

Document: Proposed Rule

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TITLE 470 DIVISION OF FAMILY AND CHILDREN

Proposed Rule

LSA Document #00-211

DIGEST

Amends 470 IAC 3.1 to comply with changes in the federal regulations (34 CFR 303). The amendments will: (1) revise the definition of "parent" to include foster parents; (2) revise the due process procedures for violations of federal and state laws, regulations, and rules; and (3) revise the due process hearings for resolving individual child complaints. Makes technical changes. This rule originally established a comprehensive system of early intervention services for eligible infants and toddlers with disabilities and their families. Effective 30 days after filing with the secretary of state.

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|---------------------------|-------------------------|
| 470 IAC 3.1-1-13.5 | 470 IAC 3.1-13-5 |
| 470 IAC 3.1-1-21 | 470 IAC 3.1-14-1 |
| 470 IAC 3.1-9-1 | 470 IAC 3.1-14-3 |
| 470 IAC 3.1-13-3 | |

SECTION 1. 470 IAC 3.1-1-13.5 IS ADDED TO READ AS FOLLOWS:

470 IAC 3.1-1-13.5 "Foster parent" defined

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 13.5. "Foster parent" means a person or persons who meet the definition found at 470 IAC 3-1-1 and:

- (1) have an ongoing, long term parental relationship with the child;**
- (2) are willing to make the decisions required of parents; and**
- (3) have no interest that would conflict with the interests of the child.**

(Division of Family and Children; 470 IAC 3.1-1-13.5)

SECTION 2. 470 IAC 3.1-1-21 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-1-21 "Parent" defined

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 21. (a) "Parent" means a parent, a guardian, a person acting as a parent of a child, a **foster parent**, or a surrogate parent who has been appointed in accordance with 470 IAC 3.1-13-5. The term does not include the state if the child is a ward of the state.

(b) As used in this article, "parent" includes the singular, as well as the plural, form of the noun. *(Division of Family and Children; 470 IAC 3.1-1-21; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1330)*

SECTION 3. 470 IAC 3.1-9-1 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-9-1 Individual family service plan development, review, and evaluation

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 1. (a) For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the forty-five (45) day time period specified in 470 IAC 3.1-6-4 required to complete evaluation and

assessment activities and hold the IFSP meeting.

(b) A review of the IFSP for a child and the child's family must be conducted every six (6) months, or more frequently if conditions warrant, or if the family requests such a review. The review may be carried out through a meeting or by any other means that are acceptable to the parent and other participants. The purpose of the periodic review is to determine the following:

- (1) The degree to which progress toward achieving the outcomes is being made.
- (2) Whether modification or revision of the outcomes or services is necessary.

(c) A meeting must be conducted on at least an annual basis to redetermine eligibility and to evaluate the IFSP for a child and the child's family and, as appropriate, to revise its provisions. The results of any current assessments, conducted under 470 IAC 3.1-8-1, and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) IFSP meetings shall be conducted:

- (1) in settings and at times that are convenient to families; and
- (2) 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.

(e) Meeting arrangements must be made with, and written notice provided to, the family and other participants at least ~~fourteen~~ **ten (10)** days before the meeting date to ensure that they will be able to attend.

(f) The contents of the IFSP must be fully explained to the parent and informed, written consent from the parent ~~legal guardian, or surrogate parent~~ must be obtained prior to the provision of early intervention services described in the plan. If the parent does not provide consent with respect to a particular early intervention service or withdraws consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided. (*Division of Family and Children; 470 IAC 3.1-9-1; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1341; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3471; filed Mar 9, 1999, 2:05 p.m.: 22 IR 2261*)

SECTION 4. 470 IAC 3.1-13-3 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-13-3 Development of procedural safeguards

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 3. (a) The division shall be responsible for the development of procedural safeguards and ensuring effective implementation of procedural safeguards by each service provider.

