

**Comments of the
Council of Organizational Representatives on
National Issues
Concerning People Who are Deaf or Hard of Hearing**

The Council of Organizational Representatives on National Issues Concerning People Who are Deaf or Hard of Hearing (COR) hereby submits comments to the U.S. Department of Education on its Notice of Proposed Rulemaking (NPRM) on its Early Intervention Program for Infants and Toddlers with Disabilities (65 Fed. Reg. 53807-53869 (September 5, 2000)).

COR members who have signed on to this document based on their interest in educational issues are: Alexander Graham Bell Association for the Deaf and Hard of Hearing, American Academy of Audiology, American Society for Deaf Children, American Speech-Language-Hearing Association, Convention of American Instructors of the Deaf, Conference of Educational Administrators of Schools and Programs for the Deaf, League for the Hard of Hearing, National Association of the Deaf, Registry of Interpreters for the Deaf, Self Help for Hard of Hearing People, and TDI, Inc. Constituencies of COR organizations provide a variety of services, including technological and telecommunications services, educational programs, parent information, support groups and self-help programs, medical, audiological, and speech-language pathology assessment and rehabilitation services, information on assistive devices and technology, and general information on other services for deaf and hard of hearing consumers. Among other things, COR serves as a link among interested organizations, the general public, and the community of people with disabilities on matters concerning deaf and hard of hearing individuals.

COR thanks the Department for issuing this NPRM and for considering COR's comments. The implementation of some provisions of Part C has been an area of great concern to us, and we are pleased to see the Department responding to our requests for greater clarification.

As consumers, parents, and professionals from a variety of philosophies and backgrounds, COR members are able to provide a synthesis and consensus of multiple perspectives on Part C of IDEA. COR believes that the most critical considerations for early intervention systems for deaf and hard of hearing children are:

- ◆ language and communication development and access for the child,
- ◆ access to assistive technology that is critical to accessing auditory communication,
- ◆ education and training for the family in the child's language and mode of communication,
- ◆ family support, and
- ◆ provision of services by qualified personnel who are knowledgeable about and experienced in providing services to deaf and hard of hearing infants and toddlers and their families.

The advent of newborn hearing screening programs across the United States is having a major impact on the development of children who are deaf or hard of hearing. Until recently, the average age of identification of a child with hearing loss was 30 months. (Harrison and Roush. (1996). Age of suspicion, identification and intervention for infants and young children with hearing loss: A national study. *Ear and Hearing*, 17, 55-62.) Children identified late typically displayed language delays that impacted on their cognitive, emotional, and social development. Early intervention programs were generally designed to address delays rather than promote age-appropriate development. Families struggled with their efforts to try to compensate for their child's missed learning and development opportunities.

The prevalence of hearing loss in newborns is approximately three to four per thousand. (National Center on Hearing Assessment and Management, <http://www.infanthearing.org/presentations/cdc/summary.html>, November 1, 2000) Research has shown that early identified children who receive appropriate types of intervention perform significantly better than late identified children given the same amount of early intervention services. (Yoshinaga-Itano, C., Sedey, A. L., Coulter, D.K., & Mehl, A. L. (1998). Language of early-and later-identified children with hearing loss. *Pediatrics*, 102, 1161-1171.) As a response, over the past 10 years, 32 states have implemented newborn hearing screening, assessment, and intervention systems. Their goal is to identify children with hearing loss by age three months and provide early intervention services by age six months. (Joint Committee on Infant Hearing. (2000). Year 2000 position statement: principles and guidelines for early hearing detection and intervention programs. *American Journal of Audiology*, 9, 9-29.; U.S. Department of Health and Human Services. (2000). *Healthy People 2010*, Chapter 28.)

Due to these newborn hearing screening efforts, the average age of identification in many geographic areas has begun to drop dramatically. These programs have begun to allow the opportunity for early intervention services to be provided to children at a very young age. They have resulted in children being fitted with amplification at as early as a few months old and in children being provided access to sign language and auditory/oral approaches this early as well. They have also resulted in families and caregivers acquiring abilities to provide their children with access to language through sign language and auditory/oral approaches.

However, Child Find, interdisciplinary assessment, and providing a range of program options for children with hearing loss continue to present challenges in states lacking legislative mandates as well as in those states with mandates to implement quality early hearing detection and intervention programs. Because in the past it was relatively rare to see a child with hearing loss in Part C programs, often insufficient attention was paid to the types of services that were being provided, the qualifications of the professionals providing the services, and the environments in which they were being provided. However, it is estimated that once universal newborn hearing screening systems are implemented nationally, approximately 16,000 infants per year will be identified with hearing loss. (Arehart, K. & Yoshinaga-Itano, C. (1999). The role of educators of the deaf in the early identification of hearing loss. *American Annals of the Deaf*. 144, (1), 19-23.) These babies will require interventions from a system that is prepared for them in quality of services and in quantity of qualified providers – providers that have specialized knowledge, skills, and attributes. (National Association of State Directors of Special Education. (1994). *Deaf and Hard of Hearing Students Educational Service Guidelines*, Alexandria, Va.) In addition, most of these babies will benefit from hearing aids. Many early intervention systems do not pay the cost of hearing aids, which can be as much as \$4000 to \$6000 per pair. This creates a huge financial burden for most families.

