DEPARTMENT OF HEALTH

Adoption of Chapter 11-140
Hawaii Administrative Rules

SEP 20 2013

(Date)

SUMMARY

Chapter 11-140, Hawaii Administrative Rules, entitled "Early Intervention Services for Infants and Toddlers", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 140

EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS

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§11-140-1 Purpose and scope. (a) The purpose of this chapter is to establish the required components of the statewide, coordinated, multidisciplinary, and interagency system of early intervention services that meet the needs of infants and toddlers with special needs. The program components include surrogate parent provisions, eligibility criteria, eligibility determination, individual family support plan, transition to preschool and other programs, procedural safeguards, mediation, administrative complaint procedures, and due process hearing procedures.

(b) The department shall be the lead agency for the coordination of federal and state funding of the program. Federal funding is provided pursuant to the Individuals with Disabilities Education Act, Infants

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and Toddlers with Disabilities (Part C), P.L. 108-446, sections 631-644; 20 United States Code sections 1431 to 1444; and the implementing regulations, 34 C.F.R. part 303. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352)

§11-140-2 Definitions. As used in this chapter:

"Assessment" means the ongoing procedures used by appropriate and qualified personnel throughout the period of the child's eligibility to identify the child's unique strengths and needs and the services appropriate to meet those needs; the resources, priorities, and concerns of the family; and the support and services necessary to enhance the family's capacity to meet the developmental needs of their child with delayed development.

"Biological risk" means the prenatal, perinatal, neonatal, or early developmental events suggestive of biological insults to the central nervous system that increase the probability of delayed development. Also referred to as "physical or mental conditions that have a high probability of resulting in a developmental delay".

"Case management" means an ongoing service of shared responsibility between families and professionals that identifies needs and assists in obtaining coordinated, appropriate services and resources. Also referred to as "service coordination" or as "care coordination".

"Case manager" means a person who provides case management. Also referred to as a "service coordinator" or as a "care coordinator".

"Child with special needs" means an infant or toddler from birth to the age of three years with delayed development or with a biological risk.

"Consent" means that the parent has agreed in writing to carrying out a specific activity pursuant to section 11-140-8(d).

"Delayed development" means a significant delay in one or more of the following areas of development: cognition, speech, language, physical, motor, vision,

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hearing, psychosocial, or self-help skills. Also referred to as "developmental delay".

"Department" means the department of health.

"Early intervention services" means services that:

(1) Are provided under public supervision;

(2) Are selected in collaboration with parents;

(3) Are provided at no cost to families, except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;

(4) Are designed to meet the developmental needs of Part C eligible children and the needs of the family to assist appropriately in the child's development, as identified by the IFSP team;

(5) Are provided by qualified personnel;

(6) Are provided to the maximum extent possible in natural environments; and

(7) Are provided in conformity with an individual family support plan and include but are not limited to: assistive technology device and service; audiology services; family training, counseling, and home visits; health services; medical services to determine a child's developmental status and need for early intervention services; nursing services; nutrition services; occupational therapy; physical therapy; psychological services; service coordination; sign language and cued language services; social work services; special instruction; speech-language pathology services; transportation and related costs; and vision services.

"Evaluation" means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this chapter.

"Exceptional family circumstances" means the allowable circumstances that make it impossible to complete the evaluation or the individual family support plan within the federally and state required

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forty-five day timeline after the Part C referral date. Exceptional family circumstances include but are not limited to: child or family illness; family on vacation; family schedule conflict; and missed or cancelled appointment.

"FERPA" means the Family Educational Rights and Privacy Act, 20 United States Code section 1232g and 34 C.F.R. part 99, that ensures the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by educational agencies, including the department and early intervention providers from the time the child is referred for early intervention services until the later of when the department or early intervention provider is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

"Home school" means the elementary school within the geographical attendance area which the child would attend, if of school age, according to the child's legal residence or the school of origin, if residing in a homeless situation.

"IDEA" or "Act" means the Individuals with Disabilities Education Act, 20 United States Code section 1400 et seq., and its regulations.

