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Chapter Authority: CNMI Const., art. XV; 1 CMC §§ 2251-2273; 3 CMC §§ 1101-1192.

Chapter History: Amdts Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Amdts Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Amdts Emergency 34 Com. Reg. 32881 (Oct. 29, 2012); Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012); Adopted 17 Com. Reg. 12717 (Jan. 15, 1995); Proposed 16 Com. Reg. 12517 (Nov. 15, 1994).

Commission Comment: Title 3, division 1 of the Commonwealth Code contains the education laws of the Commonwealth. PL 6-10, the “Education Act of 1988,” codified as amended at 1 CMC §§ 2251-2273 and 3 CMC §§ 1101-1192, took effect on October 25, 1988. PL 6-10 § 1 created the Public School System as a nonprofit corporation within the Commonwealth government, headed by the Board of Education. See 1 CMC §§ 2251 and 2261. The Board of Education is empowered to formulate policy and exercise control over the Public School System and to establish rules, regulations and policies for the operation of the Public School System. See 1 CMC § 2268(b).

PL 6-10 repealed and reenacted PL 3-43 (effective Jan. 19, 1983), a comprehensive revision of the Commonwealth’s education laws. See the commission comment to 3 CMC § 1101.

Prior to October 25, 1988, the Commonwealth government included a Department of Education and Board of Education, which are the predecessors of the current Public School System and Board of Education. See PL 1-8 (effective August 10, 1978) and PL 3-43. Throughout the development of education law in the Commonwealth, the Board of Education has been the entity with the authority to promulgate rules and regulations.

The 2012 regulations repealed the former Chapter 60-50 in its entirety and replaced it with new regulations. These regulations also added Part 900.

Chapter 60-50 was not enacted with a clear or consistent section naming or numbering scheme. Parts, subparts, and subsections have been determined, numbered, and named by the Commission, pursuant to 1 CMC § 3806(a).

Part 001 - Definitions

§ 60-50-001 Definitions Under the Individuals with Disabilities Education Act (IDEA)

- (a) “Act.” “Act” means the Individuals with Disabilities Education Act, as amended.
- (b) “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))
- (c) “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:
- (1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
 - (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
 - (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

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(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(6) 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))

(d) "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))

(e) "Child with a disability."

(1) General.

(i) "Child with a disability" means a child evaluated in accordance with sections 60-50-210 through 60-50-244 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 chapter as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(ii)(A) Subject to subsection (e)(1)(ii)(B) of this section, if it is determined, through an appropriate evaluation under sections 60-50-210 through 60-50-244, that a child has one of the disabilities identified in subsection (e)(1)(i) 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.

(B) If, consistent with subsection (ii)(1)(ii), 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 subsection (e)(1)(i) of this section.

(2) 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:

(i) 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:

(A) Physical development,

(B) Cognitive development,

(C) Communication development,

(D) social or emotional development, or

(E) adaptive development; and

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

(f) 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

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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 subsection (f)(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 subsection (f)(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 subsection (f)(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:

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- (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.

- (g) "Consent." "Consent" means that:
 - (1) 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;
 - (2) 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
 - (3)(i) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime
 - (ii) 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).

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

- (i) "Day"; "business day"; "school day".
 - (1) "Day" means calendar day unless otherwise indicated as business day or school day.

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- (2) “Business day” means Monday through Friday, except for Federal and State holidays, unless holidays are specifically included in the designation of business day.
- (3)(i) “School day” means any day, including a partial day that children are in attendance at school for instructional purposes.
- (ii) “School day” has the same meaning for all children in school, including children with and without disabilities.
- (j) “Educational service agency.” “Educational service agency” means:
- (1) A regional public multiservice agency:
- (i) Authorized by CNMI law to develop, manage, and provide services or programs;
- (ii) 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;
- (2) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and
- (3) Includes entities that meet the definition of intermediate educational unit.
- (k) “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.
- (l) “Equipment.” “Equipment” means:
- (1) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and
- (2) 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.
- (m) “Evaluation.” “Evaluation” means procedures used in accordance with sections 60-50-210 through 60-50-244 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
- (n) “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:
- (1) Amounts received:
- (i) Under Part B of the Act;
- (ii) Under Part A of title I of the ESEA; and
- (iii) Under Parts A and B of title III of the ESEA and;
- (2) Any CNMI funds expended for programs that would qualify for assistance under any of the parts described in subsection (n)(1) of this section, but excluding any amounts for capital outlay or debt service.

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- (o) “Free appropriate public education.” “Free appropriate public education” or “FAPE” means special education and related services that:
- (1) Are provided at public expense, under public supervision and direction, and without charge;
 - (2) Meet the standards of the PSS, including the requirements of this chapter;
 - (3) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and
 - (4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of sections 60-50-303 through 60-50-344.
- (p) “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.*
- (q) “Include.” “Include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
- (r) “Indian” and “Indian tribe.”
- (1) “Indian” means an individual who is a member of an Indian tribe.
 - (2) “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.).
 - (3) 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.
- (s) “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 sections 60-50-303 through 60-50-344.
- (t) “Individualized education program team.” “Individualized education program team” or “IEP Team” means a group of individuals described in sections 60-50-310 through 60-50-312 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
- (u) “Individualized family service plan.” “Individualized family service plan” or “IFSP” has the meaning given the term in section 636 of the Act.
- (v) “Infant or toddler with a disability.” “Infant or toddler with a disability”:
- (1) Means an individual under three years of age who needs early intervention services because the individual:
 - (i) 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

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- (ii) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
- (2) May also include, at the CNMI's discretion:
 - (i) At-risk infants and toddlers; and
 - (ii) 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:
 - (A) An educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills; and
 - (B) 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.
- (w) “Institution of higher education.” “Institution of higher education”:
 - (1) 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
 - (2) 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.
- (x) “Limited English proficient.” “Limited English proficient” has the meaning given the term in section 9101(25) of the ESEA.
- (y) “Native language.”
 - (1) “Native language,” when used with respect to an individual who is limited English proficient, means the following:
 - (i) 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 subsection (y)(1)(ii) of this section.
 - (ii) 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.
 - (2) 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).
- (z) “Parent.”
 - (1) “Parent” means:
 - (i) A biological or adoptive parent of a child;
 - (ii) 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;
 - (iii) 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);
 - (iv) 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

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

(2)(i) Except as provided in subsection (z)(2)(ii) 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 subsection (z)(1) 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.

(ii) If a judicial decree or order identifies a specific person or persons under subsections (z)(1)(i) through (z)(1)(iv) 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.

(aa) “Parent training and information center.” “Parent training and information center” means a center assisted under sections 671 or 672 of the Act.

(bb) “Personally identifiable.” “Personally identifiable” means information that contains:

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

(cc) “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.

(dd) “Related services.”

(1) 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.

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

(i) 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.

(ii) Nothing in subsection (dd)(2)(i) of this section:

(A) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in subsection (dd)(1) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

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(B) 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

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

(ee) 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.

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- (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.
- (i) School nurse services are services provided by a qualified school nurse.
 - (ii) 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;

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- (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.
- (ff) “Scientifically based research.” Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.
- (gg) “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.
- (hh) “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 section 60-50-632, and is developed and implemented in accordance with sections 60-50-637 through 60-50-639.
- (ii) “Secretary.” “Secretary” means the Secretary of Education.
- (jj) “Special education.”
 - (1) General.
 - (i) “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:
 - (A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (B) Instruction in physical education.
 - (ii) Special education includes each of the following, if the services otherwise meet the requirements of subsection (jj)(1)(i) of this section.
 - (A) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under CNMI standards;
 - (B) Travel training; and

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(C) Vocational education.

(kk) 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 8 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.

(ll) “State.” “State” means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(mm) “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.

(nn) “Transition services.”

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

(i) 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

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education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

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

- (A) Instruction;
- (B) Related services;
- (C) Community experiences;
- (D) The development of employment and other post-school adult living objectives; and
- (E) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) 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.

(oo) "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.

(pp) "Ward of the state"

(1) General. Subject to subsection (pp)(2) of this section, "ward of the state" means a child who, as determined by the CNMI where the child resides, is:

- (i) A foster child;
 - (ii) A ward of the state; or
 - (iii) In the custody of a public child welfare agency.
- (2) Exception. Ward of the State*

* So in original.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission placed the terms defined in quotation marks. The Commission corrected the capitalization of "whether" in subsection (b) pursuant to 1 CMC § 3806(f). The Commission corrected the spellings of "another" and "deaf-blindness" in subsection (e)(1)(i) pursuant to 1 CMC § 3806(g). The Commission split subsection § 300.8(c) in the regulation from the remainder of § 300.8 to create subsection (f) pursuant to 1 CMC § 3806(a). The Commission added a period at the end of the first sentence in subsection (f)(7) pursuant to 1 CMC § 3806(g). The Commission removed a superfluous open parenthesis from subsection (i)(2) and replaced it with a comma pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of "federal" and "state" in subsection (r) pursuant to 1 CMC § 3806(f). The Commission split subsection § 300.34(c) in the regulation from the remainder of § 300.34 to create subsection (ee) pursuant to 1 CMC § 3806(a). The Commission inserted a comma after "temperature" in subsection (ee)(7)(ii)(A) to conform to style guidelines pursuant to 1 CMC § 3806(g). The Commission divided subsection (ee)(13) to create subsections (ee)(13)(i) and (ee)(13)(ii) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsections (ll) and (pp) pursuant to 1 CMC § 3806(f).

This regulation was adapted from 34C.F.R. Part 300. Section 300.111(b), referenced in subsection (e)(2); Section 300.519, referenced in subsection (z)(1)(v); Section 300.113(b), referenced in subsection (dd)(2)(ii)(C); and Sections 300.114 through 300.116, referenced in subsection (mm) stand, were not incorporated into this regulation.

Part 100 - Free Appropriate Public Education (FAPE)

§ 60-50-101 Free Appropriate Public Education Policy

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- (a) 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.
- (b) 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.
- (c) 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.
- (d) The determination that a child described in subsection (c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission amended the phrase "in previous paragraph" in subsection (d) to read "in subsection (c)" pursuant to 1 CMC § 3806(d). The final sentence of subsection (a) is struck through in the original proposed regulation, but was not noted as amended in the proposed or enacted regulations.

§ 60-50-105 Limitations and Exceptions to FAPE for Certain Ages

- (a) The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:
- (1) 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.
- (2)(i) Children aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility,
- (A) Were not actually identified as being a child with a disability; and
- (B) Did not have an EP under Part B of the IDEA.
- (ii) The exception above does not apply to children with disabilities, aged 18 through 21, who:
- (A) 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
- (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability.

(b) 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).

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-110 Methods and Payments

(a) 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.

(b) 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.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-115 Residential Placement

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-120 Assistive Technology

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:

(a) Special education;

(b) Related services; or

(c) Supplementary aids and services.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “education” in subsection (a) pursuant to 1 CMC § 3806(f).

§ 60-50-125 Extended School Year Services

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

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

- (1) Beyond the normal school year of the PSS;
- (2) In accordance with the child’s IEP;
- (3) At no cost to the parents of the child; and
- (4) Meet the standards of the CNMI PSS.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission removed an extraneous colon after the word “that” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 60-50-130 Nonacademic Services

(a) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-135 Physical Education

(a) The PSS ensures that physical education services, specially designed if necessary, are 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “is made available” to “are made available” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 60-50-140 Full Educational Opportunity Goal Policy

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The word “to” in the last phrase is struck through in the original proposed regulation, but was not noted as amended in the proposed or enacted regulations.

§ 60-50-145 Program Options

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-150 Responsibility for General Supervision Policy.

(a) It is the policy of the PSS to ensure that:

- (1) The Part B requirements of IDEA are carried out; and
- (2) That each educational program for children with disabilities administered within the CNMI, including each program administered by any other CNMI agency:
 - (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the CNMI; and
 - (ii) Meets the educational standards of the CNMI (including the requirements of Part B of IDEA).
- (3) 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.

(b) 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.

(c) 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.

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission added a colon after “agency” in subsection (a)(2) pursuant to 1 CMC § 3806(g).

§ 60-50-155 Methods of Ensuring Services

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Part 200 - Intake and Evaluation

Subpart A - Child Find Policy

§ 60-50-201 Child Find Policy

(a) It is the policy of the PSS to conduct child find activities that are 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.

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

(c) Child find also includes:

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- (1) 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
- (2) 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 8 of the IDEA.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “child” in subsection (a) pursuant to 1 CMC § 3806(f). The Commission corrected “activities that is” to “activities that are” in subsection (a) pursuant to 1 CMC § 3806(g). The word “to” in the phrase “birth to through 21” in subsection (a) is struck through in the original proposed regulation, but was not noted as amended in the proposed or enacted regulations.

Subpart B - Evaluations

§ 60-50-210 Initial Evaluations Policy

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-211 Request for Initial Evaluation

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-212 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.)

- (a) The initial evaluation consists of procedures:
 - (1) To determine if the child is a child with a disability under IDEA; and
 - (2) To determine the educational needs of the child.
- (b) The timeframe in this section does not apply to the PSS if:
 - (1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
 - (2) 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.

(c) Screening for instructional purposes is not evaluation. 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-213 Evaluation Procedures

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.

(a) Conduct of Evaluation. Evaluations are conducted through implementation of the following procedures:

(1) 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:

(i) Whether the child is a child with a disability under IDEA; and

(ii) 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);

(2) 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,

(3) Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors.

(b) Other evaluation procedures. The evaluation procedures also ensure that:

(1) Assessments and other evaluation materials used to assess a child under Part B of IDEA:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) 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;

(iii) Are used for purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

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- (2) 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.
- (3) 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).
- (4) 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.
- (5) 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.
- (6) 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.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
- (8) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission added a colon after the word "determining" in subsection (a)(1) pursuant to 1 CMC § 3806(g).