Systems that offer appropriate services and assistive technologies from a pool of qualified providers in appropriate environments are much more likely to provide the child and family the information, education, and support they need to help the child succeed. To this end, COR offers comments in the areas of natural environment, consideration of special factors, qualified provider, comprehensive system of personnel development, and other areas. COR also includes a copy of its position “Educational Rights for Children Who are Deaf or Hard of Hearing.” With the exception of the natural environment provisions, these comments follow numerical order.

Natural Environment

COR continues to be troubled by use of the term “natural environment” and the way in which it is proposed to be defined and interpreted.

COR believes that the Department seems to be expressing incompatible views about the role of individualization in this law and policies governing decision-making about the settings and locations in which services are to be provided.

COR is pleased to see a strong emphasis on individualized assessment and service provision. The

Department quotes with approval language referring to the long history of the emphasis on individualization under this law:

“Decisions on the early intervention services to a child and his or her family, including decisions on the location of service delivery, are made in the development of the individualized family service plan . . . The Secretary contemplates that the range of available options will be reviewed at the IFSP meeting . . . , in which the parents are full participants. With respect to the comment on center-based services, the Secretary emphasizes that decisions on the location of service delivery must be made on an individualized basis in accordance with the needs of the child and the family.” (NPRM, p. 53810, citing “Analysis of Comments and Changes” in the 1993 final Part H regulations, 58 Fed. Reg. 40982 (July 30, 1993))

However, the Department’s support for individualized decision-making seems to be nullified in the next paragraph where the Department asserts:

“The basic thrust of the natural environments provisions in the statute and regulations is that, to the maximum extent appropriate, early intervention services are provided in the home of each eligible child, or in community settings *in which children without disabilities participate.*” (p. 53810) (Emphasis added.)

COR fully supports individualized decision making and the availability of a continuum of location options from which families choose services and programs. This latter statement by the Department appears to preclude options and opportunities. This preference does not seem individualized. Further, the Department states as the rationale for this “The basic principle underlying this requirement is that being in integrated settings with their nondisabled peers will enhance the development of eligible children under this part.” While this may be true for many children served by Part C, a significant number of deaf and hard of hearing children benefit from socializing and learning in an environment which includes a high percentage of deaf children and adults on a full- or a part-time basis. Qualified personnel and assistive technology for use of persons with hearing loss are typically found in such settings. Such settings are a critical resource for public agencies serving children with hearing loss. The preference for the “natural environment” as proposed to be defined by the Department does not have the intended effect for these children. In addition, children with disabilities are found in all sorts of locations. In today’s day and age, referring to environments in which there are no children with disabilities may be an unrealistic as well as un-natural placement not reflecting the current situation in which children with disabilities are already participants in a full range of programs and activities.

To address these concerns, COR recommends the following changes.

Proposed Sec. 303.18 Natural environments. As used in this part, the term natural environments –

(a) Means settings that are natural or normal for an eligible child’s age peers who have no disabilities;

COR Position: Replace (a) with:

“(a) Means the full range of settings in which an eligible child’s age peers with and without disabilities are found.”

Rationale: Referring to settings as “natural” or “normal” is vague and can be considered offensive. The Department’s proposed definition appears restrictive and does not reflect the range of integration found among the population at large. Children with disabilities are found everywhere – homes, schools, day care centers, libraries, grocery stores, and everywhere else. It does not reflect reality to refer to settings that are “natural” or “normal” only for non-disabled children. COR’s recommended definition is broader than the Department’s, and COR believes it more accurately reflects the every day lives of children with disabilities. Flexibility in setting options allows a more diverse service delivery mechanism and access to a peer group for enhanced socialization and language learning.

Proposed Sec. 303.341 Policies and procedures on natural environments.

(a)(1) To the maximum extent appropriate, early intervention services are provided in natural environments;

COR Position: Change to:

“(a)(1) To the maximum extent appropriate, the child’s IFSP outcomes are addressed in one or more appropriate settings.”

Rationale: The driving force behind this section is outcomes – not services per se. This recommended language reflects that.

Proposed Sec. 303.341(a)(2) The provision of early intervention services for each eligible child occurs in a setting other than a natural environment only if the IFSP team, based on the evaluation and assessment required in Sec. 303.322 and the information required in Sec. 303.344(a) through (c) determines that early intervention cannot be achieved satisfactorily for the child in a natural environment.

COR Position: Change to:

“(a)(2) The IFSP team, based on the evaluation and assessment required in Sec. 303.322 and the information required in Sec. 303.344(a) through (c) determines the appropriate setting or combination of settings for the addressing of outcomes for each eligible child.”

Rationale: This provides greater flexibility to meet the changing needs of child and family.

Proposed Sec. 303.341(b)(2) If, after making the determinations required by paragraph (b)(1) of this section, the team determines that a specific service for the child must be provided in a setting other than a natural environment (such as in a center-based program that serves children with disabilities, or another setting appropriate to the age and needs of the child), a justification that meets the requirements of paragraph (c) of this section must be included in the child’s IFSP.

