwealth gi esti na amendasion siha. (1 CMC § 9104(a) (2))

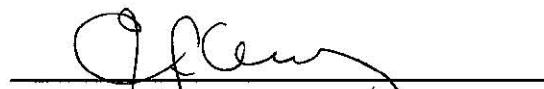
Esti na regulasion ma'apueba gi Regulât na Huntan i State Board of Education gi Ineru 12, 2012.

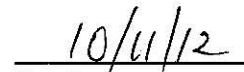
Nina'hålum as:


Mary Lou S. Ada, J. D.
Kabesiyu, Kuetpun Edukasion


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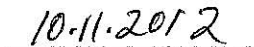
Rinisibi as:


ESTHER S. FLEMING
Espisiât Na Ayudânti Para i Atministrasion


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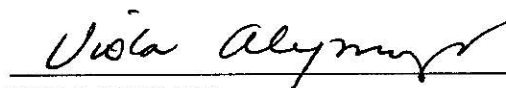
Pine'lu yan
Ninota as:


ESTHER M. SAN NICOLAS
Rehistran Commonwealth


Fetcha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha apueban i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a) (3) (hentan inapueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapublika, 1 CMC § 2153(f) (publikasion i areklamentu yan regulasion siha).

Mafetcha guini gi diha 5th gi Oktubri, 2012


VIOLA ALEPUYO
Acting na Abugâdu Henerât

STATE BOARD OF EDUCATION
Commonwealth of the Northern Mariana Islands-Public School System
PO Box 501370 Saipan, MP 96950*tel. 670 237-3027*Fax 670 664-3711

**ARONGORONGOL TOULAP REEL POMWOL ALLÉGH ME ATIWLIGH KKA REBWE
AMENDÁÁ NGALI ALLEGH ME ATIWLIGH REEL TÁTTÁLIL 60-20 REEL ATIWLIGHIL
ME ALLEGHUL PUBLIC SCHOOL SYSTEM.**

POMWOL ALLEGH ME ATIWLIGH: Commonwealth of the Northern Mariana Islands Public School System ("PSS") e schungi bwe:

MÁNGEMÁNGIL MWÓGHUT YEEL EBWE ADAPTÁÁLI ALLÉGH ME ATIWLIGH KKAAL:
Commonwealth of the Northern Mariana Islands Public School System emuschel ebwe adaptaali me aléghu ló pomwol atiwlich kka e appasch , sáangi mwóghutughutul Administrative Procedure Act, 1 CMC§ 9104(a). Atiwlich kkaal ebwe kkamaló 10 ráll mwiril yaar adaptááli me appascha llong lól Commonwealth Register. (1 CMC § 9105(b)).

BWÁÁNGIL: Pomwol lliwel ngáli atiwlichil PSS ebwe akkatowow sáangi lemelemil Board merel Article XV reel CNMI Constitution, Public Law 6-10 me CNMI Administrative Procedure Act.

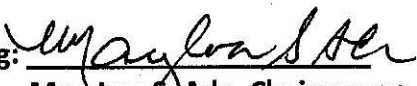
KKAPASAL ME AWEWEEL: Pomwol amenda yeel ebwe afatatiw me ebwe ayora pomwol mwóghutughut reel akkamwaschúl me Poong liir atel meleitey.

KKAPASAL ME ÓUTOL: Pomwal Atiwlich kka e affatatiw atiwlich me mwoghutughut kka e ffil reel Restraint me Seclusions reel atel meleitey lol Public School System lol CNMI.

AFAL REEL AMWELIL ME ARONGOWOWUL: Pomwol atiwlich kkaal ebwe appasch llong lól Commonwealth Register llól section we e ira proposed me newly adopted regulations. (1 CMC § 9102(a)(1) me ebwe bwal appasch fetal llól bwuley kka elo civic center me bwal llól bwulasiyoo kka llól senatorial district reel kkasal English, Remeraalis me Refaluwasch. (1 CMC § 9104(a)(1)).

ATOTOOLONGOL MWALIILI: Schóó kka remuschel rebwe areghi li proposed action to repeal yeel me isisilongol mángemáng, position ngare mwaliyer reel ngare re tipiyeeew, me rese tipiyeeew ngáli proposed action to Repeal ngáli Chairperson, State Board of Education, P.O. Box 501370 CK, Saipan, MP 96950, faingi 670-237-3027 ngare fax 670-664-3711 lól (30) calendar days mwiril yaal appaschlong lól Commonwealth Register reel amendments. (1CMC§9104(a)(2))

Atiwligh kkal ra apreba li mereel State Board of Education Special Meeting wóol Saipan, Eneero 12, 2012

Isáliiyalong: 
MaryLou S. Ada, Chairperson

Oct 03, 2012
Ráll

Aramas ye
E bwughi: 
Esther S. Fleming
Special Assistant for Administration

10/11/12
Ráll

File me
Rekkodliiyal: 
Esther M. San Nicolas
Commonwealth Register

10.11.2012
Ráll

Sengi 1 CMC § 2153(e) Allégh kkaal lleghló sáangi AG bwe e fil reel fféerul me 1 CMC § 9104(a)(3) (A mwir sáangi AG) Atiwligh kka a appasch a takkal amwuri fiischiy, me angúungú ló fféerul me legal sufficiency sáangi CNMI Attorney General me ebwele akkatewoow, (1 CMC § 2153(f)(Arongowowul allegh me atiwligh kkaal).

Ráálil iye 5th October, 2012


VIOLA ALEPUYO
Acting Attorney General

RESTRAINT AND SECLUSION POLICY AND REGULATION

POLICY

The Board of Education believes that maintaining an orderly, safe environment conducive to learning is an expectation of all staff members of the CNMI Public School System. An individual who is a teacher, administrator or school employee may, within the scope of that person's employment, use the amount of force as is reasonable and necessary to accomplish the following purposes:

1. To retrain a student from an act of wrongdoing;
2. To quell a disturbance threatening physical injury to self or others;

Definitions

(1) Extended restraint: A physical restraint the duration of which is more than twenty (20) minutes. Extended restraints increase the risk of injury and, therefore, require additional written documentation as described in this regulation.

(2) Physical escort: Touching or holding a student without the use of force for the purpose of directing the student.

(3) Physical restraint: The use of bodily force to limit a student's freedom of movement.

(4) Restraint - Other: Limiting the physical freedom of an individual student by mechanical means or seclusion in a limited space or location, or temporarily controlling the behavior of a student by chemical means. The use of chemical or mechanical restraint is prohibited unless explicitly authorized by a physician and approved in writing by the parent or guardian.

(a) Mechanical Restraint: The use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

(b) Seclusion Restraint: Physically confining a student alone in a room or limited space without access to school staff. The use of "time out" procedures during which a staff member remains accessible to the student shall not be considered "seclusion restraint."

(c) Chemical restraint: The administration of medication for the purpose of restraint.

Procedures and Training

(1) Procedures. The Commissioner of education or his/her designee shall develop written procedures regarding appropriate responses to student behavior that may require immediate

intervention. Such procedures shall be annually reviewed and provided to school staff and made available to parents of enrolled students. Such procedures shall include, but not be limited to:

- (a) Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;
- (b) PSS policy regarding restraint that provides a description and explanation of the method of physical restraint, a description of the training requirements, reporting requirements and follow-up procedures, and a procedure for receiving and investigating complaints regarding restraint practices.

(2) Required training for all staff. Each principal or director shall determine a time and method to provide all program staff with training regarding the PSS's restraint policy. Such training shall occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment. Training shall include information on the following:

- (a) The program's restraint policy;
- (b) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors;
- (c) Types of restraints and related safety considerations, including information regarding the increased risk of injury to a student when an extended restraint is used; and
- (d) Administering physical restraint in accordance with known medical or psychological limitations and/or behavioral intervention plans applicable to an individual student;

(3) In-depth staff training in the use of physical restraint. At the beginning of each school year, the Commissioner or his/her designee shall identify PSS staff that are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint.

(4) Content of in-depth training. In-depth training in the proper administration of physical restraint shall include, but not be limited to:

- (a) Appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship building and the use of alternatives to restraint;
- (b) A description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;

- (c) The simulated experience of administering and receiving physical restraint, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- (d) Instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
- (e) Demonstration by participants of proficiency in administering physical restraint.

Determining When Physical Restraint May Be Used

(1) Use of restraint. Physical restraint may be used only in the following circumstances:

- (a) Non-physical interventions would not be effective; and
- (b) The student's behavior poses a threat of imminent, serious, physical harm to self and/or others.

(2) Limitations on use of restraint. Physical restraint in a public education program shall be limited to the use of such reasonable force as is necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.

(3) Prohibitions. Physical restraint is prohibited in the following circumstances:

- (a) As a means of punishment; or
- (b) For the convenience of staff; or
- (c) As a substitute for less restrictive alternatives; or
- (d) As a response to property destruction, disruption of school order, a student's refusal to comply with a school rule or staff directive, or verbal threats that do not constitute a threat of imminent, serious, physical harm; or

(4) Referral to law enforcement or other public agencies. Nothing in these regulations prohibits:

- (a) The right of any individual to report to appropriate authorities a crime committed by a student or other individual;
- (b) Law enforcement, judicial authorities or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk; or
- (c) The exercise of an individual's responsibilities as a mandated reporter pursuant to BOE, CNMI and Federal Regulation. These regulations shall not be used to deter any individual from reporting neglect or abuse to the appropriate public agency.

Proper Administration of Physical Restraint

(1) Trained personnel. Only school personnel who have received training pursuant to this regulation shall administer physical restraint on students. Whenever possible, the administration of a restraint shall be witnessed by at least one adult who does not participate in the restraint. The training requirements contained herein shall not preclude a teacher or employee of PSS from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

(2) Use of force. A person administering a physical restraint shall use only the amount of force necessary to protect the student or others from physical injury or harm.

(3) Safest method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements. Floor or prone restraints shall be prohibited unless the staff member administering the restraint has received in-depth training and, in the judgment of the trained staff member, such method is required to provide safety for the student or others present.

(4) Duration of restraint. A person administering physical restraint shall discontinue such restraint as soon as possible. If, due to unusual circumstances, a restraint continues for more than twenty (20) minutes, it shall be considered an "extended restraint" for purposes of the reporting requirements.

(5) Safety requirements. Additional requirements for the use of physical restraint:

(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. A restraint shall be released immediately upon a determination by the staff member administering the restraint that the student is no longer at risk of causing imminent physical harm to him or herself or others.

(b) Restraint shall be administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student demonstrates significant physical distress, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.

(c) Program staff shall review and consider any known medical or psychological limitations and/or behavioral intervention plans regarding the use of physical restraint on an individual student.

(d) Following the release of a student from a restraint, the program shall implement follow-up procedures. These procedures shall include reviewing the incident with the student to address the behavior that precipitated the restraint, reviewing the incident with the staff person(s) who administered the restraint to discuss whether proper restraint

procedures were followed, and consideration of whether any follow-up is appropriate for students who witnessed the incident.

Reporting Requirements

(1) Circumstances under which a physical restraint must be reported.

- (a) PSS staff shall report the use of physical restraint after administration of a physical restraint that results in any injury to a student or staff member, or any physical restraint of duration longer than five minutes

(2) Informing school administration.

- (a) The PSS staff who administered the restraint shall verbally inform the administration of the restraint as soon as possible and by written report no later than the next school working day.
- (b) The written report shall be provided to the principal or his/her designee, except that the principal or director shall prepare the report if the principal or director has administered the restraint.
- (c) The principal or director or his/her designee shall maintain an on-going record of all reported instances of physical restraint.

(3) Informing parents.

- (a) The principal or his/her designee shall verbally inform the student's parents or guardians of the restraint as soon as possible, and by written report no later than three school working days following the use of restraint.

(4) Contents of report. The written report shall include:

- (a) The names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint; the time the restraint began and ended; and the name of the administrator who was verbally informed following the restraint.
- (b) A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint; the behavior that prompted the restraint; the efforts made to de-escalate the situation; alternatives to restraint that were attempted; and the justification for initiating physical restraint.
- (c) A description of the administration of the restraint including the holds used and reasons such holds were necessary; the student's behavior and reactions during the restraint; how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided.

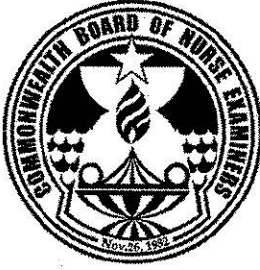
(d) For extended restraints, the written report shall describe the alternatives to extended restraint that were attempted, the outcome of those efforts and the justification for administering the extended restraint.

