

processing of agricultural or horticultural commodities.

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27. Section 1952.345 is amended by revising paragraph (b) to read as follows:

**§ 1952.345 Level of Federal enforcement.**

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(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Wyoming plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base and at private-sector hazardous-waste disposal facilities designated as Superfund sites as well as with respect to Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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28. Section 1952.347 is amended by adding paragraph (d) to read as follows:

**§ 1952.347 Changes to approved plans.**

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(d) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved Wyoming's plan amendment, dated July 19, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Wyoming pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 57

[DoD Instruction 1342.12]

#### Provision of Early Intervention and Special Education Services to Eligible DOD Dependents in Overseas Areas

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** Prior to 1991, the Department of Defense Dependents Schools (DoDDS) was required by the "Defense Dependent's Education Act of 1978," as amended, to adhere to the provisions of the "Education of All Handicapped Children Act." With the enactment of "Individuals with Disabilities Education Act Amendments of 1991," the Department of Defense was required to modify its existing special education program for children with disabilities, ages 3 through 21, and to provide early intervention services to children birth through 2 years. This final rule assigns responsibility for the implementation of the Act to the Under Secretary of Defense for Personnel and Readiness, reflecting a reorganization of the Department of Defense; assigns responsibilities for duties previously assigned to Regional Directors to Area Superintendents, reflecting a reorganization of the DoDDS; requires DoD to provide early intervention services to children with disabilities

from birth through 2 years of age, requires DoDDS to extend special education services to students from 3 through 21 years of age rather than from 5 through 21; expands the categories of disability to include both autism and traumatic brain injury; expands special education services to include both assistive technology and transition; expands the role of the DoD Coordinating Committee to include early intervention as well as special education and related services; establishes a DoD Inter-Component Coordinating Council on Early Intervention; expands the definition section to include terminology not contained in the previous part; and transfers the administrative responsibility for conducting hearings pursuant to this rule to the Defense Office of Hearings and Appeals.

**EFFECTIVE DATE:** March 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dr. Rebecca Posante, DOD, Office of Family Policy, 4015 Wilson Blvd, BCT #3, Arlington, VA 22203-5190, 703-696-5734.

**SUPPLEMENTARY INFORMATION:** On May 31, 1995 (60 FR 28362), the Department of Defense published a proposed rule. Written comments were invited and due by July 31, 1995. In response to this invitation, six individuals and organizations submitted comments. In addition, pursuant to a notice appearing in the Federal Register on July 13, 1995 (60 FR 36081), DoD conducted a public hearing concerning the proposed rule on August 4, 1995. All written comments and the transcript of the public hearing are available for public inspection in the DoD Office of Family Policy at the above address.

The Office of the Secretary of Defense has carefully considered the views of the public as reflected in the written comments and testimony at the public hearing. A description of these views and a discussion of the Department's response to them follow.

**General.** One commenter noted that the proposed rule did not contain a reference to 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, as amended. This section does not apply to persons outside of the United States. Therefore, the final rule will not include a reference to it.

The same commenter noted that reference should be made to the Architectural Barriers Act of 1968. This act is implemented in other regulatory guidance, and therefore does not require reference in this final rule.

One commenter recommended that consideration be given to consolidating the DoD Instructions that pertain to the

Department's overseas and domestic schools' special education and related services programs. The underlying statutory bases are different for the DoD domestic and overseas schools and their service delivery models are different. Therefore, the Department will maintain separate regulatory guidance.

Section 57.3. One commenter recommended that the final rule include the term "psychotherapy" in the definition of psychological services. The final rule uses the definition from the U.S. Department of Education regulation regarding special education. That definition does not contain the term "psychotherapy;" therefore, this recommendation was not accepted.

Section 57.3. One commenter requested that the reference to early intervention provided under the supervision of a military health department be changed to acknowledge that early intervention services are not necessarily health or medical in nature. The final rule will not incorporate this suggestion since the assignment of early intervention to the military medical departments was accomplished for organizational efficiency.