COR Position: Delete parentheses and change “such as” to “including.”

Rationale: Parentheses imply a negative contrast. These center-based programs and settings are a legitimate part of Part C and should be defined as such. Use of the word “including” is obviously more inclusive than the term “such as.” Situations in which a child appropriately receives services in a center-based program should be afforded the same degree of support and respect as those in which children are appropriately served in another environment.

Proposed Sec. 303.341(c)(3) If appropriate, be based on the nature of the service required to meet the unique needs of the child.

COR Position: COR appreciates the examples cited in the Preamble of this document:

“For example, some auditory service for deaf children need to be provided in a quiet, controlled setting without noise distractions; and services for medically fragile children may need to be provided in a sterile environment.” (p. 53811)

COR recommends that the Department include this example: “For a child learning sign language, there is a need to interact with adults and peers using sign language.”

Rationale: This is another good example of when the nature of the service would require placement in a specialized setting.

Proposed Sec. 303.344(d)(3)(i) Specify the natural environments (locations or settings) where each early intervention service will be provided;

COR Position: Change to: "Specify the locations or settings where each outcome of the child will be addressed."

Rationale: This provides a more expansive view of where outcomes can be addressed, regardless of whether those settings are considered "natural."

Proposed Sec. 303.344(d)(1) Statement of services. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section...

COR Position: After "services" insert "to the child and to the family" continue with "necessary to meet..."

Rationale: It should be clear that some services will be directed to the child and some will be directed to the family. Some states believe solely in family training. That may not be appropriate for all situations.

Proposed Sec. 303.344(d)(3)(ii) Include a justification of the extent, if any, to which each service will not be provided in a natural environment.

COR Position: Change to:

"(ii) Include a justification for the location and setting choices where each outcome of the child will be addressed."

Rationale: This will provide parents of all children, regardless of the setting in which the child is served, the reasons why a child's outcomes are addressed in any given place. Parents have a right to know and make informed choices about this information.

Other Provisions

Proposed Sec. 303.3(b)(1): New paragraph to clarify that Part C funds may not be used to pay for costs of a party in either due process hearings or any resulting court proceedings.

COR Position: Support.

Rationale: Part C funds should be used to provide services, not legal fees.

Proposed Sec. 303.3(b)(2): New paragraph to clarify that lead agencies are not precluded from using Part C funds for making due process hearings available.

COR Position: Support.

Rationale: This will protect parents' procedural rights.

Proposed Sec. 303.12 (b)(1)(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 children with disabilities.

COR Position: After "product system," add "including all related and necessary components of the system . . ." After "modified," add "specially fit". After "customized," continue with "that is used to increase . . ."

Rationale: This better assures that all aspects of assistive technology will be included.

Proposed Sec. 303.12(b)(1)(ii)(C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

COR Position: To this list add “dispensing.”

Rationale: The difficulties for families in acquiring needed assistive devices for their children often emanates from reimbursement constraints. Adding “dispensing” acknowledges the responsibility of public agencies to “purchase” such equipment, as it is critical to development of communication competence.

Proposed Sec. 303.12 (b)(1)(ii) Assistive technology services . . .

COR Position: Add a new section, “(D) Designing, adapting, and modifying the environment needed to support the child’s use of assistive technology or technologies.” Re-letter the following sections.

Rationale: The environment has an impact on effectiveness of of assistive technology. Care must be taken to ensure that the environment, including classroom acoustics and visual arrangement, enhances, and does not interfere with, use of assistive technology.

Proposed Sec. 303.12(b)(3): Amended by adding “special educators” to the types of personnel who may appropriately provide services.

COR Position: Support in concept but recommend enhancement of the phrase “special educators” such that it reads “special educators who are specifically trained in parent-infant/parent-toddler education and who are specially trained in their area of service provision, for example, a teacher of multiply disabled children or a teacher of the deaf).” Also see following recommendation.

Rationale: A generic special educator often is unqualified to provide services to many of the children served by Part C systems.

Proposed Sec. 303.12(b)(3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, special educators, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

COR Position: Recommend this be modified to more closely parallel Part B language. The Part B definition reads:

“Parent counseling and training means--

“(i) 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.” (34 C.F.R. §300.24(b)(7))

COR believes the proposed Part C definition and the current Part B definition should be combined to read:

“Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, special educators, and other qualified personnel to -

“(i) Assist the family of a child eligible under this part in understanding the special needs of the child;

“(ii) Provide parents with information about child development; and

“(iii) Help parents to acquire the necessary skills that will allow them to support the implementation of their child's IFSP and enhance the child's development.”

Rationale: This recommended provision will better ensure that parents receive the assistance, information, and skills necessary to help them meet the needs of their child.

Proposed Sec. 303.12(b) (3) Family training, counseling, and home visits . . .

COR Position: Implement recent amendments to IDEA and these proposed rules on this topic.

Rationale: Some service providers provide hours of parent counseling and support with no way to be paid for this service. While these providers are approved related service providers, some local entities do not recognize parent counseling as a billable service. In some cases these providers counsel the parents of children they serve, in others they counsel parents of children they do not serve but who call the provider. Some relief in this area is needed.