(e) Information regarding any further action(s) that the school has taken or may take, including any disciplinary sanctions that may be imposed on the student.

(f) Information regarding opportunities for the student's parents or guardians to discuss with school officials the administration of the restraint, any disciplinary sanctions that may be imposed on the student and/or any other related matter.

Students with Disabilities

(1) Students with Disabilities. Restraint administered to a student with a disability pursuant to an Individualized Education Plan ("IEP") or other written plan developed in accordance with local and federal law shall be deemed to meet the requirements of this regulation, except that the limitations on chemical, mechanical, and seclusion restraint, the training requirements, and the reporting requirements set forth in this regulation shall apply.



COMMONWEALTH BOARD OF NURSE EXAMINERS

P. O. Box 501458, CK

Saipan, MP 96950

Telephone: (670) 236-8250

Email: cbone@pticom.com

<http://www.nmicbne.com>

NOTICE OF PROPOSED REGULATIONS FOR THE COMMONWEALTH BOARD OF NURSE EXAMINERS

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Commonwealth Board of Nurse Examiners (CBNE) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). Pursuant to 1 CMC §9105(b), the regulations would become effective 10 days after the Board's decision to adopt the regulations and compliance with 1 CMC §§ 9102 and 9104(a).

AUTHORITY: CBNE has statutory power to promulgate and effect regulations pursuant to 3 CMC § 2306(b) and (c).

THE TERMS AND SUBSTANCE: The attached regulations establish the rules and regulations governing the Commonwealth Board of Nurse Examiners, which shall be enacted as § 140-60.1-001 et seq.

THE SUBJECTS AND ISSUES INVOLVED: These regulations establish the rules for licensing of nurses, graduate nurses, advanced practice nurses, and nurse assistive personnel. The regulations also govern the scope and standards of practice for each of these professions. Additionally, the regulations speak to reporting requirements and discuss the process for disciplinary action.

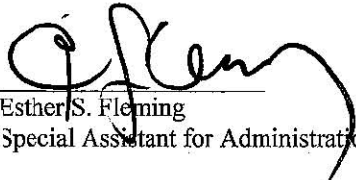
DIRECTIONS FOR FILING AND PUBLICATION: The Board is soliciting comments regarding these proposed amendments which must be received by the Board within thirty (30) days of first publication of this notice in the Commonwealth Register. Interested persons may request copies of the proposed amendments by contacting us at (670) 236-8250, or by email at cbone@pticom.com or come by our office located at Commonwealth Health Center, old Administration Bldg. Saipan, MP 96950. Written comments on these amendments should be dropped off at our Office or mailed to P.O. Box 501458, Saipan, MP 96950.

Submitted By: _____

Aurelia Long
Chairperson, CBNE

10/10/12
Date

Received By:


Esther S. Fleming
Special Assistant for Administration

Date

10/23/12

Filed and Recorded By:


Esther M. San Nicolas
Commonwealth Register

Date

10.23.2012

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).


VIOLA ALEPUY
Acting Attorney General

Date

10/12/12

COMMONWEALTH BOARD OF NURSE EXAMINERS

P. O. Box 501458, CK
Saipan, MP 96950
Tilifon: (670) 236-8250
Email: cbone@pticom.com
<http://www.nmicbne.com>

NUTISIA GI MANMAPROPONI NA REGULASION SIHA PARA I COMMONWEALTH BOARD OF NURSE EXAMINERS

I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI I MANMAPROPONI NA REGULASION SIHA: I Commonwealth Board of Nurse Examiners (CBNE) ha intensiona para u adapta kumu petmanenti na regulasion siha ni mañechettun i Manmaproponi na Regulasion siha, sigun gi manera siha gi Âktun i Administrative Procedure, 1 CMC § 9104(a). Sigun i 1 CMC §9105(b), i regulasion siha para u ifektibu dies(10) dihas dispues di disision i Kuetpu ni para u adapta i regulasion siha yan u makumpli i 1 CMC § § 9102 yan 9104(a).

ÂTURIDÂT: I CBNE gai fuetsa para u cho'gui yan u ifekta i regulasion siha sigun gi 3 CMC § 2306(b) yan (c).

I TEMA YAN SUSTÂNSIAN I PALÂBRA SIHA: I mañechettun na regulasion siha ha estapblesi i areklamentu yan regulasion siha ni ginibebietna i Commonwealth Board of Nurse Examiners, ni debi na u enacted kumu i § 140-60.1-001 et seq.

I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA SIHA: Esti na regulasion siha ha estapblesi i areklamentu para manlisensian emfitmera siha, graduate nurses, yan advanced practice nurses, yan nurse assistive personnel. I regulasion siha lokkui' ha gubietna i scope yan standards of practice para kada ni esti na professions. Put ottru, i regulasion siha ha sângan para i ripot na u dinimânda siha yan diskuti i process para i disciplinary action.

DIREKSION PARA U MAPO'LU YAN PUPBLIKASION: I Kuetpu mamaisin upiñon sigun gi esti i manmaproponi na amendasion siha ni debi na u marisibi ni Kuetpu gi halum trenta(30) dihas gi primet na pupplikasion esti na nutisia gi halum i Rehistran Commonwealth. Todu manintirisâo na petsona siña manmangâgâo kopia gi manmaproponi na amendasion siha ni siña un â'agang ham gi (670) 236-8250, pat i email gi cbone@pticom.com pat fattoigui i ufisinan-mâmi ni gaigi gi Commonwealth Health Center, gi bihu na Bldg. Atministrasion, Saipan, MP 96950. Tinigi' upiñon siha gi esti na amendasion debi na u machuli' mâgi gi Ufisinan-mâmi pat u ma-mailed guatu gi P. O. Box 501458, Saipan, MP 96950.

Nina'hålum as:


Aurelia Long
Kabesiyu, CBNE

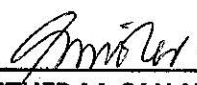
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Rinisibi as:


ESTHER S. FLEMING
Espisiât Na Ayudãnti Para I Administrasion

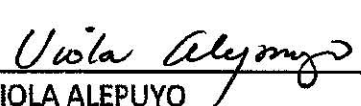
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Pine'lu yan
Ninota as:


ESTHER M. SAN NICOLAS
Rehistran Commonwealth

10.23.2012
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugãdu Henerât ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hentan inaprueban Abugãdu Henerât) i manmaproponi na regulasion siha ni mafiechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugãdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (pupplikasion areklamentu yan regulasion siha).


VIOLA ALEPUYO
Acting Abugãdu Henerât

10/12/12
Fetcha

COMMONWEALTH BOARD OF NURSE EXAMINERS

P.O. Box 50148, CK
Saipan, MP 96950
Telephone: (670)236-8250
Email: cbone@pticom.com
<http://www.nmiebne.com>

ARONGORONG REEL POMWOL ATIWLIGH REEL COMMONWEALTH BOARD REEL NURSE EXAMINERS

MÁNGEMÁNGIL MWÓGHUT YE EBWE ADAPTÁÁLI POMWOL ATIWLIGH KKAAL:

Commonwealth Board of Nurse Examiners (CBNE) ebwe adaptááli me alléghúló atiwlich kka e appasch Proposed Regulation, sengi mwóghutughutul Administrative Procedure Act, 1 CMC § 9104(a), sangi 1 CMC §9105(b), atiwlich kkaal ebwe kkamaló 10 ráll mwuril yaal Board bwunguwló me tabwey ngaliy 1CMC §§ 9102 m e9104(a)

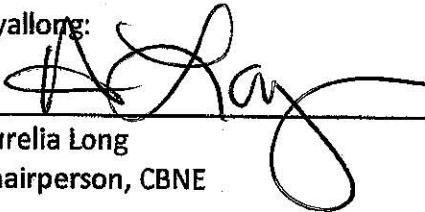
BWÁÁNGIL: Eyoor bwaángil CBNRB ebwe akkatowow atiwlich kkal sangi 3 CMC §2306(b) ,me (c)

KKAPASAL ME AWEWEEL: Atiwlich kkaa e appasch ebwe ayoora alégh me atiwlich kka ebwe lemeli Commonwealth Board of Nurse Examiners, iye ebwe fféer ló bwe § 140-60.1-001 et seq.

KKAPASAL ME ÓUTOL: Atiwlich kkaal e ayoora alégh reel licensing reel nurse, graduate nurses, advanced practice nurses, me nurse assistive personeel. Atiwlich kkaal ebwe bwal lemeli mwoghutughutul me standards il practice reel eew me eew angaang kkaal me ebwe bwal repodali requirements me diskutuli process reel disciplinary action.

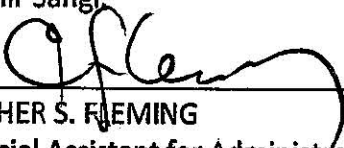
AFAL REEL AMWELIL ME ARONGOWOWUL: Board ekki tungor isisilongol mangemang reel Pomwol amenda kkal. nge rebwe resibi li reel Board eliigh(30) ráll igha e ghomwal appasch arongorong yel lól Commonwealth Register. Schóó kka re mwuschel rebwe yoor yaar copy-il Proposed Amendments kkal nge rebwe faingi telephone (670) 236-8250, me ngare email cbone@pticom.com me ngare mwoto reel bwulasiyo elo Commonwealth Health Center, fasul Administration Bldg. Saipan, MP 96950. Mangemang kkaa e iisch reel amenda kkaal nger rebwe bwughi lo reel bwulasiyo me ngare afanga ngali P.O. Box 501458, Saipan, MP 96950

Isáliiyallong:


Aurelia Long
Chairperson, CBNE

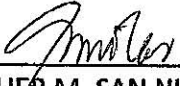
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Mwiir Sangi:


ESTHER S. FLEMING
Special Assistant for Administration

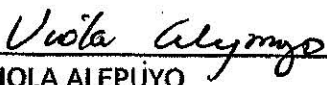
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File me Rekoodiliyal:


ESTHER M. SAN NICOLAS
Commonwealth Registrar

10.23.2012
Ráil

Sengi 1 CMC § 2153(e) Allégh kkaal a lléghló sáangi AG bwe e fil reel fféerúl me
1 CMC § 9104(a)(3)(A mwiir sáangi AG) Pomwol allégh kka a appaschlong a takkal amwuri
fiischiy, me angúungú ló fféerúl me legal sufficiency sáangi CNMI Attorney General me ebwele
akkatewoow, 1 CMC § 2153(f) (Arongowowul allegh me atiwligh kkaal)


VIOLA ALEPUYO
Acting Attorney General

10/12/12
Ráil

SUBCHAPTER 140.60.1

NORTHERN MARIANA ISLANDS BOARD OF NURSING RULES AND REGULATIONS

Part 001- General Provisions

§ 140-60.1-001 Title

This chapter shall be known and may be cited as the NMI Nursing Administrative Rules.

§ 140-60.1-005 Authority

The regulations in this chapter are promulgated by the Northern Mariana Islands Board of Nursing (NMI Board of Nursing or Board), pursuant to its authority under 3 CMC § 2306.

§ 140-60.1-010 Purpose

These rules and regulations are promulgated, first, to communicate the Board's expectations and provide guidance for nurses regarding safe nursing practice. Second, the rules herein articulate Board's criteria for evaluating the practice of nurses to determine if the practice is safe and effective.

§ 140-60.1-015 Scope

These regulations shall apply to anyone who practices or provides services in the following professions:

- (a) Registered Nurses
- (b) Licensed Practical/Vocational Nurses
- (c) Certified Technicians (including Hemodialysis Technicians)
- (d) Operating Room/Surgical Technicians
- (e) Psychiatric Technicians
- (f) Certified Nursing Assistants
- (g) Advanced Practice Registered Nurses in the categories of:
 - (1) Certified Clinical Nurse Specialist
 - (2) Certified Nurse Midwife
 - (3) Certified Registered Nurse Anesthetist
 - (4) Nurse Practitioner

§ 140-60.1-018 Exemptions

[Reserved]

§ 140-60.1-020 Definitions

In addition to any terms defined in the Nurse Practice Act, the following terms as defined as follow:

"Absolute discharge from sentence" shall mean completion of any sentence, including imprisonment, probation, parole, community supervision, or any form of court supervision.

"Adjuvant drug" means medications not specifically classified as anesthetics that are auxiliary or necessary to maintain safe, effective patient care during the anesthesia plan.

"Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject.

"Adverse action" is a home- or remote-state disciplinary action.

"Assignment" is designating nursing activities to be performed by another nurse or assistive personnel that are consistent with his or her scope of practice (licensed person) or role description (unlicensed person).