(b) **The division shall widely disseminate the procedural safeguards to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities.** (*Division of Family and Children; 470 IAC 3.1-13-3; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1347*)

SECTION 5. 470 IAC 3.1-13-5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-13-5 Surrogate parents

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 5. (a) The division shall be responsible to ensure that the rights of children eligible for early intervention services are protected if:

- (1) no parent can be identified;
- (2) the SPOE, after reasonable efforts, cannot discover the whereabouts of a parent; or
- (3) the child is a ward of the state.

(b) The division, in cooperation with the LPCC, shall be responsible for the development of policies and procedures for determining whether a child needs a surrogate parent and for assigning a surrogate parent for the child. Such policies and procedures

shall ensure that a person selected as a surrogate parent:

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

(c) A person assigned as a surrogate parent may not be any of the following:

- (1) An employee of the division.
- (2) An employee of any state agency.
- (3) An employee of any entity providing early intervention services to the child **or to a family member of the child.**
- ~~(4) A family member of the child.~~

A person who otherwise qualifies to be a surrogate parent shall not be considered an employee of an agency solely because he or she is paid by the agency to serve as a surrogate parent.

(d) A surrogate parent may represent a child in all matters related to the following:

- (1) The evaluation and assessment of the child.
- (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews.
- (3) The ongoing provision of early intervention services to the child.
- (4) Any other rights established under Part C of the Act and the implementing regulations in 34 CFR 303.

(Division of Family and Children; 470 IAC 3.1-13-5; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1347; filed Mar 9, 1999, 2:05 p.m.: 22 IR 2267)

SECTION 6. 470 IAC 3.1-14-1 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-14-1 Complaints; violations of law

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 1. (a) Any individual or organization may file a complaint (~~which shall remain confidential~~) against a participating agency alleging violations of federal or state laws, regulations, and rules that apply to the early intervention system.

(b) The complaint shall:

- (1) be in writing;
- (2) indicate the allegations of violation or violations and the factual circumstances on which the allegations are based;
- (3) be signed by the complainant or complainants;
- (4) be submitted to the division no later than one (1) year after the date of the alleged violation, unless:
 - (A) a longer period is reasonable because the violation is continuing; or
 - (B) the individual or organization is requesting compensatory services, **reimbursement, or corrective action** for an alleged violation that occurred no longer than three (3) years prior to the date the division receives the complaint;
- (5) indicate the name of the child and the address of the residence of the child; and
- (6) indicate a proposed resolution of the problem to the extent known and available to the parents at the time.

(c) The division, or its designee, shall be responsible for the assignment of an individual to investigate a complaint.

(d) Any individual assigned to investigate a complaint shall have knowledge of the early intervention system.

(e) The division shall develop a model form to assist parents in filing a complaint **and widely disseminate it to parents and other interested individuals.**

(f) If a complaint is also the subject of a due process hearing under 470 IAC 3.1-15, or contains multiple issues, including due process issues, the division must do the following:

- (1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.**
- (2) Resolve all parts of the complaint that are not part of the due process action within the sixty (60) calendar day timeline described in section 2 of this rule.**

(g) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties the:

- (1) hearing decision is binding; and**
(2) division must inform the complainant of the binding decision.

(Division of Family and Children; 470 IAC 3.1-14-1; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1350; filed Mar 9, 1999, 2:05 p.m.: 22 IR 2269)

SECTION 7. 470 IAC 3.1-14-3 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-14-3 Failure to comply

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 3. **(a)** The failure of the participating agency to comply with orders issued by a complaint investigator may result in the withholding by the state of federal and state funds to the agency.

(b) A complaint alleging a participating agency's failure to implement a due process decision must be resolved by the division. *(Division of Family and Children; 470 IAC 3.1-14-3; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1351)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 10, 2001 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 10, Indianapolis, Indiana the Division of Family and Children will hold a public hearing on proposed amendments to comply with changes in the federal regulations (34 CFR 303). The amendments will: (1) revise the definition of "parent" to include foster parents; (2) revise the due process procedures for violations of federal and state laws, regulations, and rules; and (3) revise the due process hearings for resolving individual child complaints. Makes technical changes This rule originally established a comprehensive system of early intervention services for eligible infants and toddlers with disabilities and their families. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

James Hmurovich
Director
Division of Family and Children