"Impartial" means that the person appointed to implement the due process hearing is not an employee of the department or an early intervention provider involved in the provision of early intervention services or care of the child, and does not have a personal or professional interest that would conflict with the person's objectivity in implementing the process. A person who otherwise qualifies is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures.

"Individual family support plan" or "IFSP" means a written plan of action for providing early intervention services and supports to Part C eligible children and their families. The plan, developed by families and professionals, emanates from the families' expressions of needs and goals and is based

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on the multidisciplinary evaluation of the child and an assessment of the child's family. Also referred to as "individualized family support plan" or "individualized family service plan".

"Interim individual family support plan" means an individual family support plan that is developed prior to the completion of the evaluation and assessment because early intervention services have been determined by the multidisciplinary team to be needed immediately by the child and the child's family.

"Multidisciplinary team" means two or more service providers from separate professions or disciplines who are qualified professionals and are identified by the case manager in collaboration with the family.

"Native language" means the language or mode of communication normally used by the parent of a child eligible under this chapter.

"Natural environments" means settings that are natural or normal for the child's same age peers who have no disabilities.

"Parent" means a biological or adoptive parent, a foster parent who meets state requirements, a guardian (but not the State if the child is a ward of the State), an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with section 11-140-3.

"Part B" means the sections of the IDEA that refer to the responsibilities of the Department of Education in serving children from age three to twenty-one with special needs (Part B of P.L. 108-446, and its regulations).

"Part C" means the sections of the IDEA that refer to early intervention services for infants and toddlers (Part C of P.L. 108-446; 20 United States Code sections 1431 to 1444; 34 C.F.R. part 303).

"Part C eligible child" means a child under three years of age who needs early intervention services

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because the child is experiencing delayed development, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development and adaptive development. A Part C eligible child may also include a child who has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

"Part C program" means the department's program for early intervention services.

"Part C referral date" means the date the Part C program receives the referral of the child.

"Profession or discipline" means a specific occupational category that provides early intervention services to children eligible under this chapter and their families, has been established or designated by the department, and has a required scope of responsibility and degree of supervision.

"Psychologist" means an individual who meets the licensure requirements of chapter 465, HRS.

"Psychosocial development" means the psychological and social aspects in the development of a child (e.g., laughs, smiles, interacts with other children, etc.). Also referred to as "social emotional development".

"Qualified provider" means a person who has met state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is conducting evaluations or assessments or providing early intervention services.

"Self-help development" means the development of skills for caring for oneself (e.g., dressing, toileting, feeding self). Also referred to as "adaptive development".

"Speech or language development" means the child's ability to speak or use language to communicate. Also referred to as "communication development". [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §§321-351, 352; 34 C.F.R. §§303.4 to 303.37, 303.310, 303.401)

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§11-140-3 Surrogate parent. (a) A designee of the department, in consultation with the department that has been assigned care of the child, shall assign an individual to act as a surrogate for the parent to ensure that the rights of eligible children are protected when it is determined that:

(1) No parent can be identified;

(2) The department, after reasonable efforts, cannot locate a parent; or

(3) The child is a ward of the State.

(b) In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the department, may be appointed by the judge overseeing the child's case provided that the surrogate meets the requirements of a surrogate parent.

(c) The department shall ensure that a person selected as a surrogate parent:

(1) Is not an employee of any state agency or is not a person or employee of a person providing 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 interests of the child that the person represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

(d) A person otherwise qualified to be a surrogate parent under subsection (c) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

(e) The surrogate parent has the same rights as a parent for all purposes under this chapter.

(f) The designee of the department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than thirty days after a public agency determines that the child needs a surrogate parent. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §§321-351, 352; 34 C.F.R.

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§11-140-4 Eligibility criteria. (a) A child under the age of three years with delayed development or at biological risk as set forth in this section shall be eligible for early intervention services.