§ 60-50-214 Additional Requirement for Evaluations

- (a) 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:
 - (1) Evaluations and information provided by the parents of the child;
 - (2) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (3) Observations by teachers and related services providers; and
- (b) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - (1) Whether the child is a child with a disability and the educational needs of the child;
 - (2) The present levels of academic achievement and related developmental needs of the child;
 - (3) Whether the child needs special education and related services; orand*

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- (4) 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.
- (c) Conduct of review. The group described in this section may conduct its review without a meeting.
- (d) 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.

*So in original.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-220 Reevaluation Policy

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:

- (a) 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
- (b) If the child's parent or teacher requests a reevaluation.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-221 Limitation

A reevaluation conducted in this subpart:

- (a) May occur not more than once a year, unless the parent and the PSS agree otherwise; and
- (b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed "in this section" to "in this subpart" pursuant to 1 CMC § 3806(d).

§ 60-50-222 Review of Existing Evaluation Data

- (a) As part of any reevaluation under IDEA, the IEP Team and other qualified professionals, as appropriate, must:
 - (1) Review existing evaluation data on the child, including:
 - (i) Evaluations and information provided by the parents of the child;

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- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - (i) Whether the child continues to have such a disability, and the educational needs of the child;
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (iii) Whether the child continues to need special education and related services; and
 - (iv) 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.
- (b) Conduct of review. The IEP team may conduct its review without a meeting.
- (c) 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.
- (d) 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:
 - (1) That determination and the reasons for the determination; and
 - (2) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-223 Evaluations Before Change in Eligibility

- (a) 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.
- (b) 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.
- (c) 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.

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart C - Determining Eligibility Policy

§ 60-50-230 General

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

- (a) 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
- (b) The PSS provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-231 Special Rule for Eligibility Determination

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

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-232 Procedures for Determining Eligibility and Educational Need

- (a) 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:
 - (1) 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
 - (2) Ensures that information obtained from all of these sources is documented and carefully considered.
- (b) 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 with IDEA.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted the word “with” between “accordance” and “IDEA” in subsection (b) to correct a manifest error pursuant to 1 CMC § 3806(g).

Subpart D - Additional Procedures for Identifying Children with Specific Learning Disability

§ 60-50-240 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:

- (a) Does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability;
- (b) Permits the use of a process based on the child’s response to scientific, research-based intervention; and
- (c) Permits the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-241 Additional Group Members

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:

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-242 Determining the Existence of a Specific Learning Disability

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

(1) 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:

- (i) Oral expression;
- (ii) Listening comprehension;
- (iii) Written expression;
- (iv) Basic reading skill;
- (v) Reading fluency skills;
- (vi) Reading comprehension;
- (vii) Mathematics calculation;
- (viii) Mathematics problem solving.

(2) 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

(3) 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

(4) The group determines that its findings under this section are not primarily the result of:

- (i) A visual, hearing, or motor disability;
- (ii) Intellectual disability;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) 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:

(1) 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

(2) 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.

(c) 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:

(1) 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

- (2) Whenever a child is referred for an evaluation.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the periods at the end of subsections (a)(1)(i) through (a)(1)(vii) to semicolons, corrected the semicolon at the end of subsection (c) to a colon, and added a period at the end of subsection (c)(2) pursuant to 1 CMC § 3806(g).

§ 60-50-243 Observation

(a) 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.

(b) The group described in this subpart in determining whether a child has a specific learning disability, must decide to:

(1) 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

(2) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “in this section” in subsection (b) to “in this subpart” pursuant to 1 CMC § 3806(d). The Commission inserted a colon after the phrase “must decide to” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 60-50-244 Specific Documentation for the Eligibility Determination

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

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with IDEA;

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether:

(i) The child does not achieve adequately for the child’s age or to meet PSS-approved grade-level standards; and

(ii) The child does not make sufficient progress to meet age or PSS-approved grade-level standards; or

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- (iii) 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;
 - (6) 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
 - (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - (i) The instructional strategies used and the student-centered data collected; and
 - (ii) The documentation that the child's parents were notified about:
 - (A) 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;
 - (B) Strategies for increasing the child's rate of learning; and
 - (C) The parents' right to request an evaluation.
- (b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted a hyphen between "grade" and "level" in subsection (a)(5)(iii) pursuant to 1 CMC § 3806(g).

Subpart E - Eligible Disabilities

§ 60-50-250 Child With a Disability

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.

- (a) "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.
- (b) "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.

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(c) “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.

(d) “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:

- (1) Chromosomal anomalies;
- (2) Genetic disorders;
- (3) Neurological disorders;
- (4) Inborn errors in metabolism;
- (5) Sensory loss.

(e) “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:

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) Inappropriate types of behavior or feelings under normal circumstances;
- (4) A general pervasive mood of unhappiness or depression;
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems .

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.

(f) “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.

(g) “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.

(h) “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.

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(i) “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).

(j) “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.

(k) “Specific Learning Disability.”

(1) 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.

(2) 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.

(l) “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.

(m) “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.

(n) “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.

* So in original.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted quotation marks around words defined. The Commission inserted a period at the end of the first sentence pursuant to 1 CMC § 3806(g). The Commission corrected the spelling of “diagnosed” in subsection (d), inserted semicolons after subsections (d)(1) through (d)(4), and inserted a period after

subsection (d)(5) pursuant to 1 CMC § 3806(g). The Commission corrected the periods at the ends of subsections (e)(1) through (e)(4) to semicolons pursuant to 1 CMC § 3806(g), and consolidated “f” of the original regulation into the body of the subsection pursuant to 1 CMC § 3806(a). The Commission inserted a period after subsection (f) pursuant to 1 CMC § 3806(g). The Commission inserted a comma after “Tourette syndrome” in subsection (j) to meet style guidelines pursuant to 1 CMC § 3806(g). The word “have” in the first sentence and the words “mental retardation” in subsection (g) are struck through in the original proposed regulation, but were not noted as amended in the proposed or enacted regulations.

Part 300 - Individualized Education Program (IEP)

Subpart A - Statement of Policy and Consent

§ 60-50-301 Individualized Education Program Policy

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-302 Parental Consent for Services

(a) 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.

(b) 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:

(1) 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;

(2) 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

(3) 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.

(c) 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:

(1) 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;

(2) 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;

- (3) 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
- (4) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart B – Definitions

§ 60-50-303 Definition of Individualized Education Program

(a) 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:

(1) A statement of the child's present levels of academic achievement and functional performance, including:

- (i) how the child's disability affects the child's involvement and progress in the general education curriculum; and
- (ii) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

(2) A statement of measurable annual goals, including academic and functional goals designed to:

- (i) 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
- (ii) 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;

(3) 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;

(4) 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:

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in these activities;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education environment;

(6) 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;

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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:

- (i) why the child cannot participate in the regular assessment; and
 - (ii) why the particular alternate assessment selected is appropriate for the child;
- (7) The projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications.

(b) **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:

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

(c) **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.

* So in original.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected a semicolon at the end of subsection (a)(7) to a period and corrected a period after "rights under IDEA" in subsection (c) to a comma pursuant to 1 CMC § 3806(g).

Subpart C - IEP Team

§ 60-50-310 IEP Team Members

- (a) The PSS must ensure that the IEP Team for each child with a disability includes:
 - (1) Parents of the child with a disability;
 - (2) Not less than one regular education classroom teacher of such student (if the student is, or may be, participating in the regular education environment);
 - (3) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of such student;
 - (4) 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

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with disabilities, knowledgeable about the general curriculum, and knowledgeable about the availability of resources of the PSS;

(5) 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;

(6) 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

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

(b) Transition Service Participants:

(1) 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.

(2) 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.

(3) 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.

(c) 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.

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected periods at the end of subsections (a)(1) and (a)(4) to semicolons pursuant to 1 CMC § 3806(g). The Commission corrected "PSS, (Principal or designee)" in subsection (a)(4) to "PSS (principal or designee)" pursuant to 1 CMC § 3806(f) and (g). The Commission corrected "defined above, typically" in subsection (d) to "defined above. Typically" pursuant to 1 CMC § 3806(g). Subsection (a)(7) refers to "transition requirements," but there is no section in the regulations with that title.

§ 60-50-311 IEP Team Attendance

(a) 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.

(b) 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:

(1) The parent, in writing, and the PSS consent to the excusal; and

(2) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-312 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-313 Parent Participation

(a) **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:

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

(b) **Information Provided to the Parents:**

(1) The notice required under this section must:

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) 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.

(2) 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:

(i) Indicate:

(A) 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

(B) That the PSS will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) **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.

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(d) 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:

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

(e) 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.

(f) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected a period at the end of subsection (a) to a colon pursuant to 1 CMC § 3806(g). The Commission inserted semicolons at the end of subsections (d)(1) and (d)(2) pursuant to 1 CMC § 3806(g).

Subpart D - IEP Deadlines

§ 60-50-320 When Must IEPs Be In Effect

(a) At the beginning of each school year, the PSS must have in effect an IEP for each child with a disability.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-321 Initial IEPs / Provision of Services

(a) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart E - IEP Record Management

§ 60-50-330 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:

- (a) His or her responsibilities related to implementing the child's IEP; and
- (b) The specific accommodations, modification, and supports that must be provided to the child in accordance to the child's IEP.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-331 Student Transfers

(a) IEPs 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 within 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.

(b) IEPs 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:

- (1) Conducts an evaluation, if determined to be necessary by PSS;
- (2) Develops, adopts, and implements an new IEP if appropriate, consistent with IDEA and CNMI requirements.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected "IEP's" to "IEPs" in subsections (a) and (b) pursuant to 1 CMC § 3806(g). The Commission corrected "child" to "child's" in subsection (a) pursuant to 1 CMC § 3806(g).

Subpart F - Development, Review, and Revision of IEP

§ 60-50-340 Development of IEP

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- (a) In developing each child's IEP, the IEP Team must consider:
 - (1) The strengths of the child;
 - (2) The concerns of the parents for enhancing the education of their child;
 - (3) The results of the initial or most recent evaluation of the child; and
 - (4) The academic, developmental and functional needs of the child.

- (b) Consideration of special factors. The IEP Team must:
 - (1) 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;
 - (2) 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;
 - (3) 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 inappropriate for the child;
 - (4) 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
 - (5) Consider whether the child needs assistive technology devices and services.

- (c) 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:
 - (1) Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - (2) Supplementary aids and services, program modifications, and support for school personnel consistent with IDEA.

- (d) Agreement.
 - (1) 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.
 - (2) 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.

- (e) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-341 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-342 Review and Revision of IEPs

The PSS ensures that the IEP Team:

- (a) 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:
 - (1) Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
 - (2) The results of any reevaluation conducted;
 - (3) Information about the child provided to, or by, the parents;
 - (4) The child's anticipated needs; or
 - (5) Other matters.
- (b) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors in this section.
- (c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected a colon at the end of "Consideration of special factors" in subsection (b) to a period to meet style guidelines pursuant to 1 CMC § 3806(g).

§ 60-50-343 Failure to Meet Transition Objectives

- (a) Participating agency failure. If a participating agency, other than the PSS, fails to provide the transition of 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.
- (b) 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.

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected a colon after “Participating agency failure” in subsection (a) to a period to meet style guidelines pursuant to 1 CMC § 3806(g).

§ 60-50-344 Children with Disabilities in Adult Prisons

(a) 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:

(1) The requirements contained in section 612(a)(16) of the Act and section 60-50-303(a)(6) of this chapter (relating to participation of children with disabilities in general assessments).

(2) 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.

(a) Modifications of IEP or placement.

(1) 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.

(2) The requirements relating to IEPs, and relating to LRE, do not apply with respect to the modifications described in this section.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the reference number “Sec. 300.320(a)(6)” to “section 60-50-303(a)(6) of this chapter,” pursuant to 1 CMC § 3806(d).

§ 60-50-345 Development, Review and Revision of IEPs for Students with Private School Placements

(a) Developing IEPs:

(1) 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 and IEP for the child in accordance with IDEA.

(2) 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 participating by the private school or facility, including individual and conference telephone calls.

(b) Reviewing and revising IEPs:

(1) 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.

(2) If the private school or facility initiates and conducts these meetings, the PSS must ensure that the parents and a PSS representative:

- (i) Are involved in any decision about the child's IEP; and
- (ii) Agree to any proposed changes in the IEP before those changes are implemented.

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Part 400 - Least Restrictive Environment Policy

§ 60-50-401 Least Restrictive Environment Policy

(a) 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 subpart F of part 300 of this chapter.

The PSS ensures that:

- (1) 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
- (2) 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.

(b) Additional requirement--State funding-mechanism:

- (1) A CNMI funding mechanism does not result in placements that violate the LRE requirements; and
- (2) 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.
- (3) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed "300.324" in subsection (a) to "subpart F of part 300 of this chapter" pursuant to 1 CMC § 3806(c).

§ 60-50-405 Continuum of alternative placements

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- (a) 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.
- (b) The continuum required in this section must:
 - (1) 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
 - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-410 Placement

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

- (a) The placement decision:
 - (1) 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
 - (2) Is made in conformity with the LRE provisions of this section;
- (b) The child's placement:
 - (1) Is determined at least annually;
 - (2) Is based on the child's IEP; and
 - (3) as close as possible to the child's home;
- (c) 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;
- (d) 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
- (e) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-415 Nonacademic Settings

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.

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-420 Children in Public or Private Institutions

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).

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-425 Technical Assistance and Training Activities

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

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-430 Monitoring Activities

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Part 500 - Procedural Safeguards

§ 60-50-501 Introduction

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

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission was unable to determine whether “General Information Prior Written Notice” was intended as the title of a subpart, a section, a subsection, or as the text of the regulation.