"Association of Surgical Technologists" (AST) means the national organization founded in 1973 to ensure that Surgical Technicians have the knowledge and skills to administer patient care of the highest standard through accreditation, certification and education.

"Client" is a recipient of care; may be an individual, family, group, or community.

"Clinical judgment" is the application of the nurse's knowledge and experience in making decisions about client care.

"Clinical learning experiences" are the planned, faculty-guided learning experiences that involve direct contact with patients.

"Consultation" means discussion with another CNMI-licensed health care provider for the purpose of obtaining information or advice in order to provide client care and includes, but is not limited to:

- a. Confirmation of a diagnosis;
- b. Recommendation regarding management of the medical problem or condition; and
- c. Transfer of total or partial care of the patient when necessary.

"Contact Hour" is a sixty (60) minute hour.

"DEA" means the federal Drug Enforcement Administration.

"Delegation" means the transference from the registered Nurse to another individual within the scope of his or her practice, the authority to act on behalf of the Registered Nurse in the performance of a nursing intervention, while the Registered Nurse retains the accountability and responsibility for the delegated act.

"Direct Supervision" means, at a minimum, the person responsible for the direct supervision must be physically present at the practice site and be able to observe, direct, and evaluate the performance of the person being supervised. The supervisor must not be engaged in other activities that would prevent them from providing direct supervision or intervening if necessary.

“Direction” means monitoring and guiding the practice of another through written or verbal communication.

“Dispense” means to package, label, and deliver one or more doses of a prescription-only medication in a suitable container for subsequent use by a patient.

“Distance learning” means education provided by written correspondence or electronic medium for students not located at the site of the school.

“Distribute” means the delivery of a drug other than by administering or dispensing, such as prepackaged samples.

“Encumbrance” means a nurse’s license or authority to practice has been disciplined and that the current status of the licensure or authority to practice is subject to conditions, limitations, or removal from practice.

“Endorsement” shall mean issuing an unrestricted license or certification to practice based, in part, on holding a valid license or certification in another jurisdiction.

“Episodic care” is nursing care that occurs at non-specific intervals and is focused on the individual situation at hand.

“Evaluation” means the determination of the effectiveness of the intervention(s) on the client’s health status.

“General Supervision” means the supervision in which the supervisor is available on the premises or within vocal communication either directly or by a communication device at the time the unlicensed personnel, student, graduate nurse, or other licensed nurse is practicing.

“Grandfathering” is a provision in a new law or regulation exempting those already in or a part of the existing system that is being regulated.

“Home state” is the state which is the nurse’s primary state of residence.

“Home state action” is any administrative, civil, equitable, or criminal action permitted by the home state’s laws which are imposed on a nurse by the home state’s nurse licensing board or other authority.

“Informed Consent” means the consent obtained following a thorough and easily understood explanation to the patient, or patient’s guardian, of the proposed procedures, any available alternative procedures and any risks associated with the procedures. Following the explanation, the licensee shall ask the patient, or the patient’s guardian, if there are any questions. The licensee shall provide thorough and easily understood answers to all questions asked and will document the discussion.

“Immediate Supervision” means supervision in which the supervisor is with the unlicensed personnel, student, graduate nurse, or other licensed nurse and either discussing or observing the person’s practice. It is more stringent than Direct Supervision.

“Licensee” shall mean any person with an active license or certification granted by the Board.

“Key parties” are immediate family members and others who would reasonably be expected to play a significant role in health care decisions of the patient. This includes, but is not limited to, a spouse, domestic partner, sibling, parent, child, guardian, and personal authorized to make health care decisions for the patient.

“Modified license” is a license to practice nursing within a scope of practice with limitations or with accommodations, or both, as specified by the CBNE or another nurse licensing board through a non-disciplinary process.

“Moral turpitude” is conduct that involves one or more of the following:

- (1) Intentional, knowing, or reckless conduct that causes injury or places another in fear of imminent harm.
- (2) Conduct done knowingly contrary to the accepted and customary rule of right and duty that a person owes to fellow human beings and society in general.
- (3) Certain crimes under the common law, which include generally, but are not limited to arson, bribery, conspiracy, embezzlement, extortion, forgery, fraud, manslaughter, murder, perjury, prostitution, rape, tax evasion, and theft.
- (4) Conduct that is wrong in itself, even if no statute were to prohibit the conduct.

“NCLEX-PN®” and “NCLEX-RN®” are the National Council Licensure Examinations for Practical Nurses/Registered Nurses, which are used in the U.S. and its territories to assess applicants’ nursing knowledge, skills, and abilities. CBNE shall use passage to inform its licensing decisions.

“NCSBN” means the National Council of State Boards of Nursing.

“NPA” means the Nurse Practice Act of 2003, Public Law 14-62, or succeeding legislation.

“Physician” means a doctor of medicine or osteopathy licensed by the CNMI Medical Board.

“Population” means the collection of individuals in a community or a group of individuals defined by age, health status, lifestyle, disease and/or geographic location.

“Population focus” is the section of the population which the APRN has targeted to practice within. The categories of population foci are: family/individual across the lifespan; adult-gerontology; neonatal; pediatrics; women’s health/gender-related; or psychiatric/mental health.

“Practice requirement” in an expanded specialty role means independent clinical practice in the specialty role of certification providing health care or other such activities, which have a clinical focus and are at an advanced nursing level. These activities include, but are not limited to, teaching, consulting, supervision and research related to the specialty area of certification.

“Preceptor” is an individual at or above the level of licensure that an assigned student is seeking who may serve as a teacher, mentor, role model, or supervisor in a clinical setting.

“Prescribed devices” are instruments or apparatuses intended for use in diagnosis or treatment and in the prevention of disease or restoration of health.

“Prescribing” means determining which legend drugs and controlled substances shall be used by or administered to a patient; exercised in compliance with applicable state and federal laws.

“Primary care provider” is the provider who acts as the first point of consultation for all patients with an undiagnosed health concern, as well as providing continuing care of varied medical conditions not limited by cause, organ systems, or diagnosis.

“Professional certification” is a credential issued by a national certifying body meeting specified requirements acceptable to the CBNE that is used as a requirement for APRN licensure.

“Re-entry Program” means a formal program of study with both didactic and clinical components, designed to prepare a nurse who has been out of practice to re-enter into nursing practice at the Registered Nurse level.

“Referral” means directing the client to other resources for the purpose of assessment or intervention.

“Remote state” is a party state, other than the home state where the patient is located at the time nursing care is provided, or in the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

“Review Course” means a course of study providing review of basic preparation for the NCLEX-RN examination.

“Supervision” means the direction periodic consultation provided by a qualified nurse or medical professional to an individual to whom a nursing task or patient care activity is delegated. This shall include at least initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity.

“Trained Unlicensed Personnel” means an individual, other than a licensed nurse, who has received appropriate training or instruction to function in a complementary or assistant role to a licensed nurse in providing direct patient care or in carrying out common nursing tasks. The term includes, but is not limited to, nurses’ aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, trained medication employees, geriatric aides, or other health aides.

“Unencumbered” means a state has no current disciplinary action against a license or authority to practice.

§ 140-60.1-025 Titles and Abbreviations of Licensees

Only those persons who hold a license to practice nursing or who have been approved as applicants for licensure by endorsement or have been granted a temporary permit shall have the right to use the following titles and abbreviations:

“APRN” shall mean Advanced Practice Registered Nurse.

“CHT” is a Certified Hemodialysis Technician.

“CNA” is a Certified Nursing Assistant.

“CNM” shall mean Certified Nurse Midwife, and is the designation of APRN specialty.

“CNS” shall mean Clinical Nurse Specialist, and is the designation of APRN specialty.

“CNP” shall mean Certified Nurse Practitioner, and is the designation of APRN specialty.

“CPT” is a certified Psychiatric Technician.

“CRNA” shall mean Certified Nurse Anesthetist, and is the designation of APRN specialty.

“LP/VN” is a Licensed Practical/Vocational Nurse. It encompasses both Licensed Practical Nurses and Licenses Vocational Nurses.

“NP” shall mean Nurse Practitioner.

“RN” is a Registered Nurse.

Part 100- The Commonwealth Board of Nurse Examiners

§ 140-60.1-102 Board Members

- (a) Composition. The Board is composed of seven members with qualifications as stated in 3 CMC § 2305.
- (b) Officers. The Board shall elect a Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer from among its members. Each office must receive a majority vote from a quorum of the members. If no office receives a majority of the vote, there shall be a run-off vote between the top votes.
- (c) Offices. The Board may establish additional offices as it shall deem necessary or appropriate. The duties of officers are as follow:
 - (1) Chairperson: Must be a licensed RN, LP/VN, or APRN. Shall, when present, preside at all meetings. He or she shall appoint all standing or special committees and shall be an ex-officio member of all committees. He or she shall also be responsible for the performance of all duties and functions of the Board.
 - (2) Vice-Chairperson: Shall, in the absence of the Chairperson, exercise all the duties of and possess all the powers of the Chairperson.
 - (3) Secretary: Shall record, cause to be recorded, or delegate recording of the minutes of all Board meetings and keep them in a book or file, to maintain current,

accurate copies of all Board documents, and to sign licenses or certificates issued by the Board.

(4) Treasurer: Shall be primarily responsible for overseeing the Board's budget and account status. Shall cause deposit or shall delegate deposit of checks into the Board's account. Shall make recommendations to the Board regarding proper fees and fines for the maintenance of a balanced budget.

(d) Term of Office. Officers shall serve for a term of approximately one year, beginning on the day of election in January and ending upon the election of successors the following January. Members may not be elected to a particular office more than eight (8) times. Members may not hold two offices simultaneously.

§ 140-60.1-105 Meetings

(a) The Board shall meet on a regular basis, at least once every three (3) months, to transact its business. The Board must hold its annual meeting in January for the purpose of electing officers, reorganizing, and planning. Additional meetings may be called by the Chairperson or the request of a majority of the Board members.

(b) The Board shall give official and public notice of the place and time of meeting and shall comply with all requirements of Commonwealth Code Title 1 Chapter 9, Open Government Meetings and Records.

(c) Quorum. A quorum for purposes of conducting a board meeting shall be four (4) members. The act of the majority of the members present at a meeting at which a quorum is present shall be the act of the Board.

§ 140-60.1-110 Executive Officer

[Reserved]

Part 200- - Licensure

§ 140-60.1-202 Applications

An application that remains incomplete for one calendar year or more from the date of submission shall be considered abandoned, closed, and destroyed by the Board. The applicant shall thereafter be required to reapply and submit the completed form, along with the required documents and fees.

§ 140-60.1-204 Application for Examination and Re-Examination for NCLEX-RN/LPN

(a) An applicant must submit to the Board's Office a notarized application form provided by the Board. The application form shall be accompanied by:

- (1) Two copies of a recent passport-type photograph, 2x2 inches, in color, with signature and date on the bottom;

- (2) Official transcript forwarded directly from school of nursing. The Board may request an applicant to either obtain a certificate from the Commission on Graduates of Foreign Nursing Schools or from one of the independent credentialing firms approved by the Board as having met the standards of nursing education preparation for U.S. nursing school;
 - (3) Proof of related learning experience/clinical hours in all five areas of nursing; and
 - (4) Cashier's check or money order payable to "NMI Board of Nursing" for required and non-refundable fees.
- (b) Application is considered void if the applicant does not take the examination or the application is not complete within one year from the date the application was filed. Applicant must resubmit another application with fees whenever he/she decides to reapply. The documents will be destroyed at the discretion of the Board unless the applicant requests in writing and sends sufficient funds for the postage fees, if applicable, to be returned to his/her address.
- (c) A letter of approval or denial will be sent to the applicant from the Board's Office. In the event that the application is denied and the applicant would like to appeal, he/she has 45 days to request, in writing, for such action from the Board.
- (a) An applicant who does not pass the examination can re-apply within 45 days.