(b) A child has delayed development when a significant delay is identified in one or more of the following areas of development: cognition, speech, language, physical, motor, vision, hearing, psychosocial, or self-help skills, using a standardized evaluation instrument specified by the department. A delay is significant when:

(1) The child's aggregate score derived upon completion of the evaluation instrument is at least 1.4 standard deviations below the mean for the instrument in any area or sub-area of development;

(2) The child's aggregate score derived upon completion of the evaluation instrument is at least 1.0 standard deviations below the mean for the instrument in two or more areas or sub-areas of development; or

(3) The multidisciplinary team, based on its observations and informed clinical opinion, determines that the child's score cannot be measured by the evaluation instrument.

(c) A child is at biological risk when the multidisciplinary team receives a statement or report signed by a qualified provider that includes the diagnosis of a physical or mental condition and the team determines that the diagnosis has a high probability of resulting in delayed development if early intervention services are not provided. The physical or mental condition may include but is not limited to:

(1) Chromosomal abnormality, such as Fragile X syndrome, Prader-Willi syndrome, or Trisomy 21 (Down syndrome);

(2) Genetic or congenital disorder, such as cleft lip and palate, muscular dystrophy,

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neurofibromatosis, osteogenesis imperfecta, or spina bifida;

(3) Severe sensory impairment, such as hearing or vision loss;

(4) Inborn error of metabolism, such as a disorder in metabolism of amino acids, lipids, or carbohydrates;

(5) Disorder in development of the nervous system, such as cerebral palsy or seizure disorder;

(6) Congenital infection, such as human immunodeficiency virus, cytomegalovirus, or toxoplasmosis;

(7) Disorder secondary to exposure to toxic substances, such as fetal alcohol syndrome or lead toxicity;

(8) Severe attachment disorder, such as reactive attachment disorder due to neglect, abuse, or frequently changing caregiver;

(9) Autism Spectrum Disorder, such as Autistic Disorder, Asperger's Disorder, or Pervasive Developmental Disorder, Not Otherwise Specified; and

(10) Other conditions specified by the department. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352)

§11-140-5 Eligibility determination. (a) The multidisciplinary team shall determine whether the child is eligible for early intervention services due to delayed development or biological risk, consistent with section 11-140-4.

(b) Written parental consent, consistent with section 11-140-8(d), shall be obtained by the case manager before conducting the initial evaluation of a child referred to determine eligibility.

(c) Any child who may be eligible for early intervention services due to delayed development or is eligible due to biological risk, consistent with sections 11-140-4(b) and (c), shall receive a timely, comprehensive, multidisciplinary evaluation by a

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department approved multidisciplinary team, using a standardized evaluation instrument specified by the department.

(d) The evaluation shall consist of the following components:

(1) Administering an evaluation instrument;

(2) Identifying the child's level of functioning in each of the child's developmental areas identified in section 11-140-4(b);

(3) Taking the child's history, including interviewing the parent;

(4) Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

(5) Reviewing medical, educational, or other records.

(e) The multidisciplinary evaluation shall be completed within forty-five days after the Part C referral date. In the event the child or parent is unavailable to complete the initial evaluation or assessment due to exceptional family circumstances or the parent has not provided consent despite documented, repeated attempts by the early intervention provider so that it is impossible to complete the evaluation within forty-five days from the Part C referral date, the case manager shall document the exceptional circumstances or repeated attempts to reach the family and complete the initial evaluation as soon as possible.

(f) In the event that the multidisciplinary evaluation cannot be completed within forty-five days as described in subsection (d), an interim IFSP may be developed and implemented to the extent appropriate and consistent with section 11-140-6(g).

(g) If the child is determined eligible due to delayed development or biological risk, consistent with section 11-140-4, the following shall occur:

(1) A multidisciplinary assessment of the unique needs of the child and the identification of

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early intervention services appropriate to meet those needs; and

(2) 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 the child.

The child and family assessments may occur simultaneously with the evaluation.

(h) The multidisciplinary evaluation and assessment process for continued eligibility shall be completed annually, prior to the annual IFSP, for a child found eligible due to delayed development, consistent with section 11-140-4(b).

(i) The multidisciplinary evaluation and assessment process for the child found eligible due to biological risk, consistent with section 11-140-4(c), shall be completed annually to determine if there is a change in the services needed by the child and the child's family to support the child's development.