Subpart A - Notice

§ 60-50-502 When Notice Is Required

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

- (a) 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
- (b) Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-503 Content of Notice

The written notice must:

- (a) Describe the action that the CNMI PSS proposes or refuses to take;
- (b) Explain why the CNMI PSS is proposing or refusing to take the action;
- (c) Describe each evaluation procedure, assessment, record, or report the CNMI PSS used in deciding to propose or refuse the action;
- (d) Include a statement that you have protections under the procedural safeguards provisions in Part 6 of the IDEA;
- (e) 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;
- (f) Include resources for you to contact for help in understanding Part B of the IDEA;
- (g) Describe any other choices that your child’s individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
- (h) Provide a description of other reasons why the CNMI PSS proposed or refused the action.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-504 Notice in Understandable Language

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- (a) 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.
- (b) 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.
- (c) Native Language. 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The original regulation did not designate subsections (a) or (b), but did designated (a)(1) and (a)(2) as "1" and "2." It also designated subsections (b)(1) and (b)(2) as "1" and "2." Because of the ambiguity, the Commission did not change the phrase "paragraph 1 and 2" in subsection (b)(3). The phrase "Electronic Mail 34 CFR § 300.505" is struck through in the original proposed regulation, but was not noted as amended in the proposed or enacted regulations.

Subpart B - Consent

§ 60-50-510 Consent

- (a) "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

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(3) You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission placed quotations marks around the word "consent" in the first sentence.

§ 60-50-511 Consent for initial evaluation

(a)(1) 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 subparts A and B.

(2) 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.

(b) Special rules for initial evaluation of wards of the CNMI.

(1) 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:

- (i) Despite reasonable efforts to do so, the CNMI PSS cannot find the child's parent;
- (ii) The rights of the parents have been terminated in accordance with CNMI law; or
- (iii) A judge has assigned the right to make education decision and to consent for an initial evaluation to an individual other than the parent.

(2) Ward of the CNMI, as used in the IDEA, means a child who, as determined by the CNMI where the child lives, is:

- (i) A foster child;

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- (ii) Considered a ward of the CNMI under CNMI law; or
- (iii) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “as described under the headings Prior Written Notice and Parental Consent” in subsection (a)(1) to “as described under subparts A and B” pursuant to 1 CMC § 3806(d).

§ 60-50-512 Parental Consent for Services

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

(b) 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.

(c) 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.

(d) 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.

(e) 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 subpart A before discontinuing the notice.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “under the heading Prior Written Notice” to “under subpart A” pursuant to 1 CMC § 3806(d).

§ 60-50-513 Parental Consent for Reevaluations

(a) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-514 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:

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

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-515 Other Consent Requirements

(a) 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.

(b) 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).

(c) 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.

(d) 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).

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart C - Independent Educational Evaluations

§ 60-50-520 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 evaluators.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-521 Definitions

(a) 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.

(b) 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 8 of the Act.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-522 Parent Right to Evaluation at Public Expense

(a) 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:

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(1) If you request an independent educational evaluation of your child at public expense, the CNMI PSS must, without unnecessary delay, either:

(i) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or

(ii) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-523 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:

(a) 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

(b) You or the CNMI PSS may present the evaluation as evidence at a due process hearing regarding your child.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-524 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-525 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart D - Confidentiality of Information

§ 60-50-530 Definitions

As used under subpart D:

- (a) “Destruction” means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) “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)).
- (c) “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.
- (d) “Personally identifiable” means information that has:
 - (1) Your child’s name, your name as the parent, or the name of another family member;
 - (2) Your child’s address;
 - (3) A personal identifier, such as your child’s Social Security number or student number; or
 - (4) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission added quotation marks around words and phrases defined. The Commission changed the phrase “under the heading Confidentiality of Information” to “under subpart D” pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of “Social Security number” in subsection (d)(3) pursuant to 1 CMC § 3806(f).

§ 60-50-531 Notice to Parents

- (a) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-532 Access Rights

(a) 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 8 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-533 Record of Access

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-534 Records on More Than One Child

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-535 List of Types and Locations of Information

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-536 Fees

(a) 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.

(b) The CNMI PSS may not charge a fee to search for or to retrieve information under Part B of the IDEA.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-537 Amendment of Records at Parent's Request

(a) If you believe that information in the 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.

(b) 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.

(c) 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 section 60-50-538.

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “under the heading Opportunity for a Hearing” to “under section 60-50-538” pursuant to 1 CMC § 3806(d).

§ 60-50-538 Opportunity for a Hearing

(a) 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.

(b) Hearing Procedures. A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Education Rights and Privacy Act (FERPA).

(c) Result of Hearing.

(1) 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.

(2) 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:

(i) 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

(ii) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted a comma after “misleading” in subsection (c)(1) to conform with style guidelines pursuant to 1 CMC § 3806(g).

§ 60-50-539 Consent For Disclosure of Personally Identifiable Information

(a) Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Education 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.

(b) 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.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-540 Safeguards

(a) The CNMI PSS must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each school of the CNMI PSS must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) 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 IDEA and the Family Educational Rights and Privacy Act (FERPA).

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-541 Destruction of Information

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart E - CNMI Complaint Procedures

§ 60-50-550 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 section 60-50-563, 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 in section 60-50-561(h).

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted a comma after "evaluation" in the phrase "identification, evaluation, or educational," and after "resolution" in the phrase "complaint, resolution, and hearing" to comply with style guidelines pursuant to 1 CMC § 3806(g). The Commission changed the phrase "as described in this document under the heading Resolution Process" to "as described in section 60-50-563" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "as described under the heading Model Forms" to "as described in section 60-50-561(h)" pursuant to 1 CMC § 3806(d).

§ 60-50-551 Adoption of CNMI Complaint Procedures

- (a) 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.
- (b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-552 Time Limits

- (a) 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:

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- (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:
 - (i) at the option of the agency, a proposal to resolve the complaint; and
 - (ii) 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:
 - (i) findings of fact and conclusions; and
 - (ii) the reasons for the CNMI PSS's final decision.
- (b) 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:
 - (i) exceptional circumstances exist with respect to a particular CNMI complaint; or
 - (ii) 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:
 - (i) technical assistance activities;
 - (ii) negotiations; and
 - (iii) corrective actions to achieve compliance.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-553 CNMI Complaints and Due Process Hearings

- (a) If a written CNMI complaint is received that is also the subject of a due process hearing as described below under subpart F, 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.
- (b) 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.
- (c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “under the heading Filing a Due Process Complaint” in subsection (a) to “under subpart F” pursuant to 1 CMC § 3806(d).

§ 60-50-554 Filing a Complaint

(a) 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:
 - (i) The name of the child and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) 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;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) 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.

(b) 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 section 60-50-551.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “under the heading Adoption of CNMI Complaint Procedures” in subsection (b) to “under section 60-50-551” pursuant to 1 CMC § 3806(d). The Commission corrected the spelling of “CNMI” in subsection (c) pursuant to 1 CMC § 3806(g).

Subpart F - Due Process Complaint Procedures

§ 60-50-560 General

(a) 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.

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(b) 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.

(c) 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.

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted a comma into the phrase “identification, evaluation, or educational placement” in subsection (a) to conform with style guidelines pursuant to 1 CMC § 3806(g).

§ 60-50-561 Due Process Complaint

(a) 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.

(b) 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.

(c) 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.

(d) Sufficiency of complaint.

(1) 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

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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.

(2) 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.

(e) Complaint amendment.

(1) You or the CNMI PSS may make change to the complaint only if:

(i) 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 in section 60-50-563; or

(ii) By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

(2) 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.

(f) CNMI PSS response to a due process complaint. If the CNMI PSS has not sent a prior written notice to you, as described under subpart A, 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 PSS from asserting that your due process complaint was insufficient.

(g) Other party response to a due process complaint. Except as described in subsection (f), 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.

(h) Model forms. 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 complain. 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 complain.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission removed an extra comma after the parenthetical phrase in subsection (c) pursuant to 1 CMC § 3806(g). The Commission changed the phrase “under the heading Resolution Process” in subsection (e)(1)(i) to “in section 60-50-563” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under the heading Prior Written Notice” in subsection (f) to “under subpart A” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “CNMI CNMI PSS” in subsection (f) to “CNMI PSS” pursuant to 1 CMC § 3806(g). The Commission changed the phrase “under the sub-heading immediately above, the CNMI PSS response to a due process complaint” in subsection (g) to “in subsection (f)” pursuant to 1 CMC § 3806(d).

§ 60-50-562 Mediation

(a) General. The CNMI PSS must develop procedures that make mediation available to allow you and the CNMI PSS to resolve disagreements 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 in section 60-50-560.

(b) Requirements.

(1) The procedures must ensure that the mediation process:

(i) Is voluntary on your part and the CNMI PSS’s part;

(ii) Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part 8 of the IDEA; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The CNMI PSS may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at time and location convenient to you, with a disinterested party:

(i) 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

(ii) Who would explain the benefits and encourage the use of the mediation process to you.

(3) 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.

(4) The CNMI is responsible for the cost of the mediation process, including the costs of meetings.

(5) 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.

(6) 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:

(i) 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

(ii) Is signed by both you and a representative of the CNMI PSS who has the authority to bind the CNMI PSS.

(7) 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.

(8) 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.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "under the heading Filing a Due Process Complaint" to "in section 60-50-560" pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of "federal" in subsection (b)(8) pursuant to 1 CMC § 3806(f).

§ 60-50-563 Resolution Process

(a) Resolution meeting.

(1) 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:

(i) Must include a representative of the CNMI PSS who has decision-making authority on behalf of the CNMI PSS; and

(ii) May not include an attorney of the CNMI PSS unless you are accompanied by an attorney.

(2) 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:

(i) You and the CNMI PSS agree in writing to waive the meeting; or

(ii) You and the CMNI PSS agree to use the mediation process, as described in section 60-50-562.

(b) Resolution period.

(1) 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.

(2) The 45-calendar-day timeline for issuing a final due process hearing decision, as described in section 60-50-566, 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.

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(3) 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.

(4) 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:

- (i) Detailed records of telephone calls made or attempted and the results of those calls;
- (ii) Copies of correspondence sent to you and any responses received; and
- (iii) Detailed records of visits made to your home or place of employment and the results of those visits.

(5) 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.

(c) Adjustments to the 30-calendar-day resolution period.

(1) 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.

(2) 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.

(3) 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.

(d) 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.

(e) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the spelling of "CNMI" in subsection (a)(2)(ii) pursuant to 1 CMC § 3806(g). The Commission changed the phrase "under the heading Mediation" in subsection (a)(2)(ii) to "in

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section 60-50-562” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under the heading, Hearing Decisions” in subsection (b)(2) to “in section 60-50-566” pursuant to 1 CMC § 3806(d).

§ 60-50-564 Impartial Due Process Hearing

(a) 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 sections 60-50-561 and 60-50-563.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “in the Due Process Complaint and Resolution Process sections” in subsection (a) to “in sections 60-50-561 and 60-50-563” pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of “federal” in subsection (b)(3) pursuant to 1 CMC § 3806(f).

§ 60-50-565 Hearing Rights

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- (a) 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 person 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.
- (b) Additional disclosure of information.
- (1) 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.
 - (2) 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.
- (c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-566 Hearing Decisions

- (a) Decision of hearing officer.
- (1) 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:
 - (i) Interfered with your child's right to a free appropriate public education (FAPE);
 - (ii) 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
 - (iii) Caused a deprivation of an educational benefit.
 - (2) 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).
- (b) 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

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be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(c) Finding and decision to advisory panel and general public. The CNMI PSS, after deleting any personally identifiable information, must:

- (1) Provide the findings and decision 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “federal” in subsections (a)(2) and (b) pursuant to 1 CMC § 3806(f). The Commission added a comma after “The CNMI PSS” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 60-50-567 Finality of Decision; Appeal; Impartial Review

The CNMI is a one-tier system.

(a) 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 in section 60-50-568.

(b) Timelines and convenience of hearings and reviews.

(1) 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 in section 60-50-563(c) not later than 45 calendar days after the expiration of the adjusted time period:

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

(2) 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).

(3) Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “under the heading Civil Actions, Including the Time Period in Which to File Those Actions” in subsection (a) to “in section 60-50-568” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under the sub-heading Adjustments to the 30-calendar-day resolution period” in subsection (b)(1) to “in section 60-50-563(c)” pursuant to 1 CMC § 3806(d).

§ 60-50-568 Civil Actions

(a) 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

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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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-569 Child's Placement While the Due Process Complaint and Hearing are Pending

(a) Except as provided below under subpart G, 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.

(b) 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.

(c) 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

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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).

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "under the heading PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES" in subsection (a) to "under subpart G" pursuant to 1 CMC § 3806(d).

§ 60-50-570 Attorneys' Fees

(a) General.

(1) 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.

(2) 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:

(i) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or

(ii) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(3) 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.

(b) 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:

(i) 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;

(ii) The offer is not accepted within 10 calendar days; and

(iii) 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 section 60-50-563, 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.

(c) 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 section 60-50-561.

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the phrase "to a prevailing the CNMI PSS" in subsection (a)(3) to "to the prevailing CNMI PSS" to correct a manifest error pursuant to 1 CMC § 3806(g). The Commission changed the phrase "under the heading Resolution Proces [sic]" in subsection (b)(3) to "in section 60-50-563" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "under the heading Due Process Complaint" in subsection (c)(4) to "under section 60-50-561" pursuant to 1 CMC § 3806(d).

Subpart G - Procedures When Disciplining Children with Disabilities

§ 60-50-580 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-581 General

(a)(1) 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.

(2) 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 section 60-50-584 for the definition).

(3) 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 section 60-50-582.