§ 140-60.1-205 Initial Licensure of RN and LP/VN

An applicant for licensure as an RN or LP/VN, by examination in the Commonwealth, shall submit to the Board the required fee for licensure by examination and a completed application for licensure by examination that provides the following information:

- (a) An official transcript sent directly from a state-approved nursing education program for the level of licensure being sought, which provides proof of graduation or verification of completion and eligibility for graduation. This documentation shall verify the date of graduation, credential conferred, and evidence of meeting the standards of nursing education in this state;
- (b) An official report from the NCSBN which demonstrates a passing score from either the NCLEX-RN or NCLEX-PN, as applicable;
- (c) Identification of any state, territory, or country in which he/she holds a professional license or credential, or has previously denied the applicant licensure, if applicable. Required information includes:
 - (1) The number and status of the license or credential; and
 - (2) The original state or country of licensure or credentialing;
- (d) The date the applicant previously applied for a license in the CNMI;

- (e) Current employer, if employed in health care, including address, telephone number, position, and dates of employment;
- (f) Previous employer in health care, if any, if applicant has been working for his/her current employer for less than 12 months;
- (g) Responses to questions related to the applicant's background in the following areas:
 - (1) Pending disciplinary action or investigation regarding any professional license or credential;
 - (2) Pending criminal charges;
 - (3) Criminal conviction, nolo contendere plea, Alford plea, or other plea arrangements in lieu of conviction;
 - (4) Any chemical, physical, or mental impairment and/or disability that impacts the nurse's ability to practice nursing safely, and a description of accommodations and/or practice limitations needed, if any; and
 - (5) Any current substance abuse;
- (d) Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
- (e) Submission of state and federal criminal background checks, completed within the immediately preceding three months, submitted from all jurisdictions where applicant has been convicted of a crime and from any jurisdiction where applicant has resided for at least six (6) consecutive months within the past ten years; and
- (f) Any other information the Board shall require.

§ 140-60.1-206 Initial RN Licensure by NCLEX Transfer

An applicant for licensure as an RN by NCLEX transfer from a different jurisdiction to the Commonwealth shall submit to the Board the required fee for licensure by NCLEX transfer and a completed application for initial licensure by NCLEX transfer that provides the following information:

- (a) A copy of transcripts that proves completion and eligibility for graduation. This documentation shall verify the date of graduation, credential conferred, and evidence of meeting the standards of nursing education in this state;
- (b) Birth certificate and married certificate, if applicable. High school transcripts only for foreign-educated students;
- (c) An original notarized letter asking the CBNE to accept their NCLEX score held by another state to the CBNE jurisdiction;
- (d) An original notarized letter authorizing NCSBN/Pearson vue to transfer their NCLEX score held in a different state to the CBNE jurisdiction;

- (e) An original notarized letter to their state that holds their NCLEX score requesting to transfer their NCLEX score to the CBNE jurisdiction;
- (f) Their copy of any correspondence letter from the state holding their NCLEX scores which can provide additional information, if they have one (e.g. candidate number, etc.). Complete documents must be mailed to the CBNE Board and in addition the 3 notarized letters must be scanned to the Board's email address;
- (g) Responses to questions related to the applicant's background in the following areas:
 - (1) Pending disciplinary action or investigation regarding any professional license or credential;
 - (2) Pending criminal charges;
 - (3) Criminal conviction, nolo contendere plea, Alford plea, or other plea arrangements in lieu of conviction;
 - (4) Any chemical, physical, or mental impairment and/or disability that impacts the nurse's ability to practice nursing safely, and a description of accommodations and/or practice limitations needed, if any; and
 - (5) Any current substance abuse;
- (h) Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
- (f) Submission of state and federal criminal background checks, completed within the immediately preceding three months, submitted from all jurisdictions where applicant has been convicted of a crime and from any jurisdiction where applicant has resided for at least six (6) consecutive months within the past ten years; and
- (i) Any other information the Board shall require.

§ 140-60.1-207

RN and LP/VN Licensure by Endorsement

- (a) The Board may grant a CNMI license as an RN or LP/VN by endorsement if:
 - (1) The applicant is currently licensed as an RN or LP/VN under the laws of a state or territory of the United States;
 - (2) The applicant has no encumbrance on his/her license or privilege to practice as an RN in any jurisdiction;
 - (3) The applicant's original licensure in a state or territory was based upon:
 - i. A passing score on the State Board Test Pool Examination for Nurses taken between January 1949 and February 1982; or
 - ii. A passing score on the NCLEX-RN or NCLEX-PN, whichever is applicable.

- (b) To apply for a license by endorsement, an applicant shall:
- (1) Submit a completed application and copy of his/her current license;
 - (2) Obtain an original copy of a Certificate of Good Standing from all states or territories where applicant is currently licensed;
 - (3) Have a licensure verification form sent directly to this Board from the verifying Board; and
 - (4) Provide a listing of all states where the applicant has ever applied for licensure; and
 - (5) Provide any other information the Board shall require.

§ 140-60.1-210 Initial Licensure of APRN

(a) An applicant for licensure as an APRN, by examination in the Commonwealth, shall submit to the Board the required fee for licensure by examination (this fee includes the application for the RN licensure with only one applicable fee schedule under the APRN fee; a separate RN licensure fee will not be applied) and a completed application for licensure by examination that provides the following information:

- (1) Proof of current licensure as an RN in the CNMI or compliance with section § 140-60.1-205 of these regulations, "Initial Licensure of RN and LP/VN";
- (2) An official transcript, which demonstrates completion of a graduate program accredited by a nursing accrediting body that is recognized by the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA), as acceptable by the Board. If an applicant completed an NP program after January 01, 2007, a minimum of a master's degree in nursing is required for certification by the Board. This documentation shall verify the date of graduation, credential conferred, clinical hours completed, role (NP, CAN, CNM, or CNS) and population focus of the education program, and qualifications for prescribing and ordering; and
- (3) An official record of passage of the appropriate APRN national certification examination in the APRN role and population focus congruent with educational preparation.

(b) The Board may deny an applicant a license as an APRN for reasons which include:

- (1) Any criminal conviction, nolo contendere plea, Alford plea, or other plea arrangement in lieu of conviction which affects the applicant's ability to practice nursing or to perform in a professional capacity; and/or

- (2) A disciplinary record with the licensing Board of any jurisdiction.
- (c) An applicant shall not be granted a license as an APRN for reasons which include:
 - (1) A current encumbrance on the applicant's license or privilege to practice as an RN in any jurisdiction.

§ 140-60.1-211 APRN Licensure by Endorsement

The Board may issue a license by endorsement to an APRN licensed under the laws of another state or territory if, in the opinion of the Board, the applicant meets the qualifications for licensure in this jurisdiction. An applicant for APRN licensure by endorsement shall:

- (a) Submit a completed written application and appropriate fees as established by the Board;
- (b) Hold a current unencumbered license or privilege to practice as an RN and APRN in a state or territory;
- (c) Not have an encumbered license or privilege to practice in any state or territory;
- (d) Have completed an accredited graduate level APRN program in one of the four roles and at least one population focus;
- (e) Be currently certified by a national certifying body recognized by the Board in the APRN role and at least one population focus appropriate to educational preparation;
- (f) Report any conviction, nolo contendere plea, Alford plea or other plea arrangement in lieu of conviction;
- (g) Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction or, if such acts have been committed and would be grounds for disciplinary action as set forth in P.L. 14-62, Section 2314(b) of the Nurse Practice Act, the Board has found, after investigation, that sufficient restitution has been made;
- (h) If the applicant has not been in clinical practice for more than the past two years, the applicant shall provide evidence of satisfactory completion of 30 contact hours, which consist of 12 in pharmacotherapeutics and 18 in the clinical management of patients within the two years prior to applying for approval to practice. No more than two hours may concern the study of herbal or complementary therapies;
- (i) If the applicant has not been in clinical practice for more than the past five years, the applicant shall provide evidence of satisfactory completion of 45 contact hours of pharmacotherapeutics within the two years prior to applying for approval to practice. No more than two hours may concern the study of herbal or complementary therapies. The applicant must also successfully complete a refresher course approved by the Board or an extensive orientation in the appropriate advanced practice role and population focus which includes a supervised clinical component by a qualified preceptor with a comparable practice focus; and

(j) Provide any other information the Board shall require.

§ 140-60.1-212 APRN Grandfather Clause

(a) Any person holding a current, unrestricted license to practice nursing as an APRN in the CNMI issued on or before December 31, 2015 shall be deemed to be licensed as an APRN under the provisions of this Act with their current privileges and shall be eligible for renewal of such license under the conditions and standards prescribed in this Act.

(b) After December 31, 2015, all new applicants for APRN licensure must meet national stipulated licensure requirements. At that time, an applicant applying for licensure by endorsement would be eligible upon the following conditions:

- (1) Current, active practice in the advanced role and population focus area;
- (2) Current, active national certification, or recertification as applicable, in the advanced role and population focus area, compliance with the APRN educational requirements of the state in which the APRN is applying for licensure that were in effect at the time the APRN completed his/her APRN education program; and
- (3) Compliance with all other criteria set forth by the state in which the APRN is applying for licensure (e.g. continuing education).

§ 140-60.1-215 Licensure for Internationally Educated RNs and LPN/VNs

An internationally educated applicant for licensure as an RN or LP/VN shall comply with § 140-60.1-205 of these regulations, "Initial Licensure of RN and LP/VN," as applicable, of these regulations and shall also submit to the Board the required fee for licensure by examination and a completed application for licensure by examination that provides the following information:

- (a) Graduation from an international nursing program comparable to an approved nursing education program in the United States (as determined by a Board-approved organization), as documented in an official transcript sent directly from the international nursing education program. Acceptable documentation shall verify the date of enrollment, date of graduation, and credential conferred. An official transcript and, if not in English, a certified translation is required prior to the approval to take the NCLEX®;
- (b) Official high school transcript, submitted directly from the institution; and
- (c) Demonstration of English proficiency, as the Board shall deem necessary.

§ 140-60.1-216 Licensure for Internationally Educated APRNs

The Board finds that, due to increased research that must be done and difficulty in obtaining international records, it does not currently have the resources to offer initial APRN licensure to internationally

educated APRNs. The Board may issue a license by endorsement to an APRN licensed under the laws of another country, in the opinion of the Board, the applicant meets the qualifications for licensure in this jurisdiction. An applicant for APRN licensure by endorsement shall:

- (a) Submit a completed written application and appropriate fees as established by the Board;
- (b) Hold a current unencumbered license or privilege to practice as an APRN or the equivalent in a foreign country;
- (c) Not have an encumbered license or privilege to practice in any jurisdiction, domestic or foreign;
- (d) Have completed an accredited graduate level APRN program in one of the four roles and at least one population focus;
- (e) Be currently certified by a national certifying body or its international equivalent, recognized by the Board, in the APRN role and at least one population focus appropriate to educational preparation;
- (f) Report any conviction, nolo contendere plea, Alford plea or other plea arrangement in lieu of conviction;
- (g) Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction or, if such acts have been committed and would be grounds for disciplinary action as set forth in P.L. 14-62, Section 2314(b) of the Nurse Practice Act, the Board has found, after investigation, that sufficient restitution has been made;
- (h) If the applicant has not been in clinical practice for more than the past two years, the applicant shall provide evidence of satisfactory completion of 30 contact hours, which consist of 12 in pharmacotherapeutics and 18 in the clinical management of patients within the two years prior to applying for approval to practice. No more than two hours may concern the study of herbal or complementary therapies;
- (i) If the applicant has not been in clinical practice for more than the past five years, the applicant shall provide evidence of satisfactory completion of 45 contact hours of pharmacotherapeutics within the two years prior to applying for approval to practice. No more than two hours may concern the study of herbal or complementary therapies. The applicant must also successfully complete a refresher course approved by the Board or an extensive orientation in the appropriate advanced practice role and population focus which includes a supervised clinical component by a qualified preceptor with a comparable practice focus;
- (j) Demonstrate, as the Board sees necessary, a proficiency in English; and
- (k) Provide any other information the Board shall require.

§ 140-60.1-220 Special License

- (a) A special license requires that an individual practice only within a modified scope of practice or with accommodations, or both, as specified by the Board. A special license may be granted for all levels of licensure at the Board's discretion.
- (b) The issuance of a special license is documented in a written agreement between the applicant and the Board.
- (c) A nurse granted a special license may apply to the Board for reconsideration at any time if the licensee's circumstances change.

§ 140-60.1-225 Ongoing Duties of Licensees

All licensees must:

- (a) Notify the Board, in writing, of a change of home or business address within thirty (30) days.
- (b) Submit legal evidence of name change by court record or marriage certificate within ninety (90) days of the change and before the change can be entered in the Board's records.
- (c) Submit documentation of compliance with licensing requirements upon Board request.

§ 140-60.1-230 Renewal—RN and LPN/LVN

- (a) Licenses issued or renewed before January 1, 2013 shall be valid for two (2) years from the date of issuance.
- (b) Beginning January 1, 2013, the date of expiration for new and renewed licenses shall be the applicant's birthdate. For the first year that the change affects the applicant, the expiration date shall fall on the birthdate after one full year but before two years. Upon renewal, the license shall be valid for two (2) years from the applicant's birthdate.
- (c) The licensee is responsible for the renewal of his/her license by requesting from the Board's Office all the necessary information for the renewal of his/her license.
- (d) To renew his/her license, the licensee must:
 - (1) Complete and submit an application for renewal form to the Board Office along with the required documents and fees; and
 - (2) Submit proof of completion of thirty (30) contact hours of continuing education in the licensee's current area of practice commencing with the renewal period. Only

continuing education hours obtained in the two (2) years immediately preceding the application date will be accepted for non-late renewal of licenses.