(j) Qualified personnel shall use informed clinical opinion when conducting an evaluation and assessment of the child. Informed clinical opinion may be used to establish eligibility when the evaluation instrument does not establish eligibility; however informed clinical opinion shall not be used to negate the results of evaluation instruments used to establish eligibility.

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

(l) Unless clearly not feasible to do so, all evaluations and assessments of a child shall be conducted in the native language of the child and family assessments shall be conducted in the native language of the family members.

(m) If, based on the evaluation it is determined that a child is not eligible, the parent shall be provided with written notice regarding the child's

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ineligibility. The notice shall include information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms. The parent shall also receive written information about community resources and activities to support the child's development.

(n) A child receiving early intervention services on the effective date of this chapter shall remain eligible for services until the determination at the meeting required by section 11-140-6(c)(3). This subsection shall apply to those evaluations conducted under subsection (h). [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §§303.310, 303.321, 303.342 to 303.346)

§11-140-6 Individual family support plan. (a) A written individual family support plan shall be developed for all Part C eligible children and their families by a multidisciplinary team that includes the parent.

(b) The individual family support plan shall include each of the following components:

(1) A statement of the child's present levels of development in the following areas: cognition, speech, language, physical, motor, vision, hearing, psychosocial, and self-help skills based on the information from the child's evaluations and assessments and from parent report;

(2) A statement of the child's health status;

(3) With the concurrence of the family, a statement of the family's resources, priorities, and concerns relating to enhancing the development of the child as identified through the assessment of the family;

(4) A statement of the measurable results or outcomes expected to be achieved for the child and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward

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achieving the outcomes is being made and whether modifications or revisions of the outcomes or early intervention services is necessary;

(5) A statement describing the specific early intervention services, based on peer-reviewed research to the extent possible, necessary to meet the unique needs of the child and the family to achieve the identified results or outcomes, including:

(A) The length, duration, frequency, intensity, and method of delivering services;

(B) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate and a justification as to why an early intervention service will not be provided in a natural environment; any justification for not providing an early intervention service in the natural environment for that child shall be made by the Individual Family Support Plan team and be based on the child's outcomes that are identified in paragraph (4);

(C) The location of the early intervention services; and

(D) The payment arrangements, if any. This would include payment by the department or by private insurance;

(6) To the extent appropriate, a description of medical and other services the child or family needs or is receiving through other sources, but that are neither required nor funded by the Part C program. If these services are not being provided, a statement shall be provided that includes a description of the steps the case manager or family may take to assist the child and family in securing these other services;

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(7) The projected date for the initiation of each early intervention service required under paragraph (5), which is within thirty days from when the parent provides consent for the service and the anticipated duration of each service;

(8) The name of the case manager who shall be responsible for implementing the early intervention services, including transition services, and coordination with all other agencies and persons; and

(9) The steps and services to be taken to support a smooth transition of the child from Part C services to preschool services under Part B of the Act to the extent those services are appropriate or other appropriate services. The steps shall include:

(A) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(B) Procedures to prepare the child for changes in service delivery, including how to help the child adjust to, and function in, a new setting;

(C) Any transition services needed by the child and the child's family; and

(D) With written parental consent, the transmission of information about the child to the child's home school to ensure continuity of services, including evaluation and assessment information of the child and family, and most recent individual family support plans.

(c) Individual family support plan meetings shall be scheduled as follows:

(1) The meeting to develop the initial individual family support plan shall be conducted within forty-five days after the Part C referral date for a child who has

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been evaluated for the first time and found eligible for early intervention services or was found eligible due to a biological risk condition;

(2) A review of the individual family support plan shall be 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 review is to determine:

(A) The degree to which progress toward achieving the outcomes is being made; and

(B) Whether modification or revision of the results, outcomes or services is necessary; and

(3) A meeting shall be conducted on an annual basis to evaluate and revise, as appropriate, the individual family support plan for the child and the child's family. The results of any current evaluations and other information available from the assessment of the child and family shall be used in determining the early intervention services that are needed and shall be provided.