Proposed Sec. 303.12(b)(10): Amended by making technical changes, by deleting a phrase, and adding language to clarify the functions and activities of service coordination. Amended by moving a definition of service coordination and deleting its previous citation. The result would be that IFSPs are not required to include service coordination as one of the child's early intervention services because service coordination is a basic entitlement of every eligible child under this part and is an on-going, coordinative process.

COR Position: Support.

Rationale: Service coordination should be seen as a basic entitlement, yet for many children such coordination has not occurred. This language will help ensure that service coordination, a critical part of service provision, occurs.

Proposed Sec. 303.12(b)(12)(i): Amended by using the phrase "in the following developmental areas: cognitive; physical; communication; social or emotional; and adaptive" rather than "in a variety of developmental areas..."

COR Position: Support.

Rationale: This language more closely tracks the statutory and other regulatory language.

Proposed Sec. 303.12(b)(12)(ii): Amended by revising the definitions of special instruction.

COR Position: Support and add: "303.12(b)(12)(v) For children who may experience, or experience, delays in spoken language, delivery of information through other forms of communication, such as sign language, augmentative communication devices, or other means."

Rationale: These are appropriate forms of special instruction for some children. The Department recognizes the importance of making a variety of communication modes, including American Sign Language, available to families in Part C programs. In its request for proposals, "Training Center in Early Intervention for Infants and Toddlers Who Have Hearing Impairments, Including Deafness" (65 Fed. Reg. 25155-25170 (April 28, 2000)), the Department requires applicants to describe training modules which must include, among other things, the full range of communication approaches from oral and aural through American Sign Language (ASL). Further, sign language is mentioned in regard to parents who are deaf, for example, Sec. 303.403(c)(3) which requires prior notice to be given to a parent who is deaf in sign language, if that is the mode of communication normally used by the parent. The Department should reflect its support for a variety or combination of communication modes for children in its regulations, in

this section and in others.

Proposed Sec. 303.12(c) Qualified personnel.

COR Position: Add to this list "teachers of the deaf and hard of hearing."

Rationale: This is a group of professionals that does serve this group but is not mentioned on this list. Since many states base their personnel training needs on this list of qualified personnel, along with the list of Part B qualified personnel, it is critical that these providers be on this list. It is estimated that when universal newborn hearing screening programs are in effect in every state, approximately 12,000 infants per year will be identified with hearing loss. It is essential that teachers of the deaf and hard of hearing be available to serve these children and their families.

Proposed Sec. 303.12(d) General role of service providers. To the extent appropriate, services providers in each area..."

COR Position: After "appropriate" insert "or requested by the parents" continue with "service providers in each area..."

Rationale: In at least one state service providers are being slowly phased out of evaluations and IFSP meetings because of a perceived conflict of interest. However, parents often want more involvement from the provider.

Proposed Sec. 303.12 Note: Revised to add language to clarify that "qualified personnel" who provide early intervention services also may include augmentative communication specialists, and technology specialists.

COR Position: Support and add "qualified teachers of the deaf and hard of hearing" to this list; recommend the note be moved to 303.12(d) and re-letter proposed 303.12(d).

Rationale: The substance of the note is important and should be included in the regulation so that it is not lost.

Proposed Sec. 303.14: Amended by changing the title, re-designating paragraph (a), and adding a new paragraph (b) to specify the term "IFSP team."

COR Position: Support.

Rationale: This provides a label for what many already called the "IFSP team."

Proposed Sec. 303.17 Multidisciplinary.

As used in this part, the term multidisciplinary means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in Sec. 303.322 and development of the IFSP in Sec. 303.342.

COR Position: Add "interdisciplinary" to this section. After "involvement" add "and coordination" continue with "of two or more . . ."

Rationale: The term "interdisciplinary" is the more contemporary term that means not only the involvement by the coordination of two or more disciplines in the provision of integrated services.

Proposed Sec. 303.301: Amended by adding the substance of the note following this section regarding examples of professional and other groups and deleting the note.

COR Position: Support.

Rationale: Professional organizations, parent support groups, and advocacy associations can offer a great deal of information and support to professionals and parents in the Part C system. It is appropriate to include them in this directory.

Proposed Sec. 303.302: New section added, "Service coordination," that would incorporate the substance of the definition of "Service coordination (case management)" from Sec. 303.23.

Proposed Sec. 303.302(a)(2): New section added clarifying that a State may use or adapt an existing system and that use of the term "service coordination" is not intended to affect authority for reimbursement under Medicaid.

Proposed Sec. 303.302(d)(8): New section would include a new function for service coordinators that involves assisting families in understand the sources of financing early intervention services and how to access those sources and being knowledgeable about any potential long-term costs to families in accessing those sources.

COR Position: COR supports the above three proposed amendments and recommends that the Department clarify that discussions about finances should take place after the services are determined.

Rationale: Service coordination is a critical part of the Part C service delivery system, but one that is sometimes lacking. Discussing the cost of services before it is determined which services are appropriate could influence some parents to decline some needed services.