The same commenter recommended that reference in the definitions to "medically related services" might confuse the supportive and educational nature of occupational therapy in schools and perpetuate a medical model of services. The final rule will not incorporate this recommendation. Present practice in the DoD includes occupational therapy and some other types of related services under the heading of medically related services because these responsibilities were assigned to the military medical departments. The Department does not believe that this has resulted in the use of the medical model in the provision of medically related services.

Appendix A, Section C.1.M. One commenter noted that the definition for "developmental delay" contained in the proposed rule included two criteria that were not equivalent. In order to clarify the intent of the criteria, the definition was changed to the following. "C.1. 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."

Appendix B, Section B.1.(e). One commenter recommended that the term "education" be defined for students with disabilities to delineate clearly that this is a broad concept including socialization and life skills for more involved students. The Final Rule will not further define this term since DoD guidance and practice include the concept of education in the broadest sense of the term.

Appendix B, Section 4. A commenter noted that the frequency of the reevaluation process should not be limited to every three years, but should occur each year. This section in the proposed rule states that "a reevaluation for eligibility must occur at least every three years, or more frequently." Evaluations to determine the need for services may be completed at any time, and progress reports on goals and objectives must be developed at each annual review. The final rule follows the U.S. Department of Education regulation regarding reevaluation. Therefore, this recommendation will not be incorporated in the final rule.

Appendix C, Appendix D, and Appendix E. One commenter recommended expanding the membership on the National Advisory Panel on the Education of Dependents with Disabilities, the DoD Coordinating Committee on Early Intervention, Special Education and Related Services, and the DoD Inter-Component Coordinating Council on Early Intervention to include individuals who are knowledgeable of early intervention, special education, and related services in the States and who have experience in providing those services to children and their families. The proposed rule conformed to the statutory requirements of membership. Therefore, the membership of the committees and panel has not been changed in the final rule.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this final rule will not be significant as defined by Executive Order 12866.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this final rule will not have a significant economic impact on substantial numbers of small entities because it affects only eligible DoD dependents in overseas areas.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that this final rule will not impose any reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

Accordingly, 32 CFR part 57 is revised to read as follows:

## **PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS IN OVERSEAS AREAS**

Sec.

57.1 Purpose.

57.2 Applicability and scope.

57.3 Definitions.

57.4 Policy.

57.5 Responsibilities.

57.6 Procedures.

Appendix A to part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers with Disabilities and their Families

Appendix B to part 57—Procedures for Education Programs and Services for Children with Disabilities, Aged 3 to 21, Inclusive

Appendix C to part 57—The National Advisory Panel (NAP) on the Education of Dependents with Disabilities

Appendix D to part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services

Appendix E to part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention

Appendix F to part 57—Mediation and Hearing Procedures

Authority: 20 U.S.C. 921 and 1400.

### **§ 57.1 Purpose.**

This part:

(a) Implement policy and update responsibilities and procedures under 20 U.S.C. 921–932, 20 U.S.C. 1400 *et seq.*, DoD Directive 1342.6<sup>1</sup>, and DoD Directive 1342.13<sup>2</sup> for providing the following:

(1) A free appropriate public education (FAPE) for children with disabilities who are eligible to enroll in the Department of Defense Dependent Schools (DoDDS).

(2) Early intervention services for infants and toddlers birth through age 2 years who, but for their age, would be eligible to enroll in the DoDDS under DoD Directive 1342.13.

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup> See footnote 1 to § 57.1(a).

(3) A comprehensive and multidisciplinary program for early intervention services for infants and toddlers with disabilities and their families.

(b) Establishes a National Advisory Panel (NAP) on Education for Children with Disabilities, ages 3 to 21, inclusive, and a DoD Inter-Component Council (ICC) on Early Intervention, in accordance with DoD Directive 5105.4<sup>3</sup>.

(c) Establishes a DoD Coordinating Committee (DoD-CC) on Early Intervention, Special Education, and Medically Related Services (MRS).

(d) Authorizes implementing instructions consistent with DoD 5025.1-M<sup>4</sup>, and DoD forms consistent with DoD 83201-M<sup>5</sup>, DoD 8910.1-M<sup>6</sup>, and DoD Instruction 7750.7<sup>7</sup>.

#### § 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 Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) Does not apply to schools operated by the Department of defense in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Islands).