(d) Individual family support plan meetings shall include the following participants:

(1) The initial and annual meeting shall include:

(A) The parent or parents of the child;

(B) Other family members, as requested by the family, if feasible to do so;

(C) An advocate or person outside of the family, if the parent requests that the person participate;

(D) The case manager who has been designated to be responsible for the implementation of the individual family support plan;

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(E) A person or persons directly involved in conducting the evaluation and assessment; and

(F) As appropriate, persons who will be providing services to the child or family;

(2) If the person or persons directly involved in conducting the evaluation and assessment is unable to attend either the initial or annual meeting, arrangements shall be made for the person's involvement through a telephone call, having a knowledgeable representative attend the meeting, or making pertinent records available at the meeting; and

(3) Each periodic review meeting shall provide for the participation of persons listed in paragraphs (1)(A) to (1)(D). However, if conditions warrant, provisions shall be made for the participation of others identified in paragraph (1).

(e) Individual family support plan meetings shall be conducted in settings and at times convenient to families and in the native language of the family, through the use of interpreters, or in any other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements shall be made with, and written notice provided to, the parent, family, or other participants early enough to promote their attendance.

(f) The case manager shall fully explain the contents of the individual family support plan to the parents and obtain informed written consent, consistent with section 11-140-8(d), from the parents prior to the provision of the early intervention services described in the plan. The parent's signature on the individual family support plan is the written consent so that the early intervention services identified in the plan shall be provided. If the parents do not provide consent with respect to a particular early intervention service, or withdraw consent after first providing it, that service shall

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not be provided.

(g) An interim individual family support plan may be developed to allow early intervention services for a child and the child's family to begin before the completion of the evaluation and assessment as described in section 11-140-5 when the following conditions are met:

(1) Written parental consent is obtained;

(2) An interim individual family support plan is developed that includes:

(A) The name of the case manager who will be responsible for implementing the interim individual family support plan; and

(B) The early intervention services that have been determined to be needed immediately by the child and the child's family; and

(3) The evaluation and assessment consistent with section 11-140-5(d) is completed within the forty-five day timeline. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §§303.342 to 303.345)

§11-140-7 <u>Transition to preschool and other programs.</u> (a) The department shall support the smooth transition of children under age three and their families from receiving early intervention services to:

(1) Preschool or other appropriate services for children age three with delayed development (such as Head Start Programs);

(2) Other appropriate services; or

(3) Exiting the program.

(b) A transition plan, consistent with section 11-140-6(b)(9), shall be part of the individual family support plan and shall be updated at each individual family support plan meeting.

(c) The early intervention provider shall inform the parent that personally identifiable information

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shall be provided to the child's home school to enable the Part B program to identify all potentially eligible children for services under Part B of the Act unless the parent chooses to opt out within the time specified. The information to be provided shall include:

(1) The child's name;

(2) The child's date of birth;

(3) Parent contact information, including parents' names, addresses, and telephone numbers; and

(4) The Part C referral date.

(d) The department shall notify the child's home school not fewer than ninety days but no more than nine months before the child's third birthday that the child will shortly reach the age of eligibility for preschool services under Part B of the Act unless the family chooses to opt out of this provision.

(1) If the Part C program determines that the child is eligible for early intervention services more than forty-five days but less than ninety days before the child's third birthday, the Part C program shall, as soon as possible after determining the child's eligibility, notify the child's home school that the child will reach the age of eligibility for preschool services under Part B of the Act; or

(2) If the child is referred to Part C fewer than forty-five days before the child's third birthday and the child may be eligible for services under Part B of the Act, the Part C program, with parent consent, consistent with section 11-140-8(d), shall refer the child to the child's home school, but is not required to conduct an evaluation, assessment, or initial family support plan meeting under these circumstances.

(e) If the parent does not opt out, the personally identifiable information consistent with subsection (c) shall be provided to the child's home school to enable the Part B program to identify all

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potentially eligible children for services under Part B of the Act.