Proposed Sec. 303.302(d)(8): New language clarifying that States have the discretion of deciding if this new service coordination function is one that must be carried out.

COR Position: This should not be left to the discretion of the states, it should be made mandatory.

Rationale: This is so important it should be required. States that do a poor job of service coordination might be inclined to decide not to carry out this function if it is not required. States that did it well might be inclined to require it. This would be a result not in keeping with the spirit of including this new function for service coordinators.

Proposed Sec. 303.302 Service coordination.

COR Position: Add new "(d)(9): Informing families about local, state, and national parent, consumer, and professional organizations that have knowledge in the area of the child's disability or disabilities or suspected disability or disabilities."

Rationale: This will help ensure parents receive information from a variety of sources which provide a range of information and supports.

Proposed Sec. 303.321(b)(1)(ii): (Comprehensive child find system) amended by clarifying the requirement that all infants and toddlers who are eligible are identified, located, and evaluated and includes members of two specific groups, traditionally underserved groups and highly mobile groups.

COR Position: Support.

Rationale: Often these groups are overlooked and/or underserved.

Proposed Sec. 303.321 (b) Policies and procedures.

COR Position: Add "(3) Infants with hearing loss are identified through universal newborn hearing detection activities as well as follow-up with surveillance systems based on high risk indicators for children with possible delayed onset and/or progressive hearing loss.

Rationale: Numerous health-related Federal agencies and medical, educational, audiological, and advocacy organizations, including COR members, have identified universal newborn hearing screening followed by continued surveillance systems as the preferred way to identify children with hearing loss. This list of organizations includes:

- ◆ American Academy of Pediatrics
- ◆ Centers for Disease Control and Prevention
- ◆ Health Resources and Services Administration
- ◆ Joint Committee on Infant Hearing
- ◆ Marion Downs National Center
- ◆ Maternal and Child Health Bureau
- ◆ National Center on Hearing Assessment and Management
- ◆ National Institute of Health/National Institute on Deafness and Other Communication Disorders
- ◆ Office of Disease Prevention and Health Promotion

Proposed Sec. 303.321(d)(2)(ii): Amended to delete the "two-day timeline" for referrals.

COR Position: Oppose. Although the interpretation suggests that referral patterns that are significantly longer than five days would neither meet the spirit nor the requirement of the regulation nor be in the best interests of the children served, as written the proposed provision does not include any timeline at all for referral. While it may be that referrals have been taking longer than two days, that does not need to be the case. The present two day timeline merely applies to referral time. A coordinated system with appropriate procedures, agreements, and communications among parties should be able to make referrals within two days. COR believes the Department should maintain the two day time line and encourage States to improve their referral systems. The two day timeline should remain in the regulations.

Proposed Sec. 303.322(a)(i) A timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation;

COR Position: Add "interdisciplinary to "multidisciplinary."

Rationale: As stated above, the term "interdisciplinary" is the more contemporary term that means not only the involvement by the coordination of two or more disciplines in the provision of integrated services.

Proposed Sec. 303.321(c)(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

COR Position: Between "by" and "personnel" insert "qualified."

Rationale: The added language is consistent with language used in (b)(1) and (2) of this section and emphasizes the need to assure that qualified personnel conduct the evaluation and assessment of each child.

Proposed Sec. 303.322 (c)(3)(ii)(C) Communication development.

COR Position: Add "including all modes of communication"

Rationale: Communication development must take into consideration all modes that the child has been exposed to. These modes may include languages other than English, dialects, sign languages (in English or any other language), and gestures. This will ensure that skills and strengths that the child has in other modes are also assessed and taken into consideration when profiling the child and making determinations.

Proposed Sec. 303.323 Nondiscriminatory Procedures.

COR Position: Make the following changes and additions:

Rename Sec. 303.323 Nondiscriminatory Procedures to say: "Nondiscriminatory Evaluation and Assessment Procedures."

Add a new section under (a) as follows and re-letter subsequent sections:

(a) A variety of evaluation and assessment tools including standardized assessment tools and functional assessments and strategies are used to gather relevant functional and developmental information about the child.

Rationale: Adding the additional language makes Part C consistent with language in Part B regarding Evaluation Procedures and emphasizes the need to make determinations based on data from a variety of assessment tools including functional information.

Proposed Sec. 303.323(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so.

COR Position: Rename as (b) and modify to say: "Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, or, where it is different from the parents' native language or mode of communication, the native language or mode of communication of the child, unless it is not feasible to do so."

Also, add: "In this part 'not feasible to do so' means --

"(1) The public agency has made significant efforts to locate individuals qualified to administer tests and other evaluation materials in the native language of the parents or other mode of communication, or, where it is different from the parents' native language or mode of communication, the native language or mode of communication of the child, and could not locate any;

"(2) The public agency has made significant efforts to locate individuals qualified to interpret the administration of tests and other evaluation materials into the native language of the parents or other mode of communication, or, where it is different from the parents' native language or mode of communication, the native language or mode of communication of the child, and could not locate any;

"(3) The public agency continues to make significant efforts to locate individuals qualified to administer tests and other evaluation materials in the native language of the parents or other mode of communication, or, where it is different from the parents' native language or mode of communication, the native language or mode of communication of the child;

"(4) The public agency continues to make significant efforts to locate individuals qualified to interpret the administration of tests and other evaluation materials into the native language of the parents or other mode of communication, or, where it is different from the parents' native language or mode of communication, the native language or mode of communication of the child;
and

"(5) The public agency documents its efforts."