§ 140-60.1-232 Renewal--APRN

- (a) Licenses issued or renewed before January 1, 2013 shall be valid for two (2) years from the date of issuance.
- (b) Beginning January 1, 2013, the date of expiration for new and renewed licenses shall be the applicant's birthdate. For the first year that the change affects the applicant, the expiration date shall fall on the birthdate after one full year but before two years. Upon renewal, the license shall be valid for two (2) years from the applicant's birthdate.
- (c) The licensee is responsible for the renewal of his/her license by requesting from the Board's Office all the necessary information for the renewal of his/her license.
- (d) To renew his/her license, the licensee must:
 - (1) Complete and submit an application for renewal form to the Board Office along with the required documents and fees;
 - (2) Submit evidence of completion of a minimum of 30 contact hours obtained within the most recent licensure renewal cycle;
 - (3) Submit evidence of current certification(s), or recertification as applicable, by a national professional certification organization that meets the requirements of the Board; and
 - (4) Submit evidence of current DEA licensure, if applicable.

§ 140-60.1-235 Interim Permit for Graduate Nurses

An interim permit not to exceed one year from date of graduation will be issued to nurses who graduated from a recognized nursing or advanced practice-nursing programs provided that the applicant shall:

- (a) Submit a completed written application and appropriate fees, as established by the Board, within ninety (90) days of graduation from an approved nursing education program;
- (b) Be a graduate of an approved nursing education program which meets criteria similar to and not less stringent than those established by this Board and which prepares for the level of licensure being sought; and
- (e) Have committed no acts or omissions that are grounds for disciplinary action, or if the Board has found after investigation that sufficient restitution has been made.

§ 140-60.1-237 Temporary Permits

(a) The Board may issue, upon applicant's submission of the appropriate form and fees, a temporary permit to practice nursing to:

(1) Applicants for licensure as an RN or LPN/LVN by examination, to practice under the direct supervision of a CNMI-licensed RN, LPN/LVN, APRN, or physician.

(2) Applicants for licensure as an APRN by examination, to practice under the direct supervision of a CNMI-licensed APRN or physician.

(3) Applicants for licensure as an RN, LPN/LVN, or APRN by endorsement, upon verification of licensure in another jurisdiction and a Certification of Good Standing, to practice at the same level as has been granted in that jurisdiction.

(b) A temporary license shall be valid for ninety (90) days from the date of issuance or until a permanent licensure/certification is issued or denied, whichever occurs first.

§ 140-60.1-240 Reinstatement of License

(a) Failure to meet the requirements for renewal or to pay all applicable fees within sixty (60) days of expiration shall result in a lapse of license; the Board may extend the time needed or waive these requirements for good cause.

(b) A late fee of \$15.00 will accrue on the first of each month after the license has expired.

(c) If renewal requirements are met and fees are paid within two years of expiration, the license shall be renewed from the date of expiration and the licensee shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documents and fees.

(d) The Board shall not reinstate the license of an applicant who fails to apply for reinstatement of the license within two (2) years of the expiration date. The applicant shall apply, and meet the requirements in existence at that time, for licensure by examination or endorsement.

§ 140-60.1-243 Inactive Status

Any licensee who is not engaged in the practice of nursing shall not be required to renew his/her license or pay the renewal fee. Such person shall notify the Board, in writing, of his/her inactive status and shall request placement on the inactive list prior to the expiration date of his/her current license. Prior to resumption on practice, a person on the inactive status shall request reinstatement of an active license by completion of a reinstatement form provided by the Board.

§ 140-60.1-245 Approved Institutions

The Board shall adopt internal policies and procedures which shall guide the eligibility determinations of individual institutions.

Part 300--Certification

§ 140-60.1-302

Applications

- (a) Applications containing fraudulent or misrepresented information could be the basis for denial of certification.
- (b) Incomplete applications for certification become null and void one (1) year after the date of submission.

§ 140-60.1-304

Notification of Exam

- (a) An admission letter, which includes the time, date, and place of examination, shall be issued to all eligible applicants.
- (b) The examination fee shall only be returned for excused absences.
- (c) Examination results shall be sent, by mail only, to the applicants approximately two (2) weeks following the examination date. A certificate will be issued to those who successfully passed the exam.
- (d) Examination results will be mailed to the employing agency three (3) days after the release to the applicants.

§ 140-60.1-305

Certification--Hemodialysis Technicians

- (a) A trained Hemodialysis Technician may only practice under the direct supervision of a Board-approved clinical preceptor until he/she has obtained a passing score on the Board-approved examination.
- (b) Certification by Examination.
 - (1) At least thirty (30) days prior to the date of the examination, the applicant must submit the required examination application, fees, and a notarized verification of documentation demonstrating completion of a Board-approved Hemodialysis Technician training program.
 - (2) Examination.
 - i. The Board shall develop and maintain a certification examination for Hemodialysis Technicians.
 - ii. The Hemodialysis Technician advisory committee shall set the examination dates, which shall be at least six (6) times per year, and as-needed.
 - iii. Passage rate is a minimum score of 75%.
 - iv. Applicants who fail the examination may repeat the examination one (1) time within a six (6) month period without repeating an approved training program.

(c) Certification by Endorsement. An applicant who is certified in another jurisdiction may apply for certification in the CNMI by endorsement by providing the following:

- (1) Original or certified copy of certification from another jurisdiction;
- (2) Proof of good standing in all jurisdictions where the applicant is certified;
- (3) Official written verification of the completion of a Hemodialysis Technician training program;
- (4) Written verification of at least 1,000 hours of work as a Hemodialysis Technician during the 24 month period immediately prior;
- (5) Written verification of a minimum of eighty (80) hours of supervised clinical practice in a Board-approved Hemodialysis Technician training program under the direct supervision of an approved clinical preceptor;
- (6) Proof of completion of the Hemodialysis Technician training program's skills list;
- (7) Documentation relating to any disciplinary action ordered by or pending before any Board of nursing in any jurisdiction; and
- (8) Documentation of any criminal conviction within the past ten (10) years.

(d) Certification is valid for two (2) years from the date of issuance.

(e) Recertification.

(1) Applicant must obtain renewal applications and continuing education verification forms from the Board's Office or apply online, if available. Failure to receive the application for renewal shall not relieve the Hemodialysis Technician of the responsibility of renewing the certificate by the expiration date.

(2) If the certificate is not renewed by the end of the renewal month, the Hemodialysis Technician must cease practicing until the lapsed certificate has been reactivated.

(3) Applicant must accrue fifteen (15) hours of continuing education within the 24 months immediately preceding re-certification. Board-approved courses shall consist of care and safety of a patient undergoing dialysis treatment.

(4) Applicant must provide evidence of a minimum of 1,000 hours work as Hemodialysis Technician during the 24 month period immediately preceding certification renewal. Individuals who have not met the employment requirements may not function as a Hemodialysis Technician until a refresher course has been completed and reactivation application and fee have been submitted to the Board.

(5) Completion of a refresher course shall meet both the employment and continuing education requirements. The refresher course requirements are:

- i. Completion of a minimum of eighty (80) hours of supervised clinical practice in a Board-approved hemodialysis training program under the direct supervision of an approved clinical preceptor.
- ii. Completion of the Hemodialysis Technician training program's skills list.
- iii. Completion of the hemodialysis training program final examination with a score of at least 75%.
- iv. Written verification of successful completion of supervised clinical practice, skills list, and the final examination shall be provided to the Board by the training program's Board approved Nurse educator.
- v. Completion of the Board's certification examination with a score of at least 75%.

§ 140-60.1-307

Certification---Surgical/Psychiatric Technician

(a) Initial Certification. An applicant may apply for certification in the CNMI as the first jurisdiction of certification by providing an application on the form prescribed by the Board and the following:

- (1) Verification of completion of an approved surgical/psychiatric technician program;
- (2) Successful completion of the licensing examination approved by the Board, as recorded in the Board's internal policies;
- (3) Official high school transcript demonstrating graduation;
- (4) Documentation relating to any disciplinary action ordered by or pending before any Board of nursing in any jurisdiction; and
- (5) Proof of criminal conviction within the past ten (10) years.

(b) Certification by Endorsement. An applicant who is certified in another jurisdiction may apply for certification in the CNMI by endorsement by providing an application on the form prescribed by the Board and the following:

- (1) Original or certified copy of certification from another jurisdiction;
- (2) Proof of good standing in all jurisdictions where the applicant is certified;
- (3) Official written verification of the completion of a Surgical/Psychiatric Technician training program;
- (4) Written verification of a minimum of eighty (80) hours of supervised clinical practice in a Board-approved Surgical/Psychiatric Technician training program under the direct supervision of an approved clinical preceptor;
- (5) Documentation relating to any disciplinary action ordered by or pending before

any Board of nursing in any jurisdiction; and

(6) Documentation of any criminal conviction within the past ten (10) years.

(c) **Renewal**

(1) All certifications are valid for two years from the date of issuance.

(2) An applicant for renewal will renew online with CBNE website, if available, or must obtain the renewal forms from the Board's Office. The application shall be completed and returned at least thirty (30) days prior to expiration with the renewal fee.

(3) Renewal application postmarked after the 30 days shall be assessed an additional penalty fee or late fee.

(4) Fifteen (15) hours of continuing education must be submitted with the application form for renewal.

§ 140-60.1-310 Certification---Certified Nurse Assistants

(a) **Initial Certification.** An applicant may apply for certification in the CNMI as the first jurisdiction of certification by providing an application on the form prescribed by the Board and the following:

(1) Verification of completion of a Board-approved surgical/psychiatric technician program;

(2) Successful completion of the licensing examination approved by the Board, as recorded in the Board's internal policies;

(3) Official high school transcript demonstrating graduation;

(4) Proof of employment within two (2) years of certification;

(5) Documentation relating to any disciplinary action ordered by or pending before any Board of nursing in any jurisdiction; and

(6) Proof of criminal conviction within the past ten (10) years.

(b) **Certification by Endorsement.** An applicant who is certified in another jurisdiction may apply for certification in the CNMI by endorsement by providing the appropriate fees and an application on the form prescribed by the Board and the following:

(1) Original or certified copy of an unencumbered Nursing Assistant certification or registration that is issued by a state or territory of the United States, and that is current on the date of application, if the applicant has successfully completed a competency evaluation as recognized by the Board; and

(2) Proof of good standing in all jurisdictions where the applicant is certified.

(c) **Renewal**

(1) All certifications are valid for two years from the date of issuance.

(2) Applicant must obtain renewal applications and continuing education verification forms from the Board's Office or apply online, if available. Failure to receive the application for renewal shall not relieve the Hemodialysis Technician of the responsibility of renewing the certificate by the expiration date.

(3) To renew a certification, a CNA must submit:

a. A completed application for renewal on a form provided by the Board along with the established renewal fee.

b. Verified proof of fifteen (15) hours of continuing education; and

c. A certified copy of employment in a state or territory of the United States as a CNA or in a similar position that performs Nursing Assistant duties for monetary compensation for 160 hours or more during the concluding certification period; or, if the applicant has not been employed for monetary compensation during that period, proof of completion of a separate Board-approved nursing assistant program.

§ 140-60.1-315

Reinstatement of Certification

If a licensee applying for renewal of a certification fails to submit proof of completion of the continuing education requirements or pay the late fee within sixty (60) days of the expiration of the applicant's certification, the certification shall be considered to have lapsed on the date of expiration and the health care professional shall thereafter be required to apply for reinstatement of an expired license and meet all the requirements and fees for reinstatement.

(a) An applicant for reinstatement of a certification shall:

(1) Submit proof, as set forth by the Board, of having (30) hours of continuing education in the applicant's current area of practice in the two (2) years immediately preceding the application date;

(2) Meet any other requirements that the Board may set forth to determine whether the license should be reinstated; and

(3) Submit the completed application and its supporting documents required by the Board and pay the required fees.

(b) The Board shall not reinstate the certification of an applicant who fails to apply for reinstatement of the certification within two (2) years of the certification's expiration date. The applicant shall apply and meet the requirements in existence at that time for certification by examination or endorsement.