(f) For a child who may be eligible for Part B preschool services, with approval of the family, the department shall convene a transition conference among representatives of the department, the local educational agency, and the family not fewer than ninety days but no more than nine months before the child's third birthday to discuss any services that the child may receive under Part B of the Act.

(g) For a child whose family may not be interested in preschool services under Part B of the Act, with the approval of the family, the department shall make reasonable efforts to convene a transition conference among a representative of the department, the family, and other providers to discuss other appropriate services which the child may receive from the other providers. (Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §§303.209, 303.342 to 303.344, 303.401)

§11-140-8 Procedural safeguards. (a) The department shall ensure the effective implementation of procedural safeguards by each early intervention provider that is involved in the provision of early intervention services.

(b) Procedural safeguards shall be developed and implemented to protect the confidentiality of children referred or eligible or both for early intervention services and their families from the time the child is referred for early intervention services until the later of when the early intervention provider is no longer required to maintain or no longer maintains that information under applicable federal and State laws.

(c) The department and all participants providing early intervention services shall ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the department or the early intervention provider in accordance with the

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protections under FERPA and the Part C confidentiality procedures. Families shall receive notice that is adequate to fully inform them about these requirements.

(d) The department shall obtain the family's written consent prior to the exchange of information among agencies. Effective written consent requires that:

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the family's native language, or other mode unless it is clearly not feasible to do so;

(2) The parent understands and agrees in writing to 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; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If a parent revokes consent, the revocation is not retroactive, meaning that it does not apply to an action that occurred before the consent was revoked.

(e) Parents of an eligible child shall be 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, including records relating to evaluations and assessments, eligibility determinations, development and implementation of individual family support plans, provision of early intervention services, individual complaints involving the child, and any other records about the child and the child's family. The parent's request to review any early intervention records shall be complied with without any unnecessary delay and before any meeting regarding an individual family support plan or hearing and in no case more than ten days after the request has been made, unless there is documentation that the parent does not have authority

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to review the records. If the record includes information on more than one child, the parent has the right to inspect and review information only relating to their child.

(f) The early intervention provider shall keep a record of parties obtaining access to the early intervention records (except for parents and their authorized representatives and employees of the early intervention agency), including the name, the date access was given, and the purpose for which the individual is authorized to use the early intervention record.

(g) A parent who believes that information in the early intervention record collected, maintained, or used is inaccurate, misleading, or violates the privacy or other right of the child or parent may request that the early intervention provider amend the information.

(1) If the early intervention provider refuses to amend the information, the parent shall be informed of the refusal and shall be advised of their right to a due process hearing.

(2) If, as a result of the hearing, the early intervention provider 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 so inform the parent in writing.

(3) If, as a result of the hearing, the early intervention provider decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights, it must inform the parent of the right to place in the early intervention records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the early intervention provider.

(4) Any explanation placed in the early intervention records of the child shall be

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maintained by the early intervention provider as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency and include the explanation whenever the early intervention records or the contested portion are disclosed by the early intervention provider to any party.

(h) The early intervention provider may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. However,

(1) An initial copy of the child's early intervention record must be made available to the parents at no cost; and

(2) The early intervention provider shall also provide, at no cost to parents, a copy of each evaluation and assessment of the child, family assessment, and individual family support plan as soon as possible after each individual family support plan meeting.

(i) Prior written notice shall be provided to the parents a reasonable time before the department or early intervention provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their child, or the provision of early intervention services to the child and the child's family. The content of the notice shall be in sufficient detail to inform the 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 to the family, including a description of mediation, how to file an administrative complaint and a due process complaint and the timelines under those procedures.

(j) The notice must be:

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

(2) Provided in the native language of the

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parents, or other mode unless it is clearly not feasible to do so; and

(3) If the native language or other mode of communication of the parent is not a written language, the department or early intervention provider must take steps to translate orally or by other means to the parent in the parent's native language or other mode of communication.

(k) Written parental consent shall be obtained by the case manager before:

(1) Evaluations and assessments of a child are conducted;

(2) Early intervention services are provided to the child;

(3) Public benefits or insurance or private insurance is used; and

(4) Personally identifiable information is disclosed.