(b) Additional authority. If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see section 60-50-583) 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 in section 60-50-582. The child's IEP Team determines the interim alternative educational setting for such services.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "see the heading Change of Placement Because of Disciplinary Removals" in subsection (a)(2) to "see section 60-50-584" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "under the sub-heading Services" in subsection (a)(3) to "under section 60-50-582" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "see the subheading Manifestation determination" in subsection (b) to "see section 60-50-583" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "as described below under Services" in subsection (b) to "as described below in section 60-50-582" pursuant to 1 CMC § 3806(d).

§ 60-50-582 Services

(a) 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.

(b) 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 section 60-50-583) or who is removed under special circumstances (see section 60-50-583(c)) 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.

(c) 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.

(d) If the removal is a change of placement (see section 60-50-584), 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "see subheading, Manifestation determination" in subsection (b) to "see section 60-50-583" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "see the subheading, Special circumstances" in subsection (b) to "see section 60-50-583(c)" pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of "special" in subsection (b) pursuant to 1 CMC § 3806(f). The Commission changed the phrase "see the heading, Change of Placement Because of Disciplinary Removals" in subsection (d) to "see section 60-50-584" pursuant to 1 CMC § 3806(d).

§ 60-50-583 Manifestation Determination

(a)(1) 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:

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the CNMI PSS's failure to implement the child's IEP.

(2) 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.

(3) 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.

(b) 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

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(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 subsection (c), 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.

(c) Special circumstances.

(1) 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:

- (i) 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;
- (ii) 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
- (iii) 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.

(2) Definitions.

- (i) "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)).
- (ii) "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.
- (iii) "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.
- (iv) "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.

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission inserted quotation marks around words and phrases defined. The Commission changed the phrase "under the sub-heading Special circumstances" in subsection (b) to "under subsection (c)" pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of "federal" in subsection (c)(2)(ii) pursuant to 1 CMC § 3806(f).

§ 60-50-584 Change of Placement Because of Disciplinary Removals

(a) 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:

- (i) The series of removals total more than 10 school days in a school year;
 - (ii) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;
 - (iii) 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.

(b) **Determination of setting.** The individualized education program (IEP) Team must determine the interim alternative educational setting for removals that are changes of placement, and removals under sections 60-50-581(b) and 60-50-583(c), above.

*So in original.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "under the subheadings Additional authority and Special circumstances" to "under sections 60-50-581(b) and 60-50-583(c)" pursuant to 1 CMC § 3806(d).

§ 60-50-585 Appeal

(a) **General.**

(1) You may file a due process complaint (see subpart F) to request a due process hearing if he or she* disagrees with:

- (i) Any decision regarding placement made under these discipline provisions; or
- (ii) The manifestation determination described above.

(2) 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.

(b) **Authority of hearing officer.**

(1) A hearing officer that meets the requirements described under section 60-50-564(b) must conduct the due process hearing and make a decision. The hearing officer may:

(i) 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 sections 60-50-580 through 60-50-583, or that the child's behavior was a manifestation of the child's disability; or

(ii) 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.

(2) 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 sections 60-50-560 through 60-50-566, except as follows:

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- (i) 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;
- (ii) 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;
- (iii) 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).

- (c) Placement during appeals. 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 sections 60-50-580 through 60-50-583, whichever occurs first.

* So in original.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “see the heading Due Process Complaint Procedures” in subsection (a)(1) to “see subpart F” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under the sub-heading Impartial hearing officer” in subsection (b)(1) to “under section 60-50-564(b)” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under the heading Authority of School Personnel” in subsections (b)(1) and (c) to “under sections 60-50-580 through 60-50-583” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under the headings Due Process Complaint Procedures, Hearings on Due Process Complaints” to “under sections 60-50-560 through 60-50-566” pursuant to 1 CMC § 3806(d). The Commission corrected the periods at the ends of subsections (b)(2)(i) and (b)(2)(ii) to semicolons pursuant to 1 CMC § 3806(g).

Subsection (b)(2) contains the phrase “see the heading Appeal.” Section 60-50-585 contains all the paragraphs that were located under the heading “Appeal” in the regulation. Sections 60-50-567 through 60-50-570, which govern appeals of decisions in due process hearings, were promulgated under the heading “Appeals.” The Commission let the phrase stand.

§ 60-50-586 Protections for Children Not Yet Eligible for Special Education and Related Services

- (a) 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.

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(b) 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.

(c) 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.

(d) 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 subsections (b) and (c), 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "under the sub-headings Basis of knowledge for disciplinary matters and Exception" in subsection (d) to "under subsections (b) and (c)" pursuant to 1 CMC § 3806(d).

§ 60-50-587 Referral to and Action by Law Enforcement and Judicial Authorities

(a) 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.

(b) 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).

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Part 600 - Placement of Children in Private Schools at Public Expense

Subpart A – General

§ 60-50-601 General

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-602 Reimbursement for Private School Placement

(a) 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.

(b) Limitation on reimbursement.

(i) The cost of reimbursement described in the paragraph above may be reduced or denied:

(A) If:

(I) 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

(II) 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;

(B) 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

(C) Upon a court's finding that your actions were unreasonable.

(ii) However, the cost of reimbursement:

(A) Must not be reduced or denied for failure to provide the notice if:

(I) The school prevented you from providing the notice;

(II) You had not received notice of your responsibility to provide the notice described above; or

(III) Compliance with the requirements above would likely result in physical harm to your child; and

(B) 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:

(I) you are not literate or cannot write in English; or

(II) Compliance with the above requirement would likely result in serious emotional harm to your child.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase "in the paragraph above" in subsection (b)(i) to "in subsection (a)" pursuant to 1 CMC § 3806(d).

Subpart B - Children with Disabilities Enrolled by Their Parents in Private Schools

§ 60-50-630 Definition of Parentally-Placed Private School Children with Disabilities

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-631 Child find for parentally-placed private school children with disabilities

(a) 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.

(b) Child find design. The child find process must be designed to ensure:

(i) The equitable participation of parentally-placed private school children; and

(ii) An accurate count of those children.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of "state" in subsection (f) pursuant to 1 CMC § 3806(f). This section is adapted from 34 C.F.R. § 300.131. Sections 300.111 and 300.201, referenced in subsection (a), were not incorporated into this regulation.

§ 60-50-632 Provision of Services for Parentally-Placed Private School Children with Disabilities - Basic Requirement

(a) 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.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with the previous section and sections 60-50-637 through 60-50-639, 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.

(c) 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:

- (1) The number of children evaluated;
- (2) The number of children determined to be children with disabilities; and
- (3) The number of children served.

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed “Sections 300.137 through 300.139” in subsection (b) to “sections 60-50-637 through 60-50-639” pursuant to 1 CMC § 3806(d).

This section was adapted from 34 C.F.R. 300.132. Sections 300.190 through 300.198, referenced in subsection (a), and sections 300.130 through 300.144, referenced in subsection (c), were not incorporated in their entirety into this regulation.

§ 60-50-633 Expenditures

(a) Formula. To meet the requirement of section 60-50-132, the PSS must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) 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.

(2)(i) 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.

(ii) 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.

(3) 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.

(b) 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 section 60-50-634, 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.

(c) Annual count of the number of parentally-placed private school children with disabilities.

(1) The PSS must:

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with section 60-50-634), determine the number of parentally-placed private school children with disabilities

attending private schools located in the CNMI; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) 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.

(d) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “Sec. 300.132” in subsection (a) to “section 60-50-632” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “under Sec. 300.134” in subsection (b) to “under section 60-50-634” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “with Sec. 300.134” in subsection (c)(1)(i) to “with section 60-50-634” pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of “federal” in subsections (b) and (d) pursuant to 1 CMC § 3806(f).

§ 60-50-634 Consultation

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:

(a) Child find. The child find process, including:

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process;

(b) Proportionate share of funds. The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under section 60-50-633(b), including the determination of how the proportionate share of those funds was calculated;

(c) 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;

(d) 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 -

(1) The types of services, including direct services and alternate service delivery

mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission corrected the periods at the ends of subsections (a)(2), (b), and (c) to match style guidelines pursuant to 1 CMC § 3806(g). The Commission changed the phrase “under Sec. 300.133(b)” in subsection (b) to “under section 60-50-633(b)” pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of “federal” in subsection (b) pursuant to 1 CMC § 3806(f).

§ 60-50-635 Written Affirmation

When timely and meaningful consultation, as required by section 60-50-634, has occurred, the PSS must obtain a written affirmation signed by the representatives of participating private schools.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “as required by Sec. 300.134” to “as required by section 60-50-634” pursuant to 1 CMC § 3806(d).

§ 60-50-636 Compliance

(a) 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

(b) The PSS must forward the appropriate documentation to the U.S. Secretary of Education.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-637 Equitable Services Determined

(a) 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.

(b) Decisions.

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(1) 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).

(2) The PSS must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

(c) 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:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: This section is adapted from 34 C.F.R. § 300.137. Sections 300.130 through 300.144, referenced in subsections (b)(1) and (c), were not incorporated in their entirety into this regulation.

§ 60-50-638 Equitable services provided

(a) General.

(1) 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.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under section 60-50-632 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.

(2) The services plan must, to the extent appropriate:

(i) Meet the requirements of section 60-50-303, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with IEP requirements.

(c) Provision of equitable services.

(1) The provision of services pursuant to this section and Sections 300.139 through 300.143

must be provided:

- (i) By employees of the PSS; or
 - (ii) Through contract by the PSS with an individual, association, agency, organization, or other entity.
- (2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: This section is adapted from 34 C.F.R. § 300.138. Section 300.18, referenced in subsection (a)(1), and subsection 300.323(b), referenced in subsection (b)(2)(i), were not incorporated into this regulation. The Commission changed the phrase “under Sec. 300.132” in subsection (b)(1) to “under section 60-50-632” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “described in Sections 300.134 and 300.137” in subsection (b)(1) to “described in sections 60-50-634 and 60-50-637” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “of Sec. 300.320” in subsection (b)(2)(i) to “section 60-50-303” pursuant to 1 CMC § 3806(d). The Commission changed the phrase “Sections 300.139 through 300.143” in subsection (c)(1) to “sections 60-50-639 through 60-50-643” pursuant to 1 CMC § 3806(d).

§ 60-50-639 Location of Services and Transportation

(a) 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.

(b) Transportation:

(1) General.

(i) 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:

(A) From the child’s school or the child’s home to a site other than the private school; and

(B) From the service site to the private school, or to the child’s home, depending on the timing of the services.

(ii) PSS is not required to provide transportation from the child’s home to the private school.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “of Sec. 300.133” in subsection (c) to “of section 60-50-633” pursuant to 1 CMC § 3806(d).

§ 60-50-640 Due Process Complaints and State Complaints

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(a) 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 60-50-632 through 60-50-639, including the provision of services indicated on the child's services plan.

(b) Child find complaints: To be filed with the PSS in which the private school is located.

(1) 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.

(2) Any due process complaint regarding the child find requirements (as described in this section) must be filed with the PSS.

(c) State complaints.

(1) 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 60-50-551 through 60-50-554.

(2) A complaint filed by a private school official under section 60-50-636(a) must be filed with the PSS in accordance with the procedures in section 60-50-636(b).

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The original regulation marked subsection (a)(1), but did not mark any other subsections under subsection (a). This section is adapted from 34 C.F.R. § 300.140. Sections 504 through 519, referenced in subsections (a)(1) and (b)(2), were not incorporated in their entirety into the regulation. Sections 300.300 through 300.311, referenced in subsection (b)(1), were not incorporated in their entirety into this regulation. Sections 300.132 through 300.135 and 300.137 through 300.144, referenced in subsection (c)(1), were not incorporated in their entirety into this regulation. The Commission changed the phrase "requirements of Sections 300.132 through 300.139" in subsection (a)(1) to "requirements of sections 60-50-632 through 60-50-639" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "requirements in Sec. 300.131" in subsection (b)(1) to "requirements in section 60-50-631" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "described in Sections 300.151 through 300.153" in subsection (c)(1) to "described in sections 60-50-551 through 60-50-554" pursuant to 1 CMC § 3806(d). The Commission changed the phrase "under Sec. 300.136(a)" in subsection (c)(2) to "under section 60-50-636(a)," pursuant to 1 CMC § 3806(d). The Commission changed the phrase "procedures in Sec. 300.136(b)" in subsection (c)(2) to "procedures in section 60-50-636(b)" pursuant to 1 CMC § 3806(d).

§ 60-50-641 Requirement That Funds Not Benefit a Private School

(a) 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.

(b) 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:

(1) The needs of a private school; or

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- (2) The general needs of the students enrolled in the private school.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-642 Use of Personnel

(a) 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:

- (1) To the extent necessary to provide services under Sections 300.130 through 300.144 for parentally-placed private school children with disabilities; and
(2) If those services are not normally provided by the private school.

(b) 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 -

- (1) The employee performs the services outside of his or her regular hours of duty; and
(2) The employee performs the services under public supervision and control.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: This section was adapted from 34 C.F.R. § 300.142. Sections 300.130 through 300.144, referenced in subsections (a)(1) and (b), were not incorporated in their entirety into this regulation.

§ 60-50-643 Separate Classes Prohibited

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:

- (a) The classes are at the same site; and
(b) The classes include children enrolled in public schools and children enrolled in private schools.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-644 Property, Equipment, and Supplies

(a) The PSS must control and administer the funds used to provide special education and related services under sections 60-50-637 through 60-50-639, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The PSS may place equipment and supplies in a private school for the period of time needed for the IDEA Part B program.

- (c) The PSS must ensure that the equipment and supplies placed in a private school-
 - (1) Are used only for IDEA Part B purposes; and
 - (2) Can be removed from the private school without remodeling the private school facility.

- (d) The PSS must remove equipment and supplies from a private school if-
 - (1) The equipment and supplies are no longer needed for IDEA Part B purposes; or
 - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA Part B purposes.

