Administrative Record for 8.9.8 NMAC Amendment

FIT Program

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Volume: XXXII **Issue:** 14 **Publication date:** July 20, 2021 **Number of pages:** 26 **(ALD Use Only) Sequence No.**

Issuing agency name and address: Early Childhood Education and Care Department

Agency DFA code: 611

Contact person's name: Tracy Kliphuis

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Type of rule action:

New [X] Amendment [ ] Repeal [ ] Emergency [ ] Renumber [ ]

(ALD Use Only) Most recent filing date:

Title number: 8

Title name: Social Services

Chapter number: 9

Chapter name: Early Childhood Education and Care

Part number: 8

Part name: Requirements for Family Infant Toddler Early Intervention

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Yes [ ] No [X]

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes [ ] No [ ] Public domain [ ]

Specific statutory or other authority authorizing rulemaking:

Subsection E of Section 9-29-6 NMSA 1978

Notice date(s): April 20, 2021

Hearing date(s): May 25, 2021

Rule adoption date: June 29, 2021

Rule effective date: July 20, 2021

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- **Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;**
- **Reasons for any change between the published proposed rule and the final rule; and**
- **Reasons for not accepting substantive arguments made through public comment.**

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of this rule is to promulgate new regulations for the Early Childhood Education and Care Department's Family Infant Toddler Program. A version of these regulations was previously found at 7.30.8 NMAC and those rules will be withdrawn once 8.9.8 NMAC becomes effective on July 7, 2021.

Based on public comments, ECECD made three changes from the original proposed amendments to 8.9.8 NMAC.

8.9.8.3 is changed to read: "Section 9-29-6 NMSA 1978." This is an update of ECECD's statutory rulemaking authority.

8.9.8.9(H)(1) (NMAC) is changed to read: "Early intervention provider agencies shall ensure that developmental specialists and all other direct providers of early intervention (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision." ECECD added further clarification concerning early intervention service personnel who are to receive reflective supervision in order to ensure that all applicable personnel receive this necessary component.

8.9.8.10(F)(12) NMAC is changed to read: "Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFSP team, with prior consultation with the evaluation team." This is a correction of a typographical error, "IFPS" corrected to "IFSP."

8.9.8.10(G)(4)(c)(ii) NMAC is changed to read: "perinatal factors, including prematurity (less than 35 weeks and more than 28 completed weeks gestation) or small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;" ECECD proposes to clarify eligibility for children under the biological or medical risk for developmental delay who are born premature (less than 35 weeks) and have more than 28 completed weeks, or are small for their gestational age (less than 1750 grams). The clarification is necessary to ensure that there is no gap in coverage.

Reasons for not accepting substantive arguments made through public comment: See attached document.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name: Elizabeth Groginsky

Check if authority has been delegated ☐

Title: Cabinet Secretary, ECECD

Signature: **(BLACK ink only)**

Date signed: June 29, 2021

ECECD Comment Summary for Transmittal Form 6.11.2021

Written Comments in Support of Proposed Rule Making, submitted prior to the May 5, 2021 public hearing.

Randi Malach, Program Director, Abrazos Family Support Services

Comment 1:

8.9.8.7(P)(6)

"Recommendations for Changes to the FIT Regulations - Submitted May 12, 2021

P. Definitions beginning with the letter "P"

Comment: Physical/motor development also includes "sensory motor" development.

Recommend: Add the words "sensory motor".

Department's response: ECECD appreciates this comment and will take all suggestions into consideration when proposing additional regulations changes in the future. At this time, however, ECECD will not adopt this recommendation as gross and fine motor development encompass sensory motor development and the definition is complete as is.

Randi Malach, Program Director, Abrazos Family Support Services

Comment 2:

8.9.8.7(P)(6) "Physical/motor development" means the progressive changes to a child's vision, hearing, gross and fine motor development, sensory motor, quality of movement, and health status.

H. Supervision of early intervention personnel providing direct services.

Comment: This part in the regulations that refers to reflective supervision in specific is not consistent with what is written in the FIT Definitions and Standards. It is also not consistent with references to "supervision" in other parts of the regulations. Subcontractors are "independent contractors" not staff and therefore should be responsible for obtaining supervision consistent with the requirements of their licensing and regulatory boards for their disciplines.

Recommend: Change the wording to be consistent with the wording in the FIT Service Definitions and standards as seen below.

Current wording: H. Supervision of early intervention personnel.

(1) Early intervention provider agencies shall ensure that developmental specialists and therapists (employees and subcontractors) and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

Recommend change in wording to read: *Developmental Specialists, including sub-contractors, must receive reflective supervision at least once a month. Sub-contractors must find their own supervision, if the agency does not provide this for them. Supervision of therapists and other early intervention personnel is provided according to their licensing board's requirements*

Department's response: ECECD appreciates this comment and will take all suggestions into consideration when proposing additional regulations changes in the future. At this time, however, ECECD will not adopt this recommendation as gross and fine motor development encompass sensory motor development and the definition is complete as is.

Randi Malach, Program Director, Abrazos Family Support Services

Comment 3: 8.9.8.10(F)

F. Evaluation

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

Comment: The "evaluation team" is not responsible for giving Prior Written Notice to families in any other part of the regulations.

Recommend: Replacing the words "evaluation team" with the words "Family Service Coordinator"

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the Family Service Coordinator evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

F: Evaluation
13)] (12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS team, with prior consultation with the evaluation team.
Comment: IFSP is spelled IFPS and needs to be corrected
Recommend: Correction [(13)] (12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS IFSP team, with prior consultation with the evaluation team."

Department's response: ECECD appreciates this comment and will adopt this recommendation as follows:

8.9.8.10 (F)

(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFSP team, with prior consultation with the evaluation team.

ECECD will not adopt the recommendation to replace "evaluation team" with "family service coordinator" as the evaluation team includes the family service coordinator. The regulation as written ensures that the family receives prior written notice.

House Republican Caucus Staff submission

Comment:
It is our pleasure to offer the following comments regarding the department's proposed rulemaking impacting the Family Infant Toddler (FIT) program.

As we review these proposed regulations, the one glaring shortcoming we see is the lack of provisions aligning the FIT program's eligibility with the federal guidelines of birth to four years of age. Considering recent changes have been made to increase age eligibility for child care assistance and "coming soon" changes to age eligibility for home visiting, we believe now is the perfect time to increase the FIT program's eligibility from three years of age to four. Such an increase in age would be a perfect complement to the statewide effort of ensuring every New Mexican child has flexibility and access to high quality early childhood experiences that are family focused and based on their individual needs.

By extending the FIT program to four year olds, it would provide health and developmentally appropriate early intervention options for these vulnerable children whose health and developmental needs make remaining on an Individualized Family Service Plan ideal. That extra year with least restrictive, most inclusive services can set the path for success at PreK and through their time in K-12. To the contrary, keeping the age eligibility lower than what the federal guidance recommends takes away choice from families and clinicians when determining treatment plans for young children with special health and developmental needs.

Further, this ability to extend the option of these vital services to eligible children prior to them starting Kindergarten would seem to be especially important in rural New Mexico where early intervention programs may be limited. Children who are medically fragile or have sensory integration issues are negatively impacted from long hours on multiple daily bus routes, yet FIT programs can be provided in the home. Providing flexibility for FIT's services for one additional year simply allows the child's heath and developmental needs to remain the focus of Individual Family Service Plans.

Thank you for considering our comments and we look forward to working with you in the future to ensure all New Mexico children have the best opportunities possible to reach their fullest potential.

Department's response: ECECD appreciates this comment and will consider adopting this recommendation in the future. At this time, ECECD's federal grant under Part C of the application only covers from birth to 3rd birthday, and the state would have to apply for extended Part C benefits. ECECD's policy and practice currently meets the federal guidance for determining family eligibility and aligns with the federal guidelines. ECECD would be amenable to convening a cross-agency work group with PED and members of the Interagency Coordinating Council (ICC) to address this recommendation and propose next steps.

en Brown:
"To Whom It May Concern,

I have reviewed the proposed revisions to the NM FIT Program rules and am submitting the attached comments and recommendations. Thank you for your consideration.

Comment 1: "- Page 8 **8.9.8.9 PERSONNEL**

A.(2) As it is currently written, this implies that folks from other disciplines CAN be certified as a DS even if they rarely function in that capacity. Suggest that language be revised to state: *"Individuals who hold of professional license or certificate from an approved field as identified in this rule, and provide services in that disciplines SHALL NOT be certified as a Developmental Specialist UNLESS they directly supervise Developmental Specialists or they spend sixty percent or more of their time employed in the role of developmental specialist...."*

Department's response: ECECD appreciates this comment, but does not propose adopting this recommendation at this time. ECECD's current regulations provide clarity while also providing the necessary flexibility for Developmental Specialists. 60% granular.

Jen Brown

Comment 2: "- Page 11

8.9.8.10 CHILD IDENTIFICATION

G.(3) As it is currently written, this eliminates the possibility of teams using a domain-specific tool to support the eligibility process which is in direct conflict with F.(7) earlier in the rule. In addition, the domain-specific tools are the only tools that would potentially yield a Standard Deviation score which is included as a method for eligibility determination. Suggest that the language be revised to state: *"Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) and/or domain-specific tools are not able to establish developmental delay."*

Department's response: ECECD appreciates this comment, but does not propose adopting this recommendation at this time. ECECD's current regulations provide clarity while also providing the necessary flexibility to use an array of domain specific tools to identify developmental delays as part of the eligibility process.

Jen Brown

Comment 3:

- Pages 17-19

8.9.8.12 SERVICE DELIVERY

A.(c) As it is currently written, this description does not fully encompass the full role of the Developmental Specialist, especially in comparison to other direct service providers such as therapists. I feel that the descriptions of direct service providers need to more aligned in these rules as the approach to supporting the family and certain tasks are the same across all disciplines. See suggested language changes for various disciplines below:

A.(c) Developmental instruction: those services that address the functional needs of the child across all developmental domains (cognitive, communication, physical/motor, vision, hearing, social or emotional and adaptive). Developmental instruction includes identification, assessment, and intervention; adaptation of the environment and selection of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Developmental instruction is provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(j) Occupational therapy services: those services that address the functional needs of ta child related to adaptive development, adaptive behaviors and play, and sensory, motor and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of the initial or future impairment, delay in development, or loss of functional ability. Occupational therapy is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Occupational therapy services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(k) Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems. Physical therapy is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Physical therapy services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(o) Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills. Speech and language pathology is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Speech and language pathology services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

Department's response: ECECD appreciates this comment, but does not propose adopting this recommendation at this time. ECECD's current regulations provide clarity while also providing the necessary flexibility for Developmental Specialists.

Jen Brown

Comment 4: "- pages 19-21 **8.9.8.13 TRANSITION**

The majority of the transition section is written as if all of the steps that are ONLY required for children being referred to Part B services are required for EVERY child in FIT. I would like to see significant changes in the language in this section to more accurately reflect the differences in the process of transition for children who are referred to Part B (with its own unique set of requirements under IDEA) versus those children who are not referred to Part B. Please see suggested language changes below:

C.(i) ***For a child referred to the LEA,*** a confirmation that the referral information has been transmitted...

D. Referral to the LEA ~~**and other preschool programs**~~ (this language was removed because this process is ONLY followed for a referral to the LEA; it has no bearing on a referral to other preschool programs)

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to ***all potential preschool programs, including the LEA if a referral has been made***, at least 30 days prior to the transition conference

F. Transition assessment summary:

(1) ***For a child referred to the LEA,*** the family service coordinator shall....

G.(7)(c) a review of the current IFSP ***and any other relevant information; and for a child referred to the LEA, a review of the assessment summary***

G.(7)(e) ***For a child referred to the LEA,*** an explanation by an LEA representative ..."

Department's response: ECECD appreciates this comment but does not propose adopting this recommendation at this time. ECECD's current regulations provide clarity while also providing the necessary flexibility for transition planning. Transition planning is required for all children and will vary depending on the child's circumstances.

Oral Comments Received during the 8.9.8 NMAC FIT Public Hearing Tuesday, May 25, 2021

Karen Lucero, Inspirations Early Intervention, Inc:

Comment: "I am the director of an early intervention program in Albuquerque, and I participate regularly in comprehensive multi-developmental evaluations, as well as annual evaluations to determine eligibility. And our concern is that sometimes the FIT approved tool, and some of the supplementary tools, don't show a definite delay for one reason or another. And we are able to do some standardized tools in specific domains, such as the preschool language scale or the Peabody Developmental Motor Skills, the Alberta Infant Motor Scale, the Receptive-Expressive Emergent Language scale, and there are many others that the individual professions use. They don't always report their scores in standard deviations. And there is some, sometimes some difficulty converting the scores if the test protocol doesn't give an actual conversion table. But most tests do have, do convert their scores to percentile rank. And my proposal is to add this measure as a measure that could be used in determining eligibility.

Below the 10th percentile, would be roughly equivalent to 1.5 standard deviations below the mean. So that is my proposal to amend the proposed regulations, and I did put that in writing in email to you. Do you have any questions? Okay, thank you very much for giving me the time. And I will stay on, to hear what others have to say."

Department's response: ECECD appreciates this comment but does not propose adopting the recommendation. **ECECD's current regulations provide clarity while also providing the necessary flexibility to use an array of domain specific tools to identify developmental delays as part of the eligibility process.** A child may be found eligible using Informed Clinical Opinion if a tool does not show a percentage of delay or standard deviation.

Karen Lucero, Inspirations Early Intervention, Inc:
Comment: "Okay, I would propose that under Personnel. This is page 12 of the proposed documents under H number 1, under Supervision. That it should instead of, I got off my page somehow here sorry. Okay, under Personnel number H. It reads, 'Supervision of early intervention personnel providing direct services.' That's fine. Then, number (1), it says, 'early intervention provider agencies shall ensure that developmental specialists and therapists, employees and subcontractors, and family service coordinators receive monthly planned and ongoing reflective supervision.' I would propose that that reads, instead of 'and therapists' to put in 'an all other direct providers of early intervention'. This is because therapists doesn't include all of the types of personnel that are listed that can provide early intervention services. So I think that statement should be broader, and I will send this by email also so that you have it in writing. I think 'and therapists' is it clear enough, because there are a number of different therapists, and pathologists, dietitians, nurses, social workers, that wouldn't fall under the 'and therapists' addition. Okay, so I will submit that in writing also. Thank you."

Department's response: ECECD appreciates this comment and proposes to adopt this recommendation as follows:
8.9.8.9 H (1) (NMAC):
"(1) Early intervention provider agencies shall ensure that developmental specialists and all other direct providers of early intervention (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision."

Karen Lucero, Inspirations Early Intervention, Inc:
Comment: "Okay, and I just submitted this in writing also. I was looking at the eligibility categories under established condition and bio-medical risk. And they designate a gestational age as a risk factor and also as an eligibility condition. It looks like we left out or left a gap between 28 and 29 weeks. So, I would suggest that under the section C, biological or medical risk for developmental delay. This is under G number (4) C and number (2). It says perinatal factors including prematurity less than 35 weeks and more than 29 weeks gestation. I think we should change that to be more than 28 weeks. The way it reads now under established condition, you have to be 28 weeks or less to be established condition. So, if you're more than 28 weeks that could fall under biological, medical risk. So if it read between 35, or 35 weeks and more than 28 weeks or small for gestational age, and then leave it as it is, but otherwise we have children left on between 28 and 29 weeks but don't qualify at all. So thank you."

Department's response: ECECD appreciates this comment and plans to adopt this recommendation as follows:
8.9.8.10 G Eligibility (4) (c) (ii):

"perinatal factors, including prematurity (less than 35 weeks and more than 28 completed weeks gestation) or small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;"

Written Comments Submitted during the May 25, 2021 Public Hearing

Karen Lucero, Inspirations Early Intervention, Inc:
Comment 1:

1) "I am suggesting that the proposed regulations be amended to read as follows:

Personnel 8.9
H. (1) Early intervention provider agencies shall ensure that developmental specialists and all others providing direct early intervention services (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

This addition would ensure that all providers of direct early intervention services had access to appropriate reflective supervision as members of transdisciplinary teams. The wording "and therapists" would not include social workers, dietitians, nurses, speech language pathologists, and possibly counselors.
Thank you for your consideration. I appreciate the opportunity for comment."

Department's response: ECECD appreciates this comment and proposes to adopt this recommendation as follows:
8.9.8.9 H (1) (NMAC):

"(1) Early intervention provider agencies shall ensure that developmental specialists and all other direct providers of early intervention (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision."

Karen Lucero, Inspirations Early Intervention, Inc:
Comment 2: "I found a typo in the Child Identification Section, under Evaluation F.:

8.10 Child Identification
F. Evaluation
(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS team IFSP team, with prior consultation with the evaluation team.

This should replace IFPS as written."

Department's response: ECECD appreciates this comment and proposes to adopt this recommendation as follows:

8.9.8.10 (F) "(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFSP team, with prior consultation with the evaluation team."

Karen Lucero, Inspirations Early Intervention, Inc:
Comment 3: "Also under Child Identifications, G. Eligibility:

There is a gap between the ages of prematurity designations for established condition and at risk biological/medical. Children who are born between 28 weeks and 29 weeks are not included, so would not qualify in either category.

I would suggest that G.(4) c. ii read:

(ii) perinatal factors, including prematurity (less than [32] 35 weeks and more than 28 weeks gestation) [or] small for gestational age (less than [1500] 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;"
ECECD appreciates this comment and proposes to adopt this recommendation as follows:
8.9.8.9 G Eligibility (4) (c) (ii)

Department's response: ECECD appreciates this comment and proposes to adopt this recommendation as follows:
8.9.8.10 G Eligibility (4) (c) (ii):
"perinatal factors, including prematurity (less than 35 weeks and more than 28 completed weeks gestation) or small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;"

Department Responses to Additional Comments Submitted in Opposition or Requesting Additional Regulation Changes:

None received

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

8.9.8.1 ISSUING AGENCY: Early Childhood Education and Care Department (ECECD)
[8.9.8.1 NMAC - N, 7/20/2021]

8.9.8.2 SCOPE: These regulations apply to all entities in New Mexico providing early intervention services to eligible children birth to three years of age and their families.
[8.9.8.2 NMAC - N, 7/20/2021]

8.9.8.3 STATUTORY AUTHORITY: Subsection E of Section 9-29-6 NMSA 1978.
[8.9.8.3 NMAC - N, 7/20/2021]

8.9.8.4 DURATION: Permanent
[8.9.8.4 NMAC - N, 7/20/2021]

8.9.8.5 EFFECTIVE DATE: July 7, 2021, unless a later date is cited at the end of a section.
[8.9.8.5 NMAC - N, 7/20/2021]

8.9.8.6 OBJECTIVE: These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act.
[8.9.8.6 NMAC - N, 7/20/2021]

8.9.8.7 DEFINITIONS:

A. Definitions beginning with the letter "A":

(1) "Adaptive development" means the development of self-help skills, such as eating, dressing, and toileting.

(2) "Adjusted age (corrected age)" means adjusting / correcting the child's age for children born prematurely (i.e. born less than 37 weeks gestation). The adjusted age is calculated by subtracting the number of weeks the child was born before 40 weeks of gestation from their chronological age. Adjusted Age (Corrected Age) should be used until the child is 24 months of age.

(3) "Assessment" means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility for FIT services. Assessment includes observations of the child in natural settings, use of assessment tools, informed clinical opinion, and interviews with family members. Assessment includes ongoing identification of the concerns, priorities, and resources of the family.

B. Definitions beginning with the letter "B": "Biological/medical risk" means diagnosed medical conditions that increase the risk of developmental delays and disabilities in young children.

C. Definitions beginning with the letter "C":

(1) "Child find" means activities and procedures to locate, identify, screen and refer children from birth to three years of age with or at risk of having a developmental delay or developmental disabilities.

(2) "Child record" means the early intervention records (including electronic records) maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other materials that contain information directly related to a child and family, and are maintained by the early intervention provider agency. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

(3) "Cognitive development" means the progressive changes in a child's thinking processes affecting perception, memory, judgment, understanding and reasoning.

(4) "Communication development" means the progressive acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive language, including spoken,

non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

(5) **"Confidentiality"** means protection of the family's right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

(6) **"Consent"** means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

D. Definitions beginning with the letter "D":

(1) **"Days"** means calendar days, unless otherwise indicated in these regulations.

(2) **"Developmental delay"** means an evaluated discrepancy between chronological age and developmental age of twenty-five percent, after correction for prematurity, in one or more of the following areas of development: cognitive, communication, physical/motor, social or emotional, and adaptive.

(3) **"Developmental specialist"** means an individual who meets the criteria established in these regulations and is certified to provide 'developmental instruction'. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual's level of certification as defined in early childhood education and care department, family support and early intervention division policy and service standards.

(4) **"Dispute resolution process"** means the array of formal and informal options available to parents and providers for resolving disputes related to the provision of early intervention services and the system responsible for the delivery of those services.

(5) **"Due process hearing"** means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

(6) **"Duration"** means the length of time that services included in the IFSP will be delivered.

E. Definitions beginning with the letter "E":

(1) **"Early intervention services"** means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development, as identified by the IFSP team. (Early intervention services are described in detail in the service delivery provisions of this rule.)

(2) **"ECO (early childhood outcomes)"** means the process of determining the child's development compared to typically developing children of the same age. The information is used to measure the child's developmental progress over time.

(3) **"Eligible children"** means children birth to three years of age who reside in the state and who meet the eligibility criteria within this rule.

(4) **"Environmental risk"** means the presence of adverse family factors in the child's environment that increases the risk of developmental delays and disabilities in young children.

(5) **"Established condition"** means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay or disability.

(6) **"Evaluation"** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility for FIT services. It includes a review of records pertinent to the child's current health status and medical history; parent interview and parent report; observation of the child in natural settings; informed clinical opinion; use of FIT Program approved assessment tool(s); and identification of the level of functioning of the child in each developmental area -- cognitive, communication, physical/motor (including vision and hearing), social or emotional, and adaptive. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for FIT services.

F. Definitions beginning with the letter "F:

(1) **"Family"** means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

(2) **"Family infant toddler (FIT) program"** means the program within state government that administers New Mexico's early intervention system for children (from birth to age three) who have or are at risk for developmental delay or disability and their families. The FIT program is established in accordance with 28-18-1 NMSA, 1978, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), Part C as amended, and other applicable state and federal statutes and regulations.

(3) **"Family service coordinator"** means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial family service coordinator assists the family with intake activities such as eligibility determination and development of an initial individualized family service plan (IFSP) The ongoing family service coordinator is selected at the initial IFSP meeting and designated on the IFSP form.

(4) **"FIT-KIDS (key information data system)"** means the online data collection and billing system utilized by the FIT program.

(5) **"Frequency"** means the number of times that a service is provided or an event occurs within a specified period.

G. Definitions beginning with the letter "G": [Reserved]

H. Definitions beginning with the letter "H":

(1) **"Head start/early head start"** means a comprehensive child development program for children of low income families established under the Head Start Act, as amended.

(2) **"Homeless"** means lacking a fixed, regular, and adequate nighttime residence.

I. Definitions beginning with the letter "I":

(1) **"IFSP team"** means the persons responsible for developing, reviewing the IFSP. The team shall include the parent(s), the family service coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, an advocate or other persons, including family members, as requested by the family.

(2) **"Inclusive setting"** means a setting where the child with a developmental delay or disability participates in a setting with typically developing children. A classroom in an early head start, child care or preschool classroom must have at least fifty-one percent non disabled peers in order to be considered an inclusive setting.

(3) **"Indian tribe"** means any federal or state recognized Indian tribe.

(4) **"Individualized education program (IEP)"** means a written plan developed with input from the parents that specifies goals for the child and the special education and related services and supplementary aids and services to be provided through the public school system under IDEA Part B.

(5) **"Individualized family service plan (IFSP)"** means the written plan for providing early intervention services to an eligible child and the child's family. The plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around outcomes and includes strategies to enhance the family's capacity to meet the developmental needs of the eligible child.

(6) **"Individualized family service plan process (IFSP process)"** means a process that occurs from the time of referral, development of the IFSP, implementation of early intervention services, review of the IFSP, through transition. The family service coordinator facilitates the IFSP process.

(7) **"Individuals with Disabilities Education Act (IDEA) – Part C"** means the federal law that contains requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled "The Early Intervention Program for Infants and Toddlers with Disabilities".

(8) **"Informed clinical opinion"** means the knowledgeable perceptions of the evaluation team who use qualitative and quantitative information regarding aspects of a child's development that are difficult to measure in order to make a decision about the child's eligibility for the FIT program.

(9) **"Intensity"** means the length of time the service is provided during each session.

(10) **"Interim IFSP"** means an IFSP that is developed prior to the completion of the evaluation and assessments in order to provide early intervention services that have been determined to be needed immediately by the child and the child's family. Use of an Interim IFSP does not extend the 45-day timeline for completion of the evaluation process.

J. Definitions beginning with the letter "J": [Reserved]

K. Definitions beginning with the letter "K": [Reserved]

L. Definitions beginning with the letter "L":

(1) **"Lead agency"** means the agency responsible for administering early intervention services under the Individuals with Disabilities Education Act (IDEA) Part C. The early childhood education and

care department, family infant toddler (FIT) program, is designated as the lead agency for IDEA Part C in New Mexico.

(2) **"Local education agency (LEA)"** means the local public school district.

(3) **"Location"** means the places in which early intervention services are delivered.

M. Definitions beginning with the letter "M":

(1) **"Mediation"** means a method of dispute resolution that is conducted by an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute.

(2) **"Medicaid"** means the federal medical assistance program under Title XIX of the Social Security Act. This program provides reimbursement for some services delivered by early intervention provider agencies to medicaid-eligible children.

(3) **"Method"** means the way in which a specific early intervention service is delivered. Examples include group and individual services.

(4) **"Multidisciplinary"** means personnel from more than one discipline who work with the child and family, and who coordinate with other members of the team.

N. Definitions beginning with the letter "N":

(1) **"Native language"** with respect to an individual who is limited English proficient, means the language normally used by a child or their parent(s) or mode of communication normally used by a child or their parents. Native language when used with respect to evaluations and assessments is the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment. Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(2) **"Natural environments"** means places that are natural or normal for children of the same age who have no apparent developmental delay, including the home, community and inclusive early childhood settings. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family's typical daily routine and lifestyle.

O. Definitions beginning with the letter "O":

(1) **"Other services"** means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Examples include, but are not limited to, child care, play groups, home visiting, early head start, WIC, etc.

(2) **"Outcome"** means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services that are documented on the IFSP.

P. Definitions beginning with the letter "P":

(1) **"Parent(s)"** means a biological or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents' authority to make the decisions required of parents has been removed under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Federal Individual with Disabilities Education Act; and has no interest that would conflict with the interests of the child.

(2) **"Participating agency"** means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of this rule with respect to a particular child.

(3) **"Permission"** means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

(4) **"Personally identifiable information"** means that information in any form which includes the names of the child or family members, the child's or family's address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it possible to identify the child or the family.

(5) **"Personnel"** means qualified staff and contractors who provide early intervention services, and who have met state approved or recognized certification or licensing requirements that apply to the area in which they are conducting evaluations, assessments or providing early intervention services.

(6) **"Physical/motor development"** means the progressive changes to a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

(7) **"Primary referral source"** means parents, physicians, hospitals and public health facilities (including prenatal and postnatal care facilities), child care programs, home visiting providers, schools, local education agencies, public health care providers, children's medical services, public agencies and staff in the child welfare system (including child protective service and foster care), other public health or social services agencies, early head start, homeless family shelters, domestic violence shelters and agencies, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

(8) **"Prior written notice"** means written notice given to the parents a reasonable time before the early intervention provider agency, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

(9) **"Procedural safeguards"** means the requirements set forth by IDEA, as amended, which specify families' rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

(10) **"Provider agency"** means a provider that meets the requirements established for early intervention services, and has been certified as a provider of early intervention services by the early childhood education and care department and that provides services through a provider agreement with the department.

(11) **"Public agency"** means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention services to eligible children and their families.

Q. Definitions beginning with the letter "Q": [Reserved]

R. Definitions beginning with the letter "R":

(1) **"Referral"** means the process of informing the FIT program regarding a child who may benefit from early intervention, and giving basic contact information regarding the family.

(2) **"Reflective supervision"** means planned time to provide a respectful, understanding and thoughtful atmosphere where exchanges of information, thoughts, and feelings about the things that arise around the person's work in supporting healthy parent-child relationships can occur. The focus is on the families involved and on the experience of the supervisee.