(l) If a parent does not give consent, the department or early intervention provider shall make reasonable efforts to ensure that the parent:

(1) Is fully aware of the nature of the evaluation and assessment of the child or the early intervention services that would be available; and

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

(m) The department may not use the due process hearing procedure to challenge a parent's refusal to provide any consent that is required, consistent with subsection (l).

(n) The parents have the right to determine whether they, their child with delayed development or at biological risk, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it without jeopardizing the other early intervention services.

[Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §§303.401 to 303.417)

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§11-140-9 Mediation. (a) Mediation is available to allow parties to resolve disputes regarding eligibility, evaluation, placement, or provision of early intervention services prior to the filing of an administrative complaint or due process hearing request.

(b) A parent seeking mediation shall submit the mediation request in writing to the department and shall identify any area(s) of concern and the facts relating to the concern(s).

(c) The department shall provide a mediation process that is:

(1) Voluntary on the part of the parties;

(2) Not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded to the parent; and

(3) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(d) The department shall maintain a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of early intervention services and must select mediators on a random, rotational, or other impartial basis.

(e) The department shall bear all costs of the mediation process, including the cost of meetings described in subsection (f).

(f) Each meeting in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties in the dispute.

(g) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and that states that all discussions that occurred during the mediation process will remain confidential and may not be used in any subsequent due process hearing or civil proceeding. The mediation agreement shall be signed by both the parent and a representative of the department who has authority to sign the agreement.

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(h) A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(i) The department may establish procedures to offer to parents who choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who:

(1) Is under contract with a parent training and information center or community parent resource center in the State or an appropriate alternative dispute resolution entity; and

(2) Would explain the benefits of the mediation process and encourage the parents to use the process. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §303.431)

§11-140-10 Administrative complaint procedures. (a) The administrative complaint resolution process may be used when any individual or organization, including an individual or organization from another State, believes that the department or an early intervention provider has violated a requirement under Part C of the Act.

(b) The department shall widely disseminate its complaint procedures to parents and other interested individuals, parent training centers, protection and advocacy agencies, and other appropriate entities.

(c) The individual or organization making a complaint shall submit a written signed complaint to the department and it shall include:

(1) A statement that the department or early intervention provider has violated a requirement under Part C of the Act or its regulations;

(2) The facts on which the complaint is based;

(3) The signature and contact information for the complainant; and

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(4) If alleging violations with respect to a specific child,
  (A) The name and address of residence of the child;
  (B) The name of the early intervention provider serving the child;
  (C) A description of the nature of the problem of the child, including facts related to the problem; and
  (D) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(e) The party filing the complaint shall forward a copy of the complaint to the early intervention provider serving the child at the same time the party files the complaint with the department.

(f) Within sixty days after a complaint has been filed, the department must:

(1) Carry out an independent on-site investigation, if the department determines that such 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 department or the early intervention provider with an opportunity to respond to the complaint, including, at a minimum, to:
  (A) Propose a resolution to the complaint; and
  (B) Provide an opportunity for a parent who has filed a complaint and the department or early intervention provider to voluntarily engage in mediation, consistent with section 11-140-9;

(4) Review all relevant information and make an

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independent determination as to whether the department or early intervention provider is violating a requirement of Part C of the Act or of its regulations; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions, and the reasons for the department's final decision.

(g) An extension of the sixty day filing period may be permitted if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent or individual or organization and the department or early intervention provider agree to extend the time to engage in mediation.

(h) If the department has found a failure to provide appropriate services, the department shall address:

(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the child with a disability who is the subject of the complaint and the child's family, such as compensatory services or monetary reimbursement; and

(2) Appropriate future provision of services for all children with disabilities and their families who were affected by the failure.

(i) If a written complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more is part of that hearing, the department shall 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 action shall be resolved using the timeline and procedures described in subsections (f) and (g).

(j) If an issue is raised in a complaint that has previously been decided in a due process hearing

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involving the same parties:

(1) The due process hearing decision is binding on that issue; and

(2) The department shall inform the complainant to that effect.