- (e) No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “under Sections 300.137 through 300.139” in subsection (a) to “under sections 60-50-637 through 60-50-639” pursuant to 1 CMC § 3806(d).

Subpart C - Children with Disabilities in Private Schools Placed or Referred by the CNMI PSS

§ 60-50-645 Applicability of Subpart

Sections 60-50-646 through 60-50-647 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “Sections 300.146 through 300.147” to “Sections 60-50-646 through 60-50-647” pursuant to 1 CMC § 3806(d).

§ 60-50-646 Responsibility of PSS

The PSS ensures that a child with a disability who is placed in or referred to a private school or facility by the PSS:

- (a) Is provided special education and related services-
 - (1) In conformance with an IEP that meets the requirements of Sections 300.320 through 300.325; and
 - (2) At no cost to the parents;

- (b) 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

- (c) Has all of the rights of a child with a disability who is served by the PSS.

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History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “requirements of Sections 300.320 through 300.325” in subsection (a)(1) to “sections 60-50-303 through 60-50-345” pursuant to 1 CMC § 3806(d). The Commission consolidated the sentence beginning “The requirements of IDEA...” into subsection (b) and corrected punctuation and capitalization as appropriate pursuant to 1 CMC § 3806(a). As it is unclear whether “Sec. 300.18” and “Sec. 300.156(c)” in subsection (b) refer to the IDEA, federal regulations, or these regulations, the Commission left the cite unchanged.

§ 60-50-647 Implementation by PSS

In implementing section 60-50-646, the PSS must:

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) 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
- (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of CNMI standards that apply to them.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: The Commission change the phrase “implementing Sec. 300.146” to “implementing section 60-50-646” pursuant to 1 CMC § 3806(d).

Subpart D - Children with Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue

§ 60-50-660 Placement of Children by Parents When FAPE Is at Issue

- (a) 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.
- (b) 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.
- (c) 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

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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.

(d) **Limitation on Reimbursement.** The cost of reimbursement described in this section may be reduced or denied:

(1) If:

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from 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

(ii) 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;

(2) 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

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) **Exception.** Notwithstanding the notice requirement in this section, the cost of reimbursement:

(1) Must not be reduced or denied for failure to provide the notice if:

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in this section; or

(iii) Compliance with this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with this section would likely result in serious emotional harm to the child.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: This section was adapted from 34 C.F.R. § 300.148. Section 300.504, referenced in subsection (e)(1)(ii), was not incorporated into this regulation.

Part 700 - Compliance

Subpart A - Personnel

§ 60-50-701 Personnel Qualifications

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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.

(a) 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:

(1) 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

(2) Ensure that related services personnel who deliver services in their discipline or profession:

(i) Meet the requirements of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) 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.

(b) Qualifications for special education teachers.

(1) 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).

(2) 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.

(3) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart B – Performance Tracking

§ 60-50-710 Performance Goals and Indicators

(a) The PSS has established goals for the performance of children with disabilities in the CNMI. The goals:

(1) Promote the purposes of Part B of IDEA;

(2) 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;

(3) Address graduation rates and dropout rates, as well as such other factors as the CNMI may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the CNMI.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-711 Participation in Assessments

(a) 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.

(b) The PSS has developed separation guidelines to support this policy for participation in CNMI-wide assessments or alternate assessments where necessary.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-712 Suspension and Expulsion Rates

(a) 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:

(1) Among schools in the CNMI; or

(2) Compared to the rates for nondisabled children within those agencies.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: This section was originally located after “State Advisory Panel” in the regulation. The Commission moved it to its current location to fit harmoniously within the code pursuant to 1 CMC § 3806(b). The Commission inserted a colon after the phrase “children with disabilities” in subsection (a) and corrected the spelling of “CNMI” in subsection (a)(1) pursuant to 1 CMC § 3806(g).

Subpart C - Funding

§ 60-50-720 Supplementation of CNMI and Other Federal Funds

(a) 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.

(b) 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.

(c) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-721 Maintenance of CNMI Financial Support

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-722 Compliance with Supplanting and Maintenance of Effort Requirements

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Commission Comment: This section was located under “Public Participation” [sic] in the original regulation. The Commission relocated it to fit harmoniously within the code pursuant to 1 CMC § 3806(b).

Subpart D - Public Participation

§ 60-50-730 Public Participation

(a) 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.

(b) It is the policy of the PSS to comply with the public participation requirements under Part B of IDEA before submitting a State plan.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-731 State Advisory Panel

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.

(a) Membership.

(1) 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:

(i) Parents of children with disabilities (ages birth through 26);

(ii) Individuals with disabilities;

(iii) Teachers;

(iv) Representatives of institutions of higher education that prepare special education and related services personnel;

(v) 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.);

(vi) Administrators of programs for children with disabilities;

(vii) Representatives of other CNMI agencies involved in the financing or delivery of related services to children with disabilities;

(viii) Representatives of private schools and public charter schools;

(ix) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(x) A representative from the CNMI child welfare agency responsible for foster care; and

(xi) Representatives from the CNMI juvenile and adult corrections agencies.

(2) 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).

(b) Duties. The advisory panel must:

(1) Advise the PSS of unmet needs within the CNMI in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the PSS regarding the education of children with disabilities;

(3) Advise the PSS in developing evaluations and reporting on data to the Secretary under section 618 of Part B of IDEA;

(4) Advise the PSS in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA; and

(5) Advise the PSS in developing and implementing policies relating to the coordination of

services for children with disabilities.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Subpart E - Additional Regulations

§ 60-50-750 Access to Instructional Materials

(a) 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.

(b) 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).

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-751 Overidentification and Disproportionality

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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

§ 60-50-752 Prohibition on Mandatory Medication

(a) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33258 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32930 (Oct. 29, 2012).

Part 800 - [reserved]

Part 900 - Early Intervention Services for Infants and Toddlers with Disabilities

Subpart A - Purpose

§ 60-50-901 Purpose of Early Intervention

The purpose of the Early Intervention Program for Infants and Toddlers with Disabilities is:

- (a) 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;
- (b) 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; and
- (c) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of "federal" and "state" pursuant to 1 CMC § 3806(f). The Commission corrected the periods at the ends of subsections (a) and (b) to semicolons pursuant to 1 CMC § 3806(g). The Commission inserted the word "and" after subsection (b) pursuant to 1 CMC § 3806(g).

Subpart B - Definitions

§ 60-50-902 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.

- (a) "Act" means the Individuals with Disabilities Education Act, as amended.
- (b) "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).

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- (c) “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.
- (d) “Consent” means that:
- (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language;
 - (2) 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;
 - (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
 - (4) 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).
- (e) “Council” means the CNMI Interagency Coordinating Council.
- (f) “Day” means calendar day, unless otherwise indicated.
- (g) “Developmental Delay,” when used with respect to a child residing in the CNMI, has the meaning given that term by the CNMI in subpart C.
- (h) “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.
- (i) “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:
- (1) 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;
 - (2) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and
 - (3) 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.
- (j)(1) “Early Intervention Services” means developmental services that are:
- (i) Are provided under public supervision;
 - (ii) Are selected in collaboration with the parents;
 - (iii) 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;
 - (iv) Are designed to meet the developmental needs of an infant or toddler with a disability

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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:

- (A) Physical development;
 - (B) Cognitive development;
 - (C) Communication development;
 - (D) Social or emotional development;
 - (E) Adaptive development;
 - (v) Meet the standards of the CNMI in which the early intervention services are provided, including the requirements of Part C of the Act;
 - (vi) Include services identified in this section;
 - (vii) Are provided by qualified personnel including the types of personnel listed in this section;
 - (viii) To the maximum extent appropriate, are provided in natural environments and are provided in conformity with an IFSP.
- (2) Types of Early Intervention Services include the following services:
- (i) "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.
 - (ii) "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:
 - (A) 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;
 - (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers 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 an infant or toddler 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) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.
 - (iii) "Audiology Services" include:
 - (A) The identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;
 - (B) The determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedure;
 - (C) 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;

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- (D) The provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;
- (E) Provision of services for prevention of hearing loss; and
- (F) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.
- (iv) "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.
- (v) "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.
- (vi) "Nursing Services" include:
 - (A) 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;
 - (B) 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.
- (vii) "Nutrition Services" include:
 - (A) Conducting individual assessments in nutritional history and dietary intake;
 - (B) Anthropometric, biochemical, and clinical variables;
 - (C) Feeding skills and feeding problems;
 - (D) Food habits and food preferences;
 - (E) Developing and monitoring appropriate plans to address the nutritional needs of children eligible for early intervention services based*; and
 - (F) Making referrals to appropriate community resources to carry out nutrition goals.
- (viii) "Occupational Therapy" includes 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:
 - (A) Identification, assessment, and intervention;
 - (B) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills.
 - (C) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- (ix) "Physical Therapy" includes 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:
 - (A) Screening, evaluation, and assessment of children to identify movement dysfunction;
 - (B) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (C) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

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- (x) “Psychological Services” include:
 - (A) Administering psychological and developmental tests and other assessment procedures;
 - (B) Interpreting assessment results.;
 - (C) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
 - (D) 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.
- (xi) “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.
- (xii) Specific Service Coordination Services include:
 - (A) 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;
 - (B) 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;
 - (C) Coordinating evaluations and assessments;
 - (D) Facilitating and participating in the development, review, and evaluation of IFSPs;
 - (E) Conducting referral and other activities to assist families in identifying available EIS providers;
 - (F) Coordinating, facilitating, and monitoring the delivery of services required under this part to ensure that the services are provided in a timely manner.;
 - (G) Conducting follow-up activities to determine that appropriate Part C services are being provided;
 - (H) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources;
 - (I) Coordinating the funding sources for services required under this part; and
 - (J) Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.
 - (K) 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 §§

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303.501 through 303.521 (Payor of last resort provisions).

(xiii) “Sign language and Cued Language Services” include:

- (A) Teaching sign language;
- (B) Cued language, and auditory/oral language;
- (C) Providing oral transliteration services, such as amplification; and
- (D) Providing sign and cued language interpretation.

(xiv) “Social Work Services” include:

- (A) Making home visits to evaluate a child’s living conditions and patterns of parent-child interaction;
- (B) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;
- (C) 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;
- (D) 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
- (E) 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.

(xv) “Special Instruction” includes:

- (A) 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;
- (B) 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;
- (C) Providing families with information, skills, and support related to enhancing the skill development of the child; and
- (D) Working with the infant or toddler with a disability to enhance the child’s development.

(xvi) “Speech-language Pathology Services” include:

- (A) 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;
- (B) 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
- (C) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

(xvii) “Transportation and Related Costs” include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child’s family to receive early intervention services.

(xviii) “Vision Services” means:

- (A) The evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

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(B) 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.

(3) “Qualified Personnel.” The following are the types of qualified personnel who provide early intervention services:

- (i) Audiologists;
- (ii) Family therapists;
- (iii) Nurses;
- (iv) Occupational therapists;
- (v) Orientation and mobility specialists;
- (vi) Pediatricians and other physicians for diagnostic and evaluation purposes;
- (vii) Physical therapist;
- (viii) Psychologists;
- (ix) Registered dietitians;
- (x) Social workers;
- (xi) Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness);
- (xii) Speech and language pathologists;
- (xiii) Vision specialists, including ophthalmologists and optometrists.

(4) 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.

(k) “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.

(l) “Free Appropriate Public Education” or “FAPE,” means special education and related services that:

- (1) Are provided at public expense, under public supervision and direction, and without charge;
- (2) Meet the standards of the CNMI educational agency, the Public School System, including the requirements of Part B of the Act;
- (3) Include an appropriate preschool, elementary school, or secondary school education in the CNMI; and
- (4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

(m) “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.

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- (1) The term includes:
- (i) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
 - (ii) 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.
- (2) 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).
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (n) "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.
- (o) "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.
- (p) "Indian; Indian Tribe" means an individual who is a member of an Indian tribe.
- (q) "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.
- (r) "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

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as possible once parental consent for the early intervention services in the IFSP is obtained and is developed in accordance with the IFSP procedures.

(s) “Infant or Toddler with a Disability” means an individual under three years of age who needs early intervention services because the individual:

(1) Is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas;

- (i) Cognitive development.
- (ii) Physical development, including vision and hearing.
- (iii) Communication development.
- (iv) Social or emotional development.
- (v) Adaptive development; or

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

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

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

(4) 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.

(t) “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.

(u) “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.

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(v) “Educational Service Agencies and Other Public Institutions or Agencies.” The term includes the following:

(i) “Educational service agency,” defined as a regional public multiservice agency authorized by state law to develop, manage, and provide services or programs to LEA’s 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;

(ii) 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;

(iii) 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;

(A) Is established by state law for the purpose of providing FAPE on a regional basis; and

(B) Provides special education and related services to children with disabilities within the state.

(iv) “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.

(w) “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.

(x)(1) “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:

(i) The language normally used by the parents of the child, except as provided in paragraph below; and

(ii) 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.

(2) 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).

(y) “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

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consistent with the provisions of early intervention services in natural environments.

(z)(1) “Parent” means:

- (i) A biological or adoptive parent of a child;
- (ii) 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;
- (iii) 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);
- (iv) 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
- (v) 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.

(2) 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.

(3) 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.

(aa) “Parent Training and Information Center” means a center assisted under section 671 or 672 of the Act.

(bb) “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.

(cc) “Public Agency” means the lead agency and any other agency or political subdivision of the state.

(dd) “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.

(ee) “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.”

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(ff) “Secretary” means the Secretary of Education.

(gg) “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.

(hh) “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.