S. Definitions beginning with the letter "S":

(1) **"School year"** means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years. These dates are filed each year with the public education department.

(2) **"Scientifically based practices"** means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

(3) **"Screening"** means the use of a standardized instrument to determine if there is an increased concern regarding the child's development when compared to children of the same age, and whether a full evaluation would therefore be recommended.

(4) **"Significant atypical development"** means the eligibility determination under developmental delay made using informed clinical opinion, when twenty-five percent delay cannot be documented through state approved evaluation tool, but where there is significant concern regarding the child's development.

(5) **"Social or emotional development"** the developing capacity of the child to: experience, regulate, and express emotion; form close and secure interpersonal relationships; explore the environment and learn.

(6) **"State education agency"** means the public education department responsible for administering special education and related serves under IDEA Part B.

(7) **"Strategies"** means the section of the IFSP that describes how the team, including the parents, will address each outcome. Strategies shall include the methods and activities developed by the IFSP team to achieve functional outcomes. Strategies shall include family routines, times and locations where activities will occur, as well as accommodations to be made to the environment and assistive technology to be used. Strategies shall also include how members of the team will work together to meet the outcomes on the IFSP.

(8) **"Supervision"** means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning, organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

(9) **"Surrogate parent"** means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located, or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

T. Definitions beginning with the letter "T":

(1) **"Transition"** means the process for a family and eligible child of moving from services provided through the FIT program at age three. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child's transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

(2) **"Transition plan"** means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

U. Definitions beginning with the letter "U": [Reserved]

V. Definitions beginning with the letter "V": [Reserved]

W. Definitions beginning with the letter "W": "Ward of the state" means a child who is in foster care or in the custody of the child welfare agency.

[8.9.8.7 NMAC - N, 7/20/2021]

8.9.8.8 ADMINISTRATION:

A. Supervisory authority.

(1) Any agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico early childhood education and care department.

(2) An agency that has entered into a contract or provider agreement or an inter-agency agreement with the New Mexico early childhood education and care department to provide early intervention services shall be considered an "early intervention provider agency" under these regulations.

B. Provider requirements.

(1) All early intervention provider agencies shall comply with these regulations and all other applicable state and federal regulations. All early intervention provider agencies that provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico early childhood education and care department through the family infant toddler (FIT) program.

(2) All early intervention provider agencies shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement or an inter-agency agreement, medicaid rules and early childhood education and care department service definitions and standards. This information shall be kept on file with the early intervention provider agencies and shall be available to the New Mexico early childhood education and care department or its designee upon request.

(3) All early intervention provider agencies shall employ individuals who maintain current licenses or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider agency and shall be available to the New Mexico early childhood education and care department or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico early childhood education and care department.

(4) Early intervention provider agencies shall ensure that personnel receive adequate training and planned and ongoing supervision, in order to ensure that individuals have the information and support needed to perform their job duties. The early intervention provider agency shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention provider agencies shall provide access to information necessary for the New Mexico early childhood education and care department or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention provider agencies will be addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

C. Financial matters.

(1) Reimbursement for early intervention services to eligible children and families by the family infant toddler program shall conform to the method established by the New Mexico early childhood education and care department, as delineated in the early intervention provider agency's provider agreement and in the service definitions and standards.

(2) Early intervention provider agencies shall only bill for early intervention services delivered by personnel who possess relevant, valid licenses or certification in accordance with personnel certification requirements of this rule.

(3) Early intervention provider agencies shall enter delivered services data into the FIT-KIDS (key information data system), which is generated into claims for medicaid, private insurance and invoices for the early childhood education and care department.

(4) Early intervention provider agencies shall maintain documentation of all services provided in accordance with service definitions and standards and provider agreement / contract requirements.

(5) The FIT program and early intervention provider agencies shall not implement a system of payments or fees to parents.

(6) Public and private insurance.

(a) The parent(s) will not be charged any co-pay or deductible related to billing their public insurance (including medicaid) and private insurance.

(b) The parent(s) shall provide written consent before personally identifiable information is disclosed for billing purposes to public insurance (including medicaid) and private insurance.

(c) The parent(s) may withdraw consent at any time to disclose personally identifiable information to public insurance (including medicaid) and private insurance for billing purposes.

(d) The parent(s) shall provide written consent to use their private insurance to pay for FIT program services. Consent shall be obtained prior to initial billing of their private insurance for early intervention services and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services on the IFSP.

[8.9.8.8 NMAC - N, 7/20/2021]

8.9.8.9 PERSONNEL:

A. Personnel requirements.

(1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed "qualified" based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as identified in this rule, and provide services in that discipline, do not require certification as a developmental specialist. However, individuals who hold a professional license or certificate in one of these fields and who spend sixty percent or more of their time employed in the role of developmental specialist must obtain certification as a developmental specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated.

B. Qualified personnel may include individuals from the following disciplines who meet the state's entry level requirements and possess a valid license or certification:

(1) audiology;
(2) developmental specialist;
(3) early childhood development and education;
(4) education of the deaf/hard of hearing;
(5) education of the blind and visually impaired;
(6) family therapy and counseling;
(7) nutrition/dietetics;
(8) occupational therapy (including certified occupational therapy assistants);
(9) orientation and mobility specialist;
(10) pediatric nursing;
(11) physical therapy (including physical therapy assistants);

(12) physician (pediatrics or other medical specialty);
(13) psychology (psychologist or psychological associate);
(14) social work;
(15) special education; and
(16) speech and language pathology.

C. Certification of developmental specialist.

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) A developmental specialist must have the appropriate certificate issued by the New Mexico early childhood education and care department in accordance with the developmental specialist certification policy and procedures.

(3) The term of certification as a developmental specialist is a three-year period granted from the date the application is approved.

D. Reciprocity of certification: An applicant for a developmental specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico developmental specialist certificate, at the discretion of the New Mexico early childhood education and care department.

E. Certification renewal: The individual seeking renewal of a developmental specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the FIT program.

F. Agency exemptions from personnel certification requirements.

(1) At its discretion, the FIT program may issue to an early intervention provider agency an exemption from personnel qualifications for a specific developmental specialist position. The exemption shall be in effect only for one year from the date it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider agency can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention provider agencies shall not bill for early intervention services delivered by a non-certified developmental specialist unless the FIT program has issued an exemption for that position.

(4) Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. Family service coordinators.

(1) Family service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years' experience in community, health or social services.

(2) If an early intervention provider agency is unable to hire suitable candidates meeting the above requirements, a person can be hired as a family service coordinator with an associate of arts degree and at least three years' experience in community, health or social services.

(3) Early intervention provider agencies may request a waiver from the FIT program, to hire family service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served or an individual who is the parent of a child with a developmental delay or disability.

(4) All individuals must meet all training requirements for family service coordinators in accordance with FIT program standards within one-year of being hired.

H. Supervision of early intervention personnel providing direct services.

(1) Early intervention provider agencies shall ensure that developmental specialists and all other direct providers of early intervention (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

[8.9.8.9 NMAC - N, 7/20/2021]

8.9.8.10 CHILD IDENTIFICATION:

A. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and other state, federal and tribal government agencies in a coordinated child find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and in Native American communities, children whose family is homeless, children in foster care and wards of the state, and children born prematurely.

B. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and shall inform primary referral sources regarding how to make a referral when there are concerns about a child's development. Primary referral sources include: hospitals; prenatal and postnatal care facilities; physicians; public health facilities; child care and early learning programs, school districts; home visiting programs; homeless family shelters; domestic violence shelters and agencies; child protective services, including foster care; other social service agencies; and other health care providers.

C. Early intervention provider agencies in collaboration with the New Mexico early childhood education and care department shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and intake:

(1) Primary referral sources shall inform parent(s) of their intent to refer and the purpose for the referral. Primary referral sources should refer the child as soon as possible, but in no case more than seven days after the child has been identified.

(2) Parents must give permission for a referral of their child to the FIT program.

(3) The child must be under three years of age at the time of the referral.

(4) If there are less than 45 days before the child turns three at the time of referral, the early intervention provider agency will not complete an evaluation to determine eligibility and will assist the family with a referral to Part B preschool special education and other preschool programs, as appropriate and with consent of the parent(s).

(5) The early intervention provider agency receiving a referral shall promptly assign a family service coordinator to conduct an intake with the parent(s).

(6) The family service coordinator shall contact the parent(s) to arrange a meeting at the earliest possible time that is convenient for the parent(s) in order to:

(a) inform the parent(s) about early intervention services and the IFSP process;

(b) review the FIT family handbook;

(c) explain the family's rights and procedural safeguards;

(d) if in a county that is also served by other FIT provider, inform the parent(s) of their choice of provider agencies and have them sign a "freedom of choice" form.

(e) provide information about evaluation options; and with the parent's consent, arrange the comprehensive multidisciplinary evaluation.

(7) If the child is found eligible for FIT services, the family service coordinator with parental consent shall schedule and facilitate the initial IFSP meeting to be completed within 45 days of referral to the FIT program for early intervention services.

(8) Exceptions to the 45-day timeline for completion of the initial IFSP due to exceptional family circumstances must be documented in the child's early intervention record. Exceptional family circumstances include:

(a) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation the initial assessments of the child and family, or the initial IFSP meeting.

(b) The parent has not provided consent for the screening (if applicable) the initial evaluation, or the initial assessment of the child despite documented repeated attempts by the early intervention provider.

E. Screening.

(1) A developmental screening for a child who has been referred may be conducted using a standardized instrument to determine if there is an indication that the child may have developmental delay and whether an evaluation to determine eligibility is recommended.

(2) A developmental screening should not be used if the child has a diagnosis that would qualify them under established condition or biological medical risk or where the referral indicates a strong likelihood that the child has delay in their development, including when a screening has already been conducted.

(3) If a developmental screening is conducted:

(a) the written consent of the parent(s) must be obtained for the screening; and

(b) the parent must be provided written notice that they can request an evaluation at any point during the screening process.

(4) If the results of the screening:

(a) Do not indicate that the child is suspected of having a developmental delay, the parent must be provided written notice of this result and be informed that they can request an evaluation at the present time or any future date.

(b) Do indicate that the child is suspected of having a developmental delay, an evaluation must be conducted, with the consent of the parent(s). The 45-day timeline from referral to the completion of the initial IFSP and all of the referral and intake requirements of this rule must still be met.

F. Evaluation.

(1) A child who is referred for early intervention services, and whose parent(s) has given prior informed consent, shall receive a comprehensive multidisciplinary evaluation to determine eligibility, unless the child receives a screening in accordance with the screening requirements of this rule and the results do not indicate that the child is suspected of having a developmental delay. Exception: If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted even if the results do not indicate that the child is suspected of having a developmental delay.

(2) The evaluation shall be:

(a) timely, multidisciplinary, evaluation;

(b) conducted by qualified personnel, in a nondiscriminatory manner so as not to be racially or culturally discriminatory; and

(c) shall include information provided by the parent(s).

(3) If parental consent is not given, the family service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(4) A comprehensive multidisciplinary evaluation shall be conducted by a multidisciplinary team consisting of at least two qualified professionals from different disciplines.

(5) The family service coordinator shall coordinate the evaluation and shall obtain pertinent records related to the child's health and medical history.

(6) The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history and observations of the child. The evaluation shall also include an assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

(a) physical/motor development (including vision and hearing);

(b) cognitive development;

(c) communication development;

(d) social or emotional development; and

(e) adaptive development.

(7) The evaluation team shall use the tool(s) approved by the FIT program. Other domain specific tools may be used in addition to the approved tool(s).

(8) The tool(s) used in the evaluation shall be administered by certified or licensed personnel who have received training in the use of the tool(s).

(9) The evaluation shall be conducted in the child and family's native language, in accordance with the definition of native language, unless it is clearly not feasible to do so.

(10) The evaluation team will collect and discuss all of the information obtained during the evaluation process in order to make a determination of the child's eligibility for the FIT program.

(11) An evaluation report shall be generated that summarizes the findings of the multidisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and shall describe the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes. The report shall also include a statement regarding the determination of the child's eligibility for the FIT program.

(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFSP team, with prior consultation with the evaluation team.

(13) Information from the evaluation process and the report shall be used to assist in determining a rating for the initial early childhood outcome (ECO).

(14) If the child has a recent and complete evaluation current within the past six months from another Early Intervention Agency, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

G. Eligibility.

(1) The child's eligibility for early intervention services shall be determined through the evaluation process as identified in Section F. A statement of the child's eligibility for the FIT Program shall be documented in the evaluation report.

(2) The child's age shall be adjusted (corrected) for prematurity for children born less than 37 weeks gestation. The adjusted age shall be used until a child is 24 months of age for the purpose of eligibility determination.

(3) Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) or other approved assessment tools are not able to establish developmental delay.

(a) If informed clinical opinion is used to determine the child's eligibility, documentation must be provided to justify the child's eligibility.

(b) A second level review and sign off shall occur within the early intervention provider agency by someone of equal or higher certification or licensure that was not part of the evaluation team.

(c) Informed clinical opinion may only be used to qualify a child for more than one year with review and approval of the FIT program.

(4) The child must be determined eligible under one of the following categories.

(a) **Developmental delay:** a delay of twenty-five percent or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive.

(i) Twenty-five percent delay shall be documented utilizing the tool(s) approved by the FIT program.

(ii) If the FIT program approved tool does not indicate a twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is one and one-half standard deviations below the mean or greater.

(iii) Developmental delay includes "significant atypical development" documented on the basis of informed clinical opinion.

(b) **Established condition:** a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:

(i) genetic disorders with a high probability of developmental delay, including chromosomal anomalies including Down syndrome and Fragile X syndrome (in boys); inborn errors of metabolism including Hurler syndrome; and other syndromes, including Prader-Willi and Williams;

(ii) perinatal factors, including preterm newborn, 28 completed weeks or less

(iii) perinatal factors, including toxoplasmosis, rubella, CMV, and herpes (TORCH);

(iv) prenatal toxic exposures including fetal alcohol syndrome (FAS); and birth trauma, including neurologic sequelae from asphyxia;

(v) neurologic conditions, including congenital anomalies of the brain including holoprosencephaly lissencephaly, microcephaly, hydrocephalus; anomalies of spinal cord including meningomyelocele; degenerative or progressive disorders including muscular dystrophies, leukodystrophies, spinocerebellar disorders; cerebral palsy (all types), including generalized, hypotonic patterns; abnormal movement patterns including generalized hypotonia, ataxias, myoclonus, and dystonia; peripheral neuropathies; traumatic brain injury; and CNS trauma including shaken baby syndrome;

(vi) sensory abnormalities, including visual impairment or blindness; congenital impairments including cataracts; acquired impairments including retinopathy of prematurity; cortical visual impairment; and chronic hearing loss;

(vii) physical impairment, including congenital impairments including arthrogryposis, osteogenesis imperfecta, and severe hand anomalies; and acquired impairments including amputations and severe burns;

(viii) mental/psychosocial disorders, including autism spectrum disorders; and

(ix) conditions recognized by the FIT program as established conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment or mental/psychosocial disorder that is not specified above must be recognized by the FIT program in order to qualify as an established condition for purposes of this rule; physician, designated by the New Mexico early childhood education and care department, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program receipt of the request for review.

(c) **Biological or medical risk for developmental delay:** a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file. Biological and medical risk conditions include the following:

(i) genetic disorders with increased risk for developmental delay, including chromosomal anomalies including Turner syndrome, Fragile X syndrome (in girls), inborn errors of metabolism including Phenylketonuria (PKU), and other syndromes including Goldenhar neurofibromatosis, and multiple congenital anomalies (no specific diagnosis);

(ii) perinatal factors, including prematurity (less than 35 weeks and more than 28 completed weeks gestation) or small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

(iii) neurologic conditions, including anomalies of the brain including the absence of the corpus callosum, and macrocephaly; anomalies of the spinal cord including spina bifida and tethered cord; abnormal movement patterns including severe tremor and gait problems; and other central nervous system (CNS) influences, including CNS or spinal cord tumors, CNS infections (e.g., meningitis), abscesses, acquired immunodeficiency syndrome (AIDS), and CNS toxins (e.g., lead poisoning);

(iv) sensory abnormalities, including neurological visual processing concerns that affect visual functioning in daily activities as a result of neurological conditions, including seizures, infections (e.g., meningitis), and injuries including traumatic brain injury (TBI); and mild or intermittent hearing loss;

(v) physical impairment, including congenital impairments including cleft lip or palate, torticollis, limb deformity, club feet; acquired impairments including severe arthritis, scoliosis, and brachial plexus injury;

(vi) mental/psychosocial disorders, including severe attachment disorder, severe behavior disorders, and severe socio-cultural deprivation;

(vii) other medical factors and symptoms, including growth problems, severe growth delay, failure to thrive, certain feeding disorders, and gastrostomy for feeding; and chronic illness/medically fragile conditions including severe cyanotic heart disease, cystic fibrosis, complex chronic conditions, and technology-dependency; and

(viii) conditions recognized by the FIT program as biological or medical risk conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment, mental/psychosocial disorder, or other medical factor or symptom that is not specified above must be recognized by the FIT program in order to qualify as an medical or biological risk condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program manager's receipt of the request for review.

(d) **Environmental risk for developmental delay:** a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

(5) The families of children who are determined to be not eligible for the FIT program shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. Families shall receive information regarding other community resources, such as home visiting and how to access specific

resources in their area. Families shall also be informed about how to request re-evaluation at a later time should they suspect that their child's delay or risk for delay increases.

H. Redetermination of eligibility.

(1) The child's eligibility for the FIT program shall be re-determined annually in accordance with the eligibility determination requirements of this rule.

(2) The child's continued eligibility shall be documented on the IFSP.

(3) If the child no longer meets the requirements under the original eligibility category, the team will determine if the child meets the criteria for one of the other eligibility categories before exiting the child.

(4) If the child is determined to no longer be eligible for the FIT program the family shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. The family service coordinator will assist the family, with their consent, with referrals to other agencies.

I. Ongoing assessment.

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and developmental functioning. The ongoing assessment will utilize multiple procedures including the use of a tool that helps the team determine if the child is making progress in their development, to determine developmental levels for the IFSP and to modify outcomes and strategies, and to determine the resources, priorities, and concerns of the family.

(2) Assessment information shall be used by the team as part of the process of determining early childhood outcome (ECO) scores at the time of the initial IFSP and prior to the child exiting the FIT program.

(3) An annual assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family. The IFSP shall reflect those resources, priorities and concerns the family has identified related to supporting their child's development.

[8.9.8.10 NMAC - N, 7/20/2021]

8.9.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):

A. IFSP development.

(1) A written IFSP shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family;

(b) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so; and

(c) meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(3) Participants at the initial IFSP and annual IFSP meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) a person or persons directly involved in conducting evaluations and assessments of the child;

(e) as appropriate, a person or persons who are or will be providing early intervention services to the child and family;

(f) the family service coordinator; and

(g) other individual(s) as applicable, such as personnel from: child care; early head start; home visiting; medically fragile; children's medical services; child protective services; physician and other medical staff, and with permission of the parent(s).

(4) If a person or persons directly involved in conducting evaluations and assessments of the child is unable to attend a meeting, the family service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend; or submitting a report.

(5) The initial IFSP shall be developed within 45 days of the referral.

(6) Families shall receive prior written notice of the IFSP meeting.

(7) The family service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP: The IFSP shall include:

(1) the child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age and adjusted age for prematurity (if applicable);

(2) the date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) the dates of periodic and annual reviews;

(4) a summary of the child's health (including vision and hearing) and the child's present levels of development in all domains (cognitive, communication, physical/motor, social and emotional and adaptive);

(5) with the approval of the parent(s), a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler as identified through the family assessment;

(6) the desired child and family outcomes developed with the family (including but not limited to pre-literacy and numeracy, as developmentally appropriate to the child), the strategies to achieve those outcomes and the timelines, procedures and criteria to measure progress toward those outcomes;

(7) a statement of specific early intervention services based on peer-reviewed research (to the extent practicable) that are necessary to meet the unique needs of the child and family to achieve the desired outcomes, and the duration, frequency, intensity, location, and the method of delivering the early intervention services;

(8) a parental signature, which denotes prior consent to the early intervention services on the IFSP; if the parent(s) does not provide consent for a particular early intervention service, then the service(s) to which the parent(s) did consent shall be provided;

(9) specific information concerning payment sources and arrangements;

(10) the name of the ongoing family service coordinator;

(11) a statement of all other services including, medical services, child care and other early learning services being provided to the child and family that are not funded under this rule;

(12) an outcome, including strategies the family service coordinator or family shall take to assist the child and family to secure other services not funded under this rule;

(13) a statement about the natural environments in which early intervention services shall be provided; if the IFSP team determines that services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included;

(14) the projected start dates for initiation of early intervention services and the anticipated duration of those services; and

(15) at the appropriate time, a plan including identified steps and services to be taken to ensure a smooth and effective transition from early intervention services to preschool services under IDEA Part B and other appropriate early learning services.

C. Interim IFSP.

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child or family have an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the family service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Family service coordination.

(1) Family service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing family service coordination.

(3) The parent may request to change the family service coordinator, at any time.

(4) The family service coordinator shall be responsible for:

(a) informing the family about early intervention and their rights and procedural safeguards;

(b) gathering information from the family regarding their concerns, priorities and resources;

(c) coordinating the evaluation and assessment activities;

(d) facilitating the determination of the child's eligibility;

(e) referring the family to other resources and supports;

(f) helping families plan and prepare for their IFSP meeting;
(g) organizing and facilitating IFSP meetings;
(h) arranging for and coordinating all services listed on the IFSP;
(i) coordinating and monitoring the delivery of the services on the IFSP to ensure that they are provided in a timely manner;
(j) conducting follow-up activities to determine that appropriate services are being provided;
(k) assisting the family in identifying funding sources for IFSP services, including medicaid and private insurance;
(l) facilitating periodic reviews of the IFSP; and
(m) facilitating the development of the transition plan and coordinating the transition steps and activities.

(5) Family service coordination shall be available to families upon their referral to the FIT program.

(6) Family service coordination shall be listed on the IFSP for all families of eligible children.

(7) Families may direct the level of support and assistance that they need from their family service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic review of the IFSP.

(1) A review of the IFSP for a child and child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review.

(2) The parent(s), the family service coordinator, and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider agency.

(4) Participants at a periodic review meeting shall include:
(a) the parent(s);
(b) other family members, as requested by the parent(s) (if feasible);
(c) an advocate or person outside of the family, as requested by the parent(s);
(d) the family service coordinator; and
(e) persons providing early intervention services, as appropriate.

F. Annual IFSP.

(1) The family service coordinator shall convene the IFSP team on an annual basis, to review progress regarding outcomes on the IFSP and to revise outcomes, strategies or services, as appropriate to the child's and family's needs and the annual re-determination of the child's eligibility for services.

(2) Attendance at the annual IFSP meeting shall conform to the requirements of the initial IFSP meeting.

(3) The team shall develop a new IFSP for the coming year; however, information may becarried forward from the previous IFSP if the information is current and accurate.

(4) Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what outcomes will be addressed for the child and family and the services to be provided to meet these outcomes.

(5) The annual IFSP process shall include a determination of the child's continuing eligibility utilizing the tool(s) approved by the FIT program.

(6) At any time when monitoring of the IFSP by the family service coordinator or any member of the IFSP team, including the family, indicates that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP. The IFSP team can also be reconvened if there are significant changes to the child's or family's situation, e.g., moving to a new community, starting child care or early head start, health or medical changes, etc.

(7) If there are significant changes to the IFSP, the revised IFSP can be considered a new annual IFSP with a new start and end date.

[8.9.8.11 NMAC - N, 7/20/2021]

8.9.8.12 SERVICE DELIVERY:

A. Early intervention services.

(1) Early intervention services shall be:

(a) designed to address the outcomes identified by the IFSP team (which includes parents and other team members);

(b) identified in collaboration with the parents and other team members through the IFSP process;

(c) listed on the IFSP if recommended by the team, including the family, even if a service provider is not available at that time;

(d) delivered to the maximum extent appropriate in the natural environment for the child and family in the context of the family's day to day life activities;

(e) designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development;

(f) delivered in accordance with the specific location, duration and method in the IFSP; and

(g) provided at no cost to the parent(s).

(2) Early intervention services (with the exception of consultation and evaluation and assessments) must be provided within 30 days of the start date for those services, as listed on the IFSP and consented to by the parent(s).

(3) If an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(4) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the state. Early intervention services include:

(a) **Assistive technology services**: services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals that provide early intervention or other individuals who provide other services or who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children. Assistive technology devices and services do not include medical devices that are implanted, including a cochlear implant, or the optimization, maintenance, or replacement of such a device.

(b) **Audiological services**: services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training; provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) **Developmental instruction**: services that include working in a coaching role with the family or other caregiver, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental instruction provides families and other caregivers with the information, skills, and support to enhance the child's development. Developmental instruction addresses all developmental areas: cognitive, communication, physical/motor, vision, hearing), social or emotional and adaptive development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d) **Family therapy, counseling and training**: services provided, as appropriate, by licensed social workers, family therapists, counselors, psychologists, and other qualified personnel to assist the parent(s) in understanding the special needs of their child, supporting the parent-child relationship, and to assist with

emotional, mental health and relationship issues of the parent(s) related to parenting and supporting their child's healthy development.

(e) **Family service coordination**: services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from birth through age three years of age to access and receive early intervention services. The responsibilities of the family service coordinator include acting as the single point of contact for: coordinating, facilitating and monitoring the delivery of services to ensure that services are provided in a timely manner; coordinating services across agency lines; assisting parents in gaining access to, and coordinating the provision of, early intervention services and other services as identified on the IFSP; explaining early intervention services to families, including family rights and procedural safeguards; gathering information from the family regarding their concerns, priorities and resources; coordinating the evaluation and assessment activities; facilitating the determination of the child's eligibility; referring the family to providers for needed services and supports; scheduling appointments for IFSP services for the child and their family; helping families plan and prepare for their IFSP meeting; organizing, facilitating and participating in IFSP meetings; arranging for and coordinating all services listed on the IFSP; conducting follow-up activities to determine that appropriate services are being provided; coordinating funding sources for services provided under the IFSP; facilitating periodic reviews of the IFSP; ensuring that a transition plan is developed at the appropriate time; and facilitating the activities in the transition plan to support a smooth and effective transition from FIT services.

(f) **Health services**: those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children; or services related to implementation, optimization, maintenance or replacement of a medical device that is surgically implanted.

(g) **Medical services**: those services provided for diagnostic or evaluation purposes by a licensed physician to determine a child's developmental status and other information related to the need for early intervention services.

(h) **Nursing services**: those services that enable an eligible child to benefit from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care; the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(i) **Nutrition services**: include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(j) **Occupational therapy services**: those services that address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k) **Physical therapy services**: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(l) **Psychological services**: those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(m) **Sign language and cued language services**: services that include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(n) **Social work services**: those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child's living conditions, providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child's and family's living situation that affect the child's maximum utilization of early intervention services.

(o) **Speech and language pathology services**: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p) **Transportation services**: supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early intervention services or providing other means of transporting the child and family.

(q) **Vision services**: services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training. Vision services also include orientation and mobility training addressing concurrent motor skills, sensation, environmental concepts, body image, space/time relationships, and gross motor skills. Orientation and mobility instruction is focused on travel and movement in current environments and next environments and the interweaving of skills into the overall latticework of development. Services include evaluation and assessment of infants and toddlers identified as blind/visually impaired to determine necessary interventions, vision equipment, and strategies to promote movement and independence.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the FIT program in accordance with policy and procedure established by the FIT program.

C. The family service coordinator shall review and monitor delivery of services to ensure delivery in accordance with the IFSP.

[8.9.8.12 NMAC - N, 7/20/2021]

8.9.8.13 TRANSITION:

A. Transition planning shall occur with the parent(s) of **all** children to ensure a smooth transition from the FIT program to preschool or other setting.

B. Notifications to the public education department and local education agency (LEA):

(1) The FIT program shall provide notification to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following 12-month period.

(2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following 12-month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child's name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and

(d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

C. Transition plan:

(1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.

(2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.