§ 140-60.1-320 Temporary Certification

The Board may issue a temporary certification to an applicant for certification by endorsement who meets the requirements of the Board, which is valid for ninety (90) days from the date of issuance or until a permanent certification is issued or denied, whichever occurs first.

Part 400- Professional Standards and Scope of Conduct

§ 140-60.1-402 Standards of Practice—RN

A Registered Nurse shall:

- (a) Adhere to the standards set forth in the American Nurses Association's "Code of Ethics for Nurses," as it may be amended or republished, as well as the legal boundaries of the NPA;
- (b) Base professional decisions on nursing knowledge and skills, the needs of clients, and the expectations delineated in professional standards;
- (c) Respect the client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information;
- (d) Accept responsibility for judgments, individual nursing actions, competence, decisions, and behavior in the course of nursing practice;
- (e) Report unsafe nursing practice by another that he/she has reasonable cause to suspect has exposed or is likely to expose a client unnecessarily to risk of harm as a result of failing to provide client care that conforms to the minimum standards of acceptable and prevailing professional practice. The registered Nurse shall report such conduct to the appropriate authority within the facility or to the Board;
- (f) Provide nursing services, without discrimination, regardless of age, disability, economic status, gender, national origin, race, religion, or health problems of the client served;
- (g) Not accept or perform professional responsibilities which the nurse is not competent to perform;
- (h) Not, after accepting an assignment or responsibility for a client's care, and without giving adequate notice to the supervisor so that arrangements can be made for continuation of nursing care by others:
 - (1) Unilaterally sever the established nurse-client relationship;
 - (2) Leave a client for a length of time, or in a manner, that exposes the client unnecessarily to risk of harm; or
 - (3) Leave a nursing assignment.

A violation of this Section constitutes unprofessional conduct for purposes of initiating disciplinary action.

§ 140-60.1-403 Scope of Practice--RN

[Reserved]

§ 140-60.1-405 Standards of Practice—LP/VN

A Licensed Vocational Nurse shall:

- (a) Adhere to the standards set forth in the American Nurses Association's "Code of Ethics for Nurses," as it may be amended or republished, as well as the legal boundaries of the NPA;
- (b) Report to the Board unprofessional conduct;
- (c) Document client care in accordance with standards of the profession;
- (d) Perform services in accordance with PL 14-62 Section 2304(h).
- (e) Maintain current knowledge and skills for safe and competent practice;
- (f) Maintain patient/client confidentiality;
- (g) Maintain professional boundaries with the client; and
- (h) Abstain from chemical/substance abuse.

A violation of this Section constitutes unprofessional conduct for purposes of initiating disciplinary action.

§ 140-60.1-406 Scope of Practice—LP/VN

The Licensed Vocational Nurse performs services requiring technical and manual skills which include the following:

- (a) Uses and practices basic assessment (data collection), participates in planning, executes interventions in accordance with the care plan or treatment plan, and contributes to evaluation of individualized interventions related to the care plan or treatment plan.
- (b) Provides direct client care by which the licensee:
 - (1) Performs basic nursing services as defined in the NPA Section 2304(h);
 - (2) Administers medications except intravenous treatment and therapy, unless additional certification is obtained on intravenous therapy;
 - (3) Applies communication skills for the purpose of client care and education; and
 - (4) Contributes to the development and implementation of a teaching plan related to self-care for the client.

- (a) A Graduate Nurse, as defined in the NPA Section 2304 (f), may practice registered nursing only in accordance with the NPA and this Chapter.
- (b) An individual may be authorized to engage in the supervised practice of registered nursing, as a Graduate Nurse, without a CNMI license, if the individual:
 - (1) Graduated from a nursing program pursuant to PL14-62 Section 2304 (f);
 - (2) Has never taken the NCLEX RN/LPN exam; and
 - (3) Has an initial application pending for licensure by examination in the CNMI.
- (c) A person who has been denied a license, disciplined, convicted of an offense that bears directly upon his or her fitness to be licensed, or who has such an action pending in the CNMI or another jurisdiction shall not practice pursuant to this Section unless first authorized by the Board in writing.
- (d) Within seven (7) business days of the Board's receipt of the application for licensure by exam, the Board's staff shall, at the request of the applicant, issue a supervised practice letter to the applicant to document that his/her application is pending and that he/she is authorized to practice under the NPA and this Chapter. The practice letter is not renewable and shall expire:
 - (1) One year from the date of issuance; or
 - (2) Upon receipt of written notice from the Board that the application for licensure has been denied, whichever date is the earliest.
- (e) Upon receipt of the practice letter, the Graduate Nurse shall inform and give his/her employer a copy of the same letter and take action accordingly.
- (f) The Graduate Nurse may only practice under the direct supervision of a CNMI-licensed RN or APRN. A record must be kept of the hours and conditions in which the Graduate Nurse practiced under supervision. The Supervisor shall be fully responsible for the practice by a Graduate Nurse during the period of supervision and may be subject to disciplinary action for violations of the Act or this Chapter by the Graduate Nurse.
- (g) A Graduate Nurse may only practice at a hospital, long-term care facility, a health facility operated by the CNMI government, academic institution, or other Board-approved health care facility and shall not be eligible to practice registered nursing in any of the following settings:
 - (2) Correctional Facility;
 - (3) Dialysis Center;
 - (4) Home Health Agency;
 - (5) Community Residential Facility;
 - (6) Nursing Staffing Agency;
 - (7) Medical Group Practice;
 - (8) School (as a school nurse); and
 - (9) Any other setting that has not received Board approval.

- (h) A Graduate Nurse practicing under this section shall not assume administrative or technical responsibility for the operation of a nursing program, unit, service, or institution.
- (i) A Graduate Nurse shall wear a picture identification badge with lettering clearly visible to the client bearing the name of the Graduate Nurse and the position title and shall verbally identify him/herself as such to all clients to whom the Graduate Nurse provides care.
- (j) A Graduate Nurse shall not receive compensation for any nature, directly or indirectly, from a client or client's family member, except for a salary based on hours worked under supervision.
- (k) The Board may deny an application for licensure by, or take other disciplinary action against a Graduate Nurse, who is found to have violated the NPA or this Chapter. The Board may, in addition to any other disciplinary actions permitted by the NPA, revoke, suspend, or restrict the privilege of the Graduate Nurse to practice.

§ 140-60.1-413 APRN Standards of Practice

- (a) An APRN shall comply with the standards for Registered Nurses, and to the standards of the national professional nursing associations approved by the Board. Standards for a specific role and population focus of APRN supersede standards for registered Nurses where conflict between the standards, if any, exists.
- (b) An APRN shall practice within standards established by the Board in rule and assure patient care is provided according to relevant patient care standards recognized by the Board, including standards of national professional nursing associations.
- (c) An APRN performing direct patient care shall maintain a method of quality assurance for evaluation of the APRN's practice. Proof of quality assurance reviews must be maintained for five years. The APRN will make the method and reviews available to the Board upon request.

§ 140-60.1-415 APRN Scope of Practice--Prescribing and Ordering Authority

- (a) **Position Statement.** The American Academy of Nurse Practitioners advocates that Nurse Practitioners have unlimited prescriptive authority and dispensing privileges within their scope of practice in both national and international arenas. Nurse Practitioners are APRNs who have completed a formal educational program beyond that of the RN. All Nurse Practitioners have advanced education in pathophysiology and pharmacology that prepares them to diagnose and prescribe medications and treatments within their specialty area. Nurse Practitioners make independent and collaborative decisions about the health care needs of individuals, families, and groups across the life span. Four decades of research conclude that Nurse Practitioners, practicing within their scope of practice, provide safe, cost effective, quality health care. Prescribing medications and devices is essential to the Nurse Practitioner's practice. Restrictions on prescriptive authority limit the ability of Nurse Practitioners to provide comprehensive health care services. Nurse Practitioners are registered and licensed by State Boards of Nursing or other State

designated agencies. Nurse Practitioners serve as State Board of Nursing members and on advisory councils for Advanced Practice Nurses. This process promotes public safety and competent advanced nursing practice. The American Academy of Nurse Practitioners recommends that state Boards of nursing regulate Nurse Practitioner practice and prescriptive authority. The American Academy of Nurse Practitioners also advocates that Nurse Practitioners attain annual continuing education credits in pharmacology. The ability of Nurse Practitioners to prescribe, without limitation, legend and controlled drugs, devices, adjunct health/medical services, durable medical goods, and other equipment and supplies is essential to provide cost-effective, quality health care for diverse populations across the life span.

(b) The Board grants prescribing and ordering authority to CNMI-licensed Nurse Practitioners, Certified Registered Nurse Anesthetists, and Certified Nurse Midwives. This privilege does not extend to Certified Nurse Specialists. A CNMI-licensed NP, CRNA, or CNM may prescribe, procure, administer, and dispense over-the-counter, legend, and controlled substances II-V, pursuant to applicable state and federal laws and the Board's regulatory authority. These licensees may also plan and initiate a therapeutic regimen that includes ordering and prescribing medical devices and equipment, nutrition, diagnostic, and supportive services including, but not limited to, home health care, hospice, physical, and occupational therapy. The Board may, by official order, limit the ability of APRNs to prescribe and order.

(d) Prescribing Practices. Written, verbal, or electronic prescriptions and orders will comply with all applicable state and federal laws and shall include the following information:

- (1) Name, title, address, and phone number of the APRN who is prescribing;
- (2) Name of the client;
- (3) Date of prescription;
- (4) The full name of the drug, dosage, route, amount to be dispensed, and directions for its use;
- (5) Number of refills;
- (6) Signature of prescriber on written prescription; and
- (7) DEA number of the prescriber on all scheduled drugs.

(e) The licensee will immediately file any and all of his or her DEA registrations and numbers with the Board.

(g) The Board will maintain current records of all APRNs with DEA registration and numbers.

(h) NPs, CRNAs, and CNMs may receive, sign for, record, and distribute samples to patients, in accordance with state law and the DEA laws, regulations, and guidelines.

(a) NPs are independently responsible and accountable for the continuous and comprehensive management of a broad range of health care, according to the NP's personal limits of knowledge and experience, which include:

- (1) Advanced assessment of clients, synthesis and analysis of data, and application of nursing principles and therapeutic modalities;
- (2) Management of health care during acute and chronic bases of illness;
- (3) Admission of his/her clients to hospitals and/or health services, including, but not limited to home health, hospice, long term care and drug and alcohol treatment;
- (4) Counseling;
- (5) Consultation, collaboration, and/or referral with other health care providers and community resources;
- (6) Management and coordination of care, including situations beyond the APRN's expertise;
- (7) Use of research skills;
- (8) Diagnosis of health/illness status
- (9) Serving as the primary care provider of record; and
- (10) Prescribing, ordering, dispensing, and administration of therapeutic devices and measures, including legend drugs and controlled substances, as provided in PL14-62 Section 2304(k) of the NPA, consistent with the definition of the practitioner's specialty category and scope of practice.

§ 140-60.1-422 APRN Scope of Practice--CRNA

The Certified Registered Nurse Anesthetist may:

- (a) Perform and document a pre-anesthetic assessment and evaluation of the patient;
- (b) Request and obtain consultations, laboratory, and diagnostic studies;
- (c) Select, obtain, order, or administer pre-anesthetic medications and fluids;
- (d) Obtain informed consent or confirm that the patient has given informed consent for the services to be furnished;
- (e) Select and initiate the anesthetic technique;
- (f) Select, apply, and insert invasive and non-invasive monitoring modalities;
- (g) Select and provide supports for airway management;

- (h) Select, obtain, order, or administer anesthetic agents and adjuvant drugs;
- (i) Select and provide mechanical support;
- (j) Select and provide fluids, electrolytes, and blood components;
- (k) Conduct ongoing assessment to identify problems and provide corrective or preventive action;
- (l) Order laboratory tests, blood gases, and other necessary interventions;
- (m) Select, obtain, order, or administer drugs, fluid, blood, and electrolyte components;
- (n) Direct and implement emergency resuscitative techniques; and
- (o) Provide clinical support functions.

§ 140-60.1-425 APRN Scope of Practice—Certified Nurse Midwife

(a) Midwifery practice, as conducted by certified Nurse-midwives (CNMs), is the independent management of women's health care, focusing particularly on pregnancy, childbirth, the post-partum period, care of the newborn, the family planning and gynecologic needs of women, and resuscitation and referral for infants. A CNM practices within a healthcare system that provides for consultation, collaborative management, or referral, as indicated by the health status of the client. CNMs practice in accord with the Standards for the Practice of Midwifery, as defined by the American College of Nurse-Midwives (ACNM), unless otherwise indicated by the Board.