(ii) “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.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “means that” in subsection (d) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the periods at the ends of subsections (d)(1) and (d)(2) to semicolons pursuant to 1 CMC § 3806(a). The Commission inserted the word “and” at the end of subsection (d)(2) pursuant to 1 CMC § 3806(a). The Commission inserted a close parenthesis and a period after “consent was revoked” in subsection (d) pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the phrase “Developmental Delay” in subsection (g) pursuant to 1 CMC § 3806(a). The Commission changed the phrase “Section C of this document” in subsection (g) to “subpart C” pursuant to 1 CMC § 3806(d). The Commission corrected the semicolon after the phrase “is responsible for” in subsection (a) to a colon pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of “federal” in subsection (i) pursuant to 1 CMC § 3806(f).. The Commission corrected the phrase “developmental services that are;” in subsection (j)(1) to “developmental services that:” pursuant to 1 CMC § 3806(g). The Commission inserted the word “Are” at the beginning of subsection (j)(1)(i) and changed the capitalization of “provided” pursuant to 1 CMC § 3806(f) and (g). The Commission corrected the capitalization of “federal” and “state” in subsection (j)(1)(iii) pursuant to 1 CMC § 3806(f). The Commission corrected the periods at the end of subsections (j)(1)(i) through (j)(1)(iv) and (j)(1)(v) through (j)(1)(vii) to semicolons pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after “following areas, including” in subsection (j)(1)(iv) to a colon and inserted semicolons at the ends of subsections (j)(1)(iv)(A) through (j)(1)(iv)(C) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after “the following services” in subsection (j)(2) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “The term includes” in subsection (j)(2)(ii) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the period at the end of subsection (j)(2)(ii)(C) to a semicolon pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “Audiology Services include” in subsection (j)(2)(iii) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the periods at the ends of subsections (j)(2)(iii)(A) through (j)(2)(iii)(D) to semicolons and inserted a semicolon after the word “loss” in subsection (j)(2)(iii)(E) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “Nursing Services include”

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in subsection (j)(2)(vi) to a colon and corrected the period at the end of subsection (j)(2)(vi)(A) to a semicolon pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “Nutrition Services include” in subsection (j)(2)(vii) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the periods at the ends of subsections (j)(2)(vii)(A) through (j)(2)(vii)(D) to semicolons and inserted a semicolon after the word “based” in subsection (j)(2)(vii)(E) pursuant to 1 CMC § 3806(a). The Commission corrected the phrase “Occupational Therapy include” in subsection (j)(2)(viii) to “Occupational Therapy includes” pursuant to 1 CMC § 3806(g). The Commission consolidated the first bullet point and the phrase “These services are designed to improve the child’s functional ability to perform tasks in home, school and community settings and include” into the first portion of subsection (j)(2)(viii) and corrected the periods at the end of subsections (j)(2)(viii)(A) through (j)(2)(viii)(B) to semicolons pursuant to 1 CMC § 3806(a) and (g). The Commission corrected the phrase “Physical Therapy include” in subsection (j)(2)(ix) to “Physical Therapy includes” pursuant to 1 CMC § 3806(g). The Commission consolidated the first bullet point and the phrase “These services include” into the first portion of subsection (j)(2)(ix) and corrected the period at the end of subsections (j)(2)(ix)(A) to a semicolon pursuant to 1 CMC § 3806(a). The Commission corrected the phrase “related functional problem and” in subsection (j)(2)(ix)(B) to “related functional problems; and” pursuant to 1 CMC § 3806(g). The Commission corrected the semicolon after the phrase “Psychological Services include” in subsection (j)(2)(x) to a colon and corrected the periods at the ends of subsections (j)(2)(x)(A) and (j)(2)(x)(B) to semicolons pursuant to 1 CMC § 3806(a). The Commission consolidated the bullet points under subsection (j)(2)(xi) into the body of the subsection pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “Specific Service Coordination Services include” in subsection (j)(2)(xii) to a semicolon and corrected the periods at the ends of subsections (j)(2)(xii)(A), (B), (C), (F), (G), and (H) to semicolons pursuant to 1 CMC § 3806(a). The Commission changed the phrase “subpart E” to “subpart G” pursuant to 1 CMC § 3806(d). The Commission corrected the semicolon after the phrase “Cued Language Services” in subsection (j)(2)(xiii) to a colon, added semicolons at the end of subsections (j)(2)(xiii)(A) and (B), corrected the comma after the word “amplification” in subsection (j)(2)(xiii)(C) to a semicolon, and added a period after subsection (j)(2)(xiii)(D) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “Social Work Services include” in subsection (j)(2)(xiv) to a colon and corrected the periods after subsections (j)(2)(xiv)(A) through (C) to semicolons pursuant to 1 CMC § 3806(a). The Commission corrected the phrase “Special Instruction include;” in subsection (j)(2)(xv) to “Special Instruction includes:” and corrected the periods at the ends of subsection (j)(2)(xv)(A) and (B) to semicolons pursuant to 1 CMC § 3806(a) and (g). The Commission corrected the semicolon after the phrase “Pathology Services include” in subsection (j)(2)(xvi) to a colon, corrected the period after subsection (j)(2)(xvi)(A) to a semicolon, and corrected the comma after the phrase “communication skills” in subsection (j)(2)(xvi)(B) to a semicolon pursuant to 1 CMC § 3806(a). The Commission corrected the phrase “costs that is necessary” in subsection (j)(2)(xvii) to “costs that are necessary” pursuant to 1 CMC § 3806(g). The Commission divided the subheading “Vision Services” into three parts to create subsection (j)(2)(xviii)(A) through (C) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “early intervention services” in subsection (j)(3) to a colon, added semicolons at the ends of subsections (j)(3)(i) through (j)(3)(xi), and corrected the period at the end of subsection (j)(3)(xii) to a semicolon pursuant to 1 CMC § 3806(a). The Commission divided the subheading “Free Appropriate Public Education” into four parts to create subsection (l)(1) through (4) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon at the end of subsection (m)(1) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “federal” and “state” in subsection (q). The Commission divided the subheading “Infant or Toddler with a Disability” to create subsections (s)(1) and (2), corrected the semicolons at the end of subsection (s)(1) and (2) to colons, corrected the periods at the ends of subsections (s)(1)(i) through (iv) to semicolons, and added semicolons at the ends of subsections (s)(2)(i) through (vi) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (u) pursuant to 1 CMC § 3806(f). The Commission corrected the semicolon after the phrase “Other Public Institutions and Agencies” in subsection (v) to a period, corrected the semicolon after the phrase “includes the following” in subsection (v) to a colon, corrected periods at the ends of subsections (v)(i) and (v)(ii) to semicolons, and corrected the semicolon at the end of subsection (v)(iii) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (v) pursuant to 1 CMC § 3806(f). The Commission reorganized the paragraphs beginning with “Native Language” in the original regulation into subsection (x) pursuant to 1 CMC § 3806(a). The Commission reorganized the paragraphs beginning with “Parent” in the original regulation into subsection (z) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsections (z)(ii) and (iii) pursuant to 1 CMC § 3806(f). The Commission corrected the capitalization of “state” in subsection (cc) pursuant to 1 CMC § 3806(f). The Commission inserted a period after the first word in subsection (gg) and corrected the capitalization of “except” and “state” in subsection (gg) pursuant to 1 CMC § 3806(f) and (g). The Commission corrected the capitalization of “state” in subsection (hh) pursuant to 1

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CMC § 3806(f). The Commission corrected the semicolon after the phrase “where the child resides, is” in subsection (ii), added a semicolon after subsection (ii)(1), and added a period after subsection (ii)(3) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (ii) pursuant to 1 CMC § 3806(f).

The original regulation is unclear as to whether the elements in subsections (m)(3) and (m)(6) are included or not included under the term “health services.” The federal definition of “health services” is located at 34 C.F.R. § 303.13.

This regulation was adapted from 34 C.F.R. Part 303. Sections 303.501 through 521, referenced in subsection (j)(2)(xii); section 303.211, referenced in subsection (s)(4); section 303.120, referenced in subsection (t); section 303.422, referenced in subsection (z)(2); section 303.732(d)(3), referenced in subsection (gg); and section 303.27, referenced in subsection (ii), likely refer to Title 34 of the Code of Federal Regulations.

Subpart C - Minimum Components

§ 60-50-903 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-904 Developmental Delay

(a) 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.

(b) 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:

- (1) Cognitive Development;
- (2) Physical Development, including Vision and Hearing;
- (3) Communication Development;
- (4) Social or emotional Development ;
- (5) Adaptive Development.

(c) 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

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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:

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

(d) **Informed Clinical Opinion.**

(1) 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.

(2) 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.

(e) **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.

(f) **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 section 60-50-902, include:

- (1) Assistive Technology Device;

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- (2) Assistive Technology Service ;
- (3) Audiology Services;
- (4) Family Training, Counseling, and Home Visits;
- (5) Medical Services;
- (6) Nursing Services;
- (7) Nutrition Services;
- (8) Occupational Therapy;
- (9) Physical therapy ;
- (10) Psychological Services ;
- (11) Service Coordination Services (case management);
- (12) Sign language and Cued Language Services ;
- (13) Social Work Services;
- (14) Special Instruction;
- (15) Speech-language Pathology Services Transportation and Related Costs;
- (16) Vision Services;
- (17) Qualified Personnel;
- (18) Other Services (as defined in subpart A).

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “one or more of the following areas” in subsection (b) to a colon, inserted semicolons after subsections (b)(1) through (b)(4), and inserted a period after subsection (b)(5) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon after the phrase “include but are not limited to” in subsection (c) to a colon and inserted semicolons after subsections (c)(1) through (c)(6) pursuant to 1 CMC § 3806(ga). The Commission corrected the capitalization of “state” in subsection (f) pursuant to 1 CMC § 3806(f). The Commission corrected the phrase “as defined in the definition section used in Early Intervention include;” in subsection (f) to “as defined in section 60-50-902, include:”, inserted semicolons after subsections (f)(1) through (f)(17), and inserted a period after subsection (f)(18) pursuant to 1 CMC § 3806(a) and (d). The Commission changed the phrase “as defined in Section A of this document” in subsection (f)(18) to “as defined in subpart A” pursuant to 1 CMC § 3806(d).

§ 60-50-905 Pre-Referral Procedures

(a) 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.

(b) 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

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referral sources, especially hospitals, private clinics, and physicians.

(c) 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.

(d) Welcome Baby packets, to be disseminated to parents, includes developmental checklists, brochures on child development, new born hearing screening, autism, understanding signals of premature 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.

(e) 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.

(f) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of "public awareness" and "child find" in subsections (a) and (b) pursuant to 1 CMC § 3806(f). The Commission corrected the capitalization of "child find" in subsection (c) pursuant to 1 CMC § 3806(f). The Commission corrected the capitalization of "baby" in subsection (d) pursuant to 1 CMC § 3806(f). The Commission corrected the spelling of "premature" in subsection (d) pursuant to 1 CMC § 3806(g).

§ 60-50-906 Coordination

In order to ensure there is no unnecessary duplication of effort by various programs in the CNMI, the Early Intervention Program, with the advise 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

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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:

- (a) Program authorized under Part B of the Act;
- (b) 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));
- (c) 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));
- (d) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
- (e) Head Start Act (the CNMI does not have Early Head Start programs);
- (f) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
- (g) 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.);
- (h) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and
- (i) Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase "coordinated with the" to a colon and added semicolons at the ends of subsections (a), (c), (e), and (g) pursuant to 1 CMC § 3806(a).

§ 60-50-907 Referral Procedure

- (a) 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.
- (b) 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.

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(c) 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.

(d) Primary referral sources. Primary referral sources include:

- (1) Hospitals, including prenatal and postnatal care facilities;
- (2) Physicians;
- (3) Parents, including parents of infants and toddlers;
- (4) Child care programs and early learning programs;
- (5) Schools;
- (6) Public health facilities;
- (7) Other public health or social service agencies;
- (8) Other clinics and health care providers;
- (9) Public agencies and staff in the child welfare system, including child protective service and foster care;
- (10) Homeless family shelters; and
- (11) Domestic violence shelters and agencies.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “primary referral” and “primary referral sources” throughout the section pursuant to 1 CMC § 3806(f). The Commission corrected the semicolon after the phrase “Primary referral sources include” in subsection (d) to a colon, inserted semicolons after subsections (d)(1) through (d)(10), inserted the word “and” at the end of subsection (d)(10), and inserted a period after subsection (d)(11) pursuant to 1 CMC § 3806(a).

§ 60-50-908 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-909 Evaluation, Assessment, and Nondiscriminatory Procedures

Each infant or toddler with a disability is 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the phrase “Each infant or toddler with a disability are” to “Each infant or toddler with a disability is” pursuant to 1 CMC § 3806(g).

§ 60-50-910 Post-Referral Procedures--Screenings, Evaluations, and Assessments

(a) 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:

- (1) 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
- (2) 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.

(b) Exceptional family circumstance documentation. The Early Intervention Program must:

- (1) 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;
- (2) File the Reason for Delay form in the child’s early intervention records ;
- (3) 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; and
- (4) 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.

(c) 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.

(d) 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.

(1) 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.

(2) Initial evaluation refers to the child's evaluation to determine his or her initial eligibility for Early Intervention.

(3) 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.

(4) Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

(e) 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.

(f) 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.

(g) 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.

(h) 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

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in the native language of the family members being assessed, in accordance with the definition of native language in 34 CFR § 303.25.

(i) 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.

(j) 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.

(k) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase "The Early Intervention Program must" in subsection (b) to a colon, corrected the periods at the ends of subsection (b)(1) and (b)(3) to semicolons, inserted a semicolon and the word "and" at the end of subsection (b)(2), and inserted a period at the end of subsection (b)(4) pursuant to 1 CMC § 3806(a). The Commission inserted a period at the end of subsection (d)(2) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of "state" in subsection (k) pursuant to 1 CMC § 3806(f).