(c) Applies to infants, toddlers, and children receiving or entitled to receive early intervention services or special educational instruction and related services from the Department of Defense, and their parents.

#### § 57.3 Definitions.

*Area superintendent.* The Superintendent of a DoDDS area, or designee.

*Assessment.* Techniques, procedures, and/or instruments used to measure the individual components of an evaluation.

*Assistive technology device.* Any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of children with disabilities.

*Assistive technology service.* Any service that directly assists an individual with a disability in the selection, acquisition, or use of an

assistive technology device. That 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.

*Audiology.* A service that includes the following:

(1) Identification of children with auditory impairments.

(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 pupils for the prevention of hearing loss.

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

*Autism.* A development disability significantly affecting verbal and nonverbal communication and social interaction generally evident before age 3 that adversely affects educational performance. That term does not include a child with characteristics of the disability termed "serious emotional disturbance."

*Case study committee (CSC).* (1) A school-level team comprised of, among others, the principal, other educators, parents, and MRS providers who do the following:

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

(ii) Oversee the multidisciplinary evaluation of such children.

(iii) Determine the eligibility of the student for special education and related services.

(iv) Formulate an individualized education curriculum reflected in an Individualized Education Program (IEP), in accordance with this part.

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

(2) In addition to the required members of the CSC, other membership will vary depending on the purpose of the meeting. An area CSC, appointed by the DoDDS Area Superintendent, acts in the absence of a school CSC. Members of an area CSC may be assigned to augment a school CSC. The area CSC must have at least two members besides the parent. One of the DoDDS members must have the authority to commit DoDDS resources; one shall be qualified to provide, or supervise the provision of special education. Other members may be selected from the following groups:

(i) DoDDS regular education personnel.

(ii) DoDDS special education personnel.

(iii) MRS personnel.

*Child-find.* The ongoing process used by the DoDDS, the Military Departments, and the other DoD Components to seek and identify children from birth to age 21, inclusive, who may require early intervention services or special education and related services. Child-find activities include the dissemination of information to the public, the identification and screening of children, and the use of referral procedures.

*Children with disabilities (ages 3 To 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 special education and related services.

*Consent.* That term means 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. The signed consent acknowledges

<sup>3</sup> See footnote 1 to § 57.1(a).

<sup>4</sup> See footnote 1 to § 57.1(a).

<sup>5</sup> See footnote 1 to § 57.1(a).

<sup>6</sup> See footnote 1 to § 57.1(a).

<sup>7</sup> See footnote 1 to § 57.1(a).

the parent's understanding that the parental consent is voluntary and may be revoked at any time.

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

**Deaf-blindness.** Concomitant hearing and visual impairments. That disability causes such severe communication, developmental, and educational problems that it cannot be accommodated in special education programs solely for children with deafness or blindness.

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

**Developmental delay.** That term means the following:

(1) A significant discrepancy in the actual functioning of an infant, toddler, or child, birth through age 5, when compared with the functioning of a nondisabled infant, toddler, or child of the same chronological age in any of the following areas: physical, cognitive, communication, social or emotional, and adaptive developmental as measured using standardized evaluation instruments and confirmed by clinical observation and judgment.

(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 early intervention services.

**Early identification.** The implementation of a formal plan for identifying a disability as early as possible in a child's life.

**Early intervention services.** (1) Developmental services that meet the following criteria:

(i) Are provided under the supervision of a Military medical Department.

(ii) Are provided using Military Health Services System resources at no cost to the parents. Parents may be charged in those instances where Federal law provides for a system of payments by families including a schedule of sliding fees, if any, (and incidental fees identified in Service guidance) that are normally charged to infants, toddlers, and children without disabilities or to their parents.

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

(A) Physical.

(B) Cognitive.

(C) Communication.

(D) Social or emotional.

(E) Adaptive development.

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

(v) 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, and pediatricians and other physicians.

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

(vii) Are provided in conformity with an Individualized Family Service Plan (IFSP).

(2) 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 early intervention services; and transportation and related costs necessary to enable an infant or toddler and the family to receive early intervention services.