(b) A CNM may:

- (1) Provide midwifery intrapartum care during labor, birth, and in the hours immediately thereafter;
- (2) Provide postpartum midwifery care after delivery through health support, and information on newborn care;
- (3) Determine the need of consultation or referral for both the mother and newborn, as appropriate; and
- (4) Provide family planning (advice, counseling, and provision of various contraceptive methods), well-woman care, support, and information to women regarding their overall reproductive health, as needed.

§ 140-60.1-427 APRN Scope of Practice—Certified Nurse Specialist

(a) The CNS practices within three spheres of influence: individual clients and populations; nurses and other multidisciplinary team members; and organizations. Practice may target one or

more spheres of influence.

(b) Individual client care includes, but is not limited to:

- (1) Assessing the client using tools, techniques, and methodologies based on theory and research;
- (2) Diagnosing symptoms, functional problems, risk behaviors, and health status of the client;
- (3) Developing a mutually derived therapeutic plan of care with the client;
- (4) Designing, implementing, and evaluating nursing interventions by using data, research, and theoretical knowledge;
- (5) Establishing standing orders related to nursing interventions and specific plans of care;
- (6) Encouraging disease prevention, health promotion, and health maintenance;
- (7) Providing referrals for the client to other health care services or providers as indicated.

(c) Population care includes, but is not limited to:

- (1) Planning, implementing, and evaluating data collection;
- (2) Selecting, ordering, and recommending screening and diagnostic tests for individuals within the population;
- (3) Interpreting and analyzing population data to formulate diagnoses in the area of needs, functional problems, risks, and health issues;
- (4) Reviewing and revising diagnoses based on subsequent data collection;
- (5) Innovating, implementing, guiding, evaluating, and revising population-focused plans and programs;
- (6) Encouraging disease prevention, health promotion, and health maintenance;
- (7) Establishing criteria for referral within a population;
- (8) Establishing algorithms, standing orders, or practice guidelines related to specific populations;
- (9) Informing the population about its health and promoting other community systems that influence health; and

- (10) Assessing the need for and participating in activities to change health and social policies that affect the health of the community.
- (d) A CNS may practice with nurses and other members of the multidisciplinary care team to advance the practice of nursing and improve client care. This practice includes, but is not limited to:
 - (1) Consulting and collaborating to identify and manage health care issues;
 - (2) Providing leadership in the utilization of research in practice;
 - (3) Coaching nursing staff in clinical practice development;
 - (4) Identifying knowledge deficits of target groups providing health care; and
 - (5) Developing, providing and evaluating educational and other programs that enhance the practice of nursing personnel and/or other members of the health care team.
- (e) A CNS may practice with organizations to provide clinical expertise and guidance. This practice includes, but is not limited to:
 - (1) Using system-wide change strategies based on an assessment of the needs and strengths of the organization;
 - (2) Initiating collaborative relationships among teams to facilitate interdisciplinary practice;
 - (3) Collaboratively developing and evaluating research-based and client-driven systems and processes;
 - (4) Creating, advising, and influencing system-level policy that affects programs of care; and
 - (5) Evaluating and recommending equipment and products being used in patient care for efficacy, efficiency, cost-effectiveness, and client/consumer satisfaction.

§ 140-60.1-430 Scope of Practice—Hemodialysis Technician

The duties of a hemodialysis technician include:

- (a) Collecting and measuring vital signs and weight;
- (b) Preparing patients for dialysis;
- (c) Monitoring the dialysis procedure;
- (d) Responding to any emergency that might occur during the treatment if a higher level medical professional is not immediately available;
- (e) Taking blood samples from cannula or blood lines as needed;

- (f) Measuring and adjusting blood flow rate, checking, and rechecking patient's vital signs;
- (g) Responding to any alarms that occur and making appropriate adjustments during treatment;
- (h) Administering cardiopulmonary resuscitation (CPR) or other life-saving techniques if a higher level medical professional is not immediately available;
- (i) Preparing patient's station and hemodialysis machines, dialyzer, and appropriate lines;
- (j) Observing, obtaining, and recording patient's weight at the scale pre- and post-dialysis;
- (k) Reporting any patient symptoms or reactions to charge nurse;
- (l) Recognizing, correcting, and reporting problems involving dialyzer leaks or defects in arterial or venous lines;
- (m) Cleaning and disinfecting all equipment following procedures, as assigned; and
- (n) Demonstrating the knowledge and skills necessary to provide care appropriate to adult dialysis and peritoneal patients and to teach health prevention to pre renal and ESRD patients.

§ 140-60.1-433

Scope of Practice—Surgical Technician

A Surgical Technician, as part of his/her duties, may:

- (a) Assist in operations under the supervision of surgeons, RNs, or other surgical personnel;
- (b) Help set up the operating room with the surgical instruments and equipment, sterile linens, and sterile solutions;
- (c) Assemble, adjust, and check non-sterile equipment to ensure that it is working properly;
- (d) Prepare patients for surgery by washing, shaving, and disinfecting incision sites;
- (e) Transport patients to the operating room, help position them on the operating table, and cover them with sterile surgical "drapes";
- (f) Observe patient's vital signs, check charts, and help the surgical team scrub and put on gloves, gowns, and masks;
- (g) Pass instruments and other sterile supplies to surgeons and surgeon assistants;
- (h) Hold retractors, cut sutures, and help count sponges, needles, supplies, and instruments;
- (i) Help prepare, care for, and dispose of specimens taken for laboratory analysis and help apply dressings;

- (j) Operate sterilizers, lights, or suction machines, and help operate diagnostic equipment;
- (k) Maintain supplies of fluids, such as plasma and blood; and
- (l) Assist in transferring patients to the recovery room.

§ 140-60.1-435 Scope of Practice—Psychiatric Technician

A Psychiatric Technician, as part of his/her duties, may:

- (a) Help patients with personal hygiene, such as bathing and with keeping beds, clothing, and living areas clean;
- (b) Administer oral medications, following physician's prescriptions and hospital procedures;
- (c) Use thermometers and blood pressure gauges;
- (d) Take and record measures of a patient's general physical condition, such as pulse, temperature, and respiration, to provide daily information;
- (e) Observe patient to detect behavior patterns and report observations to medical staff;
- (f) Issue oral medications from dispensary and maintain records in accordance with specified procedures;
- (g) Encourage patients to develop work skills, social relationships, and to participate in recreational activities;
- (h) Lead prescribed individual or group therapy sessions as part of specific therapeutic procedures;
- (i) Intervene to restrain violent, potentially violent, or suicidal patients by verbal or physical means as required;
- (j) Work as member of crisis intervention team;
- (k) Contact a patient's relatives by telephone to arrange family conferences;
- (l) Complete initial admittance forms for new patients;
- (m) Monitor patients' physical and emotional well-being and report unusual behavior or physical ailments to medical staff; and
- (n) Provide nursing, psychiatric and personal care to mentally ill, emotionally disturbed, or mentally disabled patients.

§ 140-60.1-438 Scope of Practice—Certified Nurse Assistant

A CNA, as part of his/her duties, may perform:

- (a) Basic nursing skills, including:
 - (1) Monitoring body functions;
 - (2) Taking and recording vital signs;
 - (3) Measuring and recording a client's height and weight;
 - (4) Caring for the client's environment;
 - (5) Non-invasive collection and testing of physical specimens;
 - (6) Measuring and recording fluid and food intake and output;
 - (7) Caring for a client if the client's death is imminent; and
 - (8) Post-mortem care.
- (b) Personal care skills, including:
 - (1) Bathing;
 - (2) Basic daily oral hygiene;
 - (3) Grooming and dressing;
 - (4) Toileting;
 - (5) Assisting with eating and hydrating;
 - (6) Proper feeding techniques; and
 - (7) Skin care.
- (c) Safety concepts related to nursing, including:
 - (1) Medical aseptic technique, including isolation;
 - (2) Basic life support;
 - (3) Environment;
 - (4) Body mechanics;
 - (5) Transfer and ambulation;
 - (6) Restraints and other protective devices;
 - (7) Fire and disaster; and
 - (8) Standards precautions for food services and infection control.

Part 500- Continuing Education

§ 140-60.1-502 Continuing Education Requirements for Renewal

- (a) Each licensee renewing a license for APRN, RN, or LPN/LVN shall submit proof of having completed, during the preceding two years, thirty (30) hours of continuing education acceptable to the Board, conducted by a Board-approved provider.
- (b) Each licensee renewing a certification as a technician or nurse assistant shall submit proof of having completed, during the preceding two years, fifteen (15) hours of continuing education acceptable to the Board, conducted by a Board-approved provider.
- (c) To obtain an active license for the next renewal period, the licensee shall be required to submit documentation, using the renewal application form, that the requirements for continuing education as prescribed by the Board of Nurse Examiners have been met.

§ 140-60.1-503 Continuing Education Courses

- (a) One clock hour of course-related documented clinical experience shall equal one hour of continuing education.

- (b) In addition to courses individually granted approval by the Board, the Board shall accept continuing education programs acceptable to licensing Boards in other U.S. jurisdictions and those recognized by Board-approved organizations, which shall be predetermined by the Board's internal policies.
- (c) The Board shall accept courses which are normally offered as a prerequisite to or part of a registered nursing program, or college/university course related to the Licensed Vocational Nurse scope of practice if the licensee is not otherwise receiving credit for the course.
- (d) Course Approval. Providers applying for approval of a continuing education course must use the Board-provided forms and supply the following information:
 - (1) A description of the subject matter of the course as it relates to recent developments in the vocational nursing field or in any special area of vocational nursing practice;
 - (2) The course objectives;
 - (3) Method of instruction;
 - (4) Dates, total number of hours in the course, and the course location;
 - (5) Any enrollment restrictions or prerequisites; and
 - (6) Instructor's qualifications.
- (e) Approved courses will remain valid for a period of two years from the date of Board approval, unless the provider is otherwise notified. Approval of a continuing education course may be withdrawn if the Board later discovers misrepresentation of the information.
- (f) Approval of Course Instructors. For approval, instructors shall meet two of the following:
 - (1) Completion within two years preceding course approval of specialized training in the subject matter of the course;
 - (2) Completion of academic studies related to the subject matter of the course within two years of course approval;
 - (3) Experience teaching a course with similar matter content within the previous two years;
 - (4) Six months of work experience in the subject matter of the course within the previous three years; or
 - (5) Experience in developing academic course within two years preceding course approval.
- (g) Course Completion Certificates and Reporting.
 - (1) At the completion of the course, the provider shall issue a certificate to each licensee.
 - (2) The licensee shall record on the license renewal form the date each course was completed, provider/course number, course title, and total hours of the course.
 - (3) Licensees are required to maintain a record of continuing education courses taken during the last four (4) years.
- (h) Exemptions from Continuing Education Requirements.

(1) A licensee applying for renewal must request an exemption from the continuing education requiring using the Board-approved form.

(2) The applicant must show evidence satisfactory to the Board that during the two-year period immediately prior to the expiration date of the applicant's license, the licensee:

- i. Has been absent from the CNMI because of military or missionary service for a period of one year or longer, preventing completion of continuing education requirements;
- ii. Should be exempt from the continuing education requirements for reasons of health, which includes total physical and/or mental disability for one year of oneself or of an immediate family member for whom the licensee has total responsibility, as verified by a licensed physician and surgeon or licensed clinical psychologist; or
- iii. Other good cause, as determined by the Board and consistent with its internal policies and procedures.

Part 600- Revenue and Fees

§ 140-60.1-602 Fees and Fines Schedule

The Board shall maintain a schedule of fees and fines, which shall be published publically at the Board's Office and its website, if available, and shall be available at the Board's Office for the cost of printing. The Board shall also provide public notice at least 72 hours in advance of any changes to the schedule.

§ 140-60.1-605 CNMI Board of Nursing Fees and Fines Account

- (a) The Board shall deposit fees and fines into the "CNMI Board of Nursing Fees and Fines Account," which shall be held at a privately owned, FDIC-insured banking institution.
- (b) The elected Officer positions shall have signatory authority over the account. Any person who is no longer an active member of the Board or an elected Officer must be removed as a signatory within two (2) business days of the change.
- (c) The Treasurer shall have the primary responsibility to manage the funds within the bank, maintain proper records, and to prevent the misuse of funds, such as overdraws or other penalties.

Part 700- Reporting Requirements

§ 140-60.1-702 Duty of Licensees to Report

Any person licensed or certified by this Board shall report names of subject individuals to the Board if the licensee has reasonable cause to suspect that a licensee or an applicant has violated any of the grounds for discipline stated in these regulations or the NPA, except for minor incidents, which are described in § 140-60.1-705, "Exception to Duty to Report—Minor Incidents," of these rules.