(k) A complaint alleging the department or early intervention provider's failure to implement a due process decision shall be resolved by the department. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §§303.432 to 303.434)

§11-140-11 Due process hearing procedures. (a) A due process hearing is available for the timely resolution of an individual child complaint by parents regarding the identification, evaluation, or placement of a child, or the provision of early intervention services to the child with delayed development or at biological risk and that child's family.

(b) A parent seeking a due process hearing shall submit the due process hearing request in writing to the department and it shall include:

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the early intervention provider serving the child;

(4) 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

(5) A proposed resolution of the problem to the extent known and available at the time.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(d) Mediation shall be offered to allow parties an opportunity to resolve any matter, including those that arose prior to the filing of a due process complaint, consistent with section 11-140-9.

(e) If the department or early intervention provider has not sent a prior written notice to the parent regarding the subject matter contained in the

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parent's due process complaint, the department or early intervention provider shall, within ten days of receiving the due process complaint, send a response to the parent that includes:

(1) An explanation of why the department or early intervention provider proposed or refused to take the action raised in the due process complaint;

(2) A description of other options that the individual family support plan team considered and the reasons why they were rejected;

(3) A description of each evaluation procedure, assessment, record, or report that the department or early intervention provider used as a basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the department's or early intervention provider's proposed or refused action.

(f) Whenever a due process complaint is received, an impartial due process hearing officer shall be appointed to implement the complaint resolution process. The person shall:

(1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(A) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the due process complaint; and

(B) Maintain and provide a record of the proceedings, including a written decision.

(g) The due process hearing cannot be held until the parent or attorney representing the parent files a complaint that meets the requirements of subsections (b) and (c).

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(h) The due process complaint shall be deemed sufficient unless the department notifies the hearing officer and the parent in writing, within fifteen days of receipt of the due process complaint, that the department believes the due process complaint does not meet the requirements in subsections (b) and (c).

(1) Within five days of receipt of the notification, the hearing officer shall make a determination as to whether the due process complaint meets the requirements in subsections (b) and (c) and immediately notify the department and the parent, in writing, of that determination.

(2) The parent may amend the due process complaint only if the department or early intervention provider consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution process.

(3) If the parent files an amended due process complaint, the timeline to resolve the due process complaint begins again with the filing of an amended due process complaint.

(i) Any parent involved in a due process hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children with delayed development or at biological risk under age three years;

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

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

(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

(5) Receive a written copy of fact and decisions

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at no cost to the parent.

(j) Any due process hearing shall be held at a time and place that is reasonably convenient to the parents.

(k) The department shall ensure that, not later than thirty days after the receipt of a parent's due process complaint, the due process hearing is completed and a written decision mailed to each of the parties. However, a hearing officer may grant specific extensions of time beyond the thirty days at the request of either party.

(l) During the pendency of any proceeding involving a due process complaint, unless the department and parent of a child otherwise agree, the child shall continue to receive the appropriate early intervention services in the settings identified in the individual family support plan currently being provided. If the complaint involves an application for initial services under this chapter, the child shall receive those services that are not in dispute.

(m) Any party aggrieved by the findings and any decision of the due process hearing has the right to bring a civil action in state or federal court under 20 United States Code section 1439. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352; 34 C.F.R. §§303.430 to 303.438)

§§11-140-12 to 11-140-99 (Reserved).

§11-140-100 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff SEP 20 2013] (Auth: HRS §321-354) (Imp: HRS §321-352)

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DEPARTMENT OF HEALTH

Chapter 11-140, Hawaii Administrative Rules, on the Summary Page dated SEP 20 2013, was adopted on SEP 20 2013, following public hearings held on April 19, 23, 24, 25, and 26, and May 1, 2013, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on March 17, 2013.

The adoption of chapter 11-140 shall take effect thirty days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE

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Loretta J. Fuddy, A.C.S.W., M.P.H.
Director
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APPROVED:

Neil Abercrombie
Governor
State of Hawaii

Dated: 9.9.13

APPROVED AS TO FORM:

Deputy Attorney General

Filed

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