Rationale (for where the native language is different): In most situations the child's native

language is the same as that of the parents. However, in some situations, such as in that of a deaf child of hearing parents, the native language of the child – such as American Sign Language – may be different. For these children, measures that have been standardized for use for children with hearing loss and deafness should be considered.

Additionally, there are other reasons why a child may have a native language other than his or her parents'. For example, a newly adopted child from a foreign country may not yet be fluent in his or her adoptive parents' language. For a child in this situation, tests and evaluation might appropriately be given in his or her native language, or at least in some combination of his or her native language and his or her new language.

Rationale (for the definition of “not feasible to do so”): Standing alone, the meaning of this phrase is not readily apparent. COR's recommended sections (1) and (3) refer to individuals qualified to administer tests and other evaluation materials directly. Sections (2) and (4) refer to use of an interpreter. This recommended definition will help clarify that use of the appropriate language or mode of communication, either used directly by the tester or evaluator or through an interpreter, is critical. Non-use of the appropriate language or mode of communication should occur only in very rare circumstances, if ever.

COR Position: Amend the new (c) in Section 303.323 as follows: Add “,linguistically, ” between “racially” and “or.”

Rationale: Linguistics variations, if not considered, may lead to discrimination and inappropriate diagnosis and recommendations. Linguistic variations may include those modes used by children that reflect dialects, languages other than English and manual codes such as sign languages.

Proposed Sec. 303.343: Amended by changing title and revising provisions on how the evaluation results would be appropriately addressed if the persons directly involved in conducting the evaluations and assessments is unable to attend the IFSP meeting.

COR Position: Support.

Rationale: This provision will help ensure that the evaluation records are appropriately interpreted.

Sec. 303.342(a)(2): Amended by adding "Consideration of special factors" section.

COR Position: Support in concept but see next comment.

Rationale: Both Congress and the Department have recognized the importance of the inclusion of consideration of these special factors in regard to their specific populations under Part B of IDEA. However, children in these populations do not suddenly develop need for these considerations when they turn three and become eligible for Part B. These needs exist from birth on and should be addressed from that time on.

Sec. 303.342(a)(2)(iv) Consider the communication needs of the child, and, in the case of a child who is deaf or hard of hearing, consider--

(A) The appropriateness of oral stimulation and language-development activities; and

(B) Opportunities for direct communication with peers, professional personnel, and deaf adults in the child's language and communication mode, consistent with the developmental level of the child;

COR Position: Recommend replacing the above with:

“Sec. 303.342(a)(2)(iv) Consider the communication development needs of the child, and in the case of a child who is deaf or hard of hearing, consider –

“(A) The appropriate use of communication and language development methodologies including, but not limited to, spoken language, signed language, cued speech, visual-gestural, vibrotactile, auditory, and augmentative communication.

“(B) Opportunities for direct communication with peers, professional personnel, and deaf and hard of hearing adults in the child's language and communication mode as referenced in Sec. 303.342(a)(2)(iv)(A) consistent with the developmental level of the child, and full range of needs related to the child's language and communication mode or mode(s).”

Rationale: There are a variety of communication methodologies available for children who are deaf or hard of hearing. Requiring this consideration will help ensure that these children have the opportunity to use the appropriate methodology or methodologies that will help them acquire and demonstrate language and communication competence.

COR's recommendation for (B) adds “hard of hearing,” “as referenced in 303.342(a)(2)(iv)(A),” and “full range of needs related to the child's language and communication mode.” These enhance the intent of (B) and will help ensure that other considerations, such as use of role models and appropriate attention-getting techniques, are addressed.

303.342(a)(2)(v) Consider whether the child requires assistive technology devices and services.

COR Position: Add: “and re-design, adaptation, and/or modification of the environment to support the child's use of assistive technology or technologies.

Rationale: This addition addresses the concern for needed environmental adaptations of acoustics and visual factors necessary to maximize auditory, signed, and/or other visual/gestural communication.

303.342 (b) Periodic review.

COR Position: Change current (b) to (c) and insert:

“(b) Statement in IFSP. If, in considering the special factors described in paragraphs (2)(i)-(v) of this section, the IFSP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to achieve the child's IFSP outcomes, the IFSP team must include a statement to that effect in the IFSP.”

Rationale: This reflects Part B regulatory language pertaining to the “special factors considerations.” In the Notice of Proposed Rulemaking for the Part B regulations, the Department states that this was added to:

“clarify that if in considering a factor, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP. *It would be an anomalous result if an IEP team determined that a service or device was needed to address one of the statutory special factors, and that service or device were not included in the child's IEP.*” (62 Fed. Reg. 55041 (October 22, 1997)) (emphasis added)

Similarly, it would be anomalous for the IFSP to determine that a service or device was needed to address one (or more) of the special factors, and that service or device was not included in the IFSP.

Proposed Sec. 303.360 Comprehensive System of Personnel Development (CSPD).

COR Position: COR supports the use of Part B standards but recommends that Part C language be maintained as well.

Rationale: Part C language maintains and enhances the critical role of the family.

Proposed Sec. 303.360 Comprehensive system of personnel development.

COR believes there is a shortage of qualified early intervention personnel that needs to be addressed through the CSPD requirements in this part. COR encourages the Department to take further steps to recruit and train, and if necessary, re-train current service providers in order to meet the needs of deaf and hard of hearing infants and toddlers and their families. As mentioned in the Introduction of these Comments, until recently the average age of identification of a child with hearing loss was two and a half. With the establishment of newborn hearing screening systems, this age has been lowered significantly in many geographic areas of the country. However, many of the systems of early intervention service provision to these children and their families have not expanded to meet the demand. Further, as mentioned in COR's comments on Sec. 303.12, teachers of the deaf must be included as qualified providers. A greater number of pediatric audiologists, speech-language pathologists, and teachers of the deaf and hard of hearing are necessary to meet the increasing demand.

COR believes that the comprehensive system of personnel (CSPD) provisions in the IDEA Parts B and C regulations should be consistent to each other, with the emphasis being on early intervention services in the Part C regulations. Due to the growing need for qualified early intervention personnel we need to not only ensure an adequate supply of qualified personnel, but also to identify the improvement strategies to be implemented to address the identified needs for in-service and pre-service preparation of these personnel who work with infants and toddlers.

Therefore, COR supports the inclusion of similar provisions on ensuring an adequate supply of qualified personnel and improvement strategies, including the need to recruit, prepare and retain qualified personnel from groups that are underrepresented in the fields special education, related services, and regular education. At the same time, it is important to retain essential elements currently in Part C including the emphasis on training qualified personnel to work with families, the critical role of family involvement, and the provision of transition services in this program.

Proposed Sec. 303.361 Personnel standards.

COR Position: Make the following additions and modifications.

Re-number the existing (f) to (f)(1) and modify to say

“(f)(1): A State may allow paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy to be used to assist in the provision of early intervention services to eligible children under this part.”

Add the following sections under 303.361 as (f)(2)(3) and (4):

“(f)(2):An appropriately trained and supervised paraprofessional is an individual who:

“(i) performs specific routine tasks to assist qualified personnel who provide early intervention services to eligible children;

“(ii) has training as necessary to perform such tasks; and (iii) performs specific routine tasks delegated by and under the supervision of a qualified provider of early intervention services, who meets the highest requirements in the State for the profession or discipline in which services are being provided, consistent with paragraphs a-e of this section.

“(f)(3):An appropriately trained and supervised assistant is an individual who:

“(i) performs specific activities that assist qualified personnel in the provision of early intervention services to eligible children;

“(ii) obtains formal, post-secondary training in the area in which he/she will be providing early intervention services from a degree granting institution accredited by an agency recognized by the U.S. Department of Education;

“(iii) is appropriately qualified under the definition at Section 303.22 see recommended language for a new section 303.22; and

“(iv) performs specific activities while working under the direction and supervision of a qualified provider of early intervention services, who meets the highest requirements in the State for the profession or discipline in which services are being provided, consistent with paragraphs a-e of this section.

“(f)(4): The State must have information on file with the Secretary that demonstrates that the State has laws, regulations, or written policies related to the training, use, and supervision of paraprofessionals and assistants. State laws, regulations, or written policies related to the training, use, and supervision of paraprofessionals and assistants must include

“(i) a scope of responsibilities for paraprofessionals and a scope of responsibilities for assistants, including tasks or activities both permitted and prohibited;

“(ii) restrictions on the number of paraprofessionals and the number of assistants who may be supervised by a qualified professional at one time;

“(iii) the amount of direct, onsite supervision that must be provided to paraprofessionals and to assistants;

“(iv) specific limitations on the utilization of paraprofessionals and assistants to make any independent, professional-level decisions (e.g., conducting evaluations, providing counseling, making IFSP recommendations), or otherwise act as fully qualified personnel;

“(v) provisions indicating that qualified personnel who supervise paraprofessionals and assistants have ultimate responsibility and liability for actions taken and tasks or activities performed by these personnel; and

“(vi) provisions indicating that parents of children with disabilities be notified when services are provided by a paraprofessional or assistant, and be notified that qualified personnel supervising paraprofessionals or assistants are responsible for all tasks and activities carried out by such paraprofessionals or assistants.”

Re-number the existing (g)(2) to (g)(3) and (g)(3) to (g)(4) as follows:

“(g)(3) If a State has reached its established timelines in paragraph (c) of this section, the State may still exercise the option under paragraph (g)(1) of this section for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the State.

“(g)(4)(i) Each State must have a mechanism for serving eligible children under this part if the need for early intervention services exceeds appropriate professional requirements in the State for a specific profession or discipline.

“(ii) A State that continues to experience shortages of qualified personnel must address those shortages in its comprehensive system of personnel development under Sec. 303.361.”

Add the following sections under 303.361 as (g)(2).

“(g)(2) If a State chooses to adopt a policy for waiving the requirements for employment of personnel who meet the highest requirements in the State for a profession or discipline, this policy must be on file with the Secretary and ensure that:

“(i) A "geographic area of the State" is defined as an area that contains no more than one local education agency.

“(ii) As a "good faith effort," the State has established, implemented, and maintained outreach and recruitment measures to broaden candidate pools to include external geographical areas and personnel sources from which hiring decisions are made to include fully qualified personnel who meet the personnel standards at Section 303.361(a) and (b); and has documented the recruitment methods used.

“(iii) For an area of the State to be eligible as a "geographic area where there is a shortage," the area must be able to document the existence of vacant, funded positions in a specific profession or discipline, the duration of such vacant positions, and the number of waivers granted, despite engaging in good faith efforts to recruit, hire, or contract with qualified personnel, as indicated in (ii) above. Eligibility as a "geographic area where there is a shortage" must be made on a position-by-position basis, renewed annually, subject to public comment, and reported to the Secretary on an annual basis.

“(iv) A State petitioning under this part report to the Secretary with a written description on the consideration of the cumulative effects of such action on children with disabilities and their families to assure that, on the whole, children with disabilities are served by qualified personnel, as defined in Section 303.22.

“(v) For persons to be considered the "most qualified individuals available," they must, at a minimum, hold an academic degree from a post-secondary degree-granting institution, be enrolled in an academic program leading to an entry-level degree in the profession or discipline in which they are providing services, and be making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraph (b)(1). These allowances must be made on a case-by-case basis.

“(vi) Use of the "most qualified individuals available" is consistent with State law governing the specific profession or discipline.

“(vii) Such individuals described in (v) above are eligible for employment under this part for one three-year time frame. The three-year limit cannot be exceeded through renewal, extension, or reapplication.

“(viii) Such individuals described in (v) above are supervised by personnel who meet appropriate professional requirements in the State as defined in Sec. 303.361(a).

Rationale: The provisions for utilizing paraprofessionals and assistants are a new concept included in IDEA. There is no previous legislative or regulatory history that has defined paraprofessionals and assistants or indicated the manner in which they should or should not be used to provide early intervention services under IDEA. Therefore, COR strongly believes that the Department of Education must provide the initial guidance necessary to ensure that, as Federal funds are used to implement the provision for utilization of paraprofessionals and assistants, there is at least a minimum framework for States to use in developing policies related to such personnel.

As consumer and professional organizations, COR members receive frequent reports of families' experiences and concerns regarding services by unqualified and/or unsupervised paraprofessionals and assistants. Clarification is needed in this area to ensure that children and families receive services from appropriately trained and supervised personnel. As written, the proposed regulations provide insufficient guidance in this area.

COR supports the extensive comments submitted by the American Speech-Language-Hearing Association on this topic and refers the Department to those comments for further support.

Proposed Sec. 303.401(a): (Definition of consent) amended by adding a new paragraph to provide that if a parent revokes consent, that revocation is not retroactive.

COR Position: COR asks for clarification on how this applies to consent for use of insurance. For example, if the parent receives approval from their HMO for a given number of service sessions for the child and the parent changes their mind about using their insurance to pay for those services, is the public agency still authorized to use the insurance payments for the child? The Department should clarify that consent should be revocable in this type of situation.

Rationale: Provides greater clarity.

Proposed Sec. 303.401(b) Native language, if used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

COR Position: Adopt the Part B definition of native language:

“(a) As used in this part, the term *native language*, if used with reference to an individual of limited English proficiency, means the following:

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

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

“(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).” (34 C.F.R. §300.19)

Rationale: Provides greater clarity.

Proposed Sec. 303.425(c) This section does not apply if a child is transitioning from early intervention services under this part to preschool services under Part B of the Act.

COR Position: Oppose.

Rationale: Part B services may be inadequate to meet the needs of the child, yet the parent will be forced to accept those services for their child.

Proposed Sec. 303.520 System of payments.

COR Position: While COR does not have specific recommendations in this area, COR would like to bring to the Department’s attention the difficulty parents of newly identified deaf and hard of hearing children have in paying for hearing aids for their children. COR member organizations receive calls routinely from parents seeking assistance so that they may be able to purchase hearing aids for their child. Many early intervention programs do not pay this cost, or if they do, it is only on behalf of very low-income individuals. If children are identified with hearing loss but don’t have access to assistive technology that may help mitigate the effects of the hearing loss for many of them, the efficacy of these programs may ultimately be in doubt. Hearing aids, which may cost up to \$4000 to \$6000 per pair, must be made available to all children with hearing loss for whom they are appropriate. State payment systems must ensure there are no financial barriers for families attempting to acquire this technology for their children.

Proposed Sec. 303.520(d)(5): States that a fee scale established by a State for early intervention services can not take into account whether or not a family has insurance.

COR Position: Support.

Rationale: Families should not be penalized for having insurance.

Attachment: "Educational Rights for Children Who Are Deaf or Hard of Hearing"