§ 60-50-911 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-912 Procedures for IFSP Development, Review, and Evaluation

(a) 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 exist that are documented in the child's file.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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:

- (1) The parent or parents of the child;
- (2) Other family members, as requested by the parent, if feasible to do so;
- (3) An advocate or person outside of the family, if the parent requests that the person participate;
- (4) The service coordinator designated by the Early Intervention Program to be responsible

for implementing the IFSP;

(5) A person or persons directly involved in conducting the evaluations and assessments; and

(6) As appropriate, persons who will be providing early intervention services to the child or family.

If a person or persons directly involved in conducting the evaluations and assessments 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.

(g) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission removed an extraneous colon after the word "IFSP" and an extraneous dash after the number "45" in subsection (a) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase "circumstances exists" in subsection (a) to "circumstances exist" pursuant to 1 CMC § 3806(g). The Commission inserted semicolons at the ends of subsections (f)(1) through (f)(5), the word "and" at the end of subsection (f)(5), and a period at the end of subsection (f)(6) pursuant to 1 CMC § 3806(a).

§ 60-50-913 Content of an IFSP

(a) 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.

(b) 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.

(c) 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.

(d) Early intervention services.

(1) 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:

(i) The length, duration, frequency, intensity, and method of delivering the early intervention services;

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- (ii) The location of the early intervention services; and
 - (iii) The payment arrangements, if any.
- (2)(i) 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.
- (ii) Method means how a service is provided.
 - (iii) 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*
 - (iv) 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).
 - (v) Location means the actual place or places where a service will be provided.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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."
- (i) 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:
- (1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

- (2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting;
- (3) 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; and
- (4) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase “results or outcomes including” in subsection (d)(1) to a colon, inserted a semicolon at the end of subsection (d)(1)(i), inserted a semicolon and the word “and” at the end of subsection (d)(1)(ii), and inserted a period at the end of subsection (d)(1)(iii) pursuant to 1 CMC § 3806(a). The Commission inserted a period at the end of subsection (d)(2)(ii) pursuant to 1 CMC § 3806(g). The Commission corrected the semicolon at the end of the phrase “The required ‘steps’ include” in subsection (i) to a semicolon, inserted a semicolon at the end of subsection (i)(2), and inserted a semicolon and the word “and” at the end of subsection (i)(3) pursuant to 1 CMC § 3806(a).

§ 60-50-914 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:

- (a) The name of the service coordinator who will be responsible, for implementing the interim IFSP and coordinating with other agencies and persons; and
- (b) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase “developed that includes” to a colon and inserted a period at the end of subsection (b) pursuant to 1 CMC § 3806(a). The Commission inserted a period at the end of the final sentence pursuant to 1 CMC § 3806(g).

§ 60-50-915 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-916 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:

- (a) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;
- (b) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this part; and*
- (c) 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.
- (d) Training personnel in the emotional and social development of young children;
- (e) Training personnel to support families in participating fully in the development and implementation of the child's IFSP.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission changed the semicolon at the end of the phrase "personnel development includes" to a colon and inserted semicolons at the ends of subsection (a) and (d) pursuant to 1 CMC § 3806(a).

§ 60-50-917 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. The PSS makes a positive effort to employ and advance qualified individuals with disabilities.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-918 Supervision, Monitoring, Funding, Interagency Coordination and Other Responsibilities

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

(a) 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.

(b) 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:

(1) Monitoring agencies, institutions, organizations, and EIS providers used by the CNMI to carry out Part C of the Act;

(2) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

(4) 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

(5) Conducting these activities and any other activities required by the CNMI under those sections.

(c) 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.

(d) The assignment of financial responsibility in accordance with subpart F of IDEA.

(e) 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.

(f) The resolution of intra- and interagency disputes in accordance with subpart F of IDEA.

(g) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase “is responsible for” to a colon, corrected the semicolon after the phrase “Part C of the Act, including” in subsection (b) to a colon, inserted semicolons at the ends of subsections (b)(1) through (b)(3), and inserted periods at the ends of subsections (c) and (d) pursuant to 1 CMC § 3806(a).

§ 60-50-919 Contracting or Otherwise Arranging for Services

(a) The Public School System contracts or makes other arrangements with public or private individuals or agency services 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.

(b) Prior to awarding contacts 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-920 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.

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History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-921 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Subpart D - Interagency Coordinating Council

§ 60-50-922 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-923 Composition

The Council must be composed as follows:

- (a) 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.
- (b) 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.
- (c) At least 20 percent of the members must be public or private providers of early intervention services.
- (d) At least one member must be from the state legislature.
- (e) At least one member must be involved in personnel preparation.
- (f) At least one member must:
 - (1) Be from each of the state agencies involved in the provision of, or payment for, early

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intervention services to infants and toddlers with disabilities and their families; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

(g) At least one member must:

(1) Be from the SEA responsible for preschool services to children with disabilities; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of the SEA.

(h) At least one member must be from the agency responsible for the state Medicaid and CHIP program.

(i) At least one member must be from a Head Start or Early Head Start agency or program in the state.

(j) At least one member must be from a state agency responsible for child care.

(k) At least one member must be from the agency responsible for the state regulation of private health insurance.

(l) At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.

(m) At least one member must be a representative from the state child welfare agency responsible for foster care.

(n) At least one member must be from the state agency responsible for children's mental health.

(o) The Governor may appoint one member to represent more than one program or agency listed in subsections (g) through (n).

(p) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolons at the ends of the phrase "At least one member must" in subsections (f) and (g) to colons pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsections (d), (f)(1), (h), (i), (j), (k), (m), (o), and the final sentence pursuant to 1 CMC § 3806(f). The Commission inserted a period at the end of subsection (o) pursuant to 1 CMC § 3806(g). The Commission changed the phrase "line 7 through 14" to "subsections (g) through (n)" pursuant to 1 CMC § 3806(d).

§ 60-50-924 Meetings

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

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necessary. The meetings must:

- (a) 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;
- (b) To the extent appropriate, be open and accessible to the general public; and
- (c) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission changed the semicolon after the phrase “The meetings must” to a colon pursuant to 1 CMC § 3806(a).

§ 60-50-925 Use of Funds by the Council

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

- (a) Conduct hearings and forums;
- (b) Reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);
- (c) 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;
- (d) Hire staff; and
- (e) 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.
- (f) Except as provided in subsections (a) through (e), Council members must serve without compensation from funds available under Part C of the Act.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “under this part to” to a colon pursuant to 1 CMC § 3806(a). The Commission changed the phrase “as provided in the five bullets above” in subsection (f) to “as provided in subsections (a) through (e)” pursuant to 1 CMC § 3806(d).

§ 60-50-926 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:

- (a) Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
- (b) Assignment of financial responsibility to the appropriate agency;
- (c) 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
- (d) Preparation of applications under this part and amendments to those applications.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “responsibilities of the Act, including” to a colon and inserted a semicolon before the word “and” at the end of subsection (c) pursuant to 1 CMC § 3806(a).

§ 60-50-927 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-928 Annual Report to the Governor and to the Secretary

The Council must:

- (a) 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
- (b) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase “The Council must” to a colon pursuant to 1 CMC § 3806(a).

§ 60-50-929 Authorized Activities by the Council

The Council may carry out the following activities:

- (a) Advise and assist the PSS regarding the provision of appropriate services for children

with disabilities from birth through age five;

(b) 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; and

(c) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the periods at the ends of subsections (a) and (b) to semicolons and inserted the word “and” at the end of subsection (b) pursuant to 1 CMC § 3806(a).

Subpart E - Public Participation

§ 60-50-930 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 and these regulations, the PSS:

(a) Holds public hearings on the new policy or procedure, including any revision to an existing policy or procedure;

(b) Provides notice of the hearings at least 30 days before the hearings are conducted to enable public participation; and

(c) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission inserted a colon after the phrase “these regulations, the PSS” and inserted a semicolon at the end of subsection (a) pursuant to 1 CMC § 3806(a).

Subpart F - Transition to Preschool and Other Programs Policy and Procedure

§ 60-50-931 Preface

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:

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “directive” pursuant to 1 CMC § 3806(f).

§ 60-50-932 Notification to the Part B (Special Education) Program

(a) 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.

(b) 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.

(c) 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.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-933 Conference to Discuss Services

(a) 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 is held no later than 90 days before the toddler's third birthday and, at the discretion of all parties, may occur up to nine months before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act.

(b) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-934 Transition Plan

(a) 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.

(b) **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.

(c) **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.

(d) **The Transition Conference or Meeting Participants**

The transition conference or meeting must include the following participants:

- (1) The parent or parents of the child;
- (2) Other family members, as requested by the parent, if feasible to do so;
- (3) An advocate or person outside of the family, if the parent requests that the person participate;
- (4) The service coordinator designated by the public agency to be responsible for

implementing the IFSP;

- (5) A person or persons directly involved in conducting the evaluations and assessments;
- (6) As appropriate, persons who will be providing early intervention services to the child or family; and
- (7) Head Start or child care representatives if appropriate.

If a person or persons directly involved in conducting the evaluations and assessments 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.

(e) 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.

^{*} So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the phrase "as appropriates" in subsection (a) to "as appropriate" pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of "transition plan" in subsection (c) and the capitalization of "transition conference" in subsections (b) and (d) pursuant to 1 CMC § 3806(f). The Commission corrected the periods at the ends of subsections (d)(1) through (d)(4) to semicolons, inserted a semicolon at the end of subsection (d)(5), corrected the period at the end of subsection (d)(6) to a semicolon and added the word "and", and inserted a period at the end of subsection (d)(7) pursuant to 1 CMC § 3806(a).

§ 60-50-935 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-936 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “not” pursuant to 1 CMC § 3806(f).

Subpart G - Procedural Safeguards

§ 60-50-937 Preface

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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-938 Confidentiality of Personally Identifiable Information and Early Intervention Records

(a) 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.

(b) 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:

(1) Participating agencies (including the PSS and EIS providers) comply with the Part C confidentiality procedures in 34 CFR §§ 303.401 through 303.417; and

(2) 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.

(c) Applicability and timeframe of procedures. The confidentiality procedures described

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above apply to the personally identifiable information of a child and the child's family that:

(1) Is contained in early intervention records collected, used, or maintained under Part C by the PSS or an EIS provider; and

(2) 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.

(d) 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:

(1) A child's name;

(2) A child's date of birth; and

(3) 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.

(e) 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.

(f) 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.

(g) 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:

(1) 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.

(2) 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.

(3) 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.

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History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “federal” and “state” in subsections (a) and (c)(2) pursuant to 1 CMC § 3806(f). The Commission inserted a colon at the end of the phrase “to ensure that” in subsection (b) pursuant to 1 CMC § 3806(a). The Commission corrected the semicolon at the end of the phrase “child’s family that” in subsection (c) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the periods at the ends of subsections (d)(1) and (d)(2) to semicolons and inserted the word “and” at the end of subsection (d)(2) pursuant to 1 CMC § 3806(a).

§ 60-50-939 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) 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;
- (b) 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;
- (c) 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
- (d) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the word “including” to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the word “state” in subsections (a) and (d) pursuant to 1 CMC § 3806(f).

§ 60-50-940 Access Rights

(a) 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:

- (1) The right to a response from the participating agency to reasonable requests for

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explanations and interpretations of the early intervention records;

(2) 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

(3) 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.

(b) 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.

(c) 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.

(d) 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.

(e) Fees for records.

(1) 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.

(2) A participating agency may not charge a fee to search for or to retrieve information under this part.

(3) 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.

(f) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase “under this section includes” in subsection (a) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (a) pursuant to 1 CMC § 3806(f). As it is unclear whether the phrase “the paragraph below” in subsection (e)(1) refers to subsection (e)(2) or to both subsections (e)(2) and (e)(3), the Commission did not change the reference.

§ 60-50-941 Opportunity for A Hearing

(a) 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).

(b) Result of hearing.

(1) 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.

(2) 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:

(i) 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

(ii) 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.

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

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “state” in subsection (a) pursuant to 1 CMC § 3806(f). The Commission corrected the semicolon after the phrase “under this section must” in subsection (b)(2) to a colon pursuant to 1 CMC § 3806(a).

§ 60-50-942 Consent Prior to Disclosure or Use

(a) Except as provided in paragraph above*, prior parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject

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to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) 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.

(c) 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.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase "personally identifiable information is" in subsection (a) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsection (b) pursuant to 1 CMC § 3806(f).

§ 60-50-943 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “state” pursuant to 1 CMC § 3806(f).

§ 60-50-944 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-945 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “state” pursuant to 1 CMC § 3806(f).

§ 60-50-950 Parental Consent and Ability to Decline Services

- (a) The PSS must ensure parental consent is obtained before:
 - (1) Administering screening procedures under 34 CFR § 303.320 that are used to determine whether a child is suspected of having a disability;
 - (2) All evaluations and assessments of a child are conducted under 34 CFR § 303.321;
 - (3) Early intervention services are provided to the child under this part;
 - (4) Public benefits or insurance or private insurance is used if such consent is required under 34 CFR § 303.520; and
 - (5) Disclosure of personally identifiable information consistent with 34 CFR § 303.414.
- (b) 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:
 - (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and

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(2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(c) 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.

(d) The parents of an infant or toddler with a disability:

(1) 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

(2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase "consent is obtained before" in subsection (a) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the dash at the end of the phrase "ensure that the parent" in subsection (b) to a colon pursuant to 1 CMC § 3806(a). The Commission inserted a period at the end of subsection (c) pursuant to 1 CMC § 3806(g). The Commission corrected the semicolon after the phrase "toddler with a disability" in subsection (d) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsection (d)(1) pursuant to 1 CMC § 3806(f).

§ 60-50-951 Prior Written Notice and Procedural Safeguards Notice

(a) 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.

(b) Content of notice. The notice must be in sufficient detail to inform parents about:

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) 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.

(c) Native language. The notice must be:

(1) Written in language understandable to the general public; and

(2) 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.