**Eligible.** The term refers to children who meet the age, command sponsorship, and dependency requirements established by the DDEA, as amended, 20 U.S.C. 921 *et seq.* and DoD Directive 1342.13. When those conditions are met, children without disabilities, ages 5 to 21, and children with disabilities, ages 3 to 21, inclusive, are authorized to receive educational instruction from the DoDDS. Additionally, an eligible infant or toddler with disabilities is a child from birth through age 2 years who meets all of the DoDDS eligibility requirements except for the age requirement. In school year 1994 through 1995, multidisciplinary assessments, IFSPs, and case management services shall be required and beginning in school year 1995 through 1996, an eligible infant or toddler is entitled to receive early

intervention services, in accordance with 20 U.S.C. 1400 *et seq.*

**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.

**Family training, counseling, and home visits.** Services provided by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services. Those services assist a family in understanding the special needs of the child and enhancing the child's development.

**Free appropriate public education (FAPE).** Special education and related services that do the following:

(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.

(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.

**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 activities for transitional, vocational, and career planning; instructional goals; objectives; and implementation.

**Health services.** Services necessary to enable an infant or toddler to benefit from the other early intervention services 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 shall need to be addressed in the course of providing other early intervention services.

(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 or health services routinely recommended for all infants or toddlers.

**Hearing impairment.** An impairment in hearing, whether permanent or

fluctuating, which adversely affects a child's educational performance, but is not included under deafness.

**Independent evaluation.** An evaluation conducted by a qualified examiner who is not employed by the DoDDS.

**Individualized education program (IEP).** A written document defining specially designed instruction for a student with a disability, ages 3 to 21, inclusive. That document is developed and implemented, in accordance with this part.

**Individualized family service plan (IFSP).** A written document for an infant or toddler, age birth through 2, with a disability and the family of such infant or toddler that is based on a multidisciplinary assessment of the unique needs of the child and concerns and priorities of the family, and identifies the early intervention and other services appropriate to meet such needs, concerns, and priorities.

**Infants and toddlers with disabilities.** Children, ages birth through 2, who need early intervention services because they:

(1) Are experiencing a developmental delay; or,

(2) Have a diagnosed physical or mental condition that has high probability of resulting in a developmental delay.

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

**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.

**Medically related services.** (1) Medical services (as defined in definition "Medical services") are those services provided under professional medical supervision, which are required by a CSC to determine a student's eligibility for special education and, if the student is eligible, the special education and related services required by the student under this part.

(2) Direct or indirect services under the development or implementation of an IEP necessary for the student to benefit from the educational curriculum. Those services may include medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary,

occupational therapy, physical therapy, audiology, ophthalmology, and psycholinguistic testing and therapy.

**Meetings.** All parties attending a meeting to determine eligibility or placement of a child 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.

**Mental retardation.** Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior. That disability is manifested during the developmental period and adversely affects a child's educational performance.

**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.

**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 parent of the child.

**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.

**Non-DoDDS placement.** An assignment by the DoDDS of a child with a disability to a non-DoDDS school or facility.

**Non-DoDDS school or facility.** A public or private school or other institution not operated by the DoDDS.

**Nutrition services.** Those services to infants and toddlers include 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 early intervention services.

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

**Occupational therapy.** That term includes services to address the functional needs of children (birth to 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) Adaption 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.

**Orthopedic impairment.** A severe physical 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 cerebra palsy, amputations, and fractures or burns causing contractures.

**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 include heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, diabetes, or attention deficit disorder.

**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.

**Parent counseling and training.** A service to assist parents in understanding the special needs of their child's development and by providing them with information on child development and special education.

**Personally identifiable information.** Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Examples include name, parent's name, address, social security number, or a list of personal characteristics.

**Physical therapy.** That term includes services to children (birth to 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 adaption. 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.

**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 brings the child to the attention of the EIP.

**Psychological services.** A service that includes 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 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.

**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 early intervention services. Procedures to determine the availability of information on early intervention services to parents are also included in that program.

**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 early intervention services to an infant, toddler, or child with a disability.

**Recreation.** A related service that includes the following.

(1) Assessment of leisure activities.

(2) Therapeutic recreational activities.

(3) Recreational programs in schools and community agencies.