(3) The following is the timeline for developing the transition plan:

(a) at the child's initial IFSP meeting the transition plan shall be initiated and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;

(b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child and any plans to visit those settings; and

(c) at least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

(4) The transition plan shall include:

(a) steps, activities and services to promote a smooth and effective transition for the child and family;

(b) a review of program and service options available, including Part B preschool special education, head start, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, private preschool, child care settings and available options for Native American tribal communities; or home if no other options are available;

(c) documentation of when the child will transition;

(d) the parent(s) needs for childcare if they are working or in school, in an effort to avoid the child having to move between preschool settings;

(e) how the child will participate in inclusive settings with typically developing peers;

(f) evidence that the parent(s) have been informed of the requirement to send notification to the LEA;

(g) discussions with and training of the parent(s) regarding future placements and other matters related the child's transition;

(h) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting; and

(i) a confirmation that referral information has been transmitted, including the assessment summary form and most recent IFSP.

D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA at least 60 days prior to the transition conference. The transition referral shall include at a minimum the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

(2) For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child.

(3) For children referred to the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parent consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

E. **Invitation to the transition conference:** The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least 30 days prior to the transition conference.

F. **Transition assessment summary:**

(1) The family service coordinator shall submit a completed transition assessment summary form to the LEA at least 30 days prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

G. **Transition conference:** The transition conference shall:

(1) be held with the approval of the parent(s);

(2) be held at least 90 days and no more than nine months prior to the child's third birthday;

(3) meet the IFSP meeting attendance requirements of this rule;

(4) take place in a setting and at a time that is convenient to the family;

(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

(7) be facilitated by the family service coordinator to include:

(a) a review of the parent(s)'s preschool and other service options for their child;

(b) a review of, and if needed, a finalization of the transition plan;

(c) a review of the current IFSP, the assessment summary; and any other relevant information;

(d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parent consent;

(e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation;

(f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.

(g) discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.

(h) documentation of the decisions made on the transition page and signatures on the transition conference signature page, which shall be included as part of the IFSP. Copies of the transition conference page and signature page shall be sent to all participants.

H. **Transition date:**

(1) The child shall transition from the FIT program when the child turns three years old.

(2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B):

(a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or

(b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

I. **The individualized education program (IEP):**

(1) The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval.

(2) The family service coordinator, with parent consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

J. **Follow-up family service coordination:** At the request of the parents, and in accordance with New Mexico early childhood education and care department policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

[8.9.8.13 NMAC - N, 7/20/2021]

8.9.8.14 PROCEDURAL SAFEGUARDS:

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico early childhood education and care department that specify family's rights and

protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The family service coordinator at the first visit with the family shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The family service coordinator shall provide ongoing information and assistance to families regarding their rights throughout the period of the child's eligibility for services. The family service coordinator shall explain dispute resolution options available to families and early intervention provider agencies. A family service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. Surrogate parent(s).

(1) A surrogate parent shall be assigned when:

(a) no parent can be identified;

(b) after reasonable efforts a parent cannot be located; and

(c) a child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process.

(2) The family service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) and shall contact the FIT program if the need for a surrogate is determined.

(3) The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process.

(4) The FIT program shall assign a surrogate parent within 30 days after it is determined that the child needs a surrogate parent. A surrogate may also be appointed by a judge in case of a child who is a ward of the court, as long as the surrogate meets the requirements of this rule.

(5) The person selected as a surrogate:

(a) must not be an employee of the lead agency, other public agency or early intervention provider agency or provider of other services to the child or family; the person is not considered an employee if they solely are employed to serve as a surrogate;

(b) must have no personal or professional interest that conflicts with the interests of the child; and

(c) must have knowledge and skills that ensure adequate representation of the child.

(6) A surrogate parent has all of the same rights as a parent for all purposes of this rule.

D. Consent.

(1) The family service coordinator shall obtain parental consent before:

(a) administering screening procedures under this rule that are used to determine whether a child is suspected of having a disability;

(b) an evaluation conducted to determine the child's eligibility for the FIT program;

(c) early intervention services are provided;

(d) public or private insurance is used, in accordance with this rule; and

(e) personally identifiable information is disclosed, unless the disclosure is made to a participating agency.

(2) The family service coordinator shall ensure that the parent is fully aware of the nature of the evaluation and assessment or early intervention service that would be available and informed that without consent the child cannot receive an evaluation or early intervention services.

(3) The parent(s):

(a) may accept or decline any early intervention service at any time; and

(b) may decline a service after first accepting it, without jeopardizing other early intervention services.

(4) The FIT program may not use due process procedures of this rule to challenge a parent's refusal to provide any consent that is required by this rule.

E. Prior written notice and procedural safeguards notice.

(1) Prior written notice shall be provided at least five days before the early intervention provider agency proposes, or refuses, to initiate or change the identification, evaluation or placement of a child, including any changes to length, duration, frequency and method of delivering a service. Parent(s) may waive the five-day period in order for the change to be implemented sooner, if needed.

(2) The prior written notice must include sufficient detail to inform the parent(s) about:

(a) the action being proposed or refused;

(b) the reasons for taking the action; and

(c) all procedural safeguards available, including mediation, how to file a complaint and a request for a due process hearing, and any timelines for each.

(3) The procedural safeguards notice must be provided in the native language of the parent(s) or other mode of communication used by the parent, unless clearly not feasible to do so.

(4) If the native language of the parent(s) is not a written language, the early intervention provider agency shall translate the notice orally in their native language or other means of communication so that the parent understands the notice. The family service coordinator shall document that this requirement has been met.

F. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

G. Confidentiality and opportunity to examine records.

(1) **Notice:** Notice to the parent(s) shall be provided when a child is referred to the FIT program, and shall include:

(a) a description of the types of children that information is maintained on, the types of information sought, and method used in gathering the information, and the uses of the information;

(b) a summary of the policies and procedures regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;

(c) a list of the types and locations of early intervention records collected, maintained or used by the agency;

(d) a description of the rights of the parent(s) and children regarding this information, including their rights under IDEA, Part C ("Confidentiality"); and

(e) a description of the extent to which the notice is provided in the native languages of the various population groups in the state.

(2) **Confidentiality.**

(a) All personally identifiable data, information, and records shall be protected, and confidentiality maintained in accordance with the Family Educational Rights and Privacy Act (FERPA).

(b) Personally identifiable data, information, and records shall be maintained as confidential from the time the child is referred to the FIT program until the point at which records are no longer required to be maintained in accordance with federal or state law.

(c) Prior consent from the parent(s) must be obtained before personally identifiable information is disclosed to anyone other than a participating agency or used for any purpose other than meeting a requirement of these regulations.

(d) The early intervention provider agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(e) One official at each early intervention provider agency must assume responsibility for ensuring the confidentiality of all personally identifiable information.

(f) The early intervention provider agency must maintain for public inspection a current listing of names and positions of personnel who may have access to personally identifiable information.

(g) All personnel collecting or using personally identifiable information must receive training or instructions on the confidentiality requirements of this rule.

(3) **Access to records.**

(a) The early intervention provider agency must permit the parent(s) to inspect and review any early intervention records related to their child without unnecessary delay and before any IFSP meeting or due process hearing, and in no cases more than 10 days after the request has been made.

(b) The early intervention provider agency must respond to reasonable requests for explanations and interpretations of the early intervention records.

(c) The parent has the right to have a representative inspect and review the early intervention records.

(d) The early intervention provider agency must assume that the parent has the right to review the early intervention records unless they have been provided documentation that the parent does not have authority under state law governing such matters as custody, foster care, guardianship, separation and divorce.

(e) The early intervention provider agency must provide copies of evaluations and assessments, the IFSP as soon as possible after each meeting at no cost.

(f) The early intervention provider agency must provide one complete copy of the child's early intervention records at the request of the parent(s) at no cost.

(g) The early intervention provider agency may otherwise charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(h) The early intervention provider agency may not charge a fee to search for or to retrieve records to be copied.

(4) **Record of access.**

(a) The early intervention provider agency must keep a record of parties obtaining access to early intervention records (except access by the parent(s), authorized representatives of the lead agency and personnel of the FIT provider agency).

(b) The record must include the name of the party, the date access was given, and the purpose for which the party was authorized to access the record.

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

(5) **Amendment of records at parent request.**

(a) If the parent(s) believes that information in the child's records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), they may request that the early intervention provider agency amend the information.

(b) The early intervention provider agency must decide whether to amend the information in accordance with the request within 14 days of receipt of the request.

(c) If the early intervention provider agency refuses to amend the information in accordance with the request, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing.

(6) **Records hearing.**

(a) The early intervention provider agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's record to ensure that it is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s).

(b) A parent may request a due process hearing under this rule to address amendment of records.

(c) If as a result of a hearing it is determined that information in the records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must amend the information accordingly and inform the parents in writing.

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

(e) Any explanation placed in the child's records must be maintained by the early intervention provider agency as long as the record is contested or as long as the contested portion is maintained and if the contested portion is released to any party, the explanation must also be disclosed to the party.

(7) **Destruction of records.**

(a) Records shall be maintained for a minimum of six years following the child's exit from the early intervention services system before being destroyed. At the conclusion of the six year period, records shall be destroyed upon the request of the parent(s), or may be destroyed at the discretion of the early intervention provider agency.

(b) The early intervention provider agency must attempt to inform the parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide services under state and federal regulations.

(c) Notwithstanding the foregoing, a permanent record of a child's name, date of birth, parent contact information, name of the family service coordinator, names of early intervention personnel, and exit data (year and age upon exit, and any programs entered into upon exit) may be maintained without time limitation.

H. Dispute resolution options.

(1) Parents and providers shall have access to an array of options for resolving disputes, as described herein.

(2) The family service coordinator shall inform the family about all options for resolving disputes. The family shall also be informed of the policies and procedures of the early intervention provider agency for resolving disputes at the local level.

I. Mediation.

(1) The mediation process shall be made available to parties to disputes, including matters arising prior to filing a complaint or request for due process hearing. The mediation:

(a) shall be voluntary on the part of the parties;

(b) shall not be used to deny or delay the parent(s)'s right to a due process hearing or to deny any other rights of the parent(s);

(c) shall be conducted by a qualified and impartial mediator who is trained in mediation techniques and who is knowledgeable in the laws and regulations related to the provision of early intervention services;

(d) shall be selected by the FIT program from a list of qualified, impartial mediators who are selected based on a random, rotational or other impartial basis; the selected mediator may not be an employee of the lead agency or the early intervention provider agency and they must not have a personal or professional interest that conflicts with the person's objectivity; and

(e) shall be funded by the FIT program.

(2) Sessions in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.

(3) If the parties resolve the dispute, they must execute a legally binding agreement that:

(a) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) is signed by both parties.

(4) The mediation agreement shall be enforceable in a state or federal district court of competent jurisdiction.

J. Complaints.

(1) An individual or organization may file a complaint with the state director of the FIT program regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family. The party submitting the complaint shall also forward a copy of the complaint to the FIT provider agency(ies) serving the child.

(2) The written complaint shall be signed by the complaining party and shall include:

(a) a statement that the FIT program or FIT provider agency(ies) serving the child have violated a requirement of this rule or Part C of the IDEA, and a statement of the facts on which that allegation is based;

(b) the signature and contact information of the complainant;

(c) if the complaint concerns a specific child:

(i) the name and address of the residence of the child, or if the child is homeless, the contact information for the child;

(ii) the name of the FIT provider agency(ies) serving the child;

(iii) a description of the nature of the dispute related to the proposed or refused initiation or change, including facts related to the dispute; and

(d) a proposed resolution of the dispute to the extent known and available to the party at the time.

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

(4) Upon receipt of a complaint, the early childhood education and care department shall determine if an investigation is necessary, and if an investigation is deemed necessary, within 60 calendar days after the complaint is received it shall:

(a) carry out an independent on-site investigation;

(b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) provide an opportunity for the lead agency, public agency or early intervention provider agency to respond to the complaint, including at a minimum:

(i) at the discretion of the FIT program, a proposal to resolve the complaint; and

(ii) an opportunity for a parent who has filed a complaint and the FIT program or the FIT provider agency(ies) serving the child to voluntarily engage in mediation, consistent with this rule;

(d) give the parties the opportunity to voluntarily engage in mediation;

(e) review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(f) issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The written decision may include recommendations that include technical assistance activities, negotiations and corrective actions to be achieved.

(5) An extension of the 60 day investigation timeline will only be granted if exceptional circumstances exist with respect to a particular complaint or if the parties agree to extend the timeline to engage in mediation.

(6) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty-calendar day timeline.

(7) If an issue raised in a complaint is or was previously decided in a due process hearing involving the same parties, the decision from that hearing is binding on that issue, and the FIT program shall inform the complainant to that effect.

(8) A complaint alleging a failure to implement a due process hearing decision shall be resolved by the department.

(9) Except as otherwise provided by law, there shall be no right to judicial review of a decision on a complaint.

K Request for a due process hearing.

(1) In addition to the complaint procedure described above, a parent, a participating FIT provider, or the FIT program may file a request for a hearing regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family.

(2) A parent or participating FIT provider may request a hearing to contest a decision made by the FIT program pursuant to the complaints provisions above.

(3) A request for a hearing shall contain the same minimum information required for a complaint under this rule.

L. Appointment of hearing officer.

(1) When a request for a hearing is received, the FIT program shall assign an impartial hearing officer from a list of hearing officers maintained by the FIT program who:

(a) has knowledge about IDEA Part C and early intervention;

(b) is not an employee of any agency or entity involved in the provision of early intervention; and

(c) does not have a personal or professional interest that would conflict with their objectivity in implementing the process.

(2) The hearing officer shall:

(a) listen to the presentation of relevant viewpoints about the due process issue;

(b) examine all information relevant to the issues;

(c) seek to reach timely resolution of the issues; and

(d) provide a record of the proceedings, including a written decision.

M. Due process hearings.

(1) When a request for a hearing is received, a due process hearing shall be conducted.

(2) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents and child involved.

(3) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than 30 days after receipt of a parent's complaint. However, the hearing officer may grant specific extensions of this time limit at the request of either party.

(4) A parent shall have the right in the due process hearing proceedings:

(a) to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children and others, at the party's discretion;

(b) to present evidence and confront, cross examine, and compel the attendance of witnesses;

(c) to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing;

(d) to obtain a written or electronic verbatim record of the hearing, at no cost to the parent; and

(e) to obtain a written copy of the findings of fact and decisions, at no cost to the parent.

(5) Any party aggrieved by the findings and decision of the hearing officer after a hearing has the right to bring a civil action in a state or federal court of competent jurisdiction, within 30 days of the date of the decision.

N. Abuse, neglect, and exploitation.

(1) All instances of suspected abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico early childhood education and care department and the children, youth and families department.

(2) A parent's decision to decline early intervention services does not constitute abuse, neglect or exploitation.

[8.9.8.14 NMAC - N, 7/20/2021]

HISTORY OF 8.9.8 NMAC: [RESERVED]

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILDHOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

8.9.8 NMAC - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

No technical scientific information was consulted in drafting this rule.

Purpose of rule: The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Copies of the rule may be found at end of this notice and at ECECD's website at https://www.newmexicokids.org/ 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.9.8 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to https://zoom.us/j/91919388049?pwd=dWZ4VjZIWXJ3UHdRcll1WkJDbVVWdz09, and follow the instructions indicated on the screen – Passcode: 149616. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

Por medio de la presente, el Departamento de Educación y Cuidado en la Primera Infancia de Nuevo México (ECECD, por sus siglas en inglés) anuncia, cumpliendo con lo dispuesto por NMSA 1978, secciones 14-4-5.2 y 1.24.25.11 del Código NMAC, que se propone emitir nuevos reglamentos para las siguientes normas sobre SERVICIOS SOCIALES, EDUCACIÓN Y CUIDADOS A LA PRIMERA INFANCIA, REQUISITOS PARA

SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS, tal como lo autoriza NMSA 1978, Secciones 9-2A-7:

8.9.8 NMAC - REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS

Para la redacción de este reglamento no se consultó ninguna información técnica científica.

Objetivo del reglamento: El objetivo de esta norma es regir la provisión de servicios de intervención temprana a los niños elegibles y sus familias en Nuevo México, así como garantizar que dichos servicios cumplan los requisitos de la legislación estatal y federal aplicable, como la Ley de Educación para Personas con Discapacidad.

Al final de este anuncio se incluye una copia de este reglamento, el cual también estará en el sitio web del ECECD en https://www.newmexicokids.org/ 30 días antes de la audiencia pública.

Anuncio de audiencia pública: La audiencia pública se celebrará el 25 de mayo de 2021 a la 1:00 p.m. La audiencia será por Internet, por correo electrónico y teléfono (consulte más abajo) debido a las inquietudes por el COVID-19, y de conformidad con la Orden Ejecutiva 2020-004 de la gobernadora Michelle Lujan Grisham, la Declaración de emergencia de salud pública y la Orden del 12 de marzo de 2020 de emergencia pública de salud para limitar las asambleas masivas debido al COVID-19. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés, podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará su mejor esfuerzo por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.9.8 NMAC Public Comment" o por correo postal de primera clase al apartado postal: Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios por escrito se pueden entregar el 25 de mayo de 2021 de 1:00 p.m. a 3:00 p.m. en el edificio Old PERA en 1120 Paseo de Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 25 de mayo de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia por Internet o teléfono y ofrecer sus comentarios públicos sobre el reglamento en cuestión. Para participar por teléfono: llame al 1-346-248-7799, usando el código de acceso 919 1938 8049. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite https://zoom.us/j/91919388049?pwd=dWZ4VjZIWXJ3UHdRcll1WkJDbVVWdz09, y siga las instrucciones indicadas en la pantalla –contraseña: 149616. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

8.9.8.1 ISSUING AGENCY: Early Childhood Education and Care Department (ECECD)
[8.9.8.1 NMAC - N, 7/7/2021]

8.9.8.2 SCOPE: These regulations apply to all entities in New Mexico providing early intervention

services to eligible children birth to three years of age and their families.
[8.9.8.2 NMAC - N, 7/7/2021]

8.9.8.3 **STATUTORY AUTHORITY:** Section 9-7-6 NMSA 1978, and Section 28-18-1 NMSA 1978.
[8.9.8.3 NMAC - N, 7/7/2021]

8.9.8.4 **DURATION:** Permanent
[8.9.8.4 NMAC - N, 7/7/2021]

8.9.8.5 **EFFECTIVE DATE:** June 29, 2012, unless a later date is cited at the end of a section.
[8.9.8.5 NMAC - N, 7/7/2021]

8.9.8.6 **OBJECTIVE:** These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act.
[8.9.8.6 NMAC - N, 7/7/2021]

8.9.8.7 **DEFINITIONS:**

A. **Definitions beginning with the letter "A":**

(1) **"Adaptive development"** means the development of self-help skills, such as eating, dressing, and toileting.

(2) **"Adjusted age (corrected age)"** means adjusting / correcting the child's age for children born prematurely (i.e. born less than 37 weeks gestation). The adjusted age is calculated by subtracting the number of weeks the child was born before 40 weeks of gestation from their chronological age. Adjusted Age (Corrected Age) should be used until the child is 24 months of age.

(3) **"Assessment"** means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility for FIT services. Assessment includes observations of the child in natural settings, use of assessment tools, informed clinical opinion, and interviews with family members. Assessment includes ongoing identification of the concerns, priorities, and resources of the family.

B. **Definitions beginning with the letter "B": "Biological/medical risk"** means diagnosed medical conditions that increase the risk of developmental delays and disabilities in young children.

C. **Definitions beginning with the letter "C":**

(1) **"Child find"** means activities and procedures to locate, identify, screen and refer children from birth to three years of age with or at risk of having a developmental delay or developmental disabilities.

(2) **"Child record"** means the early intervention records (including electronic records) maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other materials that contain information directly related to a child and family, and are maintained by the early intervention provider agency. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

(3) **"Cognitive development"** means the progressive changes in a child's thinking processes affecting perception, memory, judgment, understanding and reasoning.

(4) **"Communication development"** means the progressive acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive language, including spoken, non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

(5) **"Confidentiality"** means protection of the family's right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

(6) **"Consent"** means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

D. Definitions beginning with the letter "D":

(1) **"Days"** means calendar days, unless otherwise indicated in these regulations.

(2) **"Developmental delay"** means an evaluated discrepancy between chronological age and developmental age of twenty-five percent, after correction for prematurity, in one or more of the following areas of development: cognitive, communication, physical/motor, social or emotional, and adaptive.

(3) **"Developmental specialist"** means an individual who meets the criteria established in these regulations and is certified to provide 'developmental instruction'. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual's level of certification as defined in early childhood education and care department, family support and early intervention division policy and service standards.

(4) **"Dispute resolution process"** means the array of formal and informal options available to parents and providers for resolving disputes related to the provision of early intervention services and the system responsible for the delivery of those services.

(5) **"Due process hearing"** means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

(6) **"Duration"** means the length of time that services included in the IFSP will be delivered.

E. Definitions beginning with the letter "E":

(1) **"Early intervention services"** means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development, as identified by the IFSP team. (Early intervention services are described in detail in the service delivery provisions of this rule.)

(2) **"ECO (early childhood outcomes)"** means the process of determining the child's development compared to typically developing children of the same age. The information is used to measure the child's developmental progress over time.

(3) **"Eligible children"** means children birth to three years of age who reside in the state and who meet the eligibility criteria within this rule.

(4) **"Environmental risk"** means the presence of adverse family factors in the child's environment that increases the risk of developmental delays and disabilities in young children.

(5) **"Established condition"** means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay or disability.

(6) **"Evaluation"** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility for FIT services. It includes a review of records pertinent to the child's current health status and medical history; parent interview and parent report; observation of the child in natural settings; informed clinical opinion; use of FIT Program approved assessment tool(s); and identification of the level of functioning of the child in each developmental area -- cognitive, communication, physical/motor (including vision and hearing), social or emotional, and adaptive. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for FIT services.

F. Definitions beginning with the letter "F:

(1) **"Family"** means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

(2) **"Family infant toddler (FIT) program"** means the program within state government that administers New Mexico's early intervention system for children (from birth to age three) who have or are at risk for developmental delay or disability and their families. The FIT program is established in

accordance with 28-18-1 NMSA, Chapter 178, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), Part C as amended, and other applicable state and federal statutes and regulations.

(3) **"Family service coordinator"** means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial family service coordinator assists the family with intake activities such as eligibility determination and development of an initial individualized family service plan (IFSP) The ongoing family service coordinator is selected at the initial IFSP meeting and designated on the IFSP form.

(4) **"FIT-KIDS (key information data system)"** means the online data collection and billing system utilized by the FIT program.

(5) **"Frequency"** means the number of times that a service is provided or an event occurs within a specified period.

G. Definitions beginning with the letter "G": [Reserved]

H. Definitions beginning with the letter "H":

(1) **"Head start/early head start"** means a comprehensive child development program for children of low income families established under the Head Start Act, as amended.

(2) **"Homeless"** means lacking a fixed, regular, and adequate nighttime residence.

I. Definitions beginning with the letter "I":

(1) **"IFSP team"** means the persons responsible for developing, reviewing the IFSP. The team shall include the parent(s), the family service coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, an advocate or other persons, including family members, as requested by the family.

(2) **"Inclusive setting"** means a setting where the child with a developmental delay or disability participates in a setting with typically developing children. A classroom in an early head start, child care or preschool classroom must have at least fifty-one percent non disabled peers in order to be considered an inclusive setting.

(3) **"Indian tribe"** means any federal or state recognized Indian tribe.

(4) **"Individualized education program (IEP)"** means a written plan developed with input from the parents that specifies goals for the child and the special education and related services and supplementary aids and services to be provided through the public school system under IDEA Part B.

(5) **"Individualized family service plan (IFSP)"** means the written plan for providing early intervention services to an eligible child and the child's family. The plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around outcomes and includes strategies to enhance the family's capacity to meet the developmental needs of the eligible child.

(6) **"Individualized family service plan process (IFSP process)"** means a process that occurs from the time of referral, development of the IFSP, implementation of early intervention services, review of the IFSP, through transition. The family service coordinator facilitates the IFSP process.

(7) **"Individuals with Disabilities Education Act (IDEA) – Part C"** means the federal law that contains requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled "The Early Intervention Program for Infants and Toddlers with Disabilities".

(8) **"Informed clinical opinion"** means the knowledgeable perceptions of the evaluation team who use qualitative and quantitative information regarding aspects of a child's development that are difficult to measure in order to make a decision about the child's eligibility for the FIT program.

(9) **"Intensity"** means the length of time the service is provided during each session.

(10) **"Interim IFSP"** means an IFSP that is developed prior to the completion of the evaluation and assessments in order to provide early intervention services that have been determined to be needed immediately by the child and the child's family. Use of an Interim IFSP does not extend the 45-day timeline for completion of the evaluation process.

J. Definitions beginning with the letter "J": [Reserved]

K. Definitions beginning with the letter "K": [Reserved]

L. Definitions beginning with the letter "L":

(1) **"Lead agency"** means the agency responsible for administering early intervention services under the Individuals with Disabilities Education Act (IDEA) Part C. The early childhood education and

care department, family infant toddler (FIT) program, is designated as the lead agency for IDEA Part C in New Mexico.

(2) **"Local education agency (LEA)"** means the local public school district.

(3) **"Location"** means the places in which early intervention services are delivered.

M. Definitions beginning with the letter "M":

(1) **"Mediation"** means a method of dispute resolution that is conducted by an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute.

(2) **"Medicaid"** means the federal medical assistance program under Title XIX of the Social Security Act. This program provides reimbursement for some services delivered by early intervention provider agencies to medicaid-eligible children.

(3) **"Method"** means the way in which a specific early intervention service is delivered. Examples include group and individual services.

(4) **"Multidisciplinary"** means personnel from more than one discipline who work with the child and family, and who coordinate with other members of the team.

N. Definitions beginning with the letter "N":

(1) **"Native language"** with respect to an individual who is limited English proficient, means the language normally used by a child or their parent(s) or mode of communication normally used by a child or their parents. Native language when used with respect to evaluations and assessments is the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment. Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(2) **"Natural environments"** means places that are natural or normal for children of the same age who have no apparent developmental delay, including the home, community and inclusive early childhood settings. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family's typical daily routine and lifestyle.

O. Definitions beginning with the letter "O":

(1) **"Other services"** means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Examples include, but are not limited to, child care, play groups, home visiting, early head start, WIC, etc.

(2) **"Outcome"** means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services that are documented on the IFSP.

P. Definitions beginning with the letter "P":

(1) **"Parent(s)"** means a biological or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents' authority to make the decisions required of parents has been removed under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Federal Individual with Disabilities Education Act; and has no interest that would conflict with the interests of the child.

(2) **"Participating agency"** means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of this rule with respect to a particular child.

(3) **"Permission"** means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

(4) **"Personally identifiable information"** means that information in any form which includes the names of the child or family members, the child's or family's address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it possible to identify the child or the family.

(5) **"Personnel"** means qualified staff and contractors who provide early intervention services, and who have met state approved or recognized certification or licensing requirements that apply to the area in which they are conducting evaluations, assessments or providing early intervention services.

(6) **"Physical/motor development"** means the progressive changes to a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

(7) **"Primary referral source"** means parents, physicians, hospitals and public health facilities (including prenatal and postnatal care facilities), child care programs, home visiting providers, schools, local education agencies, public health care providers, children's medical services, public agencies and staff in the child welfare system (including child protective service and foster care), other public health or social services agencies, early head start, homeless family shelters, domestic violence shelters and agencies, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

(8) **"Prior written notice"** means written notice given to the parents a reasonable time before the early intervention provider agency, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

(9) **"Procedural safeguards"** means the requirements set forth by IDEA, as amended, which specify families' rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

(10) **"Provider agency"** means a provider that meets the requirements established for early intervention services, and has been certified as a provider of early intervention services by the early childhood education and care department and that provides services through a provider agreement with the department.

(11) **"Public agency"** means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention services to eligible children and their families.

Q. Definitions beginning with the letter "Q": [Reserved]

R. Definitions beginning with the letter "R":

(1) **"Referral"** means the process of informing the FIT program regarding a child who may benefit from early intervention, and giving basic contact information regarding the family.

(2) **"Reflective supervision"** means planned time to provide a respectful, understanding and thoughtful atmosphere where exchanges of information, thoughts, and feelings about the things that arise around the person's work in supporting healthy parent-child relationships can occur. The focus is on the families involved and on the experience of the supervisee.

S. Definitions beginning with the letter "S":

(1) **"School year"** means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years. These dates are filed each year with the public education department.

(2) **"Scientifically based practices"** means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

(3) **"Screening"** means the use of a standardized instrument to determine if there is an increased concern regarding the child's development when compared to children of the same age, and whether a full evaluation would therefore be recommended.