(3) 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:

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

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- (iii) There is written evidence that the requirements of this paragraph have been met.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolons at the ends of the phrases “to inform parents about” in subsection (b), “the notice must be” in subsection (c), and “to ensure that” in subsection (c)(3) to colons pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (b) pursuant to 1 CMC § 3806(f).

§ 60-50-952 Surrogate Parents

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

- (1) No parent (as defined in 34 CFR § 303.27) can be identified;
 - (2) The lead agency or other public agency, after reasonable efforts, cannot locate a parent;
- or
- (3) The child is a ward of the state under the laws of that state.

- (b) 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:

- (1) Determining whether a child needs a surrogate parent; and
- (2) 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.

- (c) 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)(1) and (e) of this section.

- (d) 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;

- (1) 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;
- (2) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- (3) Has knowledge and skills that ensure adequate representation of the child.

- (e) 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.

- (e) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent

for all purposes under this part.

(f) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission added a colon after the phrase “are protected when” in subsection (a) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsections (a)(3), (b), and (c) pursuant to 1 CMC § 3806(f). The Commission corrected the semicolon at the ends of the phrases “include a method for” in subsection (b) and “selected as a surrogate parent” in subsection (d) to colons pursuant to 1 CMC § 3806(a). The Commission inserted a period at the end of subsection (b)(2) pursuant to 1 CMC § 3806(g). The Commission changed the reference to “paragraph (d)(2)(i)” in subsection (c) to “paragraph (d)(1)” pursuant to 1 CMC § 3806(d).

§ 60-50-960 State Dispute Resolution Options

(a) 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.

(b) 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.

(c) 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.

(d) 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)).

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-961 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-962 Mediation

(a) 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.

(b) Requirements. The procedures meet the following requirements:

(1) The procedures ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) 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

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) 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.

(3) The PSS must select mediators on a random, rotational, or other impartial basis.

(4) The CNMI must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

(5) 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.

(6) 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—

(i) 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

(ii) 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.

(c) Impartiality of mediator. An individual who serves as a mediator under this part:

(1) 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

(2) 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.

(d) 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:

- (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 state established under section 671 or 672 of the Act; and
- (2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission inserted a period at the end of subsection (b)(1)(iii) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of “state” in subsections (b) and (d)(1) and the capitalization of “federal” in subsection (b) pursuant to 1 CMC § 3806(f). The Commission corrected the semicolons after the phrases “under this part” in subsection (c) and “with a disinterested party” in subsection (d) to colons pursuant to 1 CMC § 3806(a).

§ 60-50-963 State Complaint Procedures

- (a) Adoption of state complaint procedures. PSS adopted written procedures for:
 - (1) 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
 - (2) 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.
- (b) 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:
 - (1) 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
 - (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.
- (c) 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:
 - (1) Carry out an independent on-site investigation, if the lead agency 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 lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum:
 - (i) At the discretion of the lead agency, a proposal to resolve the complaint; and
 - (ii) 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;
 - (4) Review all relevant information and make an independent determination as to whether

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the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains;

- (i) Findings of fact and conclusions; and
- (ii) The reasons for the lead agency's final decision.

(d) Time extension; final decision; implementation. The PSS procedures described in this section also;

(1) Permit an extension of the time limit only if:

- (i) Exceptional circumstances exist with respect to a particular complaint; or
- (ii) 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

(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including:

- (i) Technical assistance activities;
- (ii) Negotiations; and
- (iii) Corrective actions to achieve compliance.

(e) Complaints filed under this section and due process hearings under 34 CFR § 303.430.

(1) 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.

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

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

(3) 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.

(f) 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:

- (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child;
 - (i) The name and address of the residence of the child;
 - (ii) The name of the EIS provider serving the child;
 - (iii) A description of the nature of the problem of the child, including facts relating to the

problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(5) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolons after the phrases “written procedures for” in subsection (a), “must address” in subsection (b), “filed under 34 CFR § 303.434 to” in subsection (c), “described in this section also” in subsection (d), “decision, if needed, including” in subsection (d)(2), “involving the same parties” in subsection (e)(2), and “must include” in subsection (f) to colons pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsections (a)(1) and (a)(2) pursuant to 1 CMC § 3806(f). The Commission inserted colons after the phrases “including, at a minimum” in subsection (c)(3) and “only if” in subsection (d)(1) pursuant to 1 CMC § 3806(a). The Commission inserted a semicolon at the end of subsection (d)(2)(i) and a period at the end of subsection (d)(2)(iii) pursuant to 1 CMC § 3806(a).

§ 60-50-970 Filing a Due Process Complaint

(a) 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.

(b) 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:

(1) The parent requests the information; or

(2) The parent or EIS provider files a due process complaint under this section.

(c) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the spelling of “complaint” in the section heading pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of “state” in subsection (a) pursuant to 1 CMC § 3806(f). The Commission corrected the semicolon after the phrase “in the area if” to a colon pursuant to 1 CMC § 3806(a).

60-50-971 Due Process Complaint

(a) 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.

(b) Content of complaint. The due process complaint required in the paragraph above must include:

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the EIS provider serving the child;
- (4) 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;
- (5) 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
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) 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.

(d) Sufficiency of complaint.

(1) 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.

(2) 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.

(3) A party may amend its due process complaint only if:

(i) 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

(ii) 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.

(e) Lead agency response to a due process complaint.

(1) 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:

- (i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;
- (ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected;
- (iii) 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
- (iv) A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.

(2) 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.

(f) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolons after the phrases "above must include" in subsection (b), "only if" in subsection (d)(3), and "response that includes" in subsection (e)(1) to colons pursuant to 1 CMC § 3806(a).

§ 60-50-972 Resolution Process

(a) Resolution meeting.

(1) 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:

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

(2) 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.

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

- (i) The parent and lead agency agree in writing to waive the meeting; or
- (ii) The parent and lead agency agree to use the mediation process described in 34 CFR § 303.431.

(3) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

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(b) Resolution period.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(c) 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:

(1) Both parties agree in writing to waive the resolution meeting.

(2) 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.

(3) 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.

(d) 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:

(1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and

(2) 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.

(e) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the dash after the phrase "due process complaint that" in subsection (a)(1) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the semicolons after the phrases "need not be held if" in subsection (a)(3), "one of the following events" in subsection (c), and "binding agreement that is" in subsection (d) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsection (d)(2) pursuant to 1 CMC § 3806(f).

§ 60-50-973 Impartial Due Process Hearing

(a) 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.

(b) 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.

(c) Impartial hearing officer.

(1) At a minimum, a hearing officer

(i) Must not be;

(A) 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

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) 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;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) 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.

(3) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission inserted a colon at the end of the phrase "a hearing officer" in subsection (c)(1) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" and "federal" in subsection (c)(1)(ii) pursuant to 1 CMC § 3806(f).

§ 60-50-974 Due Process Hearing Procedures

(a) 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.

(b) 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

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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.

(c) Exceptions to the timeline.

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

- (1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or
- (2) 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.

(d) 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:

- (1) 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;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) 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
- (4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.

(e) Additional disclosure of information.

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

(f) Parental rights at hearings. Parents involved in hearings must:

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

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolons after the phrases "complaint due to" in subsection (c), "has the right to" in subsection (d), and "involved in hearings must" in subsection (f) to colons pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsection (b) pursuant to 1 CMC § 3806(f). The Commission changed the reference to "paragraph (e)" in subsection (c) to "subsection (b)" pursuant to 1 CMC § 3806(d). The Commission changed the reference to "paragraph (b)(1)" in subsection (e)(2) to "subsection (e)(1)" pursuant to 1 CMC § 3806(d). The Commission changed the reference to "paragraphs (a)(4) and (a)(5)" in subsection (f)(2) to "subsections (d)(4) and (d)(5)" pursuant to 1 CMC § 3806(d).

§ 60-50-975 Decision of Hearing Officer

(a) 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.

(b)(1) 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:

(i) 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;

(ii) 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

(iii) Caused a deprivation of educational or developmental benefit.

(2) 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.

(c) 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.

(d) 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.

(e) Findings and decisions to general public. The PSS, after deleting any personally identifiable information, must make the findings and decisions available to the public.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase "only if the procedural inadequacies" in subsection (b)(1) to a colon pursuant to 1 CMC § 3806(a).

§ 60-50-976 Finality of Decision; Appeal; Impartial Review

(a) 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.

(b) Appeal of decisions; impartial review.

(1) 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.

(2) 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:

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

(c) 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.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under § 303.448.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “conducting the review must” in subsection (b)(2) to a colon pursuant to 1 CMC § 3806(a). The Commission inserted a semicolon at the end of subsection (b)(2)(iii) pursuant to 1 CMC § 3806(a).

§ 60-50-977 Timelines and Convenience of Hearings and Reviews

(a) 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):

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

(b) The PSS must ensure that not later than 30 days after the receipt of a request for a review:

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

(c) 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.

(d) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

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Commission Comment: The Commission changed the semicolons after the phrases “described in § 303.442(c)” in subsection (a) and “request for a review” in subsection (b) to colons pursuant to 1 CMC § 3806(a).

§ 60-50-978 Civil Action

(a) 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.

(b) 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.

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

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

(d) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon at the end of the phrase “the court” in subsection (c) to a colon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (b) pursuant to 1 CMC § 3806(f).

§ 60-50-979 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “federal” pursuant to 1 CMC § 3806(f).

§ 60-50-980 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.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “state” pursuant to 1 CMC § 3806(f).

Subpart H - Use of Funds, Payor of Last Resort and System of Payments

§ 60-50-981 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:

- (a) 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;
- (b) To expand and improve services for infants and toddlers with disabilities and their families that are otherwise available;
- (c) 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; and
- (d) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “including funds” to a colon, corrected the period at the end of subsection (a) to a semicolon, inserted a semicolon after subsection (b), corrected

the period at the end of subsection (c) to a semicolon and inserted the word “and” pursuant to 1 CMC § 3806(a).

§ 60-50-982 Payor of Last Resort

(a) Nonsubstitution of funds. Except as provided in subsection (b), 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.

(b) 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.

(c) 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.

(d) 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 IFSPs and interim IFSPs and implementation of the procedural safeguards and the other components of the statewide system of early intervention services.

History:Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission changed the phrase “in the paragraph below (Interim Payments—Reimbursement)” in subsection (a) to “in subsection (b) pursuant to 1 CMC § 3806(d). The Commission corrected the capitalization of “federal” and “state” in subsection (a) and of “early intervention services” in subsection (d) pursuant to 1 CMC § 3806(f). The Commission corrected “IFSP’s” to “IFSPs” in subsection (d) pursuant to 1 CMC § 3806(g).

§ 60-50-983 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.

(a) Signed interagency agreements that clearly identify the financial and service provision responsibilities of each agency or entity within the agency.

(b) 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).

(c) Contracts with public or private individuals or agency service providers to provide early intervention services.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of "early intervention services" and of "state" pursuant to 1 CMC § 3806(f). The Commission inserted periods at the ends of subsections (b) and (c) pursuant to 1 CMC § 3806(g).

§ 60-50-984 Procedures for Resolving Disputes

(A) Interagency agreements.

(1) 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.

(2) 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

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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.

(b) Intra-agency agreement.

(1) 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.

(2) 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.

(c) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of "early intervention services" in subsection (c) pursuant to 1 CMC § 3806(f).

§ 60-50-985 Payor of Last Resort & System of Payments Provisions--Use of Insurance, Benefits, Systems of Payments, and Fees

(a) 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.

(b) Inability to pay. The CNMI has not adopted a system of payments therefore a parent's inability 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.

(c) 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.

(d) 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.

(e) System of payments and fees. The CNMI has not adopted a system of payments therefore does not have system of payment policies.

(f) 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:

- (1) Implementing the child find requirements in 34 CFR §§ 303.301 through 303.303;
- (2) Evaluation and assessment, in accordance with 34 CFR § 303.320, and the functions related to evaluation and assessment in 34 CFR § 303.13(b);
- (3) Service coordination services, as defined in 34 CFR §§ 303.13(b)(11) and 303.33;
- (4) 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
- (5) 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.

(g) 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.

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

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the spelling of "parent's" and "inability" in subsection (b) pursuant to 1 CMC § 3806(g). The commission corrected the periods at the ends of subsections (f)(1) through (f)(3) to semicolons pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of "state" in subsection (g) pursuant to 1 CMC § 3806(f).

Subpart I - Monitoring, Enforcement and Reporting

§ 60-50-986 Preface

(a) 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.

(b) 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.

(c) 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.

(d) 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:

- (1) Early intervention services in natural environments.
- (2) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

§ 60-50-987 State Performance Plans and Data Collection

(a) 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.

(b) 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.

(c) 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.

(d) The public will be notified, as described in 34 CFR § 303.706, if the Secretary takes any enforcement action regarding the performance plan.

(e) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “state” in subsection (b) pursuant to 1 CMC § 3806(f).

§ 60-50-988 Public Reporting and Privacy

(a) 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.

(b) 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.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the capitalization of “state” in subsection (a) pursuant to 1 CMC § 3806(f).

Subpart J - Public Reports: Program Information, Data Requirements

§ 60-50-989 Public Reports

(a) 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.

(b) 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

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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.
- (c) 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.
- (d) 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.

* So in original.

History: Adopted 35 Com. Reg. 33260 (Jan. 28, 2013); Proposed 34 Com. Reg. 33041 (Oct. 29, 2012); Emergency 34 Com. Reg. 32881 (Oct. 29, 2012).

Commission Comment: The Commission corrected the semicolon after the phrase “The report includes” in subsection (b) to a colon, added a semicolon to the end of subsection (b)(1), and corrected the period at the end of subsection (b)(3) to a semicolon pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of “state” in subsection (b)(1) pursuant to 1 CMC § 3806(f).