(4) Leisure education.

**Rehabilitation counseling.** Services provided by a rehabilitation counselor or other 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.

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

**School health services.** Services provided by a qualified school nurse or other qualified person.

**Separate facility.** A school or a portion of a school, regardless of whether it is operated by the DoDDS, attended exclusively by children with disabilities.

**Serious emotional disturbance.** A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affect 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 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.

**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 the DoD EIP. Those activities include the following:

(1) Coordinating the performance of evaluation 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.

**Service provider.** Any individual who provides services listed in an IEP or an IFSP.

**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 receive maximum benefit from the educational program.

**Special education.** Instruction and related services for which a child, age 3 to 21, inclusive, becomes entitled when a CSC determines a child's educational performance is adversely affected by one or more disabling conditions.

(1) Special education is 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.

(2) That term includes speech therapy 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.

(3) 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.

(4) *At no cost.* For a child eligible to attend the DoDDS without paying

tuition, specially designed instruction and related services are provided without charge. Incidental fees normally charged to nondisabled students or their parents as a part of the regular educational program may be imposed.

(5) *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.

(6) *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.

*Special instruction.* That term includes the following:

(1) The design of learning environments and activities to promote acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Curriculum planning, including the planned interaction of personnel, materials, time, and space, that leads to achieving the outcomes in an IEP or an IFSP.

(3) Providing families with information, skills, and support to enhance skill development.

(4) Working with a child to enhance development and cognitive processes.

*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.

*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.

*Speech therapy.* That related service includes the following:

(1) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills.

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

(3) Referral for medical or other professional attention to correct or habilitate speech or language impairments.

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

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

*Transition services.* That term means the following:

(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 which promotes movement from school to postschool activities; including, post-secondary education, vocational training, integrated employment; and including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, considering the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other postschool adult living objectives, and acquisition of daily living skills and functional vocational evaluation.

*Transportation.* A service that includes the following:

(1) 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.

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

(2) Transportation and related costs for early intervention services include 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 early intervention services.

*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.

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

*Visual impairment.* An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partially seeing and blind children.

#### **§ 57.4 Policy.**

It is DoD policy that:

(a) Eligible infants and toddlers with disabilities and their families shall be entitled to receive early intervention services consistent with Appendix A to this part.

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

(c) Parents of eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive, shall be full participants in early intervention and special education services.

#### **§ 57.5 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) Establish a NAP consistent with Appendix C to this part.

(2) Establish and chair, or designate a "Chair," of the DoD-CC on Early Intervention, Special Education, and MRS consistent with Appendix D to this part.

(3) Establish and chair, or designate a "Chair," of the DoD Inter-Component Coordinating Council (ICC) on Early Intervention consistent with Appendix E to this part.

(4) Ensure compliance with this part in the provision of early intervention services, special education, and related



services through the DoD-CC, in accordance with DoD Instruction 1342.14<sup>8</sup> and other appropriate guidances.

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

(i) Ensure that eligible infants and toddlers with disabilities and their families are provided early intervention services under 20 U.S.C. 921 *et seq.* and 1400 *et seq.*

(ii) Ensure the coordination of early intervention, special education, and related services.

(iii) Ensure the development of a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth to age 21, inclusive, under 20 U.S.C 921 *et seq.* and 1400 *et seq.* who may require early intervention or special education services.

(iv) Ensure that DoD personnel are trained to provide the mediation services specified in Appendix F to this part.

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

(vi) Ensure that DoD personnel who provide services (e.g., child care, medical care, and recreation) to infants and toddlers and their families are participants in a comprehensive inter-Component system for early intervention services.

(vii) Assign functions and geographic regions of responsibility to the Military Departments for providing MRS and early intervention services.

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

(A) A comprehensive, coordinated and multidisciplinary program of early intervention services for eligible infants and toddlers with disabilities.

(B) MRS for eligible children with disabilities, ages 3 to 21, inclusive.

(ix) Ensure that qualified personnel participate in providing transition services for eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive.

(x) Ensure the development and implementation of a comprehensive system of personnel development for the DoDDS and the Military Departments. That system shall include professionals, paraprofessionals, and primary referral source personnel in the areas of early intervention, special education, and MRS. That system may include the following:

(A) Implementing innovative strategies and activities for the recruitment and retention of providers of early intervention services, special education, and MRS.