§ 140-60.1-703 Duty of Others to Report

The direct employer of any person licensed under this chapter shall report to the Board the name of any licensee or applicant:

- (a) Who has violated any of the grounds for discipline stated in these regulations or the NPA, except for minor incidents, as described in § 140-60.1-705, "Exception to Duty to Report—Minor Incidents," of these rules.
- (b) Whose employment has been terminated or who has resigned in order to avoid termination.

§ 140-60.1-705 Exception to Duty to Report—Minor Incidents

- (a) The supervisor responsible for reviewing incidents of practice breakdown may determine that an incident need not be reported to the Board if all of the following factors exist:
 - (1) The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;
 - (1) The nurse exhibits a conscientious approach to and accountability for his or her practice; and
 - (2) The nurse has demonstrated the knowledge and skill to practice safely.
- (b) The review of the incident shall include evaluation of the significance of the event in the practice setting, the context of the event, and the presence of contributing or mitigating circumstances in the nursing care delivery system.
- (c) If an event is determined to be a minor incident:
 - (1) An incident/variance report shall be completed according to the employing facility's policy, including a complete description of the incident, client record number, names of witnesses, identification of subject licensee, and action to correct or remediate the problem;
 - (2) The supervisor shall maintain a record of each minor incident involving licensee under his or her supervision; and
 - (3) The supervisor shall report to the Board if four (4) minor incidents involving a licensee are documented within a six-month time period; if a licensee leaves employment before completing any employer expectations for reeducation or other remediation; or if the risk of ongoing problems that do not respond to employer remediation expose patients to unsafe nursing care.
- (d) Nothing in this rule is intended to prevent reporting of a potential violation directly to the Board. Uncertainty should err in favor of reporting to the Board.
- (e) Failure to classify an event appropriately in order to avoid reporting may result in discipline.

§ 140-60.1-710 Duty to Report--Insurers

Twice each year, by the first day of February and August, each insurer authorized to sell insurance in the CNMI and providing professional liability insurance to RNs, LPN/VNs, or APRNs shall submit to the Board a report concerning any nurse against whom a malpractice award has been made or who has been a party to a settlement. The report shall contain at least the following information:

- (a) The total number of settlements or awards;
- (b) The date the settlement or award was made;
- (c) The allegations contained in the claim or complaint leading to the settlement or award;
- (d) The dollar amount of each malpractice settlement or award and whether that amount was paid off as a result of a settlement or of an award.
- (e) The name and address of the nurse against whom an award was made or with whom a settlement was made.

Part 800- Discipline and Proceedings

§ 140-60.1-802 Professional Boundaries

The following principles shall delineate the responsibilities of the licensee regarding the establishment and maintenance of appropriate professional boundaries with a current or former patient and key party. Patient consent to, or initiation of a personal relationship, is not a defense. The licensee shall:

- (a) Establish, maintain, and communicate professional boundaries with the patient, avoiding relationships with patients that could impair the licensee's professional judgment;
- (b) Not exploit, in any manner, the professional relationship with a patient for the licensee's emotional, financial, sexual, or personal advantage or benefit;
- (c) Avoid dual relationships to the extent possible, making alternate arrangements for care when necessary, if a licensee's ability to provide appropriate care would be impaired due to the nature of the additional relationship with the patient;
- (d) Not engage in self-disclosure to a patient unless it is limited in terms of amount, nature, and duration, and does not adversely impact the patient's care and well-being;
- (e) Not use any confidence of a patient to the patient's disadvantage or for the advantage of the licensee;
- (f) Avoid statements or disclosures that create a risk of compromising a patient's privacy, confidentiality and dignity. This includes, but is not limited to, statements or disclosures via electronic media; and
- (g) Recognize the importance of clear understandings with the patient regarding financial matters. A licensee shall not engage in loans to or from a patient, shall not barter with a patient, and shall only accept gifts of minimal value from a patient or key party.

- (h) Refrain from posting to a social media platform, such as Facebook or Twitter, any photographs or descriptions of a client or his/her specific medical condition. The fact that the client has given consent or that the client cannot easily be identified by the picture/description is not an exception to this rule.

§ 140-60.1-804 Licensee-Patient Relationship

- (a) A licensee may not engage or attempt to engage in sexual or romantic conduct with a former patient if doing so creates a risk that the relationship could cause harm to or exploitation of the former patient. Factors which the Board may consider in determining risk of harm or exploitation include, but are not limited to:
- (1) The length of time the licensee-patient relationship existed;
 - (2) The circumstances of the cessation or termination of the licensee-patient relationship;
 - (3) The amount of time that has passed since nursing services were terminated;
 - (4) The nature of the patient's health status and the extent of care received;
 - (5) The degree of the patient's dependence and vulnerability;
 - (6) Any statements or actions made by the nurse during the course of treatment suggesting or inviting the possibility of sexual or romantic conduct.
- (b) Due to the unique vulnerability of mental health patients, including patients with substance use or dependency disorders, licensees are prohibited from engaging in or attempting to engage in sexual or romantic conduct with such former patients for a period of at least one year after termination of nursing services.
- (c) These rules do not prohibit providing:
- (1) Health care services to a person with whom the nurse has a preexisting, established personal relationship where there is no evidence of, or potential for, exploiting the patient; or
 - (2) Contact that is necessary for a health care purpose that meets the standards of the profession.

§ 140-60.1-805 Disciplinary Authority

The Board has the authority to refuse to issue or renew a license; to limit; suspend or revoke a license; place on probation or reprimand; or otherwise discipline a licensee for any one or a combination of the grounds set forth in 3 CMC § 2314.

§ 140-60.1-810 Disciplinary Process

- (a) The Board shall investigate alleged acts or omissions that the Board reasonably believes violate the NPA or the CNMI Nursing Administrative Rules. The basis of the investigation may be either by written Complaint submitted to the Board or by a motion of the Board.

(b) The subject of the investigation shall be informed of the allegations or purpose of the investigation and shall be given at least sixty (60) days to respond before charges may be brought against him or her.

(c) Complaint Resolution.

(1) Complaints may be settled through informal negotiations with the subject licensee and/or subject licensee's attorney.

(2) The Board's legal counsel shall review negotiated settlements to determine whether the proposed remedy is appropriate for the facts as admitted or stipulated.

(3) If a Complaint cannot be resolved through informal negotiations, the case may be referred to the Attorney General's Office for formal administrative hearings.

(4) At any time, the cited person may make a request for an administrative hearing, which shall be held within sixty (60) days of the request.

(d) Administrative Hearings

(1) Any disinterested Board member, not involved in the collection of investigatory evidence, may be a finder of fact in an administrative hearing.

(2) The Board may allow the hearing to be conducted by an administrative law judge. The Board shall then review the evidence and record produced at the administrative hearing, along with the recommendations of the administrative law judge, to determine whether the burden of proof has been met with regards to any violation. The Board is responsible for making final disciplinary decisions.

(f) Notification of Decision

(5) The Board shall provide information, as required by federal law, to federal databanks, to the NCSBN centralized licensing and discipline databank (Nursys), and may develop procedures for communicating with others.

§ 140-60.1-815

Fine and Order of Abatement for Unlicensed Practice.

(a) A citation and Order of Abatement shall be issued against any person who is performing or who has performed services for which licensure is required under the NPA or these regulations. The amount of the fine shall be based on the following:

- (1) Whether the violation was deliberate;
- (2) Whether the individual has any training or credentials;
- (3) Duration of the unauthorized practice;
- (4) Extent of services offered or performed;
- (5) Manner in which the individual held him/herself out as a licensed professional;
- (6) Other considerations deemed relevant.

(b) If the individual is able to correct the deficiency in licensure/certification in the time set

forth on the Order, all or part of the fine may be forgiven, as pre-determined by the Board.

- (c) If a person who has been issued an Order of Abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, he/she may request an extension of time to complete the correction. Such a request shall be in writing to the Board and shall be made within the time set forth for abatement. The Board shall notify the individual within fifteen (15) days of receipt whether the extension will be granted.
- (d) If the citation is not contested or if the Order is appealed and the person cited does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or Order of Abatement and may result in additional disciplinary action being taken by the Board or other appropriate judicial relief being taken against the person cited.
- (e) If a fine is not paid after a citation has become final, the fine shall be added to the cited person's license renewal fee. A license shall not be renewed without payment of the renewal fee and fine.
- (f) The issuance and disposition of a citation shall be reported to other Boards of Nursing, and other regulatory agencies.

§ 140-60.1-820 Bases for Discipline or Restriction on Licensure/Certification

In addition to the actions stated in NPA Section 2314, the following shall be grounds for discipline or restriction of licensure/certification:

- (g) Gross Negligence, which means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.
- (h) Incompetence, which means the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by responsible licensee.
- (i) Failure to report known or suspected child abuse cases to a child protective agency.
- (j) Failure to report known or suspected elder physical abuse to an elder protective agency.
- (k) Failure to report known or suspected physical abuse of a legally dependent adult to an adult abuse protective agency.

§ 140-60.1-825 Criteria for Denial, Suspension, or Revocation of License/Certification

- (a) Substantial Relationship Criteria. For the purposes of denial, suspension, or revocation of a license or certification, a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by his license in a manner

consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to those involving the following:

1. Procuring a license by fraud, misrepresentation, or mistake;
2. Practicing medicine without the appropriate license or certification;
3. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the NPA;
4. Aiding or agreeing to aid any person in a violation of any of the provisions of the NPA;
5. Conviction of a crime involving fiscal dishonesty or moral turpitude;
6. Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices.

(b) **Criteria for Denial.** When considering the denial of a license or certification, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial;
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under this Section.
- (3) The time that has elapsed since commission of the act(s) or crime(s); and
- (4) The licensee or applicant's cooperation with the Board and reporting.

(c) **Criteria for Suspensions or Revocations.** When considering the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s);
- (2) Total criminal record;
- (3) The time that has elapsed since commission of the act(s) or offense(s);
- (4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee;
- (5) If applicable, evidence of expungement proceedings pursuant to Section of Penal code;
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

§ 140-60.1-830

Citations/Fines.

In addition to or instead of action on a license/certification, the Board may issue citation for fines for violations of the NPA or these rules and regulations.

- (a) Each citation shall be in writing, shall indicate the classification of the citation, and shall describe with particularity the nature and facts of each violation specified in the citation,

including a reference to the statute or regulation alleged to have been violated.

- (b) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation or both.
- (c) The citation shall inform the cited person of the right to an informal conference concerning the matter and of the right to an administrative hearing.
- (d) The citation shall be served upon the cited person personally or by certified and regular mail.

There shall be two classes of violations, Class "A" and Class "B."

- (e) The fine for each Class A violation shall not be less than \$300 or not more than \$1,000.00. A Class "A" violations include:

- (1) A violation which resulted in or could have resulted in patient harm and where there is not evidence that revocation or other disciplinary action is required to ensure consumer safety. Such violations include, but are not limited to, patient abandonment and falsifying nursing notes.
- (2) Any violation which is neither directly nor potentially detrimental to patients or their care. Such violations include, but are not limited to, a violation committed for personal and/or financial gain or fraud.
- (3) A minor or technical violation which continues for six months or more in duration; or
- (4) A minor or technical violation after previously receiving one or more "B" citations.

- (f) The fine for each class "B" violation shall not exceed \$1,000. A class "B" violation is a minor or technical violation which is neither directly nor potentially detrimental to patients or their care and which continues for less than six months in duration. Such violations include, but are not limited to, practicing with an expired license, pre-charting, charting errors, or verbal abuse.

- (g) If it is unclear whether the violation should be considered a class "A" or "B" violation, the Board may consider the following factors:

- (1) Nature and severity of the violation;
- (2) Duration of the violation;
- (3) If a great amount of time has passed since the violation occurred and the licensee has taken measures to remedy the violation;
- (4) Consequences of the violation, including potential or actual client harm;
- (5) History of previous violations of the same or similar nature; and
- (6) Evidence that the violation was willful.

- (h) The following factors shall be considered in determining the amount of fine to be assessed:

- (1) Gravity of the violation;
- (2) History of previous violations of the same or a similar nature;

- (3) The good and bad faith exhibited by the cited person;
- (4) Evidence that the violation was willful;
- (5) The extent to which the cited person cooperated with the Board's investigation;
- (6) The extent to which the cited person has remediated any knowledge and/or skills deficiencies, which could have injured a patient; and
- (7) Any other mitigating or aggravating factors.