(4) **"Significant atypical development"** means the eligibility determination under developmental delay made using informed clinical opinion, when twenty-five percent delay cannot be documented through state approved evaluation tool, but where there is significant concern regarding the child's development.

(5) **"Social or emotional development"** the developing capacity of the child to: experience, regulate, and express emotion; form close and secure interpersonal relationships; explore the environment and learn.

(6) **"State education agency"** means the public education department responsible for administering special education and related serves under IDEA Part B.

(7) **"Strategies"** means the section of the IFSP that describes how the team, including the parents, will address each outcome. Strategies shall include the methods and activities developed by the IFSP team to achieve functional outcomes. Strategies shall include family routines, times and locations where activities will occur, as well as accommodations to be made to the environment and assistive technology to be used. Strategies shall also include how members of the team will work together to meet the outcomes on the IFSP.

(8) **"Supervision"** means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning, organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

(9) **"Surrogate parent"** means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located, or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

T. Definitions beginning with the letter "T":

(1) **"Transition"** means the process for a family and eligible child of moving from services provided through the FIT program at age three. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child's transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

(2) **"Transition plan"** means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

U. Definitions beginning with the letter "U": [Reserved]

V. Definitions beginning with the letter "V": [Reserved]

W. Definitions beginning with the letter "W": "Ward of the state" means a child who is in foster care or in the custody of the child welfare agency.

[8.9.8.7 NMAC - N, 7/7/2021]

8.9.8.8 ADMINISTRATION:

A. Supervisory authority.

(1) Any agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico early childhood education and care department.

(2) An agency that has entered into a contract or provider agreement or an inter-agency agreement with the New Mexico early childhood education and care department to provide early intervention services shall be considered an "early intervention provider agency" under these regulations.

B. Provider requirements.

(1) All early intervention provider agencies shall comply with these regulations and all other applicable state and federal regulations. All early intervention provider agencies that provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico early childhood education and care department through the family infant toddler (FIT) program.

(2) All early intervention provider agencies shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement or an inter-agency agreement, medicaid rules and early childhood education and care department service definitions and standards. This information shall be kept on file with the early intervention provider agencies and shall be available to the New Mexico early childhood education and care department or its designee upon request.

(3) All early intervention provider agencies shall employ individuals who maintain current licenses or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider agency and

shall be available to the New Mexico early childhood education and care department or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico early childhood education and care department.

(4) Early intervention provider agencies shall ensure that personnel receive adequate training and planned and ongoing supervision, in order to ensure that individuals have the information and support needed to perform their job duties. The early intervention provider agency shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention provider agencies shall provide access to information necessary for the New Mexico early childhood education and care department or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention provider agencies will be addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

C. Financial matters.

(1) Reimbursement for early intervention services to eligible children and families by the family infant toddler program shall conform to the method established by the New Mexico early childhood education and care department, as delineated in the early intervention provider agency's provider agreement and in the service definitions and standards.

(2) Early intervention provider agencies shall only bill for early intervention services delivered by personnel who possess relevant, valid licenses or certification in accordance with personnel certification requirements of this rule.

(3) Early intervention provider agencies shall enter delivered services data into the FIT-KIDS (key information data system), which is generated into claims for medicaid, private insurance and invoices for the early childhood education and care department.

(4) Early intervention provider agencies shall maintain documentation of all services provided in accordance with service definitions and standards and provider agreement / contract requirements.

(5) The FIT program and early intervention provider agencies shall not implement a system of payments or fees to parents.

(6) Public and private insurance.

(a) The parent(s) will not be charged any co-pay or deductible related to billing their public insurance (including medicaid) and private insurance.

(b) The parent(s) shall provide written consent before personally identifiable information is disclosed for billing purposes to public insurance (including medicaid) and private insurance.

(c) The parent(s) may withdraw consent at any time to disclose personally identifiable information to public insurance (including medicaid) and private insurance for billing purposes.

(d) The parent(s) shall provide written consent to use their private insurance to pay for FIT program services. Consent shall be obtained prior to initial billing of their private insurance for early intervention services and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services on the IFSP.

[8.9.8.8 NMAC - N, 7/7/2021]

8.9.8.9 PERSONNEL:

A. Personnel requirements.

(1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed "qualified" based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as identified in this rule, and provide services in that discipline, do not require certification as a developmental specialist. However, individuals who hold a professional license or certificate in one of these fields and who spend sixty percent or more of their time employed in the role of developmental specialist must obtain certification as a developmental specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated.

B. **Qualified personnel** may include individuals from the following disciplines who meet the state's entry level requirements and possess a valid license or certification:

(1) audiology;
(2) developmental specialist;
(3) early childhood development and education;
(4) education of the deaf/hard of hearing;
(5) education of the blind and visually impaired;
(6) family therapy and counseling;
(7) nutrition/dietetics;
(8) occupational therapy (including certified occupational therapy assistants);
(9) orientation and mobility specialist;
(10) pediatric nursing;
(11) physical therapy (including physical therapy assistants);
(12) physician (pediatrics or other medical specialty);
(13) psychology (psychologist or psychological associate);
(14) social work;
(15) special education; and
(16) speech and language pathology.

C. **Certification of developmental specialist.**

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) A developmental specialist must have the appropriate certificate issued by the New Mexico early childhood education and care department in accordance with the developmental specialist certification policy and procedures.

(3) The term of certification as a developmental specialist is a three-year period granted from the date the application is approved.

D. **Reciprocity of certification:** An applicant for a developmental specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico developmental specialist certificate, at the discretion of the New Mexico early childhood education and care department.

E. **Certification renewal:** The individual seeking renewal of a developmental specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the FIT program.

F. **Agency exemptions from personnel certification requirements.**

(1) At its discretion, the FIT program may issue to an early intervention provider agency an exemption from personnel qualifications for a specific developmental specialist position. The exemption shall be in effect only for one year from the date it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider agency can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention provider agencies shall not bill for early intervention services delivered by a non-certified developmental specialist unless the FIT program has issued an exemption for that position.

(4) Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. **Family service coordinators.**

(1) Family service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years' experience in community, health or social services.

(2) If an early intervention provider agency is unable to hire suitable candidates meeting the above requirements, a person can be hired as a family service coordinator with an associate of arts degree and at least three years' experience in community, health or social services.

(3) Early intervention provider agencies may request a waiver from the FIT program, to hire family service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served or an individual who is the parent of a child with a developmental delay or disability.

(4) All individuals must meet all training requirements for family service coordinators in accordance with FIT program standards within one-year of being hired.

H. Supervision of early intervention personnel providing direct services.

(1) Early intervention provider agencies shall ensure that developmental specialists and therapists (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

[8.9.8.9 NMAC - N, 7/7/2021]

8.9.8.10 CHILD IDENTIFICATION:

A. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and other state, federal and tribal government agencies in a coordinated child find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and in Native American communities, children whose family is homeless, children in foster care and wards of the state, and children born prematurely.

B. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and shall inform primary referral sources regarding how to make a referral when there are concerns about a child's development. Primary referral sources include: hospitals; prenatal and postnatal care facilities; physicians; public health facilities; child care and early learning programs, school districts; home visiting programs; homeless family shelters; domestic violence shelters and agencies; child protective services, including foster care; other social service agencies; and other health care providers.

C. Early intervention provider agencies in collaboration with the New Mexico early childhood education and care department shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and intake:

(1) Primary referral sources shall inform parent(s) of their intent to refer and the purpose for the referral. Primary referral sources should refer the child as soon as possible, but in no case more than seven days after the child has been identified.

(2) Parents must give permission for a referral of their child to the FIT program.

(3) The child must be under three years of age at the time of the referral.

(4) If there are less than 45 days before the child turns three at the time of referral, the early intervention provider agency will not complete an evaluation to determine eligibility and will assist the family with a referral to Part B preschool special education and other preschool programs, as appropriate and with consent of the parent(s).

(5) The early intervention provider agency receiving a referral shall promptly assign a family service coordinator to conduct an intake with the parent(s).

(6) The family service coordinator shall contact the parent(s) to arrange a meeting at the earliest possible time that is convenient for the parent(s) in order to:

(a) inform the parent(s) about early intervention services and the IFSP process;

(b) review the FIT family handbook;

(c) explain the family's rights and procedural safeguards;

(d) if in a county that is also served by other FIT provider, inform the parent(s) of their choice of provider agencies and have them sign a "freedom of choice" form.

(e) provide information about evaluation options; and with the parent's consent, arrange the comprehensive multidisciplinary evaluation.

(7) If the child is found eligible for FIT services, the family service coordinator with parental consent shall schedule and facilitate the initial IFSP meeting to be completed within 45 days of referral to the FIT program for early intervention services.

(8) Exceptions to the 45-day timeline for completion of the initial IFSP due to exceptional family circumstances must be documented in the child's early intervention record. Exceptional family circumstances include:

(a) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation the initial assessments of the child and family, or the initial IFSP meeting.

(b) The parent has not provided consent for the screening (if applicable) the initial evaluation, or the initial assessment of the child despite documented repeated attempts by the early intervention provider.

E. Screening.

(1) A developmental screening for a child who has been referred may be conducted using a standardized instrument to determine if there is an indication that the child may have developmental delay and whether an evaluation to determine eligibility is recommended.

(2) A developmental screening should not be used if the child has a diagnosis that would qualify them under established condition or biological medical risk or where the referral indicates a strong likelihood that the child has delay in their development, including when a screening has already been conducted.

(3) If a developmental screening is conducted:

(a) the written consent of the parent(s) must be obtained for the screening; and

(b) the parent must be provided written notice that they can request an evaluation at any point during the screening process.

(4) If the results of the screening:

(a) Do not indicate that the child is suspected of having a developmental delay, the parent must be provided written notice of this result and be informed that they can request an evaluation at the present time or any future date.

(b) Do indicate that the child is suspected of having a developmental delay, an evaluation must be conducted, with the consent of the parent(s). The 45-day timeline from referral to the completion of the initial IFSP and all of the referral and intake requirements of this rule must still be met.

F. Evaluation.

(1) A child who is referred for early intervention services, and whose parent(s) has given prior informed consent, shall receive a comprehensive multidisciplinary evaluation to determine eligibility, unless the child receives a screening in accordance with the screening requirements of this rule and the results do not indicate that the child is suspected of having a developmental delay. Exception: If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted even if the results do not indicate that the child is suspected of having a developmental delay.

(2) The evaluation shall be:

(a) timely, multidisciplinary, evaluation;

(b) conducted by qualified personnel, in a nondiscriminatory manner so as not to be racially or culturally discriminatory; and

(c) shall include information provided by the parent(s).

(3) If parental consent is not given, the family service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(4) A comprehensive multidisciplinary evaluation shall be conducted by a multidisciplinary team consisting of at least two qualified professionals from different disciplines.

(5) The family service coordinator shall coordinate the evaluation and shall obtain pertinent records related to the child's health and medical history.

(6) The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history and observations of the child. The

evaluation shall also include an assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

(a) physical/motor development (including vision and hearing);

(b) cognitive development;

(c) communication development;

(d) social or emotional development; and

(e) adaptive development.

(7) The evaluation team shall use the tool(s) approved by the FIT program. Other domain specific tools may be used in addition to the approved tool(s).

(8) The tool(s) used in the evaluation shall be administered by certified or licensed personnel who have received training in the use of the tool(s).

(9) The evaluation shall be conducted in the child and family's native language, in accordance with the definition of native language, unless it is clearly not feasible to do so.

(10) The evaluation team will collect and discuss all of the information obtained during the evaluation process in order to make a determination of the child's eligibility for the FIT program.

(11) An evaluation report shall be generated that summarizes the findings of the multidisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and shall describe the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes. The report shall also include a statement regarding the determination of the child's eligibility for the FIT program.

(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFPS team, with prior consultation with the evaluation team.

(13) Information from the evaluation process and the report shall be used to assist in determining a rating for the initial early childhood outcome (ECO).

(14) If the child has a recent and complete evaluation current within the past six months from another Early Intervention Agency, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

G. Eligibility.

(1) The child's eligibility for early intervention services shall be determined through the evaluation process as identified in Section F. A statement of the child's eligibility for the FIT Program shall be documented in the evaluation report.

(2) The child's age shall be adjusted (corrected) for prematurity for children born less than 37 weeks gestation. The adjusted age shall be used until a child is 24 months of age for the purpose of eligibility determination.

(3) Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) or other approved assessment tools are not able to establish developmental delay.

(a) If informed clinical opinion is used to determine the child's eligibility, documentation must be provided to justify the child's eligibility.

(b) A second level review and sign off shall occur within the early intervention provider agency by someone of equal or higher certification or licensure that was not part of the evaluation team.

(c) Informed clinical opinion may only be used to qualify a child for more than one year with review and approval of the FIT program.

(4) The child must be determined eligible under one of the following categories.

(a) **Developmental delay:** a delay of twenty-five percent or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive.

(i) Twenty-five percent delay shall be documented utilizing the tool(s) approved by the FIT program.

(ii) If the FIT program approved tool does not indicate a twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is one and one-half standard deviations below the mean or greater.

(iii) Developmental delay includes "significant atypical development" documented on the basis of informed clinical opinion.

(b) Established condition: a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:

(i) genetic disorders with a high probability of developmental delay, including chromosomal anomalies including Down syndrome and Fragile X syndrome (in boys); inborn errors of metabolism including Hurler syndrome; and other syndromes, including Prader-Willi and Williams;

(ii) perinatal factors, including preterm newborn, 28 completed weeks or less

(iii) perinatal factors, including toxoplasmosis, rubella, CMV, and herpes (TORCH);

(iv) prenatal toxic exposures including fetal alcohol syndrome (FAS); and birth trauma, including neurologic sequelae from asphyxia;

(v) neurologic conditions, including congenital anomalies of the brain including holoprosencephaly lissencephaly, microcephaly, hydrocephalus; anomalies of spinal cord including meningomyelocele; degenerative or progressive disorders including muscular dystrophies, leukodystrophies, spinocerebellar disorders; cerebral palsy (all types), including generalized, hypotonic patterns; abnormal movement patterns including generalized hypotonia, ataxias, myoclonus, and dystonia; peripheral neuropathies; traumatic brain injury; and CNS trauma including shaken baby syndrome;

(vi) sensory abnormalities, including visual impairment or blindness; congenital impairments including cataracts; acquired impairments including retinopathy of prematurity; cortical visual impairment; and chronic hearing loss;

(vii) physical impairment, including congenital impairments including arthrogryposis, osteogenesis imperfecta, and severe hand anomalies; and acquired impairments including amputations and severe burns;

(viii) mental/psychosocial disorders, including autism spectrum disorders; and

(ix) conditions recognized by the FIT program as established conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment or mental/psychosocial disorder that is not specified above must be recognized by the FIT program in order to qualify as an established condition for purposes of this rule; physician, designated by the New Mexico early childhood education and care department, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program receipt of the request for review.

(c) Biological or medical risk for developmental delay: a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file. Biological and medical risk conditions include the following:

(i) genetic disorders with increased risk for developmental delay, including chromosomal anomalies including Turner syndrome, Fragile X syndrome (in girls), inborn errors of metabolism including Phenylketonuria (PKU), and other syndromes including Goldenhar neurofibromatosis, and multiple congenital anomalies (no specific diagnosis);

(ii) perinatal factors, including prematurity (less than 35 weeks and more than 29 weeks gestation) small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

(iii) neurologic conditions, including anomalies of the brain including the absence of the corpus callosum, and macrocephaly; anomalies of the spinal cord including spina

bifida and tethered cord; abnormal movement patterns including severe tremor and gait problems; and other central nervous system (CNS) influences, including CNS or spinal cord tumors, CNS infections (e.g., meningitis), abscesses, acquired immunodeficiency syndrome (AIDS), and CNS toxins (e.g., lead poisoning);

(iv) sensory abnormalities, including neurological visual processing concerns that affect visual functioning in daily activities as a result of neurological conditions, including seizures, infections (e.g., meningitis), and injuries including traumatic brain injury (TBI); and mild or intermittent hearing loss;

(v) physical impairment, including congenital impairments including cleft lip or palate, torticollis, limb deformity, club feet; acquired impairments including severe arthritis, scoliosis, and brachial plexus injury;

(vi) mental/psychosocial disorders, including severe attachment disorder, severe behavior disorders, and severe socio-cultural deprivation;

(vii) other medical factors and symptoms, including growth problems, severe growth delay, failure to thrive, certain feeding disorders, and gastrostomy for feeding; and chronic illness/medically fragile conditions including severe cyanotic heart disease, cystic fibrosis, complex chronic conditions, and technology-dependency; and

(viii) conditions recognized by the FIT program as biological or medical risk conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment, mental/psychosocial disorder, or other medical factor or symptom that is not specified above must be recognized by the FIT program in order to qualify as an medical or biological risk condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program manager's receipt of the request for review.

(d) **Environmental risk for developmental delay:** a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

(5) The families of children who are determined to be not eligible for the FIT program shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. Families shall receive information regarding other community resources, such as home visiting and how to access specific resources in their area. Families shall also be informed about how to request re-evaluation at a later time should they suspect that their child's delay or risk for delay increases.

H. Redetermination of eligibility.

(1) The child's eligibility for the FIT program shall be re-determined annually in accordance with the eligibility determination requirements of this rule.

(2) The child's continued eligibility shall be documented on the IFSP.

(3) If the child no longer meets the requirements under the original eligibility category, the team will determine if the child meets the criteria for one of the other eligibility categories before exiting the child.

(4) If the child is determined to no longer be eligible for the FIT program the family shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. The family service coordinator will assist the family, with their consent, with referrals to other agencies.

I. Ongoing assessment.

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and developmental functioning. The ongoing assessment will utilize multiple procedures including the use of a tool that helps the team determine if the child is making progress in their development, to determine developmental levels for the IFSP and to modify outcomes and strategies, and to determine the resources, priorities, and concerns of the family.

(2) Assessment information shall be used by the team as part of the process of determining early childhood outcome (ECO) scores at the time of the initial IFSP and prior to the child exiting the FIT program.

(3) An annual assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family. The IFSP shall reflect those resources, priorities and concerns the family has identified related to supporting their child's development.

[8.9.8.10 NMAC - N, 7/7/2021]

8.9.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):

A. IFSP development.

(1) A written IFSP shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family;

(b) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so; and

(c) meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(3) Participants at the initial IFSP and annual IFSP meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) a person or persons directly involved in conducting evaluations and assessments of the child;

(e) as appropriate, a person or persons who are or will be providing early intervention services to the child and family;

(f) the family service coordinator; and

(g) other individual(s) as applicable, such as personnel from: child care; early head start; home visiting; medically fragile; children's medical services; child protective services; physician and other medical staff, and with permission of the parent(s).

(4) If a person or persons directly involved in conducting evaluations and assessments of the child is unable to attend a meeting, the family service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend; or submitting a report.

(5) The initial IFSP shall be developed within 45 days of the referral.

(6) Families shall receive prior written notice of the IFSP meeting.

(7) The family service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP: The IFSP shall include:

(1) the child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age and adjusted age for prematurity (if applicable);

(2) the date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) the dates of periodic and annual reviews;

(4) a summary of the child's health (including vision and hearing) and the child's present levels of development in all domains (cognitive, communication, physical/motor, social and emotional and adaptive);

(5) with the approval of the parent(s), a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler as identified through the family assessment;

(6) the desired child and family outcomes developed with the family (including but not limited to pre-literacy and numeracy, as developmentally appropriate to the child), the strategies to achieve those outcomes and the timelines, procedures and criteria to measure progress toward those outcomes;

(7) a statement of specific early intervention services based on peer-reviewed research (to the extent practicable) that are necessary to meet the unique needs of the child and family to achieve the desired outcomes, and the duration, frequency, intensity, location, and the method of delivering the early intervention services;

(8) a parental signature, which denotes prior consent to the early intervention services on the IFSP; if the parent(s) does not provide consent for a particular early intervention service, then the

service(s) to which the parent(s) did consent shall be provided;

(9) specific information concerning payment sources and arrangements;

(10) the name of the ongoing family service coordinator;

(11) a statement of all other services including, medical services, child care and other early learning services being provided to the child and family that are not funded under this rule;

(12) an outcome, including strategies the family service coordinator or family shall take to assist the child and family to secure other services not funded under this rule;

(13) a statement about the natural environments in which early intervention services shall be provided; if the IFSP team determines that services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included;

(14) the projected start dates for initiation of early intervention services and the anticipated duration of those services; and

(15) at the appropriate time, a plan including identified steps and services to be taken to ensure a smooth and effective transition from early intervention services to preschool services under IDEA Part B and other appropriate early learning services.

C. Interim IFSP.

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child or family have an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the family service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Family service coordination.

(1) Family service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing family service coordination.

(3) The parent may request to change the family service coordinator, at any time.

(4) The family service coordinator shall be responsible for:

(a) informing the family about early intervention and their rights and procedural safeguards;

(b) gathering information from the family regarding their concerns, priorities and resources;

(c) coordinating the evaluation and assessment activities;

(d) facilitating the determination of the child's eligibility;

(e) referring the family to other resources and supports;

(f) helping families plan and prepare for their IFSP meeting;

(g) organizing and facilitating IFSP meetings;

(h) arranging for and coordinating all services listed on the IFSP;

(i) coordinating and monitoring the delivery of the services on the IFSP to ensure that they are provided in a timely manner;

(j) conducting follow-up activities to determine that appropriate services are being provided;

(k) assisting the family in identifying funding sources for IFSP services, including medicaid and private insurance;

(l) facilitating periodic reviews of the IFSP; and

(m) facilitating the development of the transition plan and coordinating the transition steps and activities.

(5) Family service coordination shall be available to families upon their referral to the FIT program.

(6) Family service coordination shall be listed on the IFSP for all families of eligible children.

(7) Families may direct the level of support and assistance that they need from their family service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic review of the IFSP.

(1) A review of the IFSP for a child and child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review.

(2) The parent(s), the family service coordinator, and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider agency.

(4) Participants at a periodic review meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) the family service coordinator; and

(e) persons providing early intervention services, as appropriate.

F. Annual IFSP.

(1) The family service coordinator shall convene the IFSP team on an annual basis, to review progress regarding outcomes on the IFSP and to revise outcomes, strategies or services, as appropriate to the child's and family's needs and the annual re-determination of the child's eligibility for services.

(2) Attendance at the annual IFSP meeting shall conform to the requirements of the initial IFSP meeting.

(3) The team shall develop a new IFSP for the coming year; however, information may becarried forward from the previous IFSP if the information is current and accurate.

(4) Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what outcomes will be addressed for the child and family and the services to be provided to meet these outcomes.

(5) The annual IFSP process shall include a determination of the child's continuing eligibility utilizing the tool(s) approved by the FIT program.

(6) At any time when monitoring of the IFSP by the family service coordinator or any member of the IFSP team, including the family, indicates that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP. The IFSP team can also be reconvened if there are significant changes to the child's or family's situation, e.g., moving to a new community, starting child care or early head start, health or medical changes, etc.

(7) If there are significant changes to the IFSP, the revised IFSP can be considered a new annual IFSP with a new start and end date.

[8.9.8.11 NMAC - N, 7/7/2021]

8.9.8.12 SERVICE DELIVERY:

A. Early intervention services.

(1) Early intervention services shall be:

(a) designed to address the outcomes identified by the IFSP team (which includes parents and other team members);

(b) identified in collaboration with the parents and other team members through the IFSP process;

(c) listed on the IFSP if recommended by the team, including the family, even if a service provider is not available at that time;

(d) delivered to the maximum extent appropriate in the natural environment for the child and family in the context of the family's day to day life activities;

(e) designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development;

(f) delivered in accordance with the specific location, duration and method in the IFSP; and

(g) provided at no cost to the parent(s).

(2) Early intervention services (with the exception of consultation and evaluation and assessments) must be provided within 30 days of the start date for those services, as listed on the IFSP and consented to by the parent(s).

(3) If an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(4) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the state. Early intervention services include:

(a) **Assistive technology services**: services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals that provide early intervention or other individuals who provide other services or who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children. Assistive technology devices and services do not include medical devices that are implanted, including a cochlear implant, or the optimization, maintenance, or replacement of such a device.

(b) **Audiological services**: services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training; provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) **Developmental instruction**: services that include working in a coaching role with the family or other caregiver, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental instruction provides families and other caregivers with the information, skills, and support to enhance the child's development. Developmental instruction addresses all developmental areas: cognitive, communication, physical/motor, vision, hearing), social or emotional and adaptive development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d) **Family therapy, counseling and training**: services provided, as appropriate, by licensed social workers, family therapists, counselors, psychologists, and other qualified personnel to assist the parent(s) in understanding the special needs of their child, supporting the parent-child relationship, and to assist with emotional, mental health and relationship issues of the parent(s) related to parenting and supporting their child's healthy development.

(e) **Family service coordination**: services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from birth through age three years of age to access and receive early intervention services. The responsibilities of the family service coordinator include acting as the single point of contact for: coordinating, facilitating and monitoring the delivery of services to ensure that services are provided in a timely manner; coordinating services across agency lines; assisting parents in gaining access to, and coordinating the provision of, early intervention services and other services as identified on the IFSP; explaining early intervention services to families, including family rights and procedural safeguards; gathering information from the family regarding their concerns, priorities and resources; coordinating the evaluation and assessment activities; facilitating the determination of the child's

eligibility; referring the family to providers for needed services and supports; scheduling appointments for IFSP services for the child and their family; helping families plan and prepare for their IFSP meeting; organizing, facilitating and participating in IFSP meetings; arranging for and coordinating all services listed on the IFSP; conducting follow-up activities to determine that appropriate services are being provided; coordinating funding sources for services provided under the IFSP; facilitating periodic reviews of the IFSP; ensuring that a transition plan is developed at the appropriate time; and facilitating the activities in the transition plan to support a smooth and effective transition from FIT services.

(f) **Health services**: those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children; or services related to implementation, optimization, maintenance or replacement of a medical device that is surgically implanted.

(g) **Medical services**: those services provided for diagnostic or evaluation purposes by a licensed physician to determine a child's developmental status and other information related to the need for early intervention services.

(h) **Nursing services**: those services that enable an eligible child to benefit from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care; the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(i) **Nutrition services**: include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(j) **Occupational therapy services**: those services that address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k) **Physical therapy services**: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(l) **Psychological services**: those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(m) **Sign language and cued language services**: services that include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(n) **Social work services**: those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child's living conditions, providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child's and family's living situation that affect the child's maximum utilization of early intervention services.

(o) **Speech and language pathology services**: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p) **Transportation services**: supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early intervention services or providing other means of transporting the child and family.

(q) **Vision services**: services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training. Vision services also include orientation and mobility training addressing concurrent motor skills, sensation, environmental concepts, body image, space/time relationships, and gross motor skills. Orientation and mobility instruction is focused on travel and movement in current environments and next environments and the interweaving of skills into the overall latticework of development. Services include evaluation and assessment of infants and toddlers identified as blind/visually impaired to determine necessary interventions, vision equipment, and strategies to promote movement and independence.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the FIT program in accordance with policy and procedure established by the FIT program.

C. The family service coordinator shall review and monitor delivery of services to ensure delivery in accordance with the IFSP.

[8.9.8.12 NMAC - N, 7/7/2021]

8.9.8.13 TRANSITION:

A. Transition planning shall occur with the parent(s) of **all** children to ensure a smooth transition from the FIT program to preschool or other setting.

B. **Notifications to the public education department and local education agency (LEA):**

(1) The FIT program shall provide notification to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following 12-month period.

(2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following 12-month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child's name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and

(d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

C. Transition plan:

(1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.

(2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.

(3) The following is the timeline for developing the transition plan:

(a) at the child's initial IFSP meeting the transition plan shall be initiated and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;

(b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child and any plans to visit those settings; and

(c) at least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

(4) The transition plan shall include:

(a) steps, activities and services to promote a smooth and effective transition for the child and family;

(b) a review of program and service options available, including Part B preschool special education, head start, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, private preschool, child care settings and available options for Native American tribal communities; or home if no other options are available;

(c) documentation of when the child will transition;

(d) the parent(s) needs for childcare if they are working or in school, in an effort to avoid the child having to move between preschool settings;

(e) how the child will participate in inclusive settings with typically developing peers;

(f) evidence that the parent(s) have been informed of the requirement to send notification to the LEA;

(g) discussions with and training of the parent(s) regarding future placements and other matters related the child's transition;

(h) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting; and

(i) a confirmation that referral information has been transmitted, including the assessment summary form and most recent IFSP.

D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA at least 60 days prior to the transition conference. The transition referral shall include at a minimum the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

(2) For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child.

(3) For children referred to the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parent consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least 30 days prior to the transition conference.

F. Transition assessment summary:

(1) The family service coordinator shall submit a completed transition assessment summary form to the LEA at least 30 days prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

G. Transition conference: The transition conference shall:

(1) be held with the approval of the parent(s);

(2) be held at least 90 days and no more than nine months prior to the child's third birthday;

(3) meet the IFSP meeting attendance requirements of this rule;

(4) take place in a setting and at a time that is convenient to the family;

(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

(7) be facilitated by the family service coordinator to include:

(a) a review of the parent(s)'s preschool and other service options for their child;

(b) a review of, and if needed, a finalization of the transition plan;

(c) a review of the current IFSP, the assessment summary; and any other relevant information;

(d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parent consent;

(e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation;

(f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.

(g) discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.

(h) documentation of the decisions made on the transition page and signatures on the transition conference signature page, which shall be included as part of the IFSP. Copies of the transition conference page and signature page shall be sent to all participants.

H. Transition date:

(1) The child shall transition from the FIT program when the child turns three years old.

(2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B):

(a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or

(b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

I. The individualized education program (IEP):

(1) The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval.

(2) The family service coordinator, with parent consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

J. Follow-up family service coordination: At the request of the parents, and in accordance with New Mexico early childhood education and care department policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

[8.9.8.13 NMAC - N, 7/7/2021]

8.9.8.14 PROCEDURAL SAFEGUARDS:

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico early childhood education and care department that specify family's rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The family service coordinator at the first visit with the family shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The family service coordinator shall provide ongoing information and assistance to families regarding their rights throughout the period of the child's eligibility for services. The family service coordinator shall explain dispute resolution options available to families and early intervention provider agencies. A family service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. Surrogate parent(s).

(1) A surrogate parent shall be assigned when:

(a) no parent can be identified;

(b) after reasonable efforts a parent cannot be located; and

(c) a child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process.

(2) The family service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) and shall contact the FIT program if the need for a surrogate is determined.

(3) The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process.

(4) The FIT program shall assign a surrogate parent within 30 days after it is determined that the child needs a surrogate parent. A surrogate may also be appointed by a judge in case of a child who is a ward of the court, as long as the surrogate meets the requirements of this rule.

(5) The person selected as a surrogate:

(a) must not be an employee of the lead agency, other public agency or early intervention provider agency or provider of other services to the child or family; the person is not considered an employee if they solely are employed to serve as a surrogate;

(b) must have no personal or professional interest that conflicts with the interests of the child; and

(c) must have knowledge and skills that ensure adequate representation of the child.

(6) A surrogate parent has all of the same rights as a parent for all purposes of this rule.

D. Consent.

(1) The family service coordinator shall obtain parental consent before:

(a) administering screening procedures under this rule that are used to determine whether a child is suspected of having a disability;

(b) an evaluation conducted to determine the child's eligibility for the FIT program;

(c) early intervention services are provided;

(d) public or private insurance is used, in accordance with this rule; and

(e) personally identifiable information is disclosed, unless the disclosure is made to a participating agency.

(2) The family service coordinator shall ensure that the parent is fully aware of the nature of the evaluation and assessment or early intervention service that would be available and informed that without consent the child cannot receive an evaluation or early intervention services.

(3) The parent(s):

(a) may accept or decline any early intervention service at any time; and

(b) may decline a service after first accepting it, without jeopardizing other early intervention services.

(4) The FIT program may not use due process procedures of this rule to challenge a parent's refusal to provide any consent that is required by this rule.

E. Prior written notice and procedural safeguards notice.

(1) Prior written notice shall be provided at least five days before the early intervention provider agency proposes, or refuses, to initiate or change the identification, evaluation or placement of a child,

including any changes to length, duration, frequency and method of delivering a service. Parent(s) may waive the five-day period in order for the change to be implemented sooner, if needed.

(2) The prior written notice must include sufficient detail to inform the parent(s) about:

(a) the action being proposed or refused;

(b) the reasons for taking the action; and

(c) all procedural safeguards available, including mediation, how to file a complaint and a request for a due process hearing, and any timelines for each.

(3) The procedural safeguards notice must be provided in the native language of the parent(s) or other mode of communication used by the parent, unless clearly not feasible to do so.

(4) If the native language of the parent(s) is not a written language, the early intervention provider agency shall translate the notice orally in their native language or other means of communication so that the parent understands the notice. The family service coordinator shall document that this requirement has been met.

F. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

G. Confidentiality and opportunity to examine records.

(1) Notice: Notice to the parent(s) shall be provided when a child is referred to the FIT program, and shall include:

(a) a description of the types of children that information is maintained on, the types of information sought, and method used in gathering the information, and the uses of the information;

(b) a summary of the policies and procedures regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;

(c) a list of the types and locations of early intervention records collected, maintained or used by the agency;

(d) a description of the rights of the parent(s) and children regarding this information, including their rights under IDEA, Part C ("Confidentiality"); and

(e) a description of the extent to which the notice is provided in the native languages of the various population groups in the state.

(2) Confidentiality.

(a) All personally identifiable data, information, and records shall be protected, and confidentiality maintained in accordance with the Family Educational Rights and Privacy Act (FERPA).

(b) Personally identifiable data, information, and records shall be maintained as confidential from the time the child is referred to the FIT program until the point at which records are no longer required to be maintained in accordance with federal or state law.

(c) Prior consent from the parent(s) must be obtained before personally identifiable information is disclosed to anyone other than a participating agency or used for any purpose other than meeting a requirement of these regulations.

(d) The early intervention provider agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(e) One official at each early intervention provider agency must assume responsibility for ensuring the confidentiality of all personally identifiable information.

(f) The early intervention provider agency must maintain for public inspection a current listing of names and positions of personnel who may have access to personally identifiable information.

(g) All personnel collecting or using personally identifiable information must receive training or instructions on the confidentiality requirements of this rule.

(3) Access to records.

(a) The early intervention provider agency must permit the parent(s) to inspect and review any early intervention records related to their child without unnecessary delay and before any IFSP meeting or due process hearing, and in no cases more than 10 days after the request has been made.

(b) The early intervention provider agency must respond to reasonable requests for explanations and interpretations of the early intervention records.

(c) The parent has the right to have a representative inspect and review the early intervention records.

(d) The early intervention provider agency must assume that the parent has the right to review the early intervention records unless they have been provided documentation that the parent does not have authority under state law governing such matters as custody, foster care, guardianship, separation and divorce.

(e) The early intervention provider agency must provide copies of evaluations and assessments, the IFSP as soon as possible after each meeting at no cost.

(f) The early intervention provider agency must provide one complete copy of the child's early intervention records at the request of the parent(s) at no cost.

(g) The early intervention provider agency may otherwise charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(h) The early intervention provider agency may not charge a fee to search for or to retrieve records to be copied.

(4) Record of access.

(a) The early intervention provider agency must keep a record of parties obtaining access to early intervention records (except access by the parent(s), authorized representatives of the lead agency and personnel of the FIT provider agency).

(b) The record must include the name of the party, the date access was given, and the purpose for which the party was authorized to access the record.

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

(5) Amendment of records at parent request.

(a) If the parent(s) believes that information in the child's records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), they may request that the early intervention provider agency amend the information.

(b) The early intervention provider agency must decide whether to amend the information in accordance with the request within 14 days of receipt of the request.

(c) If the early intervention provider agency refuses to amend the information in accordance with the request, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing.

(6) Records hearing.

(a) The early intervention provider agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's record to ensure that it is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s).

(b) A parent may request a due process hearing under this rule to address amendment of records.

(c) If as a result of a hearing it is determined that information in the records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must amend the information accordingly and inform the parents in writing.

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

(e) Any explanation placed in the child's records must be maintained by the early intervention provider agency as long as the record is contested or as long as the contested portion is maintained and if the contested portion is released to any party, the explanation must also be disclosed to the party.

(7) Destruction of records.

(a) Records shall be maintained for a minimum of six years following the child's exit from the early intervention services system before being destroyed. At the conclusion of the six year

period, records shall be destroyed upon the request of the parent(s), or may be destroyed at the discretion of the early intervention provider agency.

(b) The early intervention provider agency must attempt to inform the parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide services under state and federal regulations.

(c) Notwithstanding the foregoing, a permanent record of a child's name, date of birth, parent contact information, name of the family service coordinator, names of early intervention personnel, and exit data (year and age upon exit, and any programs entered into upon exit) may be maintained without time limitation.

H. Dispute resolution options.

(1) Parents and providers shall have access to an array of options for resolving disputes, as described herein.

(2) The family service coordinator shall inform the family about all options for resolving disputes. The family shall also be informed of the policies and procedures of the early intervention provider agency for resolving disputes at the local level.

I. Mediation.

(1) The mediation process shall be made available to parties to disputes, including matters arising prior to filing a complaint or request for due process hearing. The mediation:

(a) shall be voluntary on the part of the parties;

(b) shall not be used to deny or delay the parent(s)'s right to a due process hearing or to deny any other rights of the parent(s);

(c) shall be conducted by a qualified and impartial mediator who is trained in mediation techniques and who is knowledgeable in the laws and regulations related to the provision of early intervention services;

(d) shall be selected by the FIT program from a list of qualified, impartial mediators who are selected based on a random, rotational or other impartial basis; the selected mediator may not be an employee of the lead agency or the early intervention provider agency and they must not have a personal or professional interest that conflicts with the person's objectivity; and

(e) shall be funded by the FIT program.

(2) Sessions in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.

(3) If the parties resolve the dispute, they must execute a legally binding agreement that:

(a) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) is signed by both parties.

(4) The mediation agreement shall be enforceable in a state or federal district court of competent jurisdiction.

J. Complaints.

(1) An individual or organization may file a complaint with the state director of the FIT program regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family. The party submitting the complaint shall also forward a copy of the complaint to the FIT provider agency(ies) serving the child.

(2) The written complaint shall be signed by the complaining party and shall include:

(a) a statement that the FIT program or FIT provider agency(ies) serving the child have violated a requirement of this rule or Part C of the IDEA, and a statement of the facts on which that allegation is based;

(b) the signature and contact information of the complainant;

(c) if the complaint concerns a specific child:

(i) the name and address of the residence of the child, or if the child is homeless, the contact information for the child;

(ii) the name of the FIT provider agency(ies) serving the child;

(iii) a description of the nature of the dispute related to the proposed or refused initiation or change, including facts related to the dispute; and

(d) a proposed resolution of the dispute to the extent known and available to the party at the time.

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

(4) Upon receipt of a complaint, the early childhood education and care department shall determine if an investigation is necessary, and if an investigation is deemed necessary, within 60 calendar days after the complaint is received it shall:

(a) carry out an independent on-site investigation;

(b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) provide an opportunity for the lead agency, public agency or early intervention provider agency to respond to the complaint, including at a minimum:

(i) at the discretion of the FIT program, a proposal to resolve the complaint; and

(ii) an opportunity for a parent who has filed a complaint and the FIT program or the FIT provider agency(ies) serving the child to voluntarily engage in mediation, consistent with this rule;

(d) give the parties the opportunity to voluntarily engage in mediation;

(e) review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(f) issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The written decision may include recommendations that include technical assistance activities, negotiations and corrective actions to be achieved.

(5) An extension of the 60 day investigation timeline will only be granted if exceptional circumstances exist with respect to a particular complaint or if the parties agree to extend the timeline to engage in mediation.

(6) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty-calendar day timeline.

(7) If an issue raised in a complaint is or was previously decided in a due process hearing involving the same parties, the decision from that hearing is binding on that issue, and the FIT program shall inform the complainant to that effect.

(8) A complaint alleging a failure to implement a due process hearing decision shall be resolved by the department.

(9) Except as otherwise provided by law, there shall be no right to judicial review of a decision on a complaint.

K Request for a due process hearing.

(1) In addition to the complaint procedure described above, a parent, a participating FIT provider, or the FIT program may file a request for a hearing regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family.

(2) A parent or participating FIT provider may request a hearing to contest a decision made by the FIT program pursuant to the complaints provisions above.

(3) A request for a hearing shall contain the same minimum information required for a complaint under this rule.

L. Appointment of hearing officer.

(1) When a request for a hearing is received, the FIT program shall assign an impartial hearing officer from a list of hearing officers maintained by the FIT program who:

(a) has knowledge about IDEA Part C and early intervention;

(b) is not an employee of any agency or entity involved in the provision of early intervention; and

(c) does not have a personal or professional interest that would conflict with their objectivity in implementing the process.

(2) The hearing officer shall:

(a) listen to the presentation of relevant viewpoints about the due process issue;

(b) examine all information relevant to the issues;

(c) seek to reach timely resolution of the issues; and

(d) provide a record of the proceedings, including a written decision.

M. Due process hearings.

(1) When a request for a hearing is received, a due process hearing shall be conducted.

(2) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents and child involved.

(3) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than 30 days after receipt of a parent's complaint. However, the hearing officer may grant specific extensions of this time limit at the request of either party.

(4) A parent shall have the right in the due process hearing proceedings:

(a) to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children and others, at the party's discretion;

(b) to present evidence and confront, cross examine, and compel the attendance of witnesses;

(c) to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing;

(d) to obtain a written or electronic verbatim record of the hearing, at no cost to the parent; and

(e) to obtain a written copy of the findings of fact and decisions, at no cost to the parent.

(5) Any party aggrieved by the findings and decision of the hearing officer after a hearing has the right to bring a civil action in a state or federal court of competent jurisdiction, within 30 days of the date of the decision.

N. Abuse, neglect, and exploitation.

(1) All instances of suspected abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico early childhood education and care department and the children, youth and families department.

(2) A parent's decision to decline early intervention services does not constitute abuse, neglect or exploitation.

[8.9.8.14 NMAC - N, 7/7/2021]

HISTORY OF 8.9.8 NMAC: [RESERVED]

ANUNCIO DE AUDIENCIA PÚBLICA:

El Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México anuncia por el presente la audiencia que se realizará para el Plan Estatal del Fondo para el Desarrollo y Cuidado Infantil (CCDF). Este plan describe el programa CCDF, que será administrado por el estado o territorio durante el período del 1 de octubre de 2021 al 30 de septiembre de 2024, según lo establecido en la legislación y los reglamentos pertinentes.

Objetivo de la audiencia: El programa CCDF es resultado de una asociación federal y estatal y se encuentra autorizado por la Ley federal de Subvención en Bloque para el Desarrollo y Cuidado Infantil (CCDBG) de 2014. El CCDF contribuye a financiar el programa de ayuda para el cuidado infantil de Nuevo México. Este programa permite a las familias con ingresos elegibles a tener acceso a un cuidado infantil que promueve el aprendizaje y el desarrollo de sus niños mientras se encuentran trabajando o recibiendo educación o capacitación. Además, el programa CCDF ofrece financiación con el fin de mejorar la calidad, la salud y la seguridad del cuidado infantil para todos los niños de Nuevo México. El Plan Estatal describe la manera en que el programa CCDF será administrado por Nuevo México durante el período del 1 de octubre de 2021 al 30 de septiembre de 2024. En el sitio web del ECECD, en https://www.nmececd.org/ y en el de New Mexico Kids, en https://www.newmexicokids.org/ habrá copias del plan propuesto 20 días antes de la audiencia pública.

Anuncio de la audiencia: La audiencia se celebrará el **4 de junio de 2021 a la 1:00 p.m.** La audiencia estará accesible por Internet, por correo electrónico y por teléfono debido a las inquietudes por el COVID-19, y de conformidad con la Orden Ejecutiva 2020-004 de la gobernadora Michelle Lujan Grisham, la Declaración de emergencia de salud pública y la Orden del 12 de marzo de 2020 de emergencia pública de salud para limitar las asambleas masivas debido al COVID-19. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés, podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el plan propuesto durante la audiencia. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará todo lo posible por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el plan propuesto, de parte de cualquier interesado del público, pueden enviarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "CCDF Plan Public Comment" o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios por escrito se pueden entregar el 4 de junio de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA en 1120 Paseo De Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 4 de junio de 2021. Cualquier persona del público que esté interesada puede asistir a la audiencia por Internet o por teléfono y ofrecer sus comentarios públicos sobre el plan propuesto durante la audiencia. Para participar

por teléfono: llame al 1-346-248-7799, usando el código de acceso 914 5427 8709. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite https://zoom.us/j/91454278709 y siga las instrucciones indicadas en la pantalla – ID de la reunión (código de acceso): 914 5427 8709#. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

Kliphuis, Tracy, ECECD

From: Kliphuis, Tracy, ECECD
Sent: Tuesday, April 13, 2021 12:33 PM
To: lcs@nmlegis.gov
Cc: Gajapathi, Devi, ECECD; Claire ECECD Dudley-Chavez (Claire.DudleyChavez@state.nm.us); Smith, Ashleigh, ECECD; Brendan ECECD Egan (Brendan.Egan2@state.nm.us); PhoenixDoyle, Kathey, ECECD
Subject: Early Childhood Education and Care Department - Notice of Rulemaking and Public Hearing
Attachments: 8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf

Good afternoon,

As part of the New Mexico Statue Rules Act requirements of providing notice to the New Mexico Legislative Council for distribution to appropriate interim and standing legislative committees, attached is a Notice of Rulemaking and Public Rule hearing for the following proposed rule:

8.9.8 NMAC - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

Please provide confirmation of receipt and distribution to appropriate interim and standing legislative committees.

Thank you.

Trais Kliphuis
Quality Assurance Manager

(505) 372-8656 Mobile
Old PERA Building
1120 Paseo De Peralta
Santa Fe, NM 87505
http://nmececd.org

NEW MEXICO
Early Childhoo

Provider complaints: (888) 351-0037
ChildCare.Complaint@state.nm.us

Kliphuis, Tracy, ECECD

From: Kliphuis, Tracy, ECECD
Sent: Tuesday, April 13, 2021 4:38 PM
To: ECECD-ECS-PublicComment
Subject: Notice of Rulemaking - Families, Part 10
Attachments: 8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf; 8.9.8 (FIT) Changes shown.pdf

Dear Family,

Early Childhood Education and Care Department (ECECD) will hold a formal public hearing on the proposed regulation 8.9.8 NMAC – Social Services - **REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES.**

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.9.8 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to https://zoom.us/j/91919388049?pwd=dWZ4VjZ1WXJ3UHdRcll1WkJDbVVWdz09, and follow the instructions indicated on the screen – Passcode: 149616. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

Attached is the Notice of Rulemaking and Public Rule Hearing.

They can also be found on the NM Kids website at www.newmexicokids.org and https://www.nmececd.org/

PLEASE BE ADVISED THAT THESE PROPOSED REGULATIONS DO NOT AFFECT CURRENT CHILDCARE ELIGIBILITY TO FAMILIES

Thank you!

Kliphuis, Tracy, ECECD

From: Kliphuis, Tracy, ECECD
Sent: Wednesday, April 14, 2021 9:49 AM
To: ECECD-ECS-PublicComment
Cc: Smith, Ashleigh, ECECD; Gajapathi, Devi, ECECD; Claire ECECD Dudley-Chavez (Claire.DudleyChavez@state.nm.us)
Subject: Notice of Rulemaking - Participated in Rulemaking
Attachments: 8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf; 8.9.8 (FIT) Changes shown.pdf

Dear Participant,

Early Childhood Education and Care Department (ECECD) will hold a formal public hearing on the proposed regulation 8.9.8 NMAC – Social Services - **REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES.**

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.9.8 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to https://zoom.us/j/91919388049?pwd=dWZ4VjZIWXJ3UHdRcll1WkJDbVVWdz09, and follow the instructions indicated on the screen – Passcode: 149616. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

Attached is the Notice of Rulemaking and Public Rule Hearing.

They can also be found on the NM Kids website at www.newmexicokids.org and https://www.nmececd.org/

PLEASE BE ADVISED THAT THESE PROPOSED REGULATIONS DO NOT AFFECT CURRENT CHILDCARE ELIGIBILITY TO FAMILIES.

Thank you!

From:	PhoenixDoyle, Kathey, ECECD
To:	NMICC-L@LIST.UNM.EDU
Subject:	Early Childhood Education and Care Department - Notice of Rulemaking and Public Hearing
Date:	Tuesday, April 13, 2021 2:51:00 PM
Attachments:	8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf image001.png image004.png 8.9.8 (FIT) Changes shown (002).pdf image002.png

Dear FIT ICC Members,

Early Childhood Education and Care Department (ECECD) will hold a formal public hearing on proposed regulation.

- 8.9.8 NMAC – Social Services - **REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES**

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

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PLEASE BE ADVISED THAT THESE PROPOSED REGULATION DO NOT AFFECT CURRENT ELIGIBILITY TO FAMILIES.

Thank you,

Kathey

NEW MEXICO
Early Childhood
Education & Care Department

All together from a distance.

Kathey Phoenix-Doyle
Family Infant Toddler Program Bureau Chief

Email: kathey.phoenixdoyle@state.nm.us
Mobile: 505-660-7439
Fax : (866) 829-8838
PO Drawer 5619
Santa Fe, NM 87502-5619
http://nmececd.org

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Kliphuis, Tracy, ECECD

From: Kliphuis, Tracy, ECECD
Sent: Wednesday, April 14, 2021 9:36 AM
To: ECECD-ECS-PublicComment
Subject: Notice of Rulemaking - Providers #3
Attachments: 8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf; 8.9.8 (FIT) Changes shown.pdf

Dear Provider,

Early Childhood Education and Care Department (ECECD) will hold a formal public hearing on the proposed regulation 8.9.8 NMAC – Social Services - **REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES.**

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

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PLEASE BE ADVISED THAT THESE PROPOSED REGULATIONS DO NOT AFFECT CURRENT CHILDCARE ELIGIBILITY TO FAMILIES.

Thank you!

From:	PhoenixDoyle, Kathey, ECECD
To:	FITCOORDINATORS-L@LIST.UNM.EDU
Subject:	Early Childhood Education and Care Department - Notice of Rulemaking and Public Hearing
Date:	Tuesday, April 13, 2021 2:50:00 PM
Attachments:	8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf image001.png image004.png 8.9.8 (FIT) Changes shown (002).pdf image002.png

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Dear FIT Provider Community,

Early Childhood Education and Care Department (ECECD) will hold a formal public hearing on proposed regulation.

- 8.9.8 NMAC – Social Services - **REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES**

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

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Thank you,

Kathey

NEW MEXICO
Early Childhood
Education & Care Department

All together from a distance.

Kathey Phoenix-Doyle
Family Infant Toddler Program Bureau Chief

Email: kathey.phoenixdoyle@state.nm.us
Mobile: 505-660-7439
Fax : (866) 829-8838
PO Drawer 5619
Santa Fe, NM 87502-5619
http://nmececd.org

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Kliphuis, Tracy, ECECD

From: PhoenixDoyle, Kathey, ECECD
Sent: Tuesday, April 13, 2021 12:56 PM
To: Kliphuis, Tracy, ECECD; Brown, Kimberly, ECECD
Cc: Steward, Patricia, ECECD; DudleyChavez, Claire, ECECD; Gajapathi, Devi, ECECD; Smith, Ashleigh, ECECD; Gutierrez, Mayra, ECECD
Subject: RE: Please post notice for 8.9.8 NMAC

Hi,

The attached documents have been posted in the FIT office in Santa Fe. Kathey

From: Kliphuis, Tracy, ECECD <TracyL.Kliphuis@state.nm.us>
Sent: Tuesday, April 13, 2021 12:47 PM
To: Brown, Kimberly, ECECD <kimberly.brown@state.nm.us>; PhoenixDoyle, Kathey, ECECD <Kathey.PhoenixDoyle@state.nm.us>
Cc: Steward, Patricia, ECECD <patricia.steward@state.nm.us>; DudleyChavez, Claire, ECECD <Claire.DudleyChavez@state.nm.us>; Gajapathi, Devi, ECECD <Devi.Gajapathi2@state.nm.us>; Smith, Ashleigh, ECECD <Ashleigh.Smith@state.nm.us>
Subject: Please post notice for 8.9.8 NMAC

Hello.

Would you please ask all Child Care and FIT related offices to post and make available the attached notice?

We need this done by April 20, 2021 at the latest.

Please confirm and let us know if you have questions.

Thank you!

New Mexico
Early Childhoo

Trais Kliphuis
Quality Assurance Manager

(505) 372-8656 Mobile
Old PERA Building
1120 Paseo De Peralta
Santa Fe, NM 87505
http://nmececd.org

Provider complaints: (888) 351-0037
ChildCare.Complaint@state.nm.us

List of individuals to whom notice was mailed or sent electronically as required by 1.24.25.14.A

The following may be requested through an IPRA:

- **Names of child care assistance recipients who were notified**
- **Names of child care providers who were notified**
- **Names of individuals who have participated in the rulemaking process**

New Mexico
Early Childhood
Education & Care Department

REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1 p.m. Due to the COVID-19 health pandemic, the public hearing will be held virtually via Zoom starting at 1 p.m.

Click on the links below to view or download:

Zoom Meeting Details

Notice of Rulemaking and Public Rule Hearing 8.9.8 NMAC
PDF

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILDHOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

8.9.8 NMAC - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

No technical scientific information was consulted in drafting this rule.

Purpose of rule: The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Copies of the rule may be found at end of this notice and at ECECD's website at https://www.newmexicokids.org/ 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-

newmexicokids.org/home/

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The NewMexicoKids website offers a variety of services and resources for both educators and families in the State of New Mexico. Whether searching for quality child care or looking for professional development for early childhood educators, you will find information on this site that links you to the information or services you may need.

ANNOUNCEMENTS - (View All)

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.9.8 NMAC

Click on the links below to view or download the following documents: Notice of Rulemaking and Public Rule Hearing 8.9.8 NMAC Read Public ...

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CHILD CARE AND DEVELOPMENT FUND (CCDF) REGIONAL AND STATEWIDE SESSIONS

New Mexico's Early Childhood Education and Care Department (ECECD) invites you to join us for regional and statewide sessions to provide feedback ...

See More

NEW MEXICO'S EARLY CHILDHOOD STRATEGIC PLAN 2021-2024

The New Mexico Early Childhood Strategic Plan continues and answers the work in the Early Childhood Needs Assessment (completed in 2019). This Plan ...

See More

CACFP COVID-19 WAIVER REQUEST

CACFP COVID-19 Waiver Request - January 13, 2021. The New Mexico Early Childhood Education and Care Department (ECECD) is seeking a waiver from the ...

See More

9:03 AM 4/13/2021

newmexicokids.org/home/notice-of-rulemaking-and-public-rule-hearing-for-8-9-8-nmac/

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NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.9.8 NMAC

Download the Notice of Rulemaking and Public Rule Hearing here

Go Back to the Announcement

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILDHOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

9.9.8.7 U.S. REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION

9:04 AM 4/13/2021

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Rule Hearing Search

Hearing Date: All
Comments Deadline Date: All
Agency: Early Childhood Education and Care Department (ECECD)

Search

Total Results: 3 - Page #1

View	Agency	Public Hearing	Purpose	Hearing Date	Comments Due Date
View Details	Early Childhood Education and Care Department (ECECD)	8.9.8 NMAC REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES	The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes.	5/25/2021	5/25/2021 3:00 PM
View Details	Early Childhood Education and Care Department (ECECD)	8.15.2 NMAC SOCIAL SERVICES CARE ASSISTANCE REQUIREMENTS	Proposing amendments to 8.15.2 NMAC	1/6/2021	1/6/2021 3:00 PM
View Details	Early Childhood Education and Care Department (ECECD)	8.15.2 NMAC EMERGENCY RULE AMENDMENT	These amendments are emergency rule amendments to the child care assistance requirements under 8.15.2 NMAC.		

First, Last

9:10 AM
4/13/2021

8.9.8 NMAC REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

Agency:
Early Childhood Education and Care Department (ECECD)

Purpose:
The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Summary:
The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Rule Complete Copy :
Copies of the rule may be found at end of this notice and at ECECD's websites at https://www.nmececd.org/regulation-changes-2/ or https://www.newmexicokids.org/ 30 days prior to the Public Hearing.

Corrections:
Not available

Rule Explanatory Statement:
Not available

Related New Mexico Register Publications:
Not available

For any additional information or questions concerning this rule making or posting please contact:
Kathey Phoenix Doyle
ececd-ecs-publiccomment@state.nm.us
(505) 231-5820

Last Updated Date
4/12/2021 11:47 AM

Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

When are comments due:
5/25/2021 3:00 PM

Hearing Date:
5/25/2021 1:00 PM

Public Hearing Location:
The hearing will be held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. 5/25/2021 (1:00 PM -3:00 PM) 5/25/2021 (1:00 PM -3:00 PM)

How to participate:
Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to https://zoom.us/j/91919388049?pwd=dWZ4VjZIWXJ3UHdRcll1WkJDbVVWdz09, and follow the instructions indicated on the screen – Meeting ID (access code): 149816. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

File	File Name	File Type	Description
View Document	8.9.8 NMAC Public Notice xxxii 7 E and S with	PDF	

Kliphuis, Tracy, ECECD

From: Kliphuis, Tracy, ECECD
Sent: Tuesday, April 13, 2021 4:49 PM
To: ECECD-ECS-PublicComment
Subject: Notice of Rulemaking - Families, Part 14
Attachments: 8.9.8 NMAC Public Notice xxxii 7 E and S with Regs.pdf; 8.9.8 (FIT) Changes shown.pdf

Dear Family,

Early Childhood Education and Care Department (ECECD) will hold a formal public hearing on the proposed regulation 8.9.8 NMAC – Social Services - **REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES.**

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

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Attached is the Notice of Rulemaking and Public Rule Hearing.

They can also be found on the NM Kids website at www.newmexicokids.org and https://www.nmececd.org/

PLEASE BE ADVISED THAT THESE PROPOSED REGULATIONS DO NOT AFFECT CURRENT CHILDCARE ELIGIBILITY TO FAMILIES.

Thank you!

Las Cruces Sun News.
PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0004686109

This is not an invoice

NM EARLY CHILDHOOD EDUCATION AND CAR
1120 PASEO DE PERALTA

SANTA FE, NM 87502

I, a legal clerk of the **Las Cruces Sun News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

04/16/2021

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

Legal Clerk

Subscribed and sworn before me this April 16, 2021:

State of WI, County of Brown
NOTARY PUBLIC

1-9-25
My commission expires

KATHLEEN ALLEN
Notary Public
State of Wisconsin

Ad # 0004686109
PO #: 61100-0000000746
# of Affidavits 1

This is not an invoice

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILDHOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

8.9.8 NMAC - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

No technical scientific information was consulted in drafting this rule.

Purpose of rule: The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Copies of the rule may be found at and at this notice and at ECECD's website at https://www.newmexicokids.org/ 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-6830. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.9.8 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 3:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the rule during the hearing. To access the hearing by telephone: please call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to https://zoom.us/j/91919388049?pwd=dWZ4VjZTWXJ3UHdRcHTWkJDbVVWd209, and follow the instructions indicated on the screen – Passcode: 149616. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

Por medio de la presente, el Departamento de Educación y Cuidado en la Primera Infancia de Nuevo México (ECECD, por sus siglas en inglés) anuncia, cumpliendo con lo dispuesto por NMSA 1978, secciones 14-4-5.2 y 1.24.25.11 del Código NMAC, que se propone emitir nuevos reglamentos para las siguientes normas sobre SERVICIOS SOCIALES, EDUCACIÓN Y CUIDADOS A LA PRIMERA INFANCIA, REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS, tal como lo autoriza NMSA 1978, Secciones 9-2A-7:

8.9.8 NMAC - REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS

Para la redacción de este reglamento no se consultó ninguna información técnica científica.

Objetivo del reglamento: El objetivo de esta norma es regir la provisión de servicios de intervención temprana a los niños elegibles y sus familias en Nuevo México, así como garantizar que dichos servicios

[illegible] que [illegible] cumplen los requisitos de la legislación estatal y federal aplicable, como la Ley de Educación para Personas con Discapacidad.

Al final de este anuncio se incluye una copia de este reglamento, el cual también estará en el sitio web del ECECD en https://www.newmexicokids.org/ 30 días antes de la audiencia pública.

Anuncio de audiencia pública: La audiencia pública se celebrará el 25 de mayo de 2021 a la 1:00 p.m. La audiencia será por internet, por correo electrónico y teléfono (consulte más abajo) debido a las inquietudes por el COVID-19, y de conformidad con la Orden Ejecutiva 2020-004 de la gobernadora Michelle Lujan Grisham, la Declaración de emergencia de salud pública y la Orden del 12 de marzo de 2020 de emergencia pública de salud para limitar las asambleas masivas debido al COVID-19. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés, podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-6820. El ECECD hará su mejor esfuerzo por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.9.8 NMAAC Public Comment" o por correo postal de primera clase al apartado postal: Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios por escrito se pueden entregar el 25 de mayo de 2021 de 1:00 p.m. a 3:00 p.m. en el edificio Old PERA en 1120 Paseo de Peralta. El periodo para presentar comentarios termina al concluir la audiencia pública el 25 de mayo de 2021.

Cualquier persona del público que está interesada puede asistir a la audiencia por Internet o teléfono y ofrecer sus comentarios públicos sobre el reglamento en cuestión. Para participar por teléfono llame al 1-346-248-7799, usando el código de acceso 719 1938 8069. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite https://zoom.us/j/91919388069?pwd=dWZzMVI2TWXJ3UHdRcI1YWJDaVVWdz09, y siga las instrucciones indicadas en la pantalla –contraseña: 149616. Esto será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.
#4686169, Sun-News, April 16, 2021

SANTA FE NEW MEXICAN

Founded 1849

EARLY CHILDHOOD EDUCATION
AND CARE DEPT
PO Drawer 5619
Santa Fe, NM 875025619

ACCOUNT:	STECEAC	
AD NUMBER:	11854	
LEGAL NO	88245	P.O.#:61100-0000000747
1 TIME(S)	401.20	
AFFIDAVIT	10.00	
TAX	34.70	
TOTAL	445.90	

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE

I, Shaundel Moya, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 on Session Laws of 1937; that the Legal No 88245 a copy of which is hereto attached was published in said newspaper 1 day(s) between 04/20/2021 and 04/20/2021 and that the notice was published in the newspaper proper and not in any supplement; the first date of publication being on the 20th day of April, 2021 and that the undersigned has personal knowledge of the matter and thngs set forth in this affidavit.

ISI _____
LEGAL ADVERTISEMENT RESPRESENTATIVE

Subscribed and sworn to before me on this 22nd day of April, 2021

Notary: Susan Larine Cahoon

Commission Expires: 11/20/2024

OFFICIAL SEAL
Susan Larine Cahoon
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires 11/20/2024

LEGAL #11854

LEGAL # 88245

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILD- HOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

8.15.8 NMAC – REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

No technical scientific information was consulted in drafting this rule.

Purpose of rule: The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Copies of the rule may be found at end of this notice and at ECECD's website at: newmexicokids.org/ 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views or arguments

views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-Public Comment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-Public Comment@state.nm.us with the subject line "8.9.8 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 - 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to zoom.us/j/91919388049?pwd=dWZ4VlZ1WXJ3UHdRcll1WxJD6VVWdz09, and follow the instructions indicated on the screen - Passcode: 149616. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

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reglamentos para las siguientes normas sobre SERVICIOS SOCIALES, EDUCACIÓN Y CUIDADOS A LA PRIMERA INFANCIA, REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS, tal como lo autoriza NMSA 1978, Secciones 9-2A-7:

8.9.8 NMAC - REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS

Para la redacción de este reglamento no se consultó ninguna información técnica científica.

Objetivo del reglamento: El objetivo de esta norma es regir la provisión de servicios de intervención temprana a los niños elegibles y sus familias en Nuevo México, así como garantizar que dichos servicios cumplan los requisitos de la legislación estatal y federal aplicable, como la Ley de Educación para Personas con Discapacidad.

Al final de este anuncio se incluye una copia de este reglamento, el cual también estará en el sitio web del ECECD en newmexicokids.org/ 30 días antes de la audiencia pública.

Anuncio de audiencia pública: La audiencia pública se celebrará el 25 de mayo de 2021 a la 1:00 p.m. La audiencia será por Internet, por correo electrónico y teléfono (consulte más abajo) debido a las inquietudes por el COVID-19, y de conformidad con la Orden Ejecutiva 2020-004 de la gobernadora Michelle Lujan Grisham, la Declaración de emergencia de salud pública y la Orden del 12 de marzo de 2020 de emergencia pública de salud para limitar las asambleas masivas debido al COVID-19. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés, podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita

que contacten al ECECD a través de ECECD-ECS-Public Comment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará su mejor esfuerzo por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-Public Comment@state.nm.us con el asunto "A.9.8 RMAC Public Comment" o por correo postal de primera clase al apartado postal: Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios por escrito se pueden entregar el 25 de mayo de 2021 de 1:00 p.m. a 3:00 p.m. en el edificio Old PERA en 1120 Paseo de Peralta. El periodo para presentar comentarios termina al concluir la audiencia pública el 25 de mayo de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia por internet o teléfono y ofrecer sus comentarios públicos sobre el reglamento en cuestión. Para participar por teléfono: llame al 1-346-248-7799, usando el código de acceso 919 1938 8049. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por internet: visite zoom.us/j/91919388049?pwd=dWZ4VjZ1WXJ3UHdRcjlIWkJ0bVVWdz09, y siga las instrucciones indicadas en la pantalla - contraseña: 149616. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

Pub.: Apr. 19, 2021

New Mexico
Early Childhood
Education & Care Department

TITLE: Call For Providers, RFA Number: FY2021-2

PURPOSE: The State of New Mexico, Early Childhood Education and Care Department is issuing a Request for Application (RFA) a Call For Providers. This RFA will be used to select organizations to receive a Provider Agreement (PA) for one fiscal year beginning July 1, 2021 (Fiscal Year 2022) through June 30, 2022 (Fiscal Year 2022). Any PAs awarded via this process are subject to available funding, contractor performance, and program priorities.

This RFA is being implemented in accordance with the Health [illegible] for the state procurement code, Section 13-1-98.1 (B) NMSA 1978.

Family, Infant, Toddler (FIT) Program services are provided to infants and toddlers, birth to age three, who have or are at risk for developmental delays and disabilities and their families. FIT Program services are provided in the child's natural environment, such as the child's home or child care setting, in order to promote the child's development and learning in the context of everyday family life. Early Childhood Education and Care Department's Early Childhood Intervention Program, Public Awareness, Multilingual [illegible] Interagency [illegible] Program [illegible]

[illegible] Applications received after the due date and time will [illegible] accepted.

Journal: March 24, 25, 2021

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Elise Rodriguez , the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 2 time(s) on the following date(s):

03/24/2021, 03/25/2021

OFFICIAL SEAL
Susan Ramirez
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 2/15/2023

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 25 day of March of 2021

PRICE $189.43

Statement to come at the end of month.

ACCOUNT NUMBER 1031081

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

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CO EARLYCHILDHOOD
EDUCATIONANDCARE
DEPARTMENTECECD
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RNMSA1

Elise Rodriguez , the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

04/20/2021

OFFICIAL SEAL
Susan Ramirez
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 2/15/2023

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 20 day of April of 2021

PRICE $595.69

Statement to come at the end of month.

ACCOUNT NUMBER 1031081

your telephone comments will be recorded. To access the meeting via the internet please go to https://zoom.us/j/91919880497?pwd=dWZ4VjZWX3J0UFdFdlVWK0Dbd09 and follow the instructions indicated on the screen. Passcode: 1496 16. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

Por medio de la presente, el Departamento de Educación y Cuidado en la Primera Infancia de Nuevo México (ECECD) por sus siglas en inglés) está notificando lo dispuesto por NMSA 1978, secciones 14-4-5.2 y 9-2-A-7 y del Código NMAC, y avisa de que pondrá en marcha nuevos reglamentos para los siguientes normas sobre SERVICIOS SOCIALES, EDUCACIÓN Y AYUDA A LA PRIMERA INFANCIA: REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS, tal como lo autoriza NMSA 1978 Secciones 9-2A-7.

8.9.8 NMAC REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS

Para la redacción de este reglamento no se consultó ninguna información técnica científica.

Objetivo del reglamento: El objetivo de estas normas es regir la provisión de servicios de intervención temprana a los niños elegibles y sus familias en Nuevo México, así como garantizar que dichos servicios cumplan los requisitos de la legislación estatal y federal aplicable, incluyendo la Ley de Educación para Personas con Discapacidades.

Al final de este anuncio se incluye una copia de este reglamento, el cual también estará en el sitio web del ECECD en https://www.newmexicokids.org 30 días antes de la audiencia pública.

Anuncio de audiencia pública: La audiencia pública se celebrará el 25 de mayo de 2021 a la 1:00 p.m. La audiencia se realizará por Internet y por correo electrónico y/o teléfono (consulte más abajo) debido a las limitaciones de COVID-19. Según la Orden Ejecutiva 2020-004 de la gobernadora Michelle Lujan Grisham, se ordenó a todos los ciudadanos seguir la Orden del 12 de marzo de 2020 de emergencia pública de salud para limitar las asambleas masivas debido al COVID-19. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión. A los individuos con discapacidades, que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-EOS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará su mejor esfuerzo por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-EOS-PublicComment@state.nm.us con el asunto: 8.9.8 NMAC Public Comment o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios por escrito se pueden entregar el 25 de mayo de 2021

FOREVER
sociate
UNITED STATES
POSTAL SERVICE

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILDHOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

8.9.8 NMAC - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

No technical scientific information was consulted in drafting this rule.

Purpose of rule: The purpose of this rule is to govern the provision of early intervention services to children and their families in New Mexico and to assure that such services meet the requirements and federal statutes, such as the Individuals with Disabilities Education Act.

Copies of the rule may be found at end of this notice and at ECECD's website at https 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on Ma be held via internet, email, and telephonic means (see below) due to the accordance with Governor Michelle Lujan Grisham's Executive Ord Emergency and the March 12, 2020 Public Health Emergency Or The public hearing will be conducted in a fair and equitable officer and shall be recorded. Any interested member of reasonable opportunity to offer public comment, eithe arguments, on the rule during the hearing. Individ or participate in the public hearing are asked to call (505) 231-5820. ECECD will make e accommodation of a request that is not

Notice of acceptance of writte or arguments about the rule PublicComment@state. Drawer 5619, Santa at 1120 Paseo D the public he

ECECD
attn: Devi
PO Drawer 5619
Santa Fe, nm 87502-5619

NM Center on Law + Poverty
attn: Marie Griego
924 Park ave SW Suite C
Albuquerque, NM 87102

Any interest on the rule du 1938 8049. Yo hearing via the in https://zoom.us/j/91 indicated on the scree comment via Chat durin

NOTIFICACIÓN DE

Por medio de la presente, el Depa (ECECD, por sus siglas en inglés) a 1.24.25.11 del Código NMAC, que se SERVICIOS SOCIALES, EDUCACIÓN SERVICIOS DE INTERVENCIÓN TEM NMSA 1978, Secciones 9-2A-7:

RE

Nuevo México secciones 14-4-5.2 y uientes normas sobre ANCIA, REQUISITOS PARA E FAMILIAS, tal como lo autoriza

8.9.8 NMAC FIT Program

Redacted Comments

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Wednesday, May 12, 2021 10:10 AM
To: ECECD-ECS-PublicComment
Subject: [EXT] Comments on • 8.9.8 NMAC – Social Services - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES
Attachments: [redacted] Recommended Changes to FIT Regulations-May2021.docx

Follow Up Flag: Follow up
Flag Status: Completed

To Whom It May Concern,

I have reviewed the revisions to the NM FIT Program regulations and am submitting the attached comments and recommendations.
Thank you for your consideration.

[redacted]

[redacted]
[redacted] Family Support Services
Office phone: [redacted]

[redacted] Recommendations for Changes to the FIT Regulations - Submitted May 12, 2021

P. Definitions beginning with the letter "P"
Comment: Physical/motor development also includes "sensory motor" development.
Recommend: Add the words "sensory motor".
(6) **"Physical/motor development"** means the progressive changes to a child's vision, hearing, gross and fine motor development, **sensory motor**, quality of movement, and health status.

H. Supervision of early intervention personnel providing direct services.
Comment: This part in the regulations that refers to reflective supervision in specific is not consistent with what is written in the FIT Definitions and Standards. It is also not consistent with references to "supervision" in other parts of the regulations. Subcontractors are "independent contractors" not staff and therefore should be responsible for obtaining supervision consistent with the requirements of their licensing and regulatory boards for their disciplines.
Recommend: Change the wording to be consistent with the wording in the FIT Service Definitions and standards as seen below.
Current wording: H. Supervision of early intervention personnel.
(1) Early intervention provider agencies shall ensure that developmental specialists and therapists (employees and subcontractors) and family service coordinators receive monthly planned and ongoing reflective supervision.
(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.
(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.
Recommend change in wording to read: *Developmental Specialists, including sub-contractors, must receive reflective supervision at least once a month. Sub-contractors must find their own supervision, if the agency does not provide this for them. Supervision of therapists and other early intervention personnel is provided according to their licensing board'srequirements*

F. Evaluation

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.
Comment: The "evaluation team" is not responsible for giving Prior Written Notice to families in any other part of the regulations.
Recommend: Replacing the words "evaluation team" with the words "Family Service Coordinator"
(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the **Family Service Coordinator** ~~evaluation team~~ must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

F: Evaluation
[(13)] **(12)** Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS team, with prior consultation with the evaluation team.

Comment: IFSP is spelled IFPS and needs to be corrected
Recommend: Correction [(13)] **(12)** Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] ~~**IFPS**~~ **IFSP** team, with prior consultation with the evaluation team.

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Wednesday, May 12, 2021 4:12 PM
To: ECECD-ECS-PublicComment
Cc: [redacted]
Subject: [EXT] 8.9.8 NMAC Public Comment
Attachments: PDF Final Version of Letter to ECECD Regarding FIT Proghram Rulemaking May 21, 2021.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Sec. Groginsky:

Per the instructions given me by the leadership of the House Republican Caucus, I am attaching a document that contains the official comments of six members of the Caucus in regards to the upcoming rulemaking involving the Families Infant Toddler (FIT) program.

Please add these official comments to your formal consideration of the proposed rule changes.

If there are any questions, please do not hesitate to contact these state legislators or myself.

Thank you for your attention in this important matter.

[redacted]

[redacted]
House Republican Caucus Staff
[redacted]

State of New Mexico
House of Representatives
State Capitol
Santa Fé

May 12, 2021

The Honorable Elizabeth Groginsky
Cabinet Secretary
New Mexico Early Childhood Education and Care Department
Post Office Drawer 5619
Santa Fe, New Mexico 87502-5619

Dear Secretary Groginsky:

It is our pleasure to offer the following comments regarding the department's proposed rulemaking impacting the Family Infant Toddler (FIT) program.

As we review these proposed regulations, the one glaring shortcoming we see is the lack of provisions aligning the FIT program's eligibility with the federal guidelines of birth to four years of age. Considering recent changes have been made to increase age eligibility for child care assistance and "coming soon" changes to age eligibility for home visiting, we believe now is the perfect time to increase the FIT program's eligibility from three years of age to four. Such an increase in age would be a perfect complement to the statewide effort of ensuring every New Mexican child has flexibility and access to high quality early childhood experiences that are family focused and based on their individual needs.

By extending the FIT program to four year olds, it would provide health and developmentally appropriate early intervention options for these vulnerable children whose health and developmental needs make remaining on an Individualized Family Service Plan ideal. That extra year with least restrictive, most inclusive services can set the path for success at PreK and through their time in K-12. To the contrary, keeping the age eligibility lower than what the federal guidance recommends takes away choice from families and clinicians when determining treatment plans for young children with special health and developmental needs.

Further, this ability to extend the option of these vital services to eligible children prior to them starting Kindergarten would seem to be especially important in rural New Mexico where early intervention programs may be limited. Children who are medically fragile or have sensory integration issues are negatively impacted from long hours on multiple daily bus routes, yet FIT programs can be provided in the home. Providing flexibility for FIT's services for one additional year simply allows the child's heath and developmental needs to remain the focus of Individual Family Service Plans.

Thank you for considering our comments and we look forward to working with you in the future to ensure all New Mexico children have the best opportunities possible to reach their fullest potential.

Respectfully yours,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Friday, May 21, 2021 4:04 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment
Attachments: FIT regs.docx

Follow Up Flag: Follow up
Flag Status: Flagged

To Whom It May Concern,
I have reviewed the proposed revisions to the NM FIT Program rules and am submitting the attached comments and recommendations.
Thank you for your consideration.

Sincerely,
[redacted]

- Page 8

8.9.8.9 PERSONNEL

A.(2) As it is currently written, this implies that folks from other disciplines CAN be certified as a DS even if they rarely function in that capacity. Suggest that language be revised to state: *"Individuals who hold of professional license or certificate from an approved field as identified in this rule, and provide services in that disciplines SHALL NOT be certified as a Developmental Specialist UNLESS they directly supervise Developmental Specialists or they spend sixty percent or more of their time employed in the role of developmental specialist...."*

- Page 11

8.9.8.10 CHILD IDENTIFICATION

G.(3) As it is currently written, this eliminates the possibility of teams using a domain-specific tool to support the eligibility process which is in direct conflict with F.(7) earlier in the rule. In addition, the domain-specific tools are the only tools that would potentially yield a Standard Deviation score which is included as a method for eligibility determination. Suggest that the language be revised to state: *"Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) and/or domain-specific tools are not able to establish developmental delay."*

- Pages 17-19

8.9.8.12 SERVICE DELIVERY

A.(c) As it is currently written, this description does not fully encompass the full role of the Developmental Specialist, especially in comparison to other direct service providers such as therapists. I feel that the descriptions of direct service providers need to more aligned in these rules as the approach to supporting the family and certain tasks are the same across all disciplines. See suggested language changes for various disciplines below:

A.(c) Developmental instruction: those services that address the functional needs of the child across all developmental domains (cognitive, communication, physical/motor, vision, hearing, social or emotional and adaptive). Developmental instruction includes identification, assessment, and intervention; adaptation of the environment and selection of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Developmental

instruction is provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(j) Occupational therapy services: those services that address the functional needs of ta child related to adaptive development, adaptive behaviors and play, and sensory, motor and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of the initial or future impairment, delay in development, or loss of functional ability. Occupational therapy is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Occupational therapy services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(k) Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems. Physical therapy is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Physical therapy services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(o) Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills. Speech and language

pathology is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Speech and language pathology services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

- pages 19-21

8.9.8.13 TRANSITION

The majority of the transition section is written as if all of the steps that are ONLY required for children being referred to Part B services are required for EVERY child in FIT. I would like to see significant changes in the language in this section to more accurately reflect the differences in the process of transition for children who are referred to Part B (with its own unique set of requirements under IDEA) versus those children who are not referred to Part B. Please see suggested language changes below:

C.(i) ***For a child referred to the LEA,*** a confirmation that the referral information has been transmitted...

D. Referral to the LEA ~~**and other preschool programs**~~ (this language was removed because this process is ONLY followed for a referral to the LEA; it has no bearing on a referral to other preschool programs)

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to ***all potential preschool programs, including the LEA if a referral has been made,*** at least 30 days prior to the transition conference

F. Transition assessment summary:

(1) ***For a child referred to the LEA,*** the family service coordinator shall....

G.(7)(c) a review of the current IFSP ***and any other relevant information; and for a child referred to the LEA, a review of the assessment summary***

G.(7)(e) ***For a child referred to the LEA,*** an explanation by an LEA representative ...

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 12:14 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

I am responding to a request for comment on the proposed revisions to the FIT Program Regulations, NMAC 8.9.8.

As a provider of early intervention services, our company is regularly determining eligibility for the program with trained evaluators. The regulations allow for several ways to determine developmental delay: a 25% delay on the Infant Toddler Developmental Assessment, 1.5 standard deviation below the mean on a domain specific tool, and informed clinical opinion.

I would like to propose that one other measure be added to this list to allow us to use a wider variety of domain specific tools, a percentile measure. This would allow us to use well-established, norm-referenced tools to demonstrate significant developmental delay. The reason for this is that many evaluation protocols do not report scores in standard deviations. Most do have a conversion to percentile rank, however. Below the 10th percentile is roughly equivalent to -1.5 standard deviations. Each domain-specific tool requires the professional to be trained in its use.

I recommend altering section 8.10 Section G. 4. a) ii as follows:

8.10 G. 4. a) Developmental delay
(ii) [if] If the FIT program approved tool does not indicate a [25%] twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is [1.5] one and one-half standard deviations below the mean or greater or below the tenth percentile.

Thank you for your consideration of this recommendation. Please contact me with any questions or concerns.

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 2:08 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

I am suggesting that the proposed regulations be amended to read as follows:

Personnel 8.9

H. (1) Early intervention provider agencies shall ensure that developmental specialists and all others providing direct early intervention services (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

This addition would ensure that all providers of direct early intervention services had access to appropriate reflective supervision as members of transdisciplinary teams. The wording "and therapists" would not include social workers, dietitians, nurses, speech language pathologists, and possibly counselors.

Thank you for your consideration. I appreciate the opportunity for comment.

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 2:21 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

I found a typo in the Child Identification Section, under Evaluation F.:

8.10 Child Identification

F. Evaluation
(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS team IFSP team, with prior consultation with the evaluation team.

This should replace IFPS as written.

Thank you!

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 2:35 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

Also under Child Identifications, G. Eligibility:

There is a gap between the ages of prematurity designations for established condition and at risk biological/medical. Children who are born between 28 weeks and 29 weeks are not included, so would not qualify in either category.

I would suggest that G.(4) c. ii read:

(ii) perinatal factors, including prematurity (less than [32] 35 weeks and more than 28 weeks gestation) [or] small for gestational age (less than [1500] 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

Thank you!

[redacted]

Oral Comments Received during the 8.9.8 NMAC FIT Public Hearing Tuesday, May 25, 2021

[redacted]

"I am the director of an early intervention program in Albuquerque, and I participate regularly in comprehensive multi-developmental evaluations, as well as annual evaluations to determine eligibility. And our concern is that sometimes the FIT approved tool, and some of the supplementary tools, don't show a definite delay for one reason or another. And we are able to do some standardized tools in specific domains, such as the preschool language scale or the Peabody Developmental Motor Skills, the Alberta Infant Motor Scale, the Receptive-Expressive Emergent Language scale, and there are many others that the individual professions use. They don't always report their scores in standard deviations. And there is some, sometimes some difficulty converting the scores if the test protocol doesn't give an actual conversion table. But most tests do have, do convert their scores to percentile rank. And my proposal is to add this measure as a measure that could be used in determining eligibility. Below the 10th percentile, would be roughly equivalent to 1.5 standard deviations below the mean. So that is my proposal to amend the proposed regulations, and I did put that in writing in email to you. Do you have any questions? Okay, thank you very much for giving me the time. And I will stay on to hear what others have to say."

[redacted]

"Okay, I would propose that under Personnel. This is page 12 of the proposed documents under H number 1, under Supervision. That it should instead of, I got off my page somehow here sorry. Okay, under Personnel number H. It reads, 'Supervision of early intervention personnel providing direct services'. That's fine. Then, number (1), it says, 'early intervention provider agencies shall ensure that developmental specialists and therapists, employees and subcontractors, and family service coordinators receive monthly planned and ongoing reflective supervision'. I would propose that that reads, instead of 'and therapists' to put in 'an all other direct providers of early intervention'. This is because therapists doesn't include all of the types of personnel that are listed that can provide early intervention services. So I think that statement should be broader, and I will send this by email also so that you have it in writing. I think 'and therapists' isn't it clear enough, because there are a number of different therapists, and pathologists, dietitians, nurses, social workers, that wouldn't fall under the 'and therapists' addition. Okay, so I will submit that in writing also. Thank you."

[redacted]

"Okay, and I just submitted this in writing also. I was looking at the eligibility categories under established condition and bio-medical risk. And they designate a gestational age as a risk factor and also as an eligibility condition. It looks like we left out or left a gap between 28 and 29 weeks. So, I would suggest that under the section C, biological or medical risk for developmental delay. This is under G number (4) C and number (2). It says perinatal factors including prematurity less than 35 weeks and more than 29 weeks gestation. I think we should change that to be more than 28 weeks. The way it reads now under established condition, you have to be 28 weeks or less to be established condition. So, if you're more than 28 weeks that could fall under biological, medical risk. So if it read between 35, or 35 weeks and more than 28 weeks or small for gestational age, and then leave it as it is, but otherwise we have children left on between 28 and 29 weeks but don't qualify at all. So thank you."

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NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION

July 12, 2021

To: Elizabeth Groginsky, Secretary
c/o Tracy Kilphuis, Quality Assurance Manager

From: Matthew Ortiz, Administrative Law Division
by designation for the State Records Administrator

Re: **8.9.8 NMAC, New Rule, Requirements for Family Infant Toddler Early Intervention Services, filed on July 1, 2021, published and effective on July 20, 2021.**

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all filed copies of the above rules:

In Section 5, Effective Date, the erroneous date July 7, 2021 was replaced with correct date July 20, 2021

A copy of this *Notification* will be filed with the official version of each of the above rules.

Hon. Hector Balderas
Attorney General

Hon. Brian S. Colón
Chairman/State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Department of Cultural Affairs

Kenneth Ortiz
General Services Department

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Early Childhood Education and Care Department gives Notice of a Minor, Nonsubstantive Correction to 8.9.8 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

In Section 5, Effective Date, the erroneous date July 7, 2021 was replaced with correct date July 20, 2021

A copy of this Notification will be filed with the official version of each of the above rules.

ADOPTED RULES, ISSUE 14

EFFECTIVE DATE AND VALIDITY OF RULE FILINGS

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the
New Mexico Register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Cultural Affairs Department

4.5.9 NMAC A/E Special Grants to Public Libraries (/nmac/nmregister/xxxii/4.5.9amend_emerg.html) pdf version (/nmac/nmregister/xxxii/4.5.9amend_emerg.pdf)

Early Childhood Education and Care Department

8.9.8 NMAC N Requirements for Family Infant Toddler Early Intervention Services (/nmac/nmregister/xxxii/8.9.8.html) pdf version (/nmac/nmregister/xxxii/8.9.8.pdf)

8.15.2 NMAC A/E Requirements for Child Care Assistance Program for Clients and Child Care Providers (/nmac/nmregister/xxxii/8.15.2amend_emerg.html) pdf version (/nmac/nmregister/xxxii/8.15.2amend_emerg.pdf)

8.15.2 NMAC A/E Requirements for Child Care Assistance Program for Clients and Child Care Providers (/nmac/nmregister/xxxii/8.15.2amend_emerg2.html) pdf version (/nmac/nmregister/xxxii/8.15.2amend_emerg2.pdf)

8.16.2 NMAC A/E Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs (/nmac/nmregister/xxxii/8.16.2amend_emerg.html) pdf version (/nmac/nmregister/xxxii/8.16.2amend_emerg.pdf)

8.17.2 NMAC A/E Requirements Governing Registration of Non-Licensed Family Child Care Homes (/nmac/nmregister/xxxii/8.17.2amend_emerg.html) pdf version (/nmac/nmregister/xxxii/8.17.2amend_emerg.pdf)

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Commission of Public Records (http://www.nmcpr.state.nm.us/)

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New Mexico Register / Volume XXXII, Issue 14 /July 20, 2021

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

8.9.8.1 ISSUING AGENCY: Early Childhood Education and Care Department (ECECD)
[8.9.8.1 NMAC - N, 7/20/2021]

8.9.8.2 SCOPE: These regulations apply to all entities in New Mexico providing early intervention services to eligible children birth to three years of age and their families.
[8.9.8.2 NMAC - N, 7/20/2021]

8.9.8.3 STATUTORY AUTHORITY: Subsection E of Section 9-29-6 NMSA 1978.
[8.9.8.3 NMAC - N, 7/20/2021]

8.9.8.4 DURATION: Permanent
[8.9.8.4 NMAC - N, 7/20/2021]

8.9.8.5 EFFECTIVE DATE: July 20, 2021, unless a later date is cited at the end of a section.
[8.9.8.5 NMAC - N, 7/20/2021]

8.9.8.6 OBJECTIVE: These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act.
[8.9.8.6 NMAC - N, 7/20/2021]

8.9.8.7 DEFINITIONS:

A. Definitions beginning with the letter "A":

(1) "Adaptive development" means the development of self-help skills, such as eating, dressing, and toileting.

(2) "Adjusted age (corrected age)" means adjusting / correcting the child's age for children born prematurely (i.e. born less than 37 weeks gestation). The adjusted age is calculated by subtracting the number of weeks the child was born before 40 weeks of gestation from their chronological age. Adjusted Age (Corrected Age) should be used until the child is 24 months of age.

(3) "Assessment" means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility for FIT services. Assessment includes observations of the child in natural settings, use of assessment tools, informed clinical opinion, and interviews with family members. Assessment includes ongoing identification of the concerns, priorities, and resources of the family.

B. Definitions beginning with the letter "B": "Biological/medical risk" means diagnosed medical conditions that increase the risk of developmental delays and disabilities in young children.

C. Definitions beginning with the letter "C":

(1) "Child find" means activities and procedures to locate, identify, screen and refer children from birth to three years of age with or at risk of having a developmental delay or developmental disabilities.

(2) "Child record" means the early intervention records (including electronic records) maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other materials that contain information directly related to a child and family, and are maintained by the early intervention provider agency. Early intervention records do not include records of instructional, supervisory, and

administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

(3) **"Cognitive development"** means the progressive changes in a child's thinking processes affecting perception, memory, judgment, understanding and reasoning.

(4) **"Communication development"** means the progressive acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive language, including spoken, non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

(5) **"Confidentiality"** means protection of the family's right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

(6) **"Consent"** means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

D. Definitions beginning with the letter "D":

(1) **"Days"** means calendar days, unless otherwise indicated in these regulations.

(2) **"Developmental delay"** means an evaluated discrepancy between chronological age and developmental age of twenty-five percent, after correction for prematurity, in one or more of the following areas of development: cognitive, communication, physical/motor, social or emotional, and adaptive.

(3) **"Developmental specialist"** means an individual who meets the criteria established in these regulations and is certified to provide 'developmental instruction'. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual's level of certification as defined in early childhood education and care department, family support and early intervention division policy and service standards.

(4) **"Dispute resolution process"** means the array of formal and informal options available to parents and providers for resolving disputes related to the provision of early intervention services and the system responsible for the delivery of those services.

(5) **"Due process hearing"** means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

(6) **"Duration"** means the length of time that services included in the IFSP will be delivered.

E. Definitions beginning with the letter "E":

(1) **"Early intervention services"** means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development, as identified by the IFSP team. (Early intervention services are described in detail in the service delivery provisions of this rule.)

(2) **"ECO (early childhood outcomes)"** means the process of determining the child's development compared to typically developing children of the same age. The information is used to measure the child's developmental progress over time.

(3) **"Eligible children"** means children birth to three years of age who reside in the state and who meet the eligibility criteria within this rule.

(4) **"Environmental risk"** means the presence of adverse family factors in the child's environment that increases the risk of developmental delays and disabilities in young children.

(5) **"Established condition"** means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay or disability.

(6) **"Evaluation"** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility for FIT services. It includes a review of records pertinent to the child's current health status and medical history; parent interview and parent report; observation of the child in natural settings; informed clinical opinion; use of FIT Program approved assessment tool(s); and identification of the

level of functioning of the child in each developmental area -- cognitive, communication, physical/motor (including vision and hearing), social or emotional, and adaptive. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for FIT services.

F. Definitions beginning with the letter "F:

(1) "Family" means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

(2) "Family infant toddler (FIT) program" means the program within state government that administers New Mexico's early intervention system for children (from birth to age three) who have or are at risk for developmental delay or disability and their families. The FIT program is established in accordance with 28-18-1 NMSA, 1978, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), Part C as amended, and other applicable state and federal statutes and regulations.

(3) "Family service coordinator" means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial family service coordinator assists the family with intake activities such as eligibility determination and development of an initial individualized family service plan (IFSP) The ongoing family service coordinator is selected at the initial IFSP meeting and designated on the IFSP form.

(4) "FIT-KIDS (key information data system)" means the online data collection and billing system utilized by the FIT program.

(5) "Frequency" means the number of times that a service is provided or an event occurs within a specified period.

G. Definitions beginning with the letter "G": [RESERVED]

H. Definitions beginning with the letter "H":

(1) "Head start/early head start" means a comprehensive child development program for children of low income families established under the Head Start Act, as amended.

(2) "Homeless" means lacking a fixed, regular, and adequate nighttime residence.

I. Definitions beginning with the letter "I":

(1) "IFSP team" means the persons responsible for developing, reviewing the IFSP. The team shall include the parent(s), the family service coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, an advocate or other persons, including family members, as requested by the family.

(2) "Inclusive setting" means a setting where the child with a developmental delay or disability participates in a setting with typically developing children. A classroom in an early head start, child care or preschool classroom must have at least fifty-one percent non disabled peers in order to be considered an inclusive setting.

(3) "Indian tribe" means any federal or state recognized Indian tribe.

(4) "Individualized education program (IEP)" means a written plan developed with input from the parents that specifies goals for the child and the special education and related services and supplementary aids and services to be provided through the public school system under IDEA Part B.

(5) "Individualized family service plan (IFSP)" means the written plan for providing early intervention services to an eligible child and the child's family. The plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around outcomes and includes strategies to enhance the family's capacity to meet the developmental needs of the eligible child.

(6) "Individualized family service plan process (IFSP process)" means a process that occurs from the time of referral, development of the IFSP, implementation of early intervention services, review of the IFSP, through transition. The family service coordinator facilitates the IFSP process.

(7) "Individuals with Disabilities Education Act (IDEA) – Part C" means the federal law that contains requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled "The Early Intervention Program for Infants and Toddlers with Disabilities".

(8) "Informed clinical opinion" means the knowledgeable perceptions of the evaluation team who use qualitative and quantitative information regarding aspects of a child's development that are difficult to measure in order to make a decision about the child's eligibility for the FIT program.

(9) "Intensity" means the length of time the service is provided during each session.

(10) **"Interim IFSP"** means an IFSP that is developed prior to the completion of the evaluation and assessments in order to provide early intervention services that have been determined to be needed immediately by the child and the child's family. Use of an Interim IFSP does not extend the 45-day timeline for completion of the evaluation process.

J. Definitions beginning with the letter "J": [RESERVED]

K. Definitions beginning with the letter "K": [RESERVED]

L. Definitions beginning with the letter "L":

(1) **"Lead agency"** means the agency responsible for administering early intervention services under the Individuals with Disabilities Education Act (IDEA) Part C. The early childhood education and care department, family infant toddler (FIT) program, is designated as the lead agency for IDEA Part C in New Mexico.

(2) **"Local education agency (LEA)"** means the local public school district.

(3) **"Location"** means the places in which early intervention services are delivered.

M. Definitions beginning with the letter "M":

(1) **"Mediation"** means a method of dispute resolution that is conducted by an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute.

(2) **"Medicaid"** means the federal medical assistance program under Title XIX of the Social Security Act. This program provides reimbursement for some services delivered by early intervention provider agencies to medicaid-eligible children.

(3) **"Method"** means the way in which a specific early intervention service is delivered. Examples include group and individual services.

(4) **"Multidisciplinary"** means personnel from more than one discipline who work with the child and family, and who coordinate with other members of the team.

N. Definitions beginning with the letter "N":

(1) **"Native language"** with respect to an individual who is limited English proficient, means the language normally used by a child or their parent(s) or mode of communication normally used by a child or their parents. Native language when used with respect to evaluations and assessments is the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment. Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(2) **"Natural environments"** means places that are natural or normal for children of the same age who have no apparent developmental delay, including the home, community and inclusive early childhood settings. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family's typical daily routine and lifestyle.

O. Definitions beginning with the letter "O":

(1) **"Other services"** means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Examples include, but are not limited to, child care, play groups, home visiting, early head start, WIC, etc.

(2) **"Outcome"** means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services that are documented on the IFSP.

P. Definitions beginning with the letter "P":

(1) **"Parent(s)"** means a biological or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents' authority to make the decisions required of parents has been removed under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Federal Individual with Disabilities Education Act; and has no interest that would conflict with the interests of the child.

(2) **"Participating agency"** means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of this rule with respect to a particular child.

(3) **"Permission"** means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

(4) **"Personally identifiable information"** means that information in any form which includes the names of the child or family members, the child's or family's address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it possible to identify the child or the family.

(5) **"Personnel"** means qualified staff and contractors who provide early intervention services, and who have met state approved or recognized certification or licensing requirements that apply to the area in which they are conducting evaluations, assessments or providing early intervention services.

(6) **"Physical/motor development"** means the progressive changes to a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

(7) **"Primary referral source"** means parents, physicians, hospitals and public health facilities (including prenatal and postnatal care facilities), child care programs, home visiting providers, schools, local education agencies, public health care providers, children's medical services, public agencies and staff in the child welfare system (including child protective service and foster care), other public health or social services agencies, early head start, homeless family shelters, domestic violence shelters and agencies, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

(8) **"Prior written notice"** means written notice given to the parents a reasonable time before the early intervention provider agency, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

(9) **"Procedural safeguards"** means the requirements set forth by IDEA, as amended, which specify families' rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

(10) **"Provider agency"** means a provider that meets the requirements established for early intervention services, and has been certified as a provider of early intervention services by the early childhood education and care department and that provides services through a provider agreement with the department.

(11) **"Public agency"** means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention services to eligible children and their families.

Q. Definitions beginning with the letter "Q": [RESERVED]

R. Definitions beginning with the letter "R":

(1) **"Referral"** means the process of informing the FIT program regarding a child who may benefit from early intervention, and giving basic contact information regarding the family.

(2) **"Reflective supervision"** means planned time to provide a respectful, understanding and thoughtful atmosphere where exchanges of information, thoughts, and feelings about the things that arise around the person's work in supporting healthy parent-child relationships can occur. The focus is on the families involved and on the experience of the supervisee.

S. Definitions beginning with the letter "S":

(1) **"School year"** means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years. These dates are filed each year with the public education department.

(2) **"Scientifically based practices"** means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

(3) **"Screening"** means the use of a standardized instrument to determine if there is an increased concern regarding the child's development when compared to children of the same age, and whether a full evaluation would therefore be recommended.

(4) **"Significant atypical development"** means the eligibility determination under developmental delay made using informed clinical opinion, when twenty-five percent delay cannot be documented through state approved evaluation tool, but where there is significant concern regarding the child's development.

(5) **"Social or emotional development"** the developing capacity of the child to: experience, regulate, and express emotion; form close and secure interpersonal relationships; explore the environment and learn.

(6) **"State education agency"** means the public education department responsible for administering special education and related serves under IDEA Part B.

(7) **"Strategies"** means the section of the IFSP that describes how the team, including the parents, will address each outcome. Strategies shall include the methods and activities developed by the IFSP team to achieve functional outcomes. Strategies shall include family routines, times and locations where activities will occur, as well as accommodations to be made to the environment and assistive technology to be used. Strategies shall also include how members of the team will work together to meet the outcomes on the IFSP.

(8) **"Supervision"** means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning, organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

(9) **"Surrogate parent"** means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located, or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

T. Definitions beginning with the letter "T":

(1) **"Transition"** means the process for a family and eligible child of moving from services provided through the FIT program at age three. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child's transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

(2) **"Transition plan"** means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

U. Definitions beginning with the letter "U": [RESERVED]

V. Definitions beginning with the letter "V": [RESERVED]

W. Definitions beginning with the letter "W": "Ward of the state" means a child who is in foster care or in the custody of the child welfare agency.

[8.9.8.7 NMAC - N, 7/20/2021]

8.9.8.8 ADMINISTRATION:

A. Supervisory authority.

(1) Any agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico early childhood education and care department.

(2) An agency that has entered into a contract or provider agreement or an inter-agency agreement with the New Mexico early childhood education and care department to provide early intervention services shall be considered an "early intervention provider agency" under these regulations.

B. Provider requirements.

(1) All early intervention provider agencies shall comply with these regulations and all other applicable state and federal regulations. All early intervention provider agencies that provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico early childhood education and care department through the family infant toddler (FIT) program.

(2) All early intervention provider agencies shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement or an inter-agency agreement, medicaid rules and early childhood education and care department service definitions and standards. This information shall be kept on file with the early intervention provider agencies and shall be available to the New Mexico early childhood education and care department or its designee upon request.

(3) All early intervention provider agencies shall employ individuals who maintain current licenses or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider agency and shall be available to the New Mexico early childhood education and care department or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico early childhood education and care department.

(4) Early intervention provider agencies shall ensure that personnel receive adequate training and planned and ongoing supervision, in order to ensure that individuals have the information and support needed to perform their job duties. The early intervention provider agency shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention provider agencies shall provide access to information necessary for the New Mexico early childhood education and care department or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention provider agencies will be addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

C. Financial matters.

(1) Reimbursement for early intervention services to eligible children and families by the family infant toddler program shall conform to the method established by the New Mexico early childhood education and care department, as delineated in the early intervention provider agency's provider agreement and in the service definitions and standards.

(2) Early intervention provider agencies shall only bill for early intervention services delivered by personnel who possess relevant, valid licenses or certification in accordance with personnel certification requirements of this rule.

(3) Early intervention provider agencies shall enter delivered services data into the FIT-KIDS (key information data system), which is generated into claims for medicaid, private insurance and invoices for the early childhood education and care department.

(4) Early intervention provider agencies shall maintain documentation of all services provided in accordance with service definitions and standards and provider agreement / contract requirements.

(5) The FIT program and early intervention provider agencies shall not implement a system of payments or fees to parents.

(6) Public and private insurance.

(a) The parent(s) will not be charged any co-pay or deductible related to billing their public insurance (including medicaid) and private insurance.

(b) The parent(s) shall provide written consent before personally identifiable information is disclosed for billing purposes to public insurance (including medicaid) and private insurance.

(c) The parent(s) may withdraw consent at any time to disclose personally identifiable information to public insurance (including medicaid) and private insurance for billing purposes.

(d) The parent(s) shall provide written consent to use their private insurance to pay for FIT program services. Consent shall be obtained prior to initial billing of their private insurance for early intervention services and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services on the IFSP.

[8.9.8.8 NMAC - N, 7/20/2021]

8.9.8.9 PERSONNEL:

A. Personnel requirements.

(1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed "qualified" based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as identified in this rule, and provide services in that discipline, do not require certification as a developmental specialist. However, individuals who hold a professional license or certificate in one of these fields and who spend sixty percent or more of their time employed in the role of developmental specialist must obtain certification as a developmental specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated.

B. Qualified personnel may include individuals from the following disciplines who meet the state's entry level requirements and possess a valid license or certification:

(1) audiology;
(2) developmental specialist;
(3) early childhood development and education;
(4) education of the deaf/hard of hearing;
(5) education of the blind and visually impaired;
(6) family therapy and counseling;
(7) nutrition/dietetics;
(8) occupational therapy (including certified occupational therapy assistants);
(9) orientation and mobility specialist;
(10) pediatric nursing;
(11) physical therapy (including physical therapy assistants);
(12) physician (pediatrics or other medical specialty);
(13) psychology (psychologist or psychological associate);
(14) social work;
(15) special education; and
(16) speech and language pathology.

C. Certification of developmental specialist.

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) A developmental specialist must have the appropriate certificate issued by the New Mexico early childhood education and care department in accordance with the developmental specialist certification policy and procedures.

(3) The term of certification as a developmental specialist is a three-year period granted from the date the application is approved.

D. Reciprocity of certification: An applicant for a developmental specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico developmental specialist certificate, at the discretion of the New Mexico early childhood education and care department.

E. Certification renewal: The individual seeking renewal of a developmental specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the FIT program.

F. Agency exemptions from personnel certification requirements.

(1) At its discretion, the FIT program may issue to an early intervention provider agency an exemption from personnel qualifications for a specific developmental specialist position. The exemption shall be in effect only for one year from the date it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider agency can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention provider agencies shall not bill for early intervention services delivered by a non-certified developmental specialist unless the FIT program has issued an exemption for that position.

(4) Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. Family service coordinators.

(1) Family service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years' experience in community, health or social services.

(2) If an early intervention provider agency is unable to hire suitable candidates meeting the above requirements, a person can be hired as a family service coordinator with an associate of arts degree and at least three years' experience in community, health or social services.

(3) Early intervention provider agencies may request a waiver from the FIT program, to hire family service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served or an individual who is the parent of a child with a developmental delay or disability.

(4) All individuals must meet all training requirements for family service coordinators in accordance with FIT program standards within one-year of being hired.

H. Supervision of early intervention personnel providing direct services.

(1) Early intervention provider agencies shall ensure that developmental specialists and all other direct providers of early intervention (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

[8.9.8.9 NMAC - N, 7/20/2021]

8.9.8.10 CHILD IDENTIFICATION:

A. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and other state, federal and tribal government agencies in a coordinated child find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and in Native American communities, children whose family is homeless, children in foster care and wards of the state, and children born prematurely.

B. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and shall inform primary referral sources regarding how to make a referral when there are concerns about a child's development. Primary referral sources include: hospitals; prenatal and postnatal care facilities; physicians; public health facilities; child care and early learning programs, school districts; home visiting programs; homeless family shelters; domestic violence shelters and agencies; child protective services, including foster care; other social service agencies; and other health care providers.

C. Early intervention provider agencies in collaboration with the New Mexico early childhood education and care department shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and intake:

(1) Primary referral sources shall inform parent(s) of their intent to refer and the purpose for the referral. Primary referral sources should refer the child as soon as possible, but in no case more than seven days after the child has been identified.

(2) Parents must give permission for a referral of their child to the FIT program.

(3) The child must be under three years of age at the time of the referral.

(4) If there are less than 45 days before the child turns three at the time of referral, the early intervention provider agency will not complete an evaluation to determine eligibility and will assist the family with a referral to Part B preschool special education and other preschool programs, as appropriate and with consent of the parent(s).

(5) The early intervention provider agency receiving a referral shall promptly assign a family service coordinator to conduct an intake with the parent(s).

(6) The family service coordinator shall contact the parent(s) to arrange a meeting at the earliest possible time that is convenient for the parent(s) in order to:

(a) inform the parent(s) about early intervention services and the IFSP process;

(b) review the FIT family handbook;

(c) explain the family's rights and procedural safeguards;

(d) if in a county that is also served by other FIT provider, inform the parent(s) of their choice of provider agencies and have them sign a "freedom of choice" form.

(e) provide information about evaluation options; and with the parent's consent, arrange the comprehensive multidisciplinary evaluation.

(7) If the child is found eligible for FIT services, the family service coordinator with parental consent shall schedule and facilitate the initial IFSP meeting to be completed within 45 days of referral to the FIT program for early intervention services.

(8) Exceptions to the 45-day timeline for completion of the initial IFSP due to exceptional family circumstances must be documented in the child's early intervention record. Exceptional family circumstances include:

(a) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation the initial assessments of the child and family, or the initial IFSP meeting.

(b) The parent has not provided consent for the screening (if applicable) the initial evaluation, or the initial assessment of the child despite documented repeated attempts by the early intervention provider.

E. Screening.

(1) A developmental screening for a child who has been referred may be conducted using a standardized instrument to determine if there is an indication that the child may have developmental delay and whether an evaluation to determine eligibility is recommended.

(2) A developmental screening should not be used if the child has a diagnosis that would qualify them under established condition or biological medical risk or where the referral indicates a strong likelihood that the child has delay in their development, including when a screening has already been conducted.

(3) If a developmental screening is conducted:

(a) the written consent of the parent(s) must be obtained for the screening; and

(b) the parent must be provided written notice that they can request an evaluation at any point during the screening process.

(4) If the results of the screening:

(a) Do not indicate that the child is suspected of having a developmental delay, the parent must be provided written notice of this result and be informed that they can request an evaluation at the present time or any future date.

(b) Do indicate that the child is suspected of having a developmental delay, an evaluation must be conducted, with the consent of the parent(s). The 45-day timeline from referral to the completion of the initial IFSP and all of the referral and intake requirements of this rule must still be met.

F. Evaluation.

(1) A child who is referred for early intervention services, and whose parent(s) has given prior informed consent, shall receive a comprehensive multidisciplinary evaluation to determine eligibility, unless the child receives a screening in accordance with the screening requirements of this rule and the results do not indicate that the child is suspected of having a developmental delay. Exception: If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted even if the results do not indicate that the child is suspected of having a developmental delay.

(2) The evaluation shall be:

(a) timely, multidisciplinary, evaluation;

(b) conducted by qualified personnel, in a nondiscriminatory manner so as not to be racially or culturally discriminatory; and

(c) shall include information provided by the parent(s).

(3) If parental consent is not given, the family service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that

would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(4) A comprehensive multidisciplinary evaluation shall be conducted by a multidisciplinary team consisting of at least two qualified professionals from different disciplines.

(5) The family service coordinator shall coordinate the evaluation and shall obtain pertinent records related to the child's health and medical history.

(6) The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history and observations of the child. The evaluation shall also include an assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

(a) physical/motor development (including vision and hearing);
(b) cognitive development;
(c) communication development;
(d) social or emotional development; and
(e) adaptive development.

(7) The evaluation team shall use the tool(s) approved by the FIT program. Other domain specific tools may be used in addition to the approved tool(s).

(8) The tool(s) used in the evaluation shall be administered by certified or licensed personnel who have received training in the use of the tool(s).

(9) The evaluation shall be conducted in the child and family's native language, in accordance with the definition of native language, unless it is clearly not feasible to do so.

(10) The evaluation team will collect and discuss all of the information obtained during the evaluation process in order to make a determination of the child's eligibility for the FIT program.

(11) An evaluation report shall be generated that summarizes the findings of the multidisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and shall describe the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes. The report shall also include a statement regarding the determination of the child's eligibility for the FIT program.

(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFSP team, with prior consultation with the evaluation team.

(13) Information from the evaluation process and the report shall be used to assist in determining a rating for the initial early childhood outcome (ECO).

(14) If the child has a recent and complete evaluation current within the past six months from another Early Intervention Agency, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

G. Eligibility.

(1) The child's eligibility for early intervention services shall be determined through the evaluation process as identified in Section F. A statement of the child's eligibility for the FIT Program shall be documented in the evaluation report.

(2) The child's age shall be adjusted (corrected) for prematurity for children born less than 37 weeks gestation. The adjusted age shall be used until a child is 24 months of age for the purpose of eligibility determination.

(3) Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) or other approved assessment tools are not able to establish developmental delay.

(a) If informed clinical opinion is used to determine the child's eligibility, documentation must be provided to justify the child's eligibility.

(b) A second level review and sign off shall occur within the early intervention provider agency by someone of equal or higher certification or licensure that was not part of the evaluation team.

(c) Informed clinical opinion may only be used to qualify a child for more than one year with review and approval of the FIT program.

(4) The child must be determined eligible under one of the following categories.

(a) **Developmental delay:** a delay of twenty-five percent or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive.

(i) Twenty-five percent delay shall be documented utilizing the tool(s) approved by the FIT program.

(ii) If the FIT program approved tool does not indicate a twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is one and one-half standard deviations below the mean or greater.

(iii) Developmental delay includes "significant atypical development" documented on the basis of informed clinical opinion.

(b) **Established condition:** a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:

(i) genetic disorders with a high probability of developmental delay, including chromosomal anomalies including Down syndrome and Fragile X syndrome (in boys); inborn errors of metabolism including Hurler syndrome; and other syndromes, including Prader-Willi and Williams;

(ii) perinatal factors, including preterm newborn, 28 completed weeks or less

(iii) perinatal factors, including toxoplasmosis, rubella, CMV, and herpes (TORCH);

(iv) prenatal toxic exposures including fetal alcohol syndrome (FAS); and birth trauma, including neurologic sequelae from asphyxia;

(v) neurologic conditions, including congenital anomalies of the brain including holoprosencephaly lissencephaly, microcephaly, hydrocephalus; anomalies of spinal cord including meningomyelocele; degenerative or progressive disorders including muscular dystrophies, leukodystrophies, spinocerebellar disorders; cerebral palsy (all types), including generalized, hypotonic patterns; abnormal movement patterns including generalized hypotonia, ataxias, myoclonus, and dystonia; peripheral neuropathies; traumatic brain injury; and CNS trauma including shaken baby syndrome;

(vi) sensory abnormalities, including visual impairment or blindness; congenital impairments including cataracts; acquired impairments including retinopathy of prematurity; cortical visual impairment; and chronic hearing loss;

(vii) physical impairment, including congenital impairments including arthrogryposis, osteogenesis imperfecta, and severe hand anomalies; and acquired impairments including amputations and severe burns;

(viii) mental/psychosocial disorders, including autism spectrum disorders; and

(ix) conditions recognized by the FIT program as established conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment or mental/psychosocial disorder that is not specified above must be recognized by the FIT program in order to qualify as an established condition for purposes of this rule; physician, designated by the New Mexico early childhood education and care department, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program receipt of the request for review.