(B) Ensuring that personnel requirements are established consistent with recognized certification, licensing, registration, or other comparable requirements for personnel providing early intervention services, special education, or MRS.

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

(D) Training providers of early intervention services, special education, and MRS to work overseas.

(xi) Develop procedures to compile data on the numbers of eligible infants and toddlers with disabilities and their families in need of early intervention services, in accordance with DoD Directives 5400.7 and 5400.11.<sup>9</sup> Those data elements shall include the following:

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

(B) The types of services provided.

(C) Other information required to evaluate the implementation of early intervention programs (EIPs).

(xii) Resolve disputes in the DoD Components arising under Appendix A to this part.

(b) The Secretaries of the Military Departments shall:

(1) Provide MRS for eligible children with disabilities, ages 3 to 21, inclusive.

(2) Plan, develop, and implement a comprehensive, coordinated, intra-Component, and community-based system of early intervention services for eligible infants and toddlers with disabilities and their families.

(3) Design and implement activities to ensure compliance through technical assistance and program evaluation for early intervention and MRS.

(c) The Director, Department of Defense Education Activity, shall ensure that the Director, DoDDS, does the following:

(1) Ensures that eligible children with disabilities, ages 3 to 21, inclusive, are provided a FAPE.

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

(3) Ensures that educational facilities and services operated by the DoDDS for children with and without disabilities are comparable.

(4) Maintains records on special education and related services provided to eligible children with disabilities, ages 3 to 21, inclusive, consistent with DoD Directive 5400.11.

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

(6) Participates in the development and implementation of a comprehensive system of personnel development.

(7) Undertakes activities to ensure compliance by the DoDDS with this part through monitoring, technical assistance, and

program evaluation of special education and those related services provided by the DoDDS.

(d) The Director, Defense Office of Hearings and Appeals, under the General Counsel of the Department of Defense, shall ensure impartial due process hearings are provided consistent with Appendix F to this part.

## § 57.6 Procedures.

(a) The procedures for early intervention services for infants and toddlers with disabilities and their families are prescribed in Appendix A to this part.

(b) The procedures for educational programs and services for children with disabilities, ages 3 to 21, inclusive, are prescribed in Appendix B to this part.

(c) The procedures for conducting hearings are prescribed in Appendix F to 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. Requirements for an Early Intervention Program (EIP)

1. All eligible infants and toddlers with disabilities from birth through age 2 and their families shall receive early intervention services, as follows:

a. In school years 1991 through 1994, the Department of Defense planned and continues to develop a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among DoD entities involved in providing such services.

b. In school year 1994 through 1995, the Department of Defense implemented and shall continue to implement the following program components described in paragraph A.1.a. of this Appendix:

- (1) Multidisciplinary assessments.
- (2) IFSPs.
- (3) Service coordination.

c. In school year 1995 through 1996, the Department of Defense shall implement the program described in paragraph A.1.a. of this Appendix.<sup>1</sup>

2. Early intervention services shall be provided in the natural environment.

3. Parents of infants and toddlers with disabilities are to be full and meaningful participants in the EIP.

### B. Military Department Responsibilities

Each Military Department shall develop and implement in its assigned geographic area a system to provide for the following:

1. A comprehensive child find procedure coordinated with the DoDDS child find system and primary referral sources such as the child development center and the pediatric clinic.

2. Administration and supervision of EIPs and services.

3. Identification of available resources and coordination with those resource providers,

<sup>8</sup> See footnote 1 to § 57.1(a).

<sup>9</sup> See footnote 1 to § 57.1(a).

<sup>1</sup> The EIP shall be continuously implemented.



including the DoD Components, who routinely provide services to infants and toddlers without disabilities and their families.

4. Procedures to provide timely services for infants and toddlers with disabilities and their families.

5. Procedures to resolve inter-Component disputes about the delivery of early intervention services.

6. Procedures to collect and report data reflecting the number of infants and toddlers and their families served, the types of services provided, and other information required by the USD(P&R) implementation of early intervention services.

7. Multidisciplinary, comprehensive, and functional assessment of the unique strengths and needs of infants or toddlers and the identification of services to meet those needs.

8. Procedures for a family-directed assessment to determine resources, priorities, and concerns of a family and to identify services necessary to enhance a family's capacity to meet the child's needs.

9. An IFSP that details the early intervention services and the coordination of those services.

10. A public awareness program focusing on early identification of infants and toddlers with disabilities.

11. A central directory that includes a description of the early intervention services and other relevant resources available in each military community overseas.

12. Information to parents about their EIP procedural safeguards.

13. Establishment of ICCs at appropriate levels. Memberships shall include parents and the DoD Components who are involved in the delivery of early intervention services.

14. Policies and procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the EIP are prepared and trained.

#### *C. Eligibility*

Infants and toddlers with disabilities from birth through age 2 are eligible for early intervention services because they meet one of the following criteria:

1. 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. The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; e.g., chromosomal disorders or genetic syndromes.

#### *D. IFSP*

1. Each military medical department shall develop and implement procedures to ensure that an IFSP is developed by a multidisciplinary team including the parents

of each infant or toddler with a disability who meets the eligibility criteria in section C.1. of this appendix.

2. Meetings to develop and review the IFSP must include the following participants:

- a. The parent or parents of the child.
- b. Other family members, as requested by the parent, if possible.
- c. An advocate outside of the family, if the parent requests that person's participation.
- d. The EIP 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."
- e. The person(s) directly involved in conducting the evaluations and assessments.
- f. As appropriate, persons who shall provide services to the child or family.

3. If a person listed in section D.2. of this appendix is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including the following:

- a. Participating in a telephone conference call.
- b. Having a knowledgeable representative attend the meeting.
- c. Making pertinent records available at the meeting.
- 4. The IFSP shall be written in a reasonable time after assessment and shall contain the following:
  - a. A statement of the child's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on acceptable objective criteria.
  - b. A statement of the family's resources, priorities, and concerns on enhancing the child's development.
  - c. 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 timeliness 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.
  - d. A statement of the specific early intervention services necessary to meet the unique needs of the child and the family including the frequency, intensity, and method of delivering services.
  - e. A statement of the natural environments in which early intervention services shall be provided.
  - f. The projected dates for initiation of services and the anticipated duration of those services.
  - g. The name of the EIP service coordinator.
  - h. The steps to be taken supporting the transition of the toddler with a disability to preschool or other services.

5. 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).

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 early intervention services described in that plan.

7. With the parent's consent, early intervention services may begin before the

completion of the evaluation and assessment when it has been determined by a multidisciplinary team that a service is needed immediately by the child and/or the child's family. 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.

8. If a parent does not provide consent for participation in all early intervention services, the services shall still be provided for those interventions to which a parent does give consent.

#### *E. Procedural Safeguards in the EIP*

1. Parents of infants and toddlers with disabilities are afforded the following procedural safeguards to ensure that their children receive appropriate early intervention services:

- a. The timely administrative resolution of parental complaints, including hearing procedures in appendix F to this part.
- b. The right to confidentiality of personally identifiable information under DoD Directive 5400.11.<sup>2</sup>
- c. The right to written notice and consent to the release of relevant information outside the Department of Defense.
- d. The right to determine whether they, their child, or other family members shall accept or decline any early intervention services without jeopardizing other early intervention services.
- e. The opportunity to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.
- f. The right to prior written notice when the EIP multidisciplinary team proposes, or refuses, to initiate or change the identification, evaluation, placement, or provision of early intervention services to the infant or toddler with a disability.
- g. The right to prior written notice in their native language, unless it clearly is not possible to do so, which informs them of all procedural safeguards.
- h. During the pendency of any proceeding or action involving a complaint, unless the EIP and the parents otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

2. Parents shall be advised of their rights to due process, as defined in appendix F to this part.

Appendix B to Part 57—Procedures for Educational Programs and Services for Children With Disabilities, Ages 3 to 21, Inclusive

#### *A. Identification and Screening*

It is the responsibility of school officials of the DoDDS to locate, identify, and with the consent of a child's parent, evaluate all children who are eligible to enroll in the

<sup>2</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

DoDDS under DoD Directive 1342.13<sup>1</sup> who may require special education and related services.

1. *Procedures for Identification and Screening.* The DoDDS officials shall conduct the following activities to determine if a child needs special education and related services:

- a. Screen educational records.
- b. Screen students using system-wide or other basic skill tests in the areas of reading, math, and language arts.
- c. 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.
- d. Analyze school records to obtain pertinent information about the basis for suspensions, exclusions, withdrawals, and disciplinary actions.
- e. In cooperation with the Military Departments, conduct on-going child-finding activities and publish, periodically, any information, guidelines, and direction on child-find activities for eligible children with disabilities, ages 3 to 21, inclusive.
- f. Coordinate the transition of children from early intervention to preschool with the Military Services.

2. *Referral of a Child for Special Education or Related Services.* The DoDDS officials, MRS providers, or others who suspect that a child has a possible disabling condition shall refer that child to the CSC.

#### B. Assessment and Evaluation

Any eligible child 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.

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

- a. Assessment of visual and auditory acuity.
- b. 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:
  - (1) Assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.
  - (2) Observation in an educational environment.
  - (3) Assessment of physical status including perceptual and motor abilities.
  - (4) Assessment of the need for transition services for students 14 years and older, the acquisition of daily living skills, and functional vocational assessment.
- c. The involvement of parents, under this part.
- d. The use of 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.

e. The requirement that each assessor prepare an individual assessment report that describes the instruments and techniques used, the results of the testing, and the relationship of those findings to educational functioning.

f. The inclusion of a description of the problem area constituting the basis for an MRS referral.

2. *Standards for Assessment Selection and Procedures.* All DoD elements, including the CSC and MRS providers, shall ensure that assessment materials and evaluation procedures comply, as follows:

- a. Selected and administered so as not to be racially or culturally discriminatory.
- b. Administered in the native language or mode of communication of the child unless it clearly is not possible to do so.
- c. Validated for the specific purpose for which they are used or intended to be used.
- d. Administered by trained personnel in compliance with the instructions of the testing instrument.
- e. Administered such that no single procedure is the sole criterion for determining an appropriate educational program for a child with a disability.
- f. Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.
- g. Administered to a child with impaired sensor, motor, or communication skills so that the results reflect a child's actual ability or level of achievement, and simply not the impaired skill itself.

3. *Determination of Eligibility for Special Education and Related Services.* The CSC shall be convened to determine the eligibility of a child for special education and related services. The CSC shall do the following:

- a. 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.
- b. Meet as soon as possible after a child has been assessed to determine the eligibility of the child for services.
- c. Afford the child's parents the opportunity to participate in the CSC eligibility meeting.
- d. Issue a written eligibility report that contains the following:
  - (1) A description of the nature of the child's disabling condition.
  - (2) A synthesis of the formal and informal findings of the multidisciplinary assessment team of the child's academic progress.
  - (3) A summary of information from the parents, the child, or other persons having significant previous contact with the child.
  - (4) A determination of eligibility statement.
  - (5) A list of the educational areas affected by a child's disability and a description of a child's educational needs.

4. *Reevaluation for Eligibility for Special Education and Related Services.* School officials shall provide a comprehensive reevaluation of a child with a disability every 3 years, or more frequently, if conditions warrant. The scope and type of the comprehensive reevaluation shall be determined individually based on a child's

performance, behavior, and needs during the reevaluation.

#### C. Individualized Education Program (IEP)

The DoDDS officials shall ensure that the CSC develops and implements an IEP for each child with a disability who is enrolled in the DoDDS or is placed in another institution by the DoDDS.

1. *The CSC Meeting for the Development and Implementation of an IEP.* The CSC shall establish and convene a meeting to develop, review, or revise the IEP of a child with a disability. That meeting shall be scheduled as soon as possible following a determination by the school or area CSC that the child is eligible for special education and related services. The meeting participants shall, minimally, include the following:

- a. A principal or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education.
- b. The child's teacher.
- c. A special education teacher.
- 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.

2. *Requirements for the Development of the IEP.* The CSC shall prepