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PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS

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§ 57.1 Purpose.

This part:

(a) Implements policy, assigns responsibilities, and prescribes procedures under 20 U.S.C. chapter 33 and 20 U.S.C. 921–932, 10 U.S.C. 2164, DoD Directive 1342.6[1], DoD Directive 1342.21, DoD Instruction 1342.26, DoD Directive 1342.13, and DoD Directive 5105.4 for the following:

(1) Provision of early intervention services (EIS) to infants and toddlers with disabilities (birth through 2 years, inclusive) and their families, and special education and related services (hereafter referred to as ''special services'') to children with disabilities (ages 3 through 21 years, inclusive) entitled to receive special services from the Department of Defense in accordance with 10 U.S.C. 2164, DoD Directive 1342.6, DoD Directive 1342.21, DoD Instruction 1342.26, DoD Directive 1342.13, and DoD Directive 5105.4.

(2) Implementation of a comprehensive, multidisciplinary program of EIS for infants and toddlers (birth through 2 years, inclusive) with disabilities, and their families.

(3) Provision of a free, appropriate public education (FAPE) including special education and related services for children with disabilities enrolled in the DoD school systems, as specified in their Individualized Educational Programs (IEP).

(4) Monitoring of DoD programs providing EIS, special education, and related services for compliance with this part.

(5) Establishment of a DoD Advisory Panel (DoD-AP) on Early Intervention, Special Education, and Related Services and a DoD Coordinating Committee (DoD-CC) on Early Intervention, Special Education, and Related Services in accordance with DoD Directive 5105.4.

(b) Authorizes implementing instructions, a DoD Manual entitled ''Standard Operating Procedures for the Provision of Early Intervention, Special Education and Related Services,'' consistent with DoD 5025.1–M and DoD forms consistent with DoD 8910.1–M, DoD Instruction 7750.7, and Hospital Accreditation Standards.

§ 57.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as ''the DoD Components'').

[1] All unclassified DoD Directives, DoD Instructions, and DoD Publications mentioned in this part may be obtained via Internet at *http://www.dticmil/whs/directives*.

(b) Applies to infants, toddlers, and children receiving or entitled to receive special services from the Department of Defense, and their parents.

(c) Applies to DoD Domestic Dependents Elementary and Secondary Schools (DDESS) operated by the Department of Defense within the continental United States, Alaska, Hawaii, and territories, commonwealths and possessions of the United States (hereafter referred to as ''domestic'').

(d) Applies to DoD Dependents Schools (DoDDS) operated by the Department of Defense outside the continental United States and its territories, commonwealths and possessions (hereafter referred to as ''overseas'').

(e) Does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of such rights or remedies.

§57.3 Definitions.

(a) *Age of Majority*. The age when a person acquires the rights and responsibilities of being an adult. For purposes of this part, a child attains majority at age 18.

(b) *Alternate Assessment*. A process that measures the performance of students with disabilities unable to participate, even with accommodations provided, in system-wide assessment.

(c) *Alternative Educational Setting (AES)*. A temporary setting other than the school (*e.g.*, home, installation library) normally attended by the student. The interim AES shall:

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that shall enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior that resulted in the child being considered or placed in an AES.

(d) *Assessment*. The ongoing procedures used by appropriately qualified personnel throughout the period of a child's eligibility determination to identify the child's unique needs; the family's strengths and needs related to development of the child; and the nature and extent of early intervention services that are needed by the child and the child's family to meet their unique needs.

(e) *Assistive Technology Device*. Any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

(f) *Assistive Technology Service*. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities or the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

(g) *Attention Deficit Disorder (ADD)*. As used in this part, encompasses attention-deficit hyperactivity disorder (ADHD) and ADD without hyperactivity. The essential features of the disorder are developmentally inappropriate degrees of inattention, impulsiveness, and in some instances, hyperactivity.

(1) Either diagnosis must be made by appropriate medical personnel.

(2) ADD and ADHD are not specific disabling conditions under this part, although a child with either may be eligible for EIS and/or special education and related services as ''other health impaired'' by reason of the disability if the child's alertness or vitality is sufficiently compromised. The majority of children with ADD/ADHD generally do not meet the eligibility criteria as outlined in this part.

(h) *Audiology*. A service that includes the following:

(1) Identification of children with hearing loss.

(2) Determination of the range, nature, and degree of hearing loss, and communication functions including referral for medical or other professional attention for the habilitation of hearing.

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech-reading (lip-reading), hearing evaluation, and speech conservation.

(4) Creation and administration of programs for the prevention of hearing loss.

(5) Counseling and guidance of children concerning the prevention of hearing loss.

(6) Determination of a child's need for group and individual amplification, selecting and fitting an aid, and evaluating the effectiveness of amplification.

(i) *Autism*. A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3 years that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in paragraph (z) of this section.

(j) *Case Study Committee (CSC)*. A school-level team comprised of, among others, an administrator or designee who is qualified to supervise or provide special education, one or more of the child's regular education teachers, one or more special education teachers, parents, and related service providers (if appropriate) who do the following:

(1) Oversee screening and referral of children who may require special education.

(2) Oversee the multidisciplinary evaluation of such children.

(3) Determine the eligibility of children for special education and related services.

(4) Formulate individualized instruction as reflected in an IEP, in accordance with this part.

(5) Monitor the development, review, and revision of IEPs.

(k) *Child-Find*. An outreach program used by the DoD school systems, the Military Departments, and the other DoD Components to seek and identify children from birth to age 21, inclusive, who may require EIS or special education and related services. Child-find includes all children who are eligible to attend a DoD school. Child-find activities include the dissemination of information to military members and DoD employees, the identification and screening of children, and the use of referral procedures.

(l) *Children with Disabilities (Ages 3 through 21, Inclusive)*. Children, before graduation from high school or completion of the General Education Degree, who have one or more impairments, as determined by a CSC and who need and qualify for special education and related services.

(m) *Consent*. The permission obtained from the parent or legal guardian. This includes the following:

(1) The parent is fully informed of all information about the activity for which consent is sought in the native language or in another mode of communication, if necessary.

(2) The parent understands and agrees in writing to the implementation of the activity for which permission is sought. That consent describes the activity, lists the child's records (if any) to be released outside the Department of Defense, and specifies to whom the records shall be sent.

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

(ii) If a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the cognizant authorities received the notice of revocation of the consent).

(n) *Continuum of Alternative Placements*. Instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; includes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(o) *Counseling Service*. A service provided by a qualified social worker, psychologist, guidance counselor, or other qualified personnel.

(p) *Deaf-Blindness*. Concomitant hearing and visual impairments, the combination of which causes such severe communication, developmental, and educational problems that it cannot be accommodated in special education programs solely for children with deafness or blindness.

(q) *Deafness*. A hearing loss or deficit so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the child's educational performance adversely.

(r) *Developmental Delay*. A significant discrepancy in the actual functioning of an infant, toddler, or child, birth through age 5, when compared with the functioning of a non-disabled infant, toddler, or child of the same chronological age in any of the following areas: physical, cognitive, communication, social or emotional, and adaptive development as measured using standardized evaluation instruments and confirmed by clinical observation and judgment. A child classified with a developmental delay before the age of 5 may maintain that eligibility classification through the age 8.

(1) *A Significant Discrepancy*. The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 2 standard deviations below the mean in at least one area, or by a 25 percent delay in at least one area on assessment instruments that yield scores in months, or a developmental delay of 1.5 standard deviations below the mean in two or more areas, or by a 20 percent delay on assessment instruments that yield scores in months in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive.

(2) *High Probability for Developmental Delay*. An infant or toddler, birth through age 2, with a diagnosed physical or mental condition, such as chromosomal disorders and genetic syndromes, that places the infant or toddler at substantial risk of evidencing a developmental delay without the benefit of EIS.

(s) *DoD Dependents Schools (DoDDS)*. The overseas schools (kindergarten through grade 12) established by 20 U.S.C. 921. The DoDDS are operated under DoD Directive 1342.6.

(t) *DoD Domestic Dependent Elementary and Secondary Schools (DDESS)*. The schools (pre-kindergarten through grade 12) established by 20 U.S.C. 921–932. The DoD DDESS are operated under DoD Directive 1342.21.

(u) *DoD School Systems*. The DDESS and DoDDS school systems.

(v) *Early Identification and Assessment*. The implementation of a formal plan for identifying a disability as early as possible in a child's life.

(w) *Early Intervention Services*. Developmental services that meet the following criteria:

(1) Are provided under the supervision of a Military Medical Department.

(2) Are provided using Military Health Services System resources at no cost to the parents.

(3) Evaluation, Individualized Family Service Plan (IFSP) development and revision, and Service coordination services are provided at no cost to the infant's or toddler's parents. Parents may be charged incidental fees (identified in Service guidance) that are normally charged to infants, toddlers, and children without disabilities or to their parents.

(4) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(i) Physical.

(ii) Cognitive.

(iii) Communication.

(iv) Social or emotional.

(v) Adaptive development.

(5) Meet the standards developed or adopted by the Department of Defense.

(6) Are provided by qualified personnel including early childhood special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, pediatricians and other physicians, and certified and supervised paraprofessional assistants, such as certified occupational therapy assistants.

(7) Maximally, are provided in natural environments including the home and community settings where infants and toddlers without disabilities participate.

(8) Are provided in conformity with an IFSP.

(9) Developmental services include, but are not limited to, the following services: Family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; Service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above EIS; and transportation and related costs necessary to enable an infant or toddler and the family to receive EIS.

(x) *Educational and Developmental Intervention Services (EDIS).* Programs operated by the Military Medical Departments to provide EIS and related services in accordance with this part.

(y) *Eligible.* Children who meet the age, command sponsorship, and dependency requirements established by 10 U.S.C. 2164, DoD Directive 1342.6, DoD Directive 1342.13, and DoD Directive 5105.4.

(1) In DoDDS, children without disabilities who meet these requirements, and are ages 5 to 21 years, inclusive, are entitled to receive educational instruction.

(2) In DDESS, children without disabilities who meet these requirements, and are ages 4 to 21 years, inclusive, are entitled to receive educational instruction.

(3) In both DoDDS and DDESS, children with disabilities, ages 3 through 21 years, inclusive, are authorized to receive educational instruction. Additionally, an eligible infant or toddler with disabilities is a child from birth through age 2 years who meets either the DoDDS or DDESS eligibility requirements except for the age requirement.

(z) *Emotional Disturbance.* A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affects educational performance, and exhibits one or more of the following characteristics:

(1) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(2) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(3) Inappropriate types of behavior or feelings under normal circumstances.

(4) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5) A general pervasive mood of unhappiness or depression. Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are seriously emotionally disturbed.

(aa) *Evaluation.* The synthesis of assessment information by a multidisciplinary team used to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive early intervention or special education and/or related services.

(bb) *Family Training, Counseling, and Home Visits.* Services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(cc) *Free Appropriate Public Education (FAPE).* Special education and related services that:

(1) Are provided at no cost to parents of a child with a disability, and are under the general supervision and direction of the DoDDS or DDESS, including children with disabilities who have been suspended or expelled from school.

(2) Are provided in the least restrictive environment at a preschool, elementary, or secondary school.

(3) Are provided in conformity with an IEP.

(4) Meet the requirements of this part.

(dd) *Functional Behavioral Assessment*. A process for identifying the events that predict and maintain patterns of problem behavior.

(ee) *Functional Vocational Evaluation*. A student-centered appraisal process for vocational development and career decision-making. It allows students, educators, and others to gather information about such development and decision-making. Functional vocational evaluation includes activities for transitional, vocational, and career planning; instructional goals; objectives; and implementation.

(ff) *General Curriculum*. The curriculum adopted by the DoD school systems for all children from preschool through secondary school. To the extent applicable to an individual child with a disability, the general curriculum can be used in any educational environment along a continuum of alternative placements, described in paragraph (l) of this section.

(gg) *Health Services*. Services necessary to enable an infant or toddler to benefit from the other EIS being received under this part. That term includes the following:

(1) Services such as clean intermittent catheterization, tracheotomy care, tube feeding, changing of dressings or colostomy collection bags, and other health services.

(2) Consultation by physicians with other service providers about the special healthcare needs of infants and toddlers with disabilities that need to be addressed in the course of providing other EIS.

(3) That term does not include the following:

(i) Services that are surgical or solely medical.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical services routinely recommended for all infants or toddlers.

(hh) *Hearing Impairment*. An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance, but is not included under the definition of deafness.

(ii) *Illegal Drug*. Means a controlled substance as identified in the Controlled Substances Act (21 U.S.C. 812(c)) but does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(jj) *Independent Evaluation*. An evaluation conducted by a qualified examiner who is not employed by either the DoD school or EDIS that conducted the initial evaluation.

(kk) *Individualized Education Program (IEP)*. A written document defining specially designed instruction for a student with a disability, ages 3 through 21 years, inclusive. That document is developed and implemented in accordance with appendix B of this part.

(ll) *Individualized Family Service Plan (IFSP)*. A written document for an infant or toddler, age birth through 2 years, with a disability and the family of such infant or toddler that is developed, reviewed, and revised in accordance with appendix A of this part.

(mm) *Infants and Toddlers with Disabilities*. Children, ages birth through 2 years, who need EIS because they:

(1) Are experiencing a developmental delay, defined at paragraph (r) of this section.

(2) Have a high probability for developmental delay as defined at paragraph (r)(2) of this section.

(nn) *Inter-Component*. Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities, and their families.

(oo) *Medical Services*. Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and/or credentialed physician to

assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

(pp) *Meetings to Determine Eligibility or Placement of a Child*. All parties to such a meeting shall appear personally at the meeting site on issuance of written notice and establishment of a date convenient to the concerned parties. When a necessary participant is unable to attend, electronic communication suitable to the occasion may be used to involve the unavailable party. Parents generally shall be responsible for the cost of travel to personally attend meetings about the eligibility or placement of their child.

(qq) *Mental Retardation*. Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior. This disability is manifested during the developmental period and adversely affects a child's educational performance.

(rr) *Multidisciplinary*. The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities, and development of an IFSP or an IEP.

(ss) *Native Language*. When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

(tt) *Natural Environments*. Settings that are natural or normal (*e.g.*, home or day care setting) for the infant, toddler, or child's same-age peers who have no disability.

(uu) *Non-DoD Placement*. An assignment by the DoD school system of a child with a disability to a non-DoD school or facility. The term does not include a home schooling arrangement, except pursuant to an IEP.

(vv) *Non-DoD School or Facility*. A public or private school or other institution not operated by the Department of Defense. That term includes DDESS special contractual arrangements.

(ww) *Nutrition Services*. Those services to infants and toddlers that include, but are not limited to, the following:

(1) 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.

(2) Developing and monitoring plans to address the nutritional needs of infants and toddlers eligible for EIS.

(3) Making referrals to community resources to carry out nutrition goals.

(xx) *Occupational Therapy*. Services provided by a qualified occupational therapist or a certified occupational therapist assistant (under the supervision of a qualified occupational therapist). That term includes services to address the functional needs of children (birth through age 21, inclusive) related to adaptive development; adaptive behavior and play; and sensory, motor, and postural development. Those services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include the following:

(1) Identification, assessment, and intervention.

(2) Adaptation of the environment and selection, design, and fabrication of assistive and orthotic devices to help development and promote the acquisition of functional skills.

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(yy) *Orthopedic Impairment*. A severe orthopedic impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot or absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis; and impairments from other causes such as cerebral palsy, amputations, and fractures or burns causing contractures.

(zz) *Orientation and Mobility*. Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community; and includes teaching students the following, as appropriate:

(1) To understand spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) orientation and mobility to establish, maintain, or regain orientation and line of travel (*e.g.*, using sound at a traffic light to cross the street);

(2) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(3) To understand and use remaining vision and distance low vision aids; and other concepts, techniques, and tools.

(aaa) *Other Health Impairment*. Limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect a child's educational performance. Such impairments may include ADD, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, or diabetes.

(bbb) *Parent*. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, if such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(ccc) *Parent Counseling and Training*. A service that assists parents in understanding the special needs of their child's development and that provides them with information on child development and special education.

(ddd) *Personally Identifiable Information*. Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Information includes:

(1) The name of the child, the child's parent, or other family member; the address of the child;

(2) A personal identifier, such as the child's social security number or student number; or

(3) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(eee) *Physical Therapy*. Services provided by a qualified physical therapist or a certified physical therapist (under the supervision of a qualified physical therapist). That term includes services to children (birth through age 21, inclusive) to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Those services include the following:

(1) Screening, evaluation, and assessment to identify movement dysfunction.

(2) Obtaining, interpreting, and integrating information to appropriate program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(fff) *Primary Referral Source*. Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and bring the child to the attention of the EDIS.

(ggg) *Psychological Services*. Services that include the following:

(1) Administering psychological and educational tests and other assessment procedures.

(2) Interpreting test and assessment results.

(3) Obtaining, integrating, and interpreting information about a child's behavior and conditions relating to learning.

(4) Consulting with other staff members, including service providers, to plan programs to meet the special needs of children, as indicated by psychological tests, interviews, and behavioral evaluations.

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(hhh) *Public Awareness Program*. Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may

include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of EIS. Procedures to determine the availability of information on EIS to parents are also included in that program.

(iii) *Qualified.* A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides special education or related services or EIS to an infant, toddler, or child with a disability.

(jjj) *Recreation.* A related service that includes the following:

(1) Assessment of leisure function.

(2) Therapeutic recreational activities.

(3) Recreational programs in schools and community agencies.

(4) Leisure education.

(kkk) *Rehabilitation Counseling.* Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(lll) *Related Services.* Transportation and such developmental, corrective, and other supportive services, as required, to assist a child, age 3 through 21 years, inclusive, with a disability to benefit from special education under the child's IEP. The term includes speech-language pathology and audiology, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluative purposes. That term also includes school health services, social work services in schools, and parent counseling and training. The sources for those services are school, community, and medical treatment facilities.

(mmm) *Related Services Assigned to the Military Medical Departments Overseas.* Services provided by EDIS to DoDDS students, under the development or implementation of an IEP, necessary for the student to benefit from special education. Those services may include medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

(nnn) *School Health Services.* Services provided by a qualified school nurse or other qualified person.

(ooo) *Separate Facility.* A school or a portion of a school, regardless of whether it is operated by the Department of Defense, attended exclusively by children with disabilities.

(ppp) *Service Coordination.* Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural safeguards, and services that are authorized to be provided under appendix B of this part. Those activities include the following:

(1) Coordinating the performance of evaluations and assessments.

(2) Assisting families to identify their resources, concerns, and priorities.

(3) Facilitating and participating in the development, review, and evaluation of IFSPs.

(4) Assisting in identifying available service providers.

(5) Coordinating and monitoring the delivery of available services.

(6) Informing the family of support or advocacy services.

(7) Coordinating with medical and health providers.

(8) Facilitating the development of a transition plan to preschool services.

(qqq) *Service Provider.* Any individual who provides services listed in an IEP or an IFSP.

(rrr) *Social Work Services in Schools.* A service that includes the following:

(1) Preparing a social or developmental history on a child with a disability.

(2) Counseling a child and the family on a group or individual basis.

(3) Working with those problems in a child's home, school, or community that adversely affect adjustment in school.

(4) Using school and community resources to enable a child to benefit from the educational program.

(sss) *Special Education*. Specially designed instruction, including physical education, which is provided at no cost to the parent or guardians to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

(1) That term includes speech-language pathology or any other related service if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(2) That term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(3) *At No Cost*. For a child eligible to attend a DoD school without paying tuition, specially designed instruction and related services are provided without charge. Incidental fees normally charged to non-disabled students or their parents as a part of the regular educational program may be imposed.

(4) *Physical Education*. The development of the following:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(ttt) *Specially Designed Instruction*. That term means adapting content, methodology or delivery of instruction to:

(1) Address the unique needs of an eligible child under this part; and

(2) Ensure access of the child to the general curriculum, so that she or he can meet the educational standards within the DoD school systems.

(uuu) *Specific Learning Impairment*. A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term, commonly called, ''specific learning disability,'' does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic differences.

(vvv) *Speech and Language Impairments*. A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a child's educational performance.

(www) *Speech-Language Pathology Services*. Services provided by a qualified speech/language therapist or a certified speech/language assistant (under the supervision of a qualified speech/language therapist), that include the following:

(1) Identification of children with speech or language impairments.

(2) Diagnosis and appraisal of specific speech or language impairments.

(3) Referral for medical or other professional attention for the habilitation or prevention of speech and language impairments.

(4) Provision of speech and language services for the habilitation or prevention of communicative impairments.

(5) Counseling and guidance of children, parents, and teachers for speech and language impairments.

(xxx) *Supplementary Aids and Services*. Include aids, services, and other supports that are provided in regular education classes or other educational-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.

(yyy) *Transition Services*. (1) A coordinated set of activities for a student

that may be required to promote movement from early intervention, preschool, and other educational programs into different educational settings or programs.

(2) For students 14 years of age and older, transition services are designed in an outcome-oriented process that promotes movement from school to post-school activities; including, related services, post-secondary education, vocational training, integrated employment; and also including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities are based on the individual student's needs, considering the student's preferences and interests, and include instruction, community experiences, the development of employment and other post-school adult living objectives, and acquisition of daily living skills and functional vocational evaluation.

(zzz) *Transportation*. A service that includes the following:

(1) Transportation and related costs for EIS includes the cost of travel (*e.g.*, mileage or travel by taxi, common carrier, or other means) and other costs (*e.g.*, tolls and parking expenses) that are necessary to enable an eligible child and the family to receive EIS.

(2) Services rendered under the IEP of a child with a disability:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel in and around school buildings.

(3) Specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide transportation for a child with a disability.

(aaaa) *Traumatic Brain Injury*. An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance. That term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. That term does not include brain injuries that are congenital or degenerative, or brain injuries that are induced by birth trauma.

(bbbb) *Vision Services*. Services necessary to habilitate or rehabilitate the effects of sensory impairment resulting from a loss of vision.

(cccc) *Visual Impairment*. An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partial sight and blindness.

(dddd) *Vocational Education*. Organized educational programs for the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(eeee) *Weapon*. Items carried, presented, or used in the presence of other persons in a manner likely to make reasonable persons fear for their safety. They include, but are not limited to, guns, look-alike (replica) guns, knives, razors, box or carpet cutters, slingshots, nunchucks, any flailing instrument such as a fighting chain or heavy studded or chain belt, objects designed to project a missile, explosives, mace, pepper spray, or any other similar propellant, or any other object concealed, displayed, or brandished in a manner that reasonably provokes fear.

§ 57.4 Policy.

It is DoD policy that:

(a) Eligible infants and toddlers with disabilities and their families shall be provided EIS consistent with appendix A of this part.

(b) Eligible children with disabilities, ages 3 through 21 years, inclusive, shall be provided a FAPE in the least restrictive environment, consistent with appendix B of this part.

(c) The Military Medical Departments and DoDDS shall cooperate in the delivery of related services to eligible children with disabilities, ages 3

through 21 years, inclusive, that require such services to benefit from special education. Related services assigned to the Military Medical Departments are defined in §57.3 and are provided in accordance with appendix C of this part. DDESS is responsible for the delivery of all related services to eligible children with disabilities, ages 3 through 21 years, inclusive, served by DDESS.

(d) The Military Medical Departments shall provide EIS in both domestic and overseas areas, and related services assigned to them in overseas areas, at the same priority as medical care is provided to active duty military members.

§57.5 Responsibilities.

(a) *The Under Secretary of Defense (Personnel and Readiness)* (USD (P&R)) shall:

(1) Establish a DoD-AP consistent with appendix D of this part.

(2) Establish and chair, or designate a ''Chair,'' of the DoD-CC consistent with appendix E of this part.

(3) Ensure that inter-Component agreements or other mechanisms for inter-Component coordination are in effect between the DoD Components providing services to infants, toddlers and children.

(4) Ensure the implementation of procedural safeguards consistent with appendix F of this part.

(5) In consultation with the General Counsel of the Department of Defense (GC, DoD) and the Secretaries of the Military Departments:

(i) Ensure that eligible infants and toddlers with disabilities and their families are provided comprehensive, coordinated and multidisciplinary EIS under 20 U.S.C. 921–932 and 10 U.S.C. 2164 as provided in appendix A of this part.

(ii) Ensure that eligible children with disabilities (ages 3 through 21 years, inclusive) are provided a FAPE under U.S.C. 921–932 and 10 U.S.C. 2164 as provided in appendix A of this part.

(iii) Ensure that eligible DoDDS students are provided related services, as provided in appendix C of this part.

(iv) Ensure that all eligible DDESS students are provided related services by DDESS.

(v) Ensure the development of a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth through 21 years, inclusive, under DoD Directive 1342.6 who may require early intervention or special education services.

(vi) Ensure that personnel are identified to provide the mediation services specified in appendix 7 of this part.

(vii) Ensure that transition services are available to promote movement from early intervention, preschool, and other educational programs into different educational settings and post-secondary environments.

(viii) Ensure compliance with this Part in the provision of special services, in accordance with appendix H of this part and other appropriate guidance.

(ix) Ensure that personnel are identified and trained to provide the monitoring specified in appendix H of this part

(x) Ensure that the Military Departments deliver the following:

(A) In overseas and domestic areas, a comprehensive, coordinated, and multidisciplinary program of EIS for eligible infants and toddlers (birth through 2 years, inclusive) with disabilities.

(B) In overseas areas, the related services as defined in §57.3 for eligible children with disabilities, ages 3 through 21 years, inclusive.

(xi) Ensure the development and implementation of a comprehensive system of personnel development in the area of special services for the Department of Defense Education Activity (DoDEA) and the Military Departments. That system shall include professionals, paraprofessionals, and primary referral source personnel in the areas of special services, and may also include:

(A) Implementation of innovative strategies and activities for the recruitment and retention of personnel providing special services, ensuring that personnel requirements are established consistent with recognized certification, licensing, registration, or other comparable requirements for personnel providing special services, and allow the use of paraprofessionals and assistants who are appropriately

trained and supervised to assist in the provision of special services.

(B) Training personnel to coordinate transition services for infants and toddlers from an early intervention program to preschool or other appropriate services

(C) Ensuring that training is provided in and across disciplines.

(xii) Develop procedures to compile data on the numbers of eligible infants and toddlers with disabilities and their families in need of EIS, and children in need of special education and related services, in accordance with DoD Directives 5400.7 and 5400.11. Those data elements shall include, at a minimum, the following:

(A) The number of infants and toddlers and their families served.

(B) The number of children served.

(C) The types of services provided.

(D) Other information required to evaluate and monitor the provision of services.

(xiii) Resolve disputes among the DoD Components involving appendix A of this part.

(xiv) Ensure the assigned responsibilities for the delivery of special services are reviewed at least every 5 years to determine the most appropriate distribution of responsibilities.

(b) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)), under the *Principal Deputy Under Secretary of Defense for Personnel and Readiness* (PDUSD(P&R)), shall:

(1) Ensure the provision of advice and consultation about the provision of EIS and related services to the USD(P&R) and the GC, DoD.

(2) Ensure the development of healthcare provider workload standards and performance levels to determine staffing requirements of designated centers. These standards shall take into account the provider training needs, the requirements of this part, and the additional time required to provide EIS (in domestic and overseas areas) and related services (in overseas areas) as defined in § 57.3 for assessment and treatment and for coordination with other DoD Components, such as the DoD school systems.

(3) Assign the Military Medical Departments geographical areas of responsibility for providing related services and EIS under paragraph (c)(1) of this section. Periodically review the alignment of geographic areas to ensure that base closures and other resourcing issues are considered in the cost effective delivery of services.

(4) Establish a system for compiling data required by this part.

(c) The *Secretaries of the Military Departments* shall:

(1) In consultation with DoDEA, establish Educational and Developmental Intervention Services (EDIS) within the following areas:

(i) Designated overseas areas of geographical responsibility, capable of providing necessary related services and EIS to support the needs of eligible beneficiaries.

(ii) Domestic areas, capable of providing necessary EIS to support the needs of eligible beneficiaries.

(2) Staff EDIS with appropriate professional staff, as necessary based on services required, which should include occupational therapist(s) with pediatric experience; physical therapist(s) with pediatric experience; audiologist(s) with pediatric experience; child psychiatrist(s); clinical psychologist(s) with pediatric experience; social worker(s) with pediatric experience; speech language pathologists; community health nurse(s) or the equivalent; pediatrician(s) with experience and/or training in developmental pediatrics; certified assistants (for example, certified occupational therapy assistants or physical therapy assistants); and early childhood special educators.

(3) Provide a comprehensive, coordinated, inter-Component, community-based system of EIS for eligible infants and toddlers with disabilities (birth through 2 inclusive) and their families using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(4) Provide related services, as defined in § 57.3 to DoDDS students who are on IEPs using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(5) To DoDDS students, provide transportation to and from the site where related services are provided by

the Military Medical Department, if not provided at the school.

(6) Provide transportation to and from the site where EIS is provided, if it is not provided in the home or some other natural environment.

(d) The *Surgeons General of the Military Departments* shall:

(1) Ensure the development of policies and procedures for providing, documenting, and evaluating EIS and related services assigned to the Military Medical Departments, as defined in §57.3 (mmm).

(2) Ensure that EDIS participates in the existing military treatment facility (MTF) quality assurance program, which monitors and evaluates the medical services for children receiving such services as described by this part. Standards used by the Joint Commission on Accreditation of Health Organizations or equivalent standards shall be used, where applicable, to ensure accessibility, acceptability, and adequacy of the medical portion of the program provided by EDIS.

(3) Ensure that each program providing EIS is monitored for compliance with this part at least once every 3 years in accordance with appendix H of this part.

(4) Ensure that resources are allocated in accordance with the healthcare provider workload standards and performance levels developed under the direction of the ASD(HA).

(5) Ensure the cooperation and coordination between their respective offices, the offices of other Surgeons General, and DoDEA with respect to the implementation of this Part.

(6) Ensure that training is available for each healthcare professional providing EIS or related services. This training shall include information about the roles and responsibilities of the providers and the development of an Individualized Family Service Plan (IFSP) or an IEP.

(7) Ensure the provision of in-service training on EIS and related services to educational, legal, and other suitable personnel, if requested and feasible.

(8) Provide professional supervision of the EDIS provision of EIS and related services in the overseas areas, as designated in (b)(3) of this section and of EIS in domestic areas of responsibility.

(9) Submit to the DoD-CC a report not later than July 31 of each year certifying that all EDIS are in compliance with this part and other DoD guidance in accordance with appendix H of this part.

(e) The *Director, Department of Defense Education Activity* under the *Deputy Under Secretary of Defense (Military Community and Family Policy)*, and the PDUSD(P&R), shall ensure that the Directors of the DoD school systems shall:

(1) Ensure that eligible children with disabilities, ages 3 through 21 years, inclusive, are provided a FAPE.

(2) Ensure that the educational needs of children with and without disabilities are met comparably, consistent with appendix B of this part.

(3) Ensure that educational facilities and services operated by the DoD school systems for children with and without disabilities are comparable.

(4) Maintain records on special education and related services provided to eligible children with disabilities, ages 3 through 21 years, inclusive, consistent with 21 U.S.C. 812(c).

(5) Provide any or all special education and related services required by a child with a disability, ages 3 through 21 years, inclusive, other than those furnished by the Secretaries of the Military Departments through inter-Agency, intra-Agency, and inter-Service arrangements, or through contracts with private parties when funds are authorized and appropriated.

(6) Provide transportation, which is a related service under this Part, to students with disabilities when transportation is prescribed in the student's IEP. The DoD school systems shall furnish transportation between the student's home (or another location specified in the IEP) and the DoD school.

(7) Provide transportation to and from the site where DDESS provides related services, if not provided at the school.

(8) Participate in the development and implementation of a comprehensive system of personnel development.

(9) Ensure that all programs providing special education and related services, including those provided by

the Military Medical Departments, are monitored for compliance with this part in accordance with appendix H of this part.

(10) Provide physical space for the provision of occupational therapy, physical therapy, and psychological services in those DoDDS facilities where EDIS shall provide related services.

(11) Provide physical space for the provision of occupational therapy, physical therapy, psychological services, and therapists' offices in construction of DoDDS facilities at those locations where EDIS shall provide related services. The DoDDS shall determine the specifics of space design in consultation with the responsible Military Department's medical authorities concerned and the Defense Medical Facilities Office, Office of the ASD(HA).

(12) The DoDDS shall provide repair and maintenance support, custodial support, and utilities to the areas described in paragraphs (e)(10) and (e)(11) of this section.

(13) The DoDDS shall maintain operational control of therapy and office space.

(14) Ensure that all newly constructed or renovated DoD school facilities are fully accessible to persons with mobility impairments including those in wheelchairs.

(15) Report not later than July 31 of each year to the DoD-CC on the following:

(i) Number of children with disabilities participating in regular and alternate system-wide assessment.

(ii) Performance of children with disabilities on the regular system-wide assessment and on the alternate system-wide assessment.

(iii) By district, rate of suspension and expulsion of students with disabilities compared to regular education students.

(f) The *Director, Defense Office of Hearings and Appeals* (DOHA), under the *General Counsel of the Department of Defense*, shall ensure impartial due process hearings are provided consistent with appendix G of this part.

§ 57.6 Procedures.

(a) The procedures for EIS for infants and toddlers with disabilities and their families are prescribed in appendix A of this part.

(b) The procedures for educational programs and services for children with disabilities, ages 3 through 21 years, inclusive, on IEPs are prescribed in appendix B of this part.

(c) The procedures for the provision of related services for DoDDS students with disabilities, ages 3 through 21, inclusive, are prescribed in appendix C of this part

(d) Procedural safeguards and parent and student rights are prescribed in appendix F of this part.

(e) The procedures for conducting mediation and due process hearings are prescribed in appendix G of this part.

(f) The procedures for conducting compliance monitoring are prescribed in appendix H of this part.

APPENDIX A TO PART 57—PROCEDURES FOR THE PROVISION OF EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES

A. IDENTIFICATION AND SCREENING

(1) Each Military Department shall develop and implement in its assigned geographic area a comprehensive child-find public awareness program that focuses on the early identification of children who are eligible to receive EIS under this part. The public awareness program must inform the public about:

(i) The EDIS early intervention program;

(ii) The child-find system, including:

(*A*) The purpose and scope of the system;

(*B*) How to make referrals to service providers that includes timelines and provides for participation by primary referral sources; and

(*C*) How to gain access to a comprehensive, multidisciplinary evaluation and other EIS; and

(*D*) A central directory that includes a description of the EIS and other relevant resources available in each military community overseas.

(2) EDIS must prepare and disseminate materials for parents on the availability of EIS to all primary referral sources, especially hospitals, physicians, and child development centers.

(3) Upon receipt of a referral, EDIS shall appoint a service coordinator.

(4) Procedures for Identification and Screening. All children referred to the EDIS for EIS shall be screened to determine the appropriateness of the referral and to guide the assessment process.

(i) Screening does not constitute a full evaluation. At a minimum, screening shall include a review of the medical and developmental history of the referred child through a parent interview and/or a review of medical records.

(ii) If screening was conducted prior to the referral, or if there is a substantial or obvious biological risk, screening may not be necessary.

B. ASSESSMENT AND EVALUATION

(1) The assessment and evaluation of each child must:

(i) Be conducted by a multidisciplinary team.

(ii) Be based on informed clinical opinion; and

(iii) Include the following:

(*A*) A review of pertinent records related to the child's current health status and medical history.

(*B*) An evaluation of the child's level of functioning in each of the following developmental areas:

(*i*) Cognitive development.

(*ii*) Physical development, including vision and hearing.

(*iii*) Communication development.

(*iv*) Social or emotional development.

(*v*) Adaptive development.

(iv) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph B.(1)(iii)(*B*) of this appendix, including the identification of services appropriate to meet those needs.

(2) *Family Assessment.* (i) Family assessments must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(ii) Any assessment that is conducted must be voluntary on the part of the family.

(iii) If an assessment of the family is carried out, the assessment must:

(*A*) Be conducted by personnel trained to utilize appropriate methods and procedures.

(*B*) Be based on information provided by the family through a personal interview; and

(*C*) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(3) *Standards for Assessment Selection and Procedures.* EDIS shall ensure, at a minimum, that:

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

(ii) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory.

(iii) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(iv) Evaluations and assessments are conducted by qualified personnel.

(4) With the parent's consent, EIS may begin before the completion of the assessment and evaluation when it has been determined by a multidisciplinary team that the child and/or the child's family needs the service immediately. Although all assessments have not been completed, an IFSP must be developed before the start of services. The remaining assessments must then be completed in a timely manner.

C. ELIGIBILITY

(1) Eligibility shall be determined at an EIS team meeting that includes parents.

(i) The EIS team shall document the basis for eligibility on an eligibility report.

(ii) A copy of the eligibility report shall be provided to the parent at the eligibility meeting.

(2) Children with disabilities from birth through age 2 are eligible for EIS if they meet one of the following criteria:

(i) The child is experiencing a developmental delay as defined in § 57.3(r).

(ii) The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, as defined in § 57.3(s).

D. TIMELINES

(1) The initial evaluation and assessment of each child (including the family assessment) must be completed within a timely manner.

(2) The Military Department responsible for providing EIS shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within a timely manner (*e.g.*, if a child is ill), EDIS shall:

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with this part.

E. IFSP

(1) Each Military Department shall ensure that the EDIS develop and implement an IFSP for each child, birth through 2 years of age, who meets the eligibility criteria for EIS in section B of this appendix.

(2) *The IFSP Meeting.* The EDIS shall establish and convene a meeting to develop the IFSP of a child with a disability. That meeting shall be scheduled as soon as possible following a determination by the EDIS that the child is eligible for EIS, but not later than 45 days from the date of the referral for services.

(3) Meetings to develop and review the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible.

(iii) An advocate or person outside of the family, if the parent requests that person's participation.

(iv) The services coordinator who has worked with the family since the initial referral of the child or who has been designated as responsible for the implementation of the IFSP.

(v) The person(s) directly involved in conducting the evaluations and assessments.

(vi) As appropriate, persons who shall provide services to the child or family.

(4) If a person listed in paragraph E.(3) of this appendix is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including the following:

(i) Participating in a telephone conference call.

(ii) Having a knowledgeable, authorized representative attend the meeting.

(iii) Making pertinent records available at the meeting.

(5) The IFSP shall be written in a reasonable time after assessment and shall contain the following:

(i) A statement of the child's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on professionally acceptable objective criteria.

(ii) With the concurrence of the family, a statement of the family's resources, priorities, and concerns about enhancing the child's development.

(iii) A statement of the major outcomes expected to be achieved for the child and the family. Additionally, the statement shall contain the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the outcomes and services are necessary.

(iv) A statement of the specific EIS necessary to meet the unique needs of the child and the family including the frequency, intensity, and method of delivering services.

(v) The projected number of sessions necessary to achieve the outcomes listed in the IFSP.

(vi) A statement of the natural environments in which EIS shall be provided, and a justification of the extent, if any, to which the services shall not be provided in a natural environment.

(vii) The projected dates for initiation of services and the anticipated duration of those services.

(viii) The name of the service coordinator who shall be responsible for the implementation of the IFSP and coordination with other agencies and persons. In meeting these requirements, EDIS may:

(*A*) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or

(*B*) Appoint a new service coordinator.

(*C*) Appoint a service coordinator requested by the parents.

(ix) The steps to be taken supporting the transition of the toddler with a disability to preschool or other services. These steps must include:

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

(*B*) 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

(*C*) The transmission of information about the child to the DoD school system, to ensure continuity of services, including evaluation and assessment information, and copies of IFSPs that have been developed and implemented in accordance with this Part.

(6) The contents of the IFSP shall be explained to the parents and an informed, written consent from the parents shall be obtained before providing EIS described in that plan.

(7) If a parent does not provide consent for participation in all EIS, the services shall still be provided for those interventions to which a parent does give consent.

(8) The IFSP shall be evaluated at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the child and family needs). The purpose of the periodic review is to determine the following:

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

(ii) Whether modification or revision of the outcomes or services is necessary.

(9) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

F. MAINTENANCE OF RECORDS

(1) The EDIS officials shall maintain all EIS records, in accordance with DoD Directive 5400.11.

(2) The IFSP and the documentation of services delivered in accordance with the IFSP are educational records and shall be maintained accordingly.

APPENDIX B TO PART 57—PROCEDURES FOR THE PROVISION OF EDUCATIONAL PROGRAMS AND SERVICES FOR CHILDREN WITH DISABILITIES, AGES 3 THROUGH 21 YEARS, INCLUSIVE

A. IDENTIFICATION

(1) It is the responsibility of the DoD school system officials to engage in child-find activities to locate, identify, and with informed parental consent, evaluate all children who are eligible to enroll in the DDESS under DoD Directive 1342.26 or in the DoDDS under DoD Directive 1342.13 who may require special education and related services.

(2) *Referral of a Child for Special Education or Related Services.* The DoD school system officials, related service providers, parents, or others who suspect that a child has a possible disabling condition shall refer that child to the CSC.

(3) *Procedures for Identification and Screening.* The DoD school system officials shall conduct the following activities to determine if a child needs special education and related services:

(i) Screen educational records.

(ii) Screen students using system-wide or other basic skill tests in the areas of reading, math, and language arts.

(iii) Screen school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel about the health status of a child.

(iv) Analyze school records to obtain pertinent information about the basis for suspensions, exclusions, withdrawals, and disciplinary actions.

(v) Coordinate the transition of children from early intervention to preschool.

(4) In cooperation with the Military Departments, conduct on-going child-find activities and publish, periodically, any information, guidelines, and direction on child-find activities for eligible children with disabilities, ages 3 through 21 years, inclusive.

B. ASSESSMENT AND EVALUATION

(1) Every child eligible to attend a DoD school who is referred to a CSC shall receive a full and comprehensive diagnostic evaluation of educational needs. An evaluation shall be conducted before an IEP is developed or placement is made in a special education program.

(2) *Procedures for Assessment and Evaluation.* A CSC shall ensure that the following elements are included in a comprehensive assessment and evaluation of a child:

(i) Assessment of visual and auditory acuity.

(ii) A plan to assess the type and extent of the disability. A child shall be assessed in all areas related to the suspected disability. When necessary, the assessment plan shall include the following:

(*A*) Assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.

(*B*) Observation in an educational environment.

(*C*) Assessment of physical status including perceptual and motor abilities.

(*D*) Assessment of the need for transition services for students 14 years and older, the acquisition of daily living skills, and functional vocational assessment.

(iii) The involvement of parents.

(3) The CSC shall use all locally available community, medical, and school resources to accomplish the assessment. At least one specialist with knowledge in the area of the suspected disability shall be a member of the multidisciplinary assessment team.

(4) Each assessor shall prepare an individual assessment report that includes:

(i) Demographic information about the student and the assessor.

(ii) The problem areas constituting the bases for a referral.

(iii) A behavioral observation of the child during testing.

(iv) The instruments and techniques used for the assessment.

(v) A description of the child's strengths and limitations.

(vi) The results of the assessment; and

(vii) The instructional implications of the findings for educational functioning.

(5) *Standards for Assessment Selection and Procedures.* All DoD elements, including the CSC and related services providers, shall ensure that assessment materials and evaluation procedures are in compliance with the following criteria:

(i) Selected and administered so as not to be racially or culturally discriminatory.

(ii) Administered in the native language or mode of communication of the child, unless it clearly is not possible to do so.

(iii) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(iv) Validated for the specific purpose for which they are used or intended to be used.

(v) Administered by trained personnel in compliance with the instructions of the testing instrument.

(vi) Administered such that no single procedure is the sole criterion for determining eligibility or an appropriate educational program for a child with a disability.

(vii) Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

(viii) Administered to a child with impaired sensory, motor, or communication skills so that the results reflect accurately a

child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(6) *Review of Existing Evaluation Data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation, the CSC shall review existing evaluation data on the child, including:

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based assessments and observations;

(iii) Observations by teachers and related services providers; and

(iv) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(*A*) Whether the child has a particular category of disability, or in the case of a reevaluation of a child, whether the child continues to have such a disability.

(*B*) The present levels of performance and educational needs of the child.

(*C*) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(*D*) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(v) The CSC may conduct its review without a meeting.

(vi) The CSC shall administer tests and other evaluation materials as may be needed to produce the data identified under paragraph B.(2) of this appendix.

C. ELIGIBILITY

(1) The CSC shall:

(i) Ensure that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team. The team shall be comprised of teachers or other specialists with knowledge in the area of the suspected disability.

(ii) Convene a meeting to determine the eligibility of a child for special education and related services.

(iii) Meet as soon as possible after a child has been assessed to determine the eligibility of the child for services.

(iv) Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

(v) Issue a written eligibility report that contains the following:

(*A*) Identification of the child's disabling condition.

(*B*) A synthesis of the formal and informal findings of the multidisciplinary assessment team.

(*C*) A summary of information from the parents, the child, or other persons having significant contact with the child.

(*D*) A determination of eligibility statement.

(*E*) A list of the educational areas affected by the child's disability, a description of the child's educational needs, and a statement of the child's present level of performance.

(2) *Reevaluation for Eligibility.* School officials shall reevaluate the eligibility of a child with a disability every 3 years, or more frequently, if conditions warrant.

(i) The scope and type of the reevaluation shall be determined individually based on a child's performance, behavior, and needs during the reevaluation and the review of existing data in accordance with paragraph B.(6) of this appendix.

(ii) The CSC is not required to conduct assessments unless requested to do so by the child's parents.

(iii) If the CSC determines that no additional data are needed to determine whether the child continues to be a child with a disability, the CSC shall notify the parents of:

(*A*) The determination that no additional assessment data are needed and the reasons for their determination; and

(*B*) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability.

D. IEP

(1) The DoD school system officials shall ensure that the CSC develop and implement an IEP for each child with a disability who:

(i) Is enrolled in the DoD school system;

(ii) In DoDDS, is home-schooled, eligible to enroll in DoDDS on a space-required, tuition-free basis and whose sponsors have completed a registration form and complied with other registry procedures and requirements of the school;

(iii) In DDESS, is home-schooled and eligible to enroll on a tuition-free basis and whose sponsors have completed a registration form and complied with other registry procedures and requirements of the school; or

(iv) Is placed in another institution by the DoD school system.

(2) The CSC shall convene a meeting to develop, review, or revise the IEP of a child with a disability. That meeting shall:

(i) Be scheduled as soon as possible following a determination by the CSC that the child is eligible for special education and related services.

(ii) Include minimally as participants the following:

(*A*) An administrator or school representative other than the child's teacher who is

qualified to provide or supervise the provision of special education and is knowledgeable about the general curriculum and available resources.

(*B*) The child's teacher (if the child is, or may be, participating in the regular education environment);

(*C*) A special education teacher or provider.

(*D*) One or both of the child's parents.

(*E*) The child, if appropriate.

(*F*) For a child with a disability who has been evaluated for the first time, a representative of the evaluation team who is knowledgeable about the evaluation procedures used and is familiar with the results of the evaluation.

(*G*) Other individuals invited at the discretion of the parent or school who have knowledge or special expertise regarding the child, including related services personnel, as appropriate.

(3) *Development of the IEP*. The CSC shall prepare the IEP with the following:

(i) A statement of the child's present levels of educational performance including a description of:

(*A*) How the child's disability affects involvement and progress in the general curriculum or for preschoolers, how the disability affects participation in appropriate activities.

(*B*) A description of the child's participation in the regular classroom (if the child participates in the regular education environment), extracurricular and other non-academic activities; and

(*C*) If necessary, an explanation of the extent to which the child shall not participate with children who are not disabled in these activities.

(ii) A statement of measurable annual goals including benchmarks or short-term instructional objectives related to meeting:

(*A*) The child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum;

(*B*) Each of the child's other needs resulting from his or her disability.

(iii) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that shall be provided for the child to:

(*A*) Advance appropriately toward attaining the annual goals.

(*B*) Be involved in and progress in the general curriculum in accordance with this part and to participate in extracurricular and other non-academic activities; and

(*C*) Be educated and participate with other children with or without disabilities.

(iv) A statement of any individual modifications in the administration of system-wide or district-wide assessment of student achievement that are needed for the child to participate in the assessment.

(v) If the CSC determines that the child shall not participate in a particular system-wide or district-wide assessment of student achievement (or part of an assessment), a statement of:

(*A*) Why that assessment is not appropriate for the child; and

(*B*) How the child shall be assessed using alternate assessments to measure student progress.

(vi) A statement explaining how the child's progress towards annual goals shall be measured.

(vii) A statement explaining how parents shall be informed, at least as often as parents are informed of progress of children who are not disabled, of:

(*A*) Their child's progress toward annual goals; and

(*B*) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(viii) A statement of special education, related services, and modifications necessary for the child to advance appropriately toward the annual goals.

(ix) A statement of the amount of time that each service shall be provided to the child, to include the projected date for beginning of services and location and duration of those services (including adjusted school day or an extended school year) and modifications.

(x) A statement of the physical education program provided in one of the following settings:

(*A*) In the regular education program.

(*B*) In the regular education program with adaptations, modifications, or the use of assistive technology.

(*C*) Through specially designed instruction based on the goals and objectives included in the IEP.

(xi) Beginning at age 14, and updated annually:

(*A*) A statement of transition service needs under applicable components of the child's IEP that focuses on his or her course of study and augments the standard transition requirements.

(*B*) A statement of needed transition services, including inter-Agency responsibilities.

(xii) Beginning at least one year before the child reaches the age of majority, a statement that the child has been informed of those rights that transfer to him or her under this Part.

(xiii) A statement of special transportation requirement, if any.

(xiv) A statement of the vocational education program for secondary students. If a specially designed instructional program is required, the necessary goals and objectives in the IEP shall be included.

(4) *Consideration of Special Factors*. The CSC shall consider:

(i) Assistive technology needs for all children.

(ii) Language needs for the limited English proficient child.

(iii) Providing Braille instruction, unless the CSC determines that the use of Braille is not appropriate, for a child who is blind or visually impaired.

(iv) Interventions, strategies, and supports including behavior management plans to address behavior for a child whose behavior impedes learning.

(v) Language and communication needs, opportunities for communication in the child's language and communication mode, including direct instruction in that mode, for the child who is deaf or hard of hearing.

(5) The CSC shall ensure that at least one parent understands the special education procedures including the due process procedures described in appendix G of this part and the importance of the parent's participation in those processes. School officials shall use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent about the child.

(6) The CSC shall ensure that all provisions developed for any child entitled to an education by the DoD school system are fully implemented in DoD schools or in non-DoD schools or facilities including those requiring special facilities, other adaptations, or assistive devices.

(7) The CSC shall afford the child's parents the opportunity to participate in every CSC meeting to determine their child's initial or continuing eligibility for special education and related services, or to prepare or change the child's IEP or to determine or change the child's placement.

(8) In developing each child's IEP, the CSC shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

E. IMPLEMENTATION OF THE IEP

The CSC shall:

(1) Obtain parental agreement and signature before implementation of the IEP.

(2) Provide a copy of the child's IEP to the parents.

(3) Ensure that the IEP is in effect before a child receives special education and related services.

(4) Ensure that the IEP is implemented as soon as possible following the meetings described under paragraph D.(2) of this appendix.

(5) Provide special education and related services, in accordance with the IEP. The Department of Defense, the DoD school systems, and DoD personnel are not accountable if a child does not achieve the growth projected in the annual goals of the IEP, as long as services have been provided in accordance with the IEP.

(6) Ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation, and that each teacher and provider is informed of:

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(7) Review the IEP for each child at least annually in a CSC meeting to determine whether the annual goals for the child are being achieved.

(8) Revise the IEP, as appropriate, to address:

(i) Any lack of progress toward the annual goals and in the general curriculum, where appropriate.

(ii) The results of any reevaluation.

(iii) Information about the child provided by the parents.

(iv) The child's anticipated needs.

F. TRANSFERRING STUDENTS

(1) When a student transfers to a DoD school with a current IEP from a non-DoD school, the CSC shall convene promptly an IEP meeting to address eligibility and special education services as described in sections C and D of this appendix. The CSC may:

(i) Accept the child's current IEP by notifying and obtaining consent of the parents to use the current IEP and all elements contained in it.

(ii) Initiate a CSC meeting to revise the current IEP, if necessary.

(iii) Initiate an evaluation of the child, if necessary.

(2) When a student with a current IEP transfers from one DoD school to another, the CSC shall accept the child's eligibility and current IEP by notifying and obtaining consent of the parents to use the current IEP and all elements contained in it.

G. LEAST RESTRICTIVE ENVIRONMENT

(1) To the maximum extent, a child with a disability should be placed with children who are not disabled. Special classes, separate schooling, or other removal of a child with a disability from the regular education environment shall occur only when the type or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) A child shall not be placed by the DoD school system in any special education program unless the CSC has developed an IEP. If

a child with a disability is applying for initial admission to a school, the child shall enter on the same basis as a child without a disability. A child with an IEP, and with the consent of a parent and school officials, may receive an initial placement in a special education program under procedures listed in section F of this appendix.

(3) A placement decision requires the following:

(i) Parent participation in the decision and parent consent to the placement before actual placement of the child, except as otherwise provided in paragraph H.(2) of this appendix.

(ii) Delivery of educational instruction and related services in the least restrictive environment.

(iii) The CSC to base placements on the IEP and to review the IEP at least annually.

(iv) The child to participate, to the maximum extent appropriate to the needs and abilities of the child, in school activities including meals, assemblies, recess periods, and field trips with children who are not disabled.

(v) Consideration of factors affecting the child's well-being, including the effects of separation from parents.

(vi) A child to attend a DoD school that is located as close as possible to the residence of the parent who is sponsoring the child's attendance. Unless otherwise required by the IEP, the school should be the same school that the child would have attended had he or she not been disabled.

H. DISCIPLINE

(1) All regular disciplinary rules and procedures applicable to children attending a DoD school shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the following provisions. School personnel may remove a child with a disability from the child's current placement (to the extent removal would be applied to children who are not disabled):

(i) On an emergency basis for the duration of the emergency when it reasonably appears that the child's behavior may endanger the health, welfare, or safety of self or any other child, teacher, or school personnel.

(ii) For not more than 10-cumulative school days in a school year for any violation of school rules.

(2) *Change of Placement*. If a child is removed from his or her current placement for more than 10-cumulative school days in a school year, it is considered a change of placement.

(i) Not later than the date on which the decision to make a change in placement is made, the school must notify parents of the decision and of all procedural safeguards, as described in section B of appendix F of this part.

(ii) Not later than 10 days following the change of placement, the CSC must:

(*A*) Convene a meeting of the IEP team and other qualified personnel to conduct a manifestation determination as described in paragraph H.(5) of this appendix and

(*B*) Convene an IEP meeting to review the IEP to develop appropriate behavioral interventions to address the child's behavior and implement those interventions. This review may be conducted at the same meeting that is convened under paragraph H.(2)(ii)(*A*) of this appendix.

(*i*) If the child has a behavioral intervention plan, the CSC must review the plan and its implementation, and modify the plan and its implementation as necessary, to address the behavior.

(*ii*) If the child does not have a behavioral intervention plan, the CSC must develop an assessment plan to include a functional behavioral assessment.

(*iii*) As soon as practicable after developing the assessment plan and completing the assessments required by the plan, the CSC must convene an IEP meeting to develop a behavioral intervention plan to address that behavior, and shall implement the plan.

(3) After a child with a disability has been removed from his or her current placement for more than 10-cumulative school days in a school year, during any subsequent days of removal the DoD school system must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

(4) *Alternative Education Setting (AES)*. School personnel may order a change in placement of a child with a disability in accordance with the requirements of paragraph H.(2) of this appendix to an appropriate interim AES for the same amount of time that a non-disabled child would be subject to discipline, but for not more than 45 days, if:

(i) The child carries a weapon to school or to a school function under the jurisdiction of the DoD school system; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function under the jurisdiction of a DoD school system.

(5) *Manifestation Determination*. The CSC shall determine whether the child's behavior is the result of the child's disability by considering all relevant information including evaluation results, observation of the child, information provided by the parents of the child, and the child's IEP and placement.

(i) Unless all of the following are evident, the CSC must consider the child's behavior to be a manifestation of the disability:

(*A*) IEP and placement were appropriate and the special education services, supplementary aides and services, and behavior

intervention strategies were provided consistent with the child's IEP and placement;

(*B*) The child's disability did not impair his or her ability to understand the impact and consequences of the behavior subject to the disciplinary action; and

(*C*) The child's disability did not impair his or her ability to control the behavior subject to disciplinary action.

(ii) If the CSC determines that the child's behavior was a manifestation of the disability, the child is not subject to removal from current educational placement as a disciplinary action, except as provided for in paragraph H.(1)(i) of this appendix.

(*A*) The child's parents shall be notified of the right to have an IEP meeting before any changes in the child's placement.

(*B*) The CSC shall address the behavior that was the subject of the disciplinary action, by:

(*i*) Reviewing the child's educational placement to ensure that it is appropriate in consideration of the child's behavior.

(*ii*) Revising the IEP to include goals, services, and modifications that address the behavior subject to disciplinary action, as necessary.

(iii) If the CSC determines that the child's behavior was not the result in whole or part of the disability, relevant disciplinary procedures may be applied to the child in the same manner in which it would be applied to a child without a disability, except as provided in FAPE.

I. PARENT APPEAL

(1) If the parent disagrees with the manifestation determination or with any decision regarding placement, the parent may request a hearing.

(2) The school system shall arrange for an expedited hearing in accordance with appendix G of this part.

(3) *Placement During Appeal.* When a parent requests a hearing challenging placement in an interim AES, the child shall remain in the interim AES pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph H.(3) of this appendix whichever comes first, unless the parent and the school system agree otherwise.

(i) After expiration of the interim AES, during the pendency of any proceedings to challenge the proposed change in placement, the child shall return and remain in the child's placement prior to the interim AES.

(ii) If the school personnel maintain that it is dangerous for the child to return to his or her placement prior to the interim AES, the DoD school system may request an expedited hearing.

J. ORDER BY A HEARING OFFICER

A hearing officer may order a change in the placement of a child with a disability to an interim AES for not more than 45 days, if the hearing officer:

(1) Determines that the DoD school system has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(2) Considers the appropriateness of the child's current placement.

(3) Considers whether the school system has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(4) Determines that the interim AES meets the requirements of section A of this appendix.

K. CHILDREN NOT YET DETERMINED ELIGIBLE FOR SPECIAL EDUCATION

Children who have not yet been determined eligible for special education and who have violated the disciplinary rules and procedures may assert the protections of the IDEA if the DoD school system had knowledge that the child had a disability before the behavior occurred.

(1) The DoD school system is considered to have had knowledge if:

(i) The parents expressed concern in writing to the school system personnel that the child needed special education or related services.

(ii) The child's behavior or performance indicated a need for services.

(iii) The child's parents requested an evaluation; or

(iv) The child's teacher or other DoD school system personnel expressed concern about the behavior or performance to the CSC, the school principal, assistant principal, or district special education coordinator.

(2) If the DoD school system does not have knowledge of a disability prior to disciplinary action, the child shall be subject to the regular disciplinary rules and procedures.

(3) If an evaluation were requested during the time the child is subjected to disciplinary action, the evaluation shall be expedited. The child shall remain in his or her current placement until determined eligible for special education or related services.

(4) The DoD school system is not constrained from reporting crime to the appropriate law enforcement authorities and shall ensure that special education and disciplinary records are transmitted to the appropriate law enforcement and judicial authorities.

L. CHILDREN WITH DISABILITIES WHO ARE PLACED IN A NON-DoD SCHOOL OR FACILITY

(1) Children with disabilities who are eligible to receive a DoD school system education, but are placed in a non-DoD school or facility by a DoD school system, shall have all the rights of children with disabilities who are enrolled in a DoD school.

(2) A child with a disability may be placed in a non-DoD school or facility only if required by the IEP.

(3) Placement by DoDDS in a host-nation non-DoD school or facility shall be made under the host-nation requirements.

(4) Placement by DoDDS in a host-nation non-DoD school or facility is subject to all treaties, executive agreements, and status of forces agreements between the United States and the host nations, and all DoD and DoD school system regulations.

(5) If a DoD school system places a child with a disability in a non-DoD school or facility as a means of providing special education and related services, the program of that institution, including non-medical care and room and board, as prescribed in the child's IEP, must be provided at no cost to the child or the child's parents. The DoD school system or the responsible DoD Component shall pay the costs in accordance with this part.

(6) DoD school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoD school or facility should attend the meeting. If the representative cannot attend, the DoD school system officials shall communicate in other ways to ensure participation including individual or conference telephone calls. The IEP must meet the following standards:

(i) Be signed by an authorized DoD school system official before it becomes valid.

(ii) Include a determination that the DoD school system does not currently have or cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(iii) Include a determination that the non-DoD school or facility and its educational program and related services conform to the requirements of this part.

(7) *Cost of Tuition for Non-DoD School or Facility*. The Department of Defense is not authorized to reimburse the costs of special education if a parent unilaterally places the student in a non-DoD school without approval of the cognizant CSC and the Superintendent, in coordination with the Director of the DoD school system. A valid IEP must document the necessity of the placement in a non-DoD school or facility.

(i) Reimbursement may be required if a hearing officer determines that the DoD school system had not made FAPE available in a timely manner prior to enrollment in the non-DoD school and that the private placement is appropriate.

(ii) Reimbursement may be reduced or denied if the parents did not inform the CSC that the placement determined by the CSC was rejected, including a statement of their concerns, and that they intended to place a child in a non-DoD school; or if 10 business days (Monday through Friday, except for Federal holidays) prior to the parents' removal of the child from the school, the parents failed to provide written notice to the DoD school system of their rejection of the placement decision concerning the child, the reasons for their rejection, and their intent to remove the child; or if the CSC informed parents of its intent to evaluate the child, but parents did not make the child available.

(iii) Reimbursement may not be reduced or denied for failure to provide the required notice if the parents cannot read and write in English; compliance would result in physical or emotional harm to the child; the DoD school prevented the parent from providing notice; or the parents had not received notice of a requirement to provide required notice.

M. CONFIDENTIALITY OF THE RECORDS

The DoD school system and EDIS officials shall maintain all student records in accordance with DoD Directive 5400.11.

N. DISPUTE RESOLUTION

A parent, teacher, or other person covered by this part may file a written complaint about any aspect of this part that is not a proper subject for adjudication by a due process hearing officer, in accordance with DSR 2500.11.

APPENDIX C TO PART 57—PROCEDURES FOR THE PROVISION OF RELATED SERVICES BY THE MILITARY MEDICAL DEPARTMENTS TO DoDDS STUDENTS ON IEPs

A. EVALUATION PROCEDURES

(1) Upon request by a DoDDS CSC, the responsible EDIS shall ensure that a qualified medical authority conducts or verifies a medical evaluation for use by the CSC in determining the medically related disability that results in a child's need for special education and related services, and oversees an EDIS evaluation used in determining a child's need for related services.

(i) This medical or related services evaluation, including necessary consultation with other medical personnel, shall be supervised by a physician or other qualified healthcare provider.

(ii) This medical evaluation shall include a review of general health history, current health assessment, systems evaluation to include growth and developmental assessment,

and, if pertinent, detailed evaluation of gross motor and fine motor adaptive skills, psychological status, and visual and audiological capabilities, including details of present level of performance in each of these areas affecting the student's performance in school.

(iii) The EDIS-related services evaluation shall be specific to the areas addressed in the referral by the CSC.

(2) EDIS shall provide a summary evaluation report to the CSC that responds to the questions posed in the original referral. The written report shall include:

(i) Demographic information about the child.

(ii) Behavioral observation of the child during testing.

(iii) Instruments and techniques used.

(iv) Evaluation results.

(v) Descriptions of the child's strengths and limitations.

(vi) Instructional implications of the findings; and

(vii) The impact of the child's medical condition(s), if applicable, on his or her educational performance.

(3) If EDIS determines that in order to respond to the CSC referral the scope of its assessment and evaluation must be expanded beyond the areas specified in the initial parental permission, EDIS must:

(i) Obtain parental permission for the additional activities.

(ii) Complete their initial evaluation by the original due date; and

(iii) Notify the CSC of the additional evaluation activities.

(4) When additional evaluation information is submitted by EDIS, the CSC shall review all data and determine the need for program changes and/or the reconsideration of eligibility.

(5) An EDIS provider shall serve on the CSC when eligibility, placement, or requirements for related services that EDIS provides are to be determined.

(6) Related services provided by EDIS, pursuant to an IEP, are educational and not medical services.

B. IEP

(1) EDIS shall be provided the opportunity to participate in the IEP meeting.

(2) EDIS shall provide related services assigned to EDIS that are listed on the IEP.

C. LIAISON WITH DODDS

Each EDIS shall designate an EDIS Liaison Officer to:

(1) Provide liaison between the EDIS and DoDDS schools.

(2) Offer, on a consultative basis, training for DoDDS personnel on medical aspects of specific disabilities.

(3) Offer consultation and advice as needed regarding the health services provided at school (for example, tracheostomy care, tube feeding, occupational therapy).

(4) Participate with DoDDS and legal personnel in developing and delivering in-service training programs that include familiarization with various conditions that impair a child's educational endeavors, the relationship of medical findings to educational functioning, related services, and this part.

APPENDIX D TO PART 57—THE DOD-AP

A. MEMBERSHIP

(1) The DoD Advisory Panel on Early Intervention and Special Education shall meet as needed in publicly announced, accessible meetings open to the general public and shall comply with DoD Directive 5105.4. The DoD-AP members, appointed by the Secretary of Defense, or designee, shall include at least one representative from each of the following groups:

(i) Persons with disabilities.

(ii) Representatives of the Surgeons General of the Military Departments.

(iii) Representatives of the family support programs of the Military Departments.

(iv) Special education teachers from the DoD school system.

(v) Regular education teachers from the DoD school system.

(vi) Parents of children, ages 3 through 21 years, inclusive, who are receiving special education from the DoD school system.

(vii) Parents of children, ages birth through 2 years, inclusive, who are receiving EIS from EDIS.

(viii) Institutions of higher education that prepare early intervention, special education, and related services personnel.

(ix) Special education program managers from the DoD school systems.

(x) Representatives of the Military Departments and overseas commands, including providers of early intervention and related services.

(xi) Representatives of vocational community, or business organizations concerned with transition services.

(xii) Other appropriate persons.

(2) A majority of panel members shall be individuals with disabilities or parents of children, ages birth through 2 years, inclusive, who are receiving EIS from EDIS and children, ages 3 through 21 years, inclusive who are receiving special education from the DoD school system.

(3) The DoD-AP members shall serve under appointments that shall be for a term not to exceed 3 years.

B. RESPONSIBILITIES

(1) Advise the USD(P&R) of unmet needs within the Department of Defense in the provision of special services to infants, toddlers, and children with disabilities.

(2) Advise and assist the Military Departments in the performance of their responsibilities, particularly the identification of appropriate resources and agencies for providing EIS and promoting inter-Component agreements.

(3) Advise and assist the DoD schools systems on the provision of special education and related services, and on transition of toddlers with disabilities to preschool services.

C. ACTIVITIES

The DoD-AP shall perform the following activities:

(1) Review information about improvements in service provided to children with disabilities, ages birth through 21, inclusive, in the Department of Defense.

(2) Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

(3) Review policy memoranda on effective inter-Department and inter-Component collaboration.

(4) Review the findings of fact and decisions of each impartial due process hearing conducted under appendix G of this part.

(5) Review reports of technical assistance and monitoring activities.

(6) Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the programs providing special services.

(i) Identify strategies to address areas of conflict, overlap, duplication, or omission of services.

(ii) When necessary, establish committees for short-term purposes comprised of representatives from parent, student, professional groups, and individuals with disabilities.

(iii) Assist in developing and reporting such information and evaluations as may assist the Department of Defense.

(iv) Comment publicly on rules or standards about EIS for infants and toddlers, ages birth through 2 years, and special education of children with disabilities, ages 3 through 21 years, inclusive.

(v) Perform such other tasks as may be requested by the USD(P&R).

D. REPORTING REQUIREMENTS

(1) Submit an annual report of the DoD-AP's activities and suggestions to the DoD Coordinating Committee, by July 31 of each year.

(2) That report is exempt from formal review and licensing under section 5 of DoD Instruction 7750.7

APPENDIX E TO PART 57—DOD-CC ON EARLY INTERVENTION, SPECIAL EDUCATION, AND RELATED SERVICES

A. COMMITTEE MEMBERSHIP

The DoD-CC shall meet at least yearly to facilitate collaboration in early intervention, special education, and related services in the Department of Defense. The DoD-CC shall consist of the following members, appointed by the Secretary of Defense or designee:

(1) A representative of the USD(P&R) or designee, who shall serve as the Chair.

(2) Representatives of the Secretaries of the Military Departments.

(3) A representative of the TRICARE Management Activity.

(4) Representatives from the DoD school systems.

(5) A representative from the GC, DoD.

B. RESPONSIBILITIES

(1) Advise and assist the USD(P&R) in the performance of his or her responsibilities.

(2) At the direction of the USD(P&R), advise and assist the Military Departments, and the DoD school systems in the coordination of services among providers of early intervention, special education, and related services.

(3) Ensure compliance in the provision of EIS for infants and toddlers and special education and related services for children ages 3 through 21 years, inclusive.

(4) Review the recommendations of the DoD-AP to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).

(5) Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and related services in the DoDDS or EIS through the Military Departments.

(6) Perform other duties as assigned by the USD(P&R), including monitoring the delivery of services under this part.

APPENDIX F TO PART 57—PARENT AND STUDENT RIGHTS

A. PARENTAL CONSENT

(1) The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before any of the following:

(i) Initiation of formal evaluation procedures or re-evaluation.

(ii) Provision of EIS or initial educational placement.

(iii) Change in EIS or educational placement.

(2) If a parent of an infant or toddler (birth through 2 years of age) does not provide consent for participation in all EIS, the services shall still be provided for those interventions to which a parent does give consent.

(3) If the parent of a child 3 through 21 years, inclusive, refuses consent to initial evaluation, reevaluation, or initial placement in a special education program, the DoD school system or the parent may do the following:

(i) Request a conference between the school and parents.

(ii) Request mediation.

(iii) Initiate an impartial due process hearing under appendix G of this part to show cause as to why an evaluation or placement in a special education program should or should not occur without such consent. If the hearing officer sustains the DoD school system's position in the impartial due process hearing, the DoD school system may evaluate or provide special education and related services to the child without the consent of a parent, subject to the further exercise of due process rights.

(4) The Department of Defense shall protect the child's rights, by assigning an individual to act as a surrogate for the parents, when after reasonable effort the Department of Defense cannot locate the parents.

B. PROCEDURAL SAFEGUARDS

Parents of children with disabilities are afforded the following procedural safeguards, consistent with appendix G of this part to ensure that their children receive appropriate special services:

(1) The timely administrative resolution of parental complaints, including hearing procedures with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of EIS for an infant or toddler, age birth through 2 years, or a free appropriate public education for the child, age 3 through 21 years, inclusive.

(2) The right to confidentiality of personally identifiable information under DoD Directive 5400.11.

(3) The right to provision of written notice and to have furnished consent prior to the release of relevant information outside the Department of Defense.

(4) The right to determine whether they, their child, or other family members shall accept or decline any portion of EIS, without jeopardizing the provision of other EIS.

(5) The opportunity to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP and IEP.

(6) *Written Notice.* The right to prior written notice when the EDIS or school proposes, or refuses, to initiate or change the identification, evaluation, placement or provision of special services to the child with a disability.

(i) The notice must be in sufficient detail to inform the parents about:

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

(B) The reasons for taking the action;

(C) All procedural safeguards that are available under this part as described in paragraph B.(7) of this appendix; and

(D) Conflict resolution procedures, including a description of mediation and due process hearings procedures and applicable timelines, as defined in appendix G of this part.

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

(7) *Procedural Safeguards Notice.* Parents must be given a Procedural Safeguards Notice, at a minimum, upon initial referral for evaluation, upon each notification of an IFSP or IEP meeting, upon reevaluation of the child, and upon receipt of a request for due process.

(i) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available with regard to the matters in paragraph B.(7) of this appendix including the right to:

(*A*) Independent educational evaluation for school-aged children.

(*B*) Prior written notice.

(*C*) Parental consent.

(*D*) Access to educational or early intervention records.

(*E*) Opportunity to present complaints.

(*F*) The child's placement during pendency of due process proceedings.

(*G*) Procedures for children (3 through 21 years, inclusive) who are subject to placement in an interim alternative educational setting.

(*H*) Requirements for unilateral placement by parents of children in private schools at public expense.

(*I*) Mediation.

(*J*) Due process hearings, including requirements for disclosure of evaluation results and recommendations.

(*K*) Civil actions.

(*L*) The DoD complaint system, including a description of how to file a complaint and the timelines under those procedures.

(ii) The procedural safeguards notice must be:

(*A*) Written in language understandable to the general public.

(*B*) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school system shall take steps to ensure that:

(*i*) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication.

(*ii*) The parent understands the content of the notice; and

(*iii*) There is written evidence that the requirements in paragraph B.(7)(ii)(*A*) and paragraph B.(7)(ii)(*B*) of this appendix have been met.

(8) *Independent Educational Evaluation*. A parent of a child (3 through 21 years, inclusive) may be entitled to an independent educational evaluation of the child at the expense of the DoD school system if the parent disagrees with the DoD school system's evaluation of the child.

(i) If a parent requests an independent educational evaluation at the school system's expense, the DoD school system must, without unnecessary delay, either:

(*A*) Initiate an impartial due process hearing to show that its evaluation is appropriate; or

(*B*) Ensure an independent evaluation is provided at the DoD school system's expense. Unless the DoD school system demonstrates in an impartial due process hearing that an independent evaluation obtained by the parent did not meet DoD school system criteria. In such cases, the parents must bear the cost of the evaluation.

(ii) If the DoD school system initiates a hearing and the decision is that the DoD school system's evaluation is appropriate, the parents still have the right to an independent evaluation, but not at the school system's expense.

(iii) An independent educational evaluation provided at the DoD school system's expense must do the following:

(*A*) Conform to the requirements of this part.

(*B*) Be conducted, when possible, in the area where the child resides.

(*C*) Meet DoD standards governing persons qualified to conduct an educational evaluation, including an evaluation for related services.

(9) The DoD school system, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

(10) *Access to Records*. The parents of a child with a disability shall be afforded an opportunity to inspect and review educational records about the identification, evaluation, and educational placement of the child, and the provision of a free public education for the child.

(11) *Due Process Rights*. (i) The parent of a child with a disability, the Military Department, or the DoD school system has the opportunity to file a written petition for an impartial due process hearing under appendix G of this part. The petition may concern issues affecting a particular child's identification, evaluation, or placement, or the provision of EIS or a free and appropriate public education.

(ii) While an impartial due process hearing or judicial proceeding is pending, unless the EDIS or the DoD school system and the parent of the child agree otherwise, the child shall remain in his or her present educational setting, subject to the disciplinary procedures prescribed in section H of appendix B of this part.

(12) *Transfer of Parental Rights at Age of Majority*. (i) In the DoD school systems, a child reaches the age of majority at age 18.

(ii) When a child with a disability reaches the age of majority (except for a child with a disability who has been determined to be incompetent under State law) the rights accorded to parents under this Part transfer to the child.

(iii) When a child reaches the age of majority, the DoD school system shall notify the individual and the parents of the transfer of rights.

(iv) When a child with a disability who has reached the age of majority, who has not been determined to be incompetent, but who does not have the ability to provide informed consent with respect to his or her educational program, the Department of Defense shall establish procedures for appointing the parent of the child to represent the educational interests of the child throughout the period of eligibility for special education services.

APPENDIX G TO PART 57—MEDIATION AND HEARING PROCEDURES

A. PURPOSE

This appendix establishes requirements for the resolution of conflicts through mediation and impartial due process hearings. Parents of infants, toddlers, and children who are covered by this Part and, as the case may be, the cognizant Military Medical Department or the DoD school system are afforded impartial mediation and/or impartial due process hearings and administrative appeals about the provision of EIS, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with sections 927 and 1400 of 20 U.S.C. and section 2164 of 10 U.S.C.

B. MEDIATION

(1) Mediation may be initiated by either a parent or the Military Medical Department concerned or the DoD school system to resolve informally a disagreement on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.

(i) The DoD school system shall participate in mediation involving special education and related services.

(ii) The cognizant Military Medical Department shall participate in mediation involving EIS.

(2) The party initiating mediation must notify the other party to the mediation of its request to mediate. The initiating party's request must be written, include a written description of the dispute and bear the signature of the requesting party. Formal acknowledgement of the request for mediation shall occur in a timely manner. The parties may jointly request mediation.

(3) Upon agreement of the parties to mediate a dispute, the Military Medical Department or DoD school shall forward a request for a mediator to higher headquarters, or request a mediator through the Director, Defense Office of Hearings and Appeals (DOHA).

(i) The cognizant DoDDS Area Special Education Coordinator or the DDESS District Superintendent shall promptly appoint a mediator. The Director, DOHA, through the DoHA Office of Alternate Dispute Resolution (ADR), shall maintain a roster of mediators trained in ADR methods, knowledgeable in laws and regulations related to special education, and available to mediate disputes upon request. When requested, the Director, DOHA, through the Office of ADR, shall appoint a mediator within 15 business days of receiving the request for a due process hearing, unless a party provides written notice to the Director, DOHA that the party refuses to participate in mediation.

(ii) The mediator assigned to a dispute shall not be employed by the Military Medical Department or the DoD school system involved, unless the parties agree otherwise.

(4) Unless both parties agree otherwise, mediation shall commence in a timely manner after both parties agree to mediation.

(5) The parents of the infant, toddler or child and 2 representatives of the EDIS or DoD school may participate in mediation. With the consent of both parties, other persons may participate in mediation. Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator.

(6) If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing and that it is signed and dated by the parties and that a copy is given to each party. The resolution or agreement is legally binding upon the parties.

(7) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Unless the parties and the mediator agree, no person may record a mediation session, nor should any written notes be taken from the room by either party. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(8) Parents must be provided an opportunity to meet with appropriate EDIS or DoD school system staff in at least one mediation session, if they request a due process hearing in accordance with sections A through H of this appendix. The parents and the Military Medical Department or DoD school system must participate in mediation, unless a party objects to mediation.

(9) Mediation shall not delay hearings or appeals related to the dispute. All mediation sessions shall be held in a location that is convenient to the parties. The Military Medical Department in mediations concerning EIS or the DoD school system in mediations concerning special education and related services shall bear the cost of the mediation process.

(10) Any hearing officer or adjudicative body may draw no negative inference from the fact that a mediator or a party withdrew from mediation or that mediation did not result in settlement of a dispute.

C. HEARING ADMINISTRATION

(1) The Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by sections D through H of this appendix.

(2) This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

(3) Impartial hearing officers, who shall be DOHA Administrative Judges, shall be appointed by the Director, DOHA, and shall be attorneys in good standing of the bar of any State, the District of Columbia, or a commonwealth, territory or possession of the United States, who are also independent of the DoD school system or the Military Medical Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings by counsel or by persons with special knowledge or training with respect to the challenges of individuals with disabilities. The DOHA Department Counsel normally shall appear and represent the DoD school system in proceedings conducted under this appendix, when such proceedings involve a child age 3 to 21, inclusive. When an infant or toddler is involved, the Military Medical Department responsible under this part for delivering EIS shall either provide its own counsel or request counsel from the DOHA.

D. HEARING PRACTICE AND PROCEDURE

(1) *Hearing*. (i) Should mediation be refused or otherwise fail to resolve the issues on the

provision of EIS to an infant or toddler or the identification or evaluation of such an individual, the parent may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant or toddler and the Military Medical Department concerned shall be the only parties to a hearing conducted under this appendix.

(ii) Should mediation be refused or otherwise fail to resolve the issues on the provision of a FAPE to a child with a disability, age 3 to 21, inclusive, or the identification, evaluation, or educational placement of such an individual, the parent or the school principal, for the DoD school system, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of a child age 3 to 21, inclusive, and the DoD school system shall be the only parties to a hearing conducted under this appendix.

(2) The parents and the Military Medical Department or DoD school system must have an opportunity to obtain an impartial due process hearing, if the parents object to:

(i) A proposed formal educational assessment or proposed denial of a formal educational assessment of their child.

(ii) The proposed placement of their child in, or transfer of their child to a special education program.

(iii) The proposed denial of placement of their child in a special education program or the transfer of their child from a special education program.

(iv) The proposed provision or addition of special education services for their child; or

(v) The proposed denial or removal of special education services for their child.

(3) The parent or the attorney representing the child shall include in the petition, the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including the facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

(4) The DoD school system may file a written petition for a hearing to override a parent's refusal to grant consent for an initial evaluation, a reevaluation or an initial educational placement of the child. The DoD school system may also file a written petition for a hearing to override a parent's refusal to accept an IEP.

(5) The party seeking the hearing shall submit the petition to the Director, DOHA, at P.O. Box 3656, Arlington, Virginia 22203. The petitioner shall deliver a copy of the petition to the opposing party (*i.e.*, the parent or the school principal, for the DoD school system, or the military MTF commander, for the Military Medical Department), either in person or by first-class mail, postage prepaid. Delivery is complete on mailing. When the DoD school system or the Military Medical Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.(6) of this appendix and shall provide the other parties with a copy of this part.

(6) An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, at the latest by the 15th business day after receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

(7) By 10 business days after receipt of the petition, the Director, DOHA, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DOHA, shall forward all pleadings to the hearing officer.

(8) The party requesting the hearing shall plead with specificity as to what issues are in dispute and all issues not specifically pleaded with specificity is deemed waived. Parties must limit evidence to the issues specifically pleaded. A party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 10 business days before the hearing.

(9) The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. The hearing shall be held in the DoD school district attended by the child or at the military base location of the EDIS clinic, unless the parties agree otherwise or upon a showing of good cause.

(10) The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record with the Federal Rules of Evidence, title 28, United States Code serving as guide.

(11) The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the DoD school system or the Military Medical Department concerned and to call and question witnesses.

(12) Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel or personal representative of the parents, the counsel and professional employees of the DoDDS or the Military Medical Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to

attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities. The parents have the right to an open hearing on waiving in writing their privacy rights and those of the individual with disabilities who is the subject of the hearing.

(13) A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent on request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for conforming it to actual testimony after adequate notice of such changes is given to all parties.

(14) The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, if such matter is made available to all parties before the record is closed under paragraph D.(16) of this appendix.

(15) The hearing officer shall make a full and complete record of a case presented for adjudication.

(16) The hearing officer shall decide when the record in a case is closed.

(17) The hearing officer shall issue findings of fact and conclusions of law in a case not later than 50 business days after being assigned to the case, unless a request for discovery is made by either party, as provided for in paragraph D.(5) of this appendix in which case the time required for such discovery does not count toward the 50 business days. The hearing officer may grant a specific extension of time for good cause either on his or her own motion or at the request of either party. Good cause includes the time required for mediation under section B of this appendix. If the hearing officer grants an extension of time, he or she shall identify the length of the extension and the reason for the extension in the record of the proceeding.

E. DISCOVERY

(1) Full discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure, Rules 26–37, codified at 28 U.S.C. serving as a guide.

(2) If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery. The hearing officer shall grant an order to accomplish discovery upon a showing that the requested evidence is relevant and necessary. Relevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue. A matter is not in issue when it is admitted or stipulated as a fact. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

(3) Records compiled or created in the regular course of business, which have been provided to a party prior to hearing in accordance with paragraph E.(2) of this appendix may be received and considered by the officer without authenticating witnesses.

F. WITNESSES; PRODUCTION OF EVIDENCE

(1) All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the U.S. Government as to any matter in the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

(2) A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoD school system or the Military Medical Department concerned shall pay such expenses when a witness is called by the hearing officer.

(3) The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence on the hearing officer's own motion or, if good cause can be shown, on motion of either party.

(4) When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

(5) The party or the hearing officer seeking to compel testimony or the production of evidence may, based on the certification provided for in paragraph F.(4) of this appendix file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

(6) At least 5 business days prior to a hearing, the parties shall exchange lists of all documents and materials that each party intends to use at the hearing, including all evaluations and reports. Each party also shall disclose the names of all witnesses it intends to call at hearing along with a proffer of the anticipated testimony of each witness.

(7) At least 10 business days in advance of hearing, each party must provide the name, title, curriculum vitae, and summary of proposed testimony of any expert witness it intends to call at hearing.

(8) Failure to disclose documents, materials, or witnesses pursuant to paragraphs F.(6) and F.(7) of this appendix may result in the hearing officer barring their introduction at the hearing.

G. HEARING OFFICER'S FINDINGS OF FACT AND DECISION

(1) The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

(2) The Director, DOHA, shall forward to the Director, of the DoD school system, or to the Military Medical Department concerned, copies with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

(3) The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section I of this appendix. The DoD school system or the Military Medical Department concerned shall implement the decision as soon as practicable after it becomes final.

H. DETERMINATION WITHOUT HEARING

(1) At the request of a parent of an infant, toddler, or child age 3 to 21, inclusive, when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and conclusions of law in the period fixed by paragraph D.(17) of this appendix.

(2) The DoD school system or the Military Medical Department concerned may oppose a request to waive a hearing. In that event, the hearing officer shall rule on that request.

(3) Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph F.(6) of this appendix. A party submitting such documents shall provide copies to all other parties.

I. APPEAL

(1) A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, at P.O. Box 3656, Arlington, Virginia 22203, within 15 business days of receipt of the findings of fact and conclusions of law. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete on mailing.

(2) Within 30 business days of receipt of the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 20 business days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete on mailing.

(3) The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 45 business days of receiving timely submitted replies under paragraph I.(2) of this appendix.

(4) The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under sections 921–932 and chapter 33 of title 20, United States Code to bring a civil action on the matters in dispute in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(5) No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

J. PUBLICATION AND INDEXING OF FINAL DECISIONS

The Director, DOHA, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with DoD Directive 5400.11.

APPENDIX H TO PART 57—MONITORING

A. MONITORING

(1) The DoDEA and the Military Medical Departments shall establish procedures for monitoring special services requiring:

(i) Periodic on-site monitoring at each administrative level.

(ii) The DoD school systems to report annually that the provision of special education and related services is in compliance with this part.

(iii) The Military Medical Departments to report annually that the provision of EIS is in compliance with this part.

(2) The Director, DoDEA, and the Surgeons General of the Military Medical Departments shall submit reports to the DoD-CC not later than July 31 each year that summarize the status of compliance. The reports shall:

(i) Identify procedures conducted at Headquarters and at each subordinate level, including on-site visits, to evaluate compliance with this part.

(ii) Summarize the findings.

(iii) Describe corrective actions required of the programs that were not in compliance and the technical assistance that shall be provided to ensure they reach compliance.

B. USD(P&R) OVERSIGHT

(1) On behalf of the USD(P&R), the DoD-CC or designees, shall make periodic unannounced visits to selected programs to ensure the monitoring process is in place and to validate the compliance data and reporting. The DoD-CC may use other means in addition to the procedures in this section to ensure compliance with the requirements established in this part.

(2) For DoD-CC monitoring visits, the Secretaries of the Military Departments, or designees, shall:

(i) Provide necessary travel funding and support for their respective team members.

(ii) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which they are responsible.

(iii) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(iv) Address monitoring teams' recommendations concerning early intervention and related services for which the Secretary concerned has responsibility, including those to be furnished through an inter-Service agreement, are promptly implemented.

(3) For DoD-CC monitoring visits, the Director, DoDEA shall:

(i) Provide necessary travel funding and support for team members from the Office of the Under Secretary (P&R); the Office of GC, DoD; and DoD school systems.

(ii) Provide necessary technical assistance and logistical support to monitoring teams during monitoring visits to facilities for which he/she is responsible.

(iii) Cooperate with monitoring teams, including making all pertinent records available to the teams.

(iv) Address the monitoring teams' recommendations concerning special education and related services for which the DoD school system concerned has responsibility.

(4) The ASD(HA), or designee, shall provide technical assistance to the DoD monitoring teams when requested.

(5) The GC, DoD, or designee, shall:

(i) Provide legal counsel regarding monitoring activities conducted pursuant to this part to the USD(P&R), the ASD(HA), and, where appropriate, to DoDEA, monitored Agencies, and monitoring teams.

(ii) Provide advice about the legal requirements of this part and Federal law to the DoD school systems, military medical commanders, and military installation commanders, and to other DoD personnel as appropriate, in connection with monitoring activities conducted pursuant to this part.

PART 64—MANAGEMENT AND MOBILIZATION OF REGULAR AND RESERVE RETIRED MILITARY MEMBERS

Sec.
64.1 Purpose.
64.2 Applicability and scope.
64.3 Definitions.
64.4 Policy.
64.5 Responsibilities.

AUTHORITY: 10 U.S.C. 688, 973, and 12301(a).

SOURCE: 71 FR 19828, Apr. 18, 2006, unless otherwise noted.

§ 64.1 Purpose.

This part implements 10 U.S.C. 688, 973, 12301(a), and 12307 by prescribing uniform policy and guidance governing the peacetime management of retired Regular and Reserve military personnel preparing for their use during a mobilization.

§ 64.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as part of the Navy by agreement with the Department of Homeland Security), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to as the ''DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard. The term ''Secretary concerned,'' refers to the respective Secretaries of the Military Departments and the Secretary of Homeland Security for the Coast Guard when it is not operating as part of the Navy. (b) This part also applies to non-DoD organizations that have DoD-related missions, such as the Department of Homeland Security and the Selective Service System, and non-DoD organizations that have North Atlantic Treaty Organization-related missions, under agreements with those non-DoD organizations.