(c) **Biological or medical risk for developmental delay:** a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file. Biological and medical risk conditions include the following:

(i) genetic disorders with increased risk for developmental delay, including chromosomal anomalies including Turner syndrome, Fragile X syndrome (in girls), inborn errors of metabolism including Phenylketonuria (PKU), and other syndromes including Goldenhar neurofibromatosis, and multiple congenital anomalies (no specific diagnosis);

(ii) perinatal factors, including prematurity (less than 35 weeks and more than 28 completed weeks gestation) or small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

(iii) neurologic conditions, including anomalies of the brain including the absence of the corpus callosum, and macrocephaly; anomalies of the spinal cord including spina bifida and tethered cord; abnormal movement patterns including severe tremor and gait problems; and other central nervous system (CNS) influences, including CNS or spinal cord tumors, CNS infections (e.g., meningitis), abscesses, acquired immunodeficiency syndrome (AIDS), and CNS toxins (e.g., lead poisoning);

(iv) sensory abnormalities, including neurological visual processing concerns that affect visual functioning in daily activities as a result of neurological conditions, including seizures, infections (e.g., meningitis), and injuries including traumatic brain injury (TBI); and mild or intermittent hearing loss;

(v) physical impairment, including congenital impairments including cleft lip or palate, torticollis, limb deformity, club feet; acquired impairments including severe arthritis, scoliosis, and brachial plexus injury;

(vi) mental/psychosocial disorders, including severe attachment disorder, severe behavior disorders, and severe socio-cultural deprivation;

(vii) other medical factors and symptoms, including growth problems, severe growth delay, failure to thrive, certain feeding disorders, and gastrostomy for feeding; and chronic illness/medically fragile conditions including severe cyanotic heart disease, cystic fibrosis, complex chronic conditions, and technology-dependency; and

(viii) conditions recognized by the FIT program as biological or medical risk conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment, mental/psychosocial disorder, or other medical factor or symptom that is not specified above must be recognized by the FIT program in order to qualify as an medical or biological risk condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program manager's receipt of the request for review.

(d) **Environmental risk for developmental delay:** a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

(5) The families of children who are determined to be not eligible for the FIT program shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. Families shall receive information regarding other community resources, such as home visiting and how to access specific resources in their area. Families shall also be informed about how to request re-evaluation at a later time should they suspect that their child's delay or risk for delay increases.

H. **Redetermination of eligibility.**

(1) The child's eligibility for the FIT program shall be re-determined annually in accordance with the eligibility determination requirements of this rule.

(2) The child's continued eligibility shall be documented on the IFSP.

(3) If the child no longer meets the requirements under the original eligibility category, the team will determine if the child meets the criteria for one of the other eligibility categories before exiting the child.

(4) If the child is determined to no longer be eligible for the FIT program the family shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. The family service coordinator will assist the family, with their consent, with referrals to other agencies.

I. **Ongoing assessment.**

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and developmental functioning. The ongoing assessment will utilize multiple

procedures including the use of a tool that helps the team determine if the child is making progress in their development, to determine developmental levels for the IFSP and to modify outcomes and strategies, and to determine the resources, priorities, and concerns of the family.

(2) Assessment information shall be used by the team as part of the process of determining early childhood outcome (ECO) scores at the time of the initial IFSP and prior to the child exiting the FIT program.

(3) An annual assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family. The IFSP shall reflect those resources, priorities and concerns the family has identified related to supporting their child's development.

[8.9.8.10 NMAC - N, 7/20/2021]

8.9.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):

A. IFSP development.

(1) A written IFSP shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family;

(b) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so; and

(c) meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(3) Participants at the initial IFSP and annual IFSP meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) a person or persons directly involved in conducting evaluations and assessments of the child;

(e) as appropriate, a person or persons who are or will be providing early intervention services to the child and family;

(f) the family service coordinator; and

(g) other individual(s) as applicable, such as personnel from: child care; early head start; home visiting; medically fragile; children's medical services; child protective services; physician and other medical staff, and with permission of the parent(s).

(4) If a person or persons directly involved in conducting evaluations and assessments of the child is unable to attend a meeting, the family service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend; or submitting a report.

(5) The initial IFSP shall be developed within 45 days of the referral.

(6) Families shall receive prior written notice of the IFSP meeting.

(7) The family service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP: The IFSP shall include:

(1) the child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age and adjusted age for prematurity (if applicable);

(2) the date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) the dates of periodic and annual reviews;

(4) a summary of the child's health (including vision and hearing) and the child's present levels of development in all domains (cognitive, communication, physical/motor, social and emotional and adaptive);

(5) with the approval of the parent(s), a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler as identified through the family

assessment;

(6) the desired child and family outcomes developed with the family (including but not limited to pre-literacy and numeracy, as developmentally appropriate to the child), the strategies to achieve those outcomes and the timelines, procedures and criteria to measure progress toward those outcomes;

(7) a statement of specific early intervention services based on peer-reviewed research (to the extent practicable) that are necessary to meet the unique needs of the child and family to achieve the desired outcomes, and the duration, frequency, intensity, location, and the method of delivering the early intervention services;

(8) a parental signature, which denotes prior consent to the early intervention services on the IFSP; if the parent(s) does not provide consent for a particular early intervention service, then the service(s) to which the parent(s) did consent shall be provided;

(9) specific information concerning payment sources and arrangements;

(10) the name of the ongoing family service coordinator;

(11) a statement of all other services including, medical services, child care and other early learning services being provided to the child and family that are not funded under this rule;

(12) an outcome, including strategies the family service coordinator or family shall take to assist the child and family to secure other services not funded under this rule;

(13) a statement about the natural environments in which early intervention services shall be provided; if the IFSP team determines that services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included;

(14) the projected start dates for initiation of early intervention services and the anticipated duration of those services; and

(15) at the appropriate time, a plan including identified steps and services to be taken to ensure a smooth and effective transition from early intervention services to preschool services under IDEA Part B and other appropriate early learning services.

C. Interim IFSP.

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child or family have an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the family service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Family service coordination.

(1) Family service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing family service coordination.

(3) The parent may request to change the family service coordinator, at any time.

(4) The family service coordinator shall be responsible for:

(a) informing the family about early intervention and their rights and procedural safeguards;

(b) gathering information from the family regarding their concerns, priorities and resources;

(c) coordinating the evaluation and assessment activities;

(d) facilitating the determination of the child's eligibility;

(e) referring the family to other resources and supports;

(f) helping families plan and prepare for their IFSP meeting;

(g) organizing and facilitating IFSP meetings;

(h) arranging for and coordinating all services listed on the IFSP;

(i) coordinating and monitoring the delivery of the services on the IFSP to ensure that they are provided in a timely manner;

(j) conducting follow-up activities to determine that appropriate services are being provided;

(k) assisting the family in identifying funding sources for IFSP services, including medicaid and private insurance;

(l) facilitating periodic reviews of the IFSP; and

(m) facilitating the development of the transition plan and coordinating the transition steps and activities.

(5) Family service coordination shall be available to families upon their referral to the FIT program.

(6) Family service coordination shall be listed on the IFSP for all families of eligible children.

(7) Families may direct the level of support and assistance that they need from their family service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic review of the IFSP.

(1) A review of the IFSP for a child and child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review.

(2) The parent(s), the family service coordinator, and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider agency.

(4) Participants at a periodic review meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) the family service coordinator; and

(e) persons providing early intervention services, as appropriate.

F. Annual IFSP.

(1) The family service coordinator shall convene the IFSP team on an annual basis, to review progress regarding outcomes on the IFSP and to revise outcomes, strategies or services, as appropriate to the child's and family's needs and the annual re-determination of the child's eligibility for services.

(2) Attendance at the annual IFSP meeting shall conform to the requirements of the initial IFSP meeting.

(3) The team shall develop a new IFSP for the coming year; however, information may becarried forward from the previous IFSP if the information is current and accurate.

(4) Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what outcomes will be addressed for the child and family and the services to be provided to meet these outcomes.

(5) The annual IFSP process shall include a determination of the child's continuing eligibility utilizing the tool(s) approved by the FIT program.

(6) At any time when monitoring of the IFSP by the family service coordinator or any member of the IFSP team, including the family, indicates that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP. The IFSP team can also be reconvened if there are significant changes to the child's or family's situation, e.g., moving to a new community, starting child care or early head start, health or medical changes, etc.

(7) If there are significant changes to the IFSP, the revised IFSP can be considered a new annual IFSP with a new start and end date.

[8.9.8.11 NMAC - N, 7/20/2021]

8.9.8.12 SERVICE DELIVERY:

A. Early intervention services.

(1) Early intervention services shall be:

(a) designed to address the outcomes identified by the IFSP team (which includes parents and other team members);

(b) identified in collaboration with the parents and other team members through the IFSP process;

(c) listed on the IFSP if recommended by the team, including the family, even if a service provider is not available at that time;

(d) delivered to the maximum extent appropriate in the natural environment for the child and family in the context of the family's day to day life activities;

(e) designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development;

(f) delivered in accordance with the specific location, duration and method in the IFSP; and

(g) provided at no cost to the parent(s).

(2) Early intervention services (with the exception of consultation and evaluation and assessments) must be provided within 30 days of the start date for those services, as listed on the IFSP and consented to by the parent(s).

(3) If an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(4) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the state. Early intervention services include:

(a) **Assistive technology services**: services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals that provide early intervention or other individuals who provide other services or who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children. Assistive technology devices and services do not include medical devices that are implanted, including a cochlear implant, or the optimization, maintenance, or replacement of such a device.

(b) **Audiological services**: services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training; provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) **Developmental instruction**: services that include working in a coaching role with the family or other caregiver, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental instruction provides families and other caregivers with the information, skills, and support to enhance the child's development. Developmental instruction addresses all developmental areas: cognitive, communication, physical/motor, vision, hearing), social or emotional and adaptive development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d) **Family therapy, counseling and training**: services provided, as appropriate, by licensed social workers, family therapists, counselors, psychologists, and other qualified personnel to assist the parent(s) in understanding the special needs of their child, supporting the parent-child

relationship, and to assist with emotional, mental health and relationship issues of the parent(s) related to parenting and supporting their child's healthy development.

(e) Family service coordination: services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from birth through age three years of age to access and receive early intervention services. The responsibilities of the family service coordinator include acting as the single point of contact for: coordinating, facilitating and monitoring the delivery of services to ensure that services are provided in a timely manner; coordinating services across agency lines; assisting parents in gaining access to, and coordinating the provision of, early intervention services and other services as identified on the IFSP; explaining early intervention services to families, including family rights and procedural safeguards; gathering information from the family regarding their concerns, priorities and resources; coordinating the evaluation and assessment activities; facilitating the determination of the child's eligibility; referring the family to providers for needed services and supports; scheduling appointments for IFSP services for the child and their family; helping families plan and prepare for their IFSP meeting; organizing, facilitating and participating in IFSP meetings; arranging for and coordinating all services listed on the IFSP; conducting follow-up activities to determine that appropriate services are being provided; coordinating funding sources for services provided under the IFSP; facilitating periodic reviews of the IFSP; ensuring that a transition plan is developed at the appropriate time; and facilitating the activities in the transition plan to support a smooth and effective transition from FIT services.

(f) Health services: those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children; or services related to implementation, optimization, maintenance or replacement of a medical device that is surgically implanted.

(g) Medical services: those services provided for diagnostic or evaluation purposes by a licensed physician to determine a child's developmental status and other information related to the need for early intervention services.

(h) Nursing services: those services that enable an eligible child to benefit from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care; the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(i) Nutrition services: include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(j) Occupational therapy services: those services that address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k) Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and

related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(l) Psychological services: those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(m) Sign language and cued language services: services that include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(n) Social work services: those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child's living conditions, providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child's and family's living situation that affect the child's maximum utilization of early intervention services.

(o) Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p) Transportation services: supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early intervention services or providing other means of transporting the child and family.

(q) Vision services: services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training. Vision services also include orientation and mobility training addressing concurrent motor skills, sensation, environmental concepts, body image, space/time relationships, and gross motor skills. Orientation and mobility instruction is focused on travel and movement in current environments and next environments and the interweaving of skills into the overall latticework of development. Services include evaluation and assessment of infants and toddlers identified as blind/visually impaired to determine necessary interventions, vision equipment, and strategies to promote movement and independence.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the FIT program in accordance with policy and procedure established by the FIT program.

C. The family service coordinator shall review and monitor delivery of services to ensure delivery in accordance with the IFSP.

[8.9.8.12 NMAC - N, 7/20/2021]

8.9.8.13 TRANSITION:

A. Transition planning shall occur with the parent(s) of **all** children to ensure a smooth transition from the FIT program to preschool or other setting.

B. Notifications to the public education department and local education agency (LEA):

(1) The FIT program shall provide notification to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following 12-month period.

(2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following 12-month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child's name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and

(d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

C. Transition plan:

(1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.

(2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.

(3) The following is the timeline for developing the transition plan:

(a) at the child's initial IFSP meeting the transition plan shall be initiated and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;

(b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child and any plans to visit those settings; and

(c) at least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

(4) The transition plan shall include:

(a) steps, activities and services to promote a smooth and effective transition for the child and family;

(b) a review of program and service options available, including Part B preschool special education, head start, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, private preschool, child care settings and available options for Native American tribal communities; or home if no other options are available;

(c) documentation of when the child will transition;

(d) the parent(s) needs for childcare if they are working or in school, in an effort to avoid the child having to move between preschool settings;

(e) how the child will participate in inclusive settings with typically developing peers;

(f) evidence that the parent(s) have been informed of the requirement to send notification to the LEA;

(g) discussions with and training of the parent(s) regarding future placements and other matters related the child's transition;

(h) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting; and

(i) a confirmation that referral information has been transmitted, including the assessment summary form and most recent IFSP.

D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA at least 60 days prior to the transition conference. The transition referral shall include at a minimum the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

(2) For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child.

(3) For children referred to the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parent consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least 30 days prior to the transition conference.

F. Transition assessment summary:

(1) The family service coordinator shall submit a completed transition assessment summary form to the LEA at least 30 days prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

G. Transition conference: The transition conference shall:

(1) be held with the approval of the parent(s);

(2) be held at least 90 days and no more than nine months prior to the child's third birthday;

(3) meet the IFSP meeting attendance requirements of this rule;

(4) take place in a setting and at a time that is convenient to the family;

(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

(7) be facilitated by the family service coordinator to include:

(a) a review of the parent(s)'s preschool and other service options for their child;

(b) a review of, and if needed, a finalization of the transition plan;

(c) a review of the current IFSP, the assessment summary; and any other relevant information;

(d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parent consent;

(e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation;

(f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.

(g) discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.

(h) documentation of the decisions made on the transition page and signatures on the transition conference signature page, which shall be included as part of the IFSP. Copies of the transition conference page and signature page shall be sent to all participants.

H. Transition date:

(1) The child shall transition from the FIT program when the child turns three years old.

(2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B):

(a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or

(b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

I. The individualized education program (IEP):

(1) The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval.

(2) The family service coordinator, with parent consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

J. Follow-up family service coordination: At the request of the parents, and in accordance with New Mexico early childhood education and care department policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

[8.9.8.13 NMAC - N, 7/20/2021]

8.9.8.14 PROCEDURAL SAFEGUARDS:

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico early childhood education and care department that specify family's rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The family service coordinator at the first visit with the family shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The family service coordinator shall provide ongoing information and assistance to families regarding their rights throughout the period of the child's eligibility for services. The family service coordinator shall explain dispute resolution options available to families and early intervention provider agencies. A family service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. Surrogate parent(s).

(1) A surrogate parent shall be assigned when:

(a) no parent can be identified;

(b) after reasonable efforts a parent cannot be located; and

(c) a child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process.

(2) The family service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) and shall contact the FIT program if the need for a surrogate is determined.

(3) The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process.

(4) The FIT program shall assign a surrogate parent within 30 days after it is determined that the child needs a surrogate parent. A surrogate may also be appointed by a judge in case of a child who is a ward of the court, as long as the surrogate meets the requirements of this rule.

(5) The person selected as a surrogate:

(a) must not be an employee of the lead agency, other public agency or early intervention provider agency or provider of other services to the child or family; the person is not considered an employee if they solely are employed to serve as a surrogate;

(b) must have no personal or professional interest that conflicts with the interests of the child; and

(c) must have knowledge and skills that ensure adequate representation of the child.

(6) A surrogate parent has all of the same rights as a parent for all purposes of this rule.

D. Consent.

(1) The family service coordinator shall obtain parental consent before:

(a) administering screening procedures under this rule that are used to determine whether a child is suspected of having a disability;

(b) an evaluation conducted to determine the child's eligibility for the FIT program;

(c) early intervention services are provided;

(d) public or private insurance is used, in accordance with this rule; and

(e) personally identifiable information is disclosed, unless the disclosure is made to a participating agency.

(2) The family service coordinator shall ensure that the parent is fully aware of the nature of the evaluation and assessment or early intervention service that would be available and informed that without consent the child cannot receive an evaluation or early intervention services.

(3) The parent(s):

(a) may accept or decline any early intervention service at any time; and

(b) may decline a service after first accepting it, without jeopardizing other early intervention services.

(4) The FIT program may not use due process procedures of this rule to challenge a parent's refusal to provide any consent that is required by this rule.

E. Prior written notice and procedural safeguards notice.

(1) Prior written notice shall be provided at least five days before the early intervention provider agency proposes, or refuses, to initiate or change the identification, evaluation or placement of a child, including any changes to length, duration, frequency and method of delivering a service. Parent(s) may waive the five-day period in order for the change to be implemented sooner, if needed.

(2) The prior written notice must include sufficient detail to inform the parent(s) about:

(a) the action being proposed or refused;

(b) the reasons for taking the action; and

(c) all procedural safeguards available, including mediation, how to file a complaint and a request for a due process hearing, and any timelines for each.

(3) The procedural safeguards notice must be provided in the native language of the parent(s) or other mode of communication used by the parent, unless clearly not feasible to do so.

(4) If the native language of the parent(s) is not a written language, the early intervention provider agency shall translate the notice orally in their native language or other means of communication so that the parent understands the notice. The family service coordinator shall document that this requirement has been met.

F. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

G. Confidentiality and opportunity to examine records.

(1) Notice: Notice to the parent(s) shall be provided when a child is referred to the FIT program, and shall include:

(a) a description of the types of children that information is maintained on, the types of information sought, and method used in gathering the information, and the uses of the information;

(b) a summary of the policies and procedures regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;

(c) a list of the types and locations of early intervention records collected, maintained or used by the agency;

(d) a description of the rights of the parent(s) and children regarding this information, including their rights under IDEA, Part C ("Confidentiality"); and

(e) a description of the extent to which the notice is provided in the native languages of the various population groups in the state.

(2) Confidentiality.

(a) All personally identifiable data, information, and records shall be protected, and confidentiality maintained in accordance with the Family Educational Rights and Privacy Act (FERPA).

(b) Personally identifiable data, information, and records shall be maintained as confidential from the time the child is referred to the FIT program until the point at which records are no longer required to be maintained in accordance with federal or state law.

(c) Prior consent from the parent(s) must be obtained before personally identifiable information is disclosed to anyone other than a participating agency or used for any purpose other than meeting a requirement of these regulations.

(d) The early intervention provider agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(e) One official at each early intervention provider agency must assume responsibility for ensuring the confidentiality of all personally identifiable information.

(f) The early intervention provider agency must maintain for public inspection a current listing of names and positions of personnel who may have access to personally identifiable information.

(g) All personnel collecting or using personally identifiable information must receive training or instructions on the confidentiality requirements of this rule.

(3) Access to records.

(a) The early intervention provider agency must permit the parent(s) to inspect and review any early intervention records related to their child without unnecessary delay and before any IFSP meeting or due process hearing, and in no cases more than 10 days after the request has been made.

(b) The early intervention provider agency must respond to reasonable requests for explanations and interpretations of the early intervention records.

(c) The parent has the right to have a representative inspect and review the early intervention records.

(d) The early intervention provider agency must assume that the parent has the right to review the early intervention records unless they have been provided documentation that the parent does not have authority under state law governing such matters as custody, foster care, guardianship, separation and divorce.

(e) The early intervention provider agency must provide copies of evaluations and assessments, the IFSP as soon as possible after each meeting at no cost.

(f) The early intervention provider agency must provide one complete copy of the child's early intervention records at the request of the parent(s) at no cost.

(g) The early intervention provider agency may otherwise charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(h) The early intervention provider agency may not charge a fee to search for or to retrieve records to be copied.

(4) Record of access.

(a) The early intervention provider agency must keep a record of parties obtaining access to early intervention records (except access by the parent(s), authorized representatives of the lead agency and personnel of the FIT provider agency).

(b) The record must include the name of the party, the date access was given, and the purpose for which the party was authorized to access the record.

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

(5) Amendment of records at parent request.

(a) If the parent(s) believes that information in the child's records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), they may request that the early intervention provider agency amend the information.

(b) The early intervention provider agency must decide whether to amend the information in accordance with the request within 14 days of receipt of the request.

(c) If the early intervention provider agency refuses to amend the information in accordance with the request, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing.

(6) Records hearing.

(a) The early intervention provider agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's record to ensure that it is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s).

(b) A parent may request a due process hearing under this rule to address amendment of records.

(c) If as a result of a hearing it is determined that information in the records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must amend the information accordingly and inform the parents in writing.

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

(e) Any explanation placed in the child's records must be maintained by the early intervention provider agency as long as the record is contested or as long as the contested portion is maintained and if the contested portion is released to any party, the explanation must also be disclosed to the party.

(7) Destruction of records.

(a) Records shall be maintained for a minimum of six years following the child's exit from the early intervention services system before being destroyed. At the conclusion of the six year period, records shall be destroyed upon the request of the parent(s), or may be destroyed at the discretion of the early intervention provider agency.

(b) The early intervention provider agency must attempt to inform the parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide services under state and federal regulations.

(c) Notwithstanding the foregoing, a permanent record of a child's name, date of birth, parent contact information, name of the family service coordinator, names of early intervention personnel, and exit data (year and age upon exit, and any programs entered into upon exit) may be maintained without time limitation.

H. Dispute resolution options.

(1) Parents and providers shall have access to an array of options for resolving disputes, as described herein.

(2) The family service coordinator shall inform the family about all options for resolving disputes. The family shall also be informed of the policies and procedures of the early intervention provider agency for resolving disputes at the local level.

I. Mediation.

(1) The mediation process shall be made available to parties to disputes, including matters arising prior to filing a complaint or request for due process hearing. The mediation:

(a) shall be voluntary on the part of the parties;

(b) shall not be used to deny or delay the parent(s)'s right to a due process hearing or to deny any other rights of the parent(s);

(c) shall be conducted by a qualified and impartial mediator who is trained in mediation techniques and who is knowledgeable in the laws and regulations related to the provision of early intervention services;

(d) shall be selected by the FIT program from a list of qualified, impartial mediators who are selected based on a random, rotational or other impartial basis; the selected mediator may not be an employee of the lead agency or the early intervention provider agency and they must not have a personal or professional interest that conflicts with the person's objectivity; and

(e) shall be funded by the FIT program.

(2) Sessions in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.

(3) If the parties resolve the dispute, they must execute a legally binding agreement that:

(a) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) is signed by both parties.

(4) The mediation agreement shall be enforceable in a state or federal district court of competent jurisdiction.

J. Complaints.

(1) An individual or organization may file a complaint with the state director of the FIT program regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family. The party

submitting the complaint shall also forward a copy of the complaint to the FIT provider agency(ies) serving the child.

(2) The written complaint shall be signed by the complaining party and shall include:

(a) a statement that the FIT program or FIT provider agency(ies) serving the child have violated a requirement of this rule or Part C of the IDEA, and a statement of the facts on which that allegation is based;

(b) the signature and contact information of the complainant;

(c) if the complaint concerns a specific child:

(i) the name and address of the residence of the child, or if the child is homeless, the contact information for the child;

(ii) the name of the FIT provider agency(ies) serving the child;

(iii) a description of the nature of the dispute related to the proposed or refused initiation or change, including facts related to the dispute; and

(d) a proposed resolution of the dispute to the extent known and available to the party at the time.

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

(4) Upon receipt of a complaint, the early childhood education and care department shall determine if an investigation is necessary, and if an investigation is deemed necessary, within 60 calendar days after the complaint is received it shall:

(a) carry out an independent on-site investigation;

(b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) provide an opportunity for the lead agency, public agency or early intervention provider agency to respond to the complaint, including at a minimum:

(i) at the discretion of the FIT program, a proposal to resolve the complaint; and

(ii) an opportunity for a parent who has filed a complaint and the FIT program or the FIT provider agency(ies) serving the child to voluntarily engage in mediation, consistent with this rule;

(d) give the parties the opportunity to voluntarily engage in mediation;

(e) review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(f) issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The written decision may include recommendations that include technical assistance activities, negotiations and corrective actions to be achieved.

(5) An extension of the 60 day investigation timeline will only be granted if exceptional circumstances exist with respect to a particular complaint or if the parties agree to extend the timeline to engage in mediation.

(6) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty-calendar day timeline.

(7) If an issue raised in a complaint is or was previously decided in a due process hearing involving the same parties, the decision from that hearing is binding on that issue, and the FIT program shall inform the complainant to that effect.

(8) A complaint alleging a failure to implement a due process hearing decision shall be resolved by the department.

(9) Except as otherwise provided by law, there shall be no right to judicial review of a decision on a complaint.

K Request for a due process hearing.

(1) In addition to the complaint procedure described above, a parent, a participating FIT provider, or the FIT program may file a request for a hearing regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family.

(2) A parent or participating FIT provider may request a hearing to contest a decision made by the FIT program pursuant to the complaints provisions above.

(3) A request for a hearing shall contain the same minimum information required for a complaint under this rule.

L. Appointment of hearing officer.

(1) When a request for a hearing is received, the FIT program shall assign an impartial hearing officer from a list of hearing officers maintained by the FIT program who:

(a) has knowledge about IDEA Part C and early intervention;

(b) is not an employee of any agency or entity involved in the provision of early intervention; and

(c) does not have a personal or professional interest that would conflict with their objectivity in implementing the process.

(2) The hearing officer shall:

(a) listen to the presentation of relevant viewpoints about the due process issue;

(b) examine all information relevant to the issues;

(c) seek to reach timely resolution of the issues; and

(d) provide a record of the proceedings, including a written decision.

M. Due process hearings.

(1) When a request for a hearing is received, a due process hearing shall be conducted.

(2) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents and child involved.

(3) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than 30 days after receipt of a parent's complaint. However, the hearing officer may grant specific extensions of this time limit at the request of either party.

(4) A parent shall have the right in the due process hearing proceedings:

(a) to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children and others, at the party's discretion;

(b) to present evidence and confront, cross examine, and compel the attendance of witnesses;

(c) to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing;

(d) to obtain a written or electronic verbatim record of the hearing, at no cost to the parent; and

(e) to obtain a written copy of the findings of fact and decisions, at no cost to the parent.

(5) Any party aggrieved by the findings and decision of the hearing officer after a hearing has the right to bring a civil action in a state or federal court of competent jurisdiction, within 30 days of the date of the decision.

N. Abuse, neglect, and exploitation.

(1) All instances of suspected abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico early childhood education and care department and the children, youth and families department.

(2) A parent's decision to decline early intervention services does not constitute abuse, neglect or exploitation.

[8.9.8.14 NMAC - N, 7/20/2021]

HISTORY OF 8.9.8 NMAC: [RESERVED]

NEW MEXICO
State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
Your Access to Public Information

NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION

July 12, 2021

To: Elizabeth Groginsky, Secretary
c/o Tracy Kilphuis, Quality Assurance Manager

From: Matthew Ortiz, Administrative Law Division
by designation for the State Records Administrator

Re: **8.9.8 NMAC, New Rule, Requirements for Family Infant Toddler Early Intervention Services, filed on July 1, 2021, published and effective on July 20, 2021.**

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all filed copies of the above rules:

In Section 5, Effective Date, the erroneous date July 7, 2021 was replaced with correct date July 20, 2021

A copy of this *Notification* will be filed with the official version of each of the above rules.

Hon. Hector Balderas
Attorney General

Hon. Brian S. Colón
Chairman/State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Department of Cultural Affairs

Kenneth Ortiz
General Services Department

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Early Childhood Education and Care Department gives Notice of a Minor, Nonsubstantive Correction to 8.9.8 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

In Section 5, Effective Date, the erroneous date July 7, 2021 was replaced with correct date July 20, 2021

A copy of this Notification will be filed with the official version of each of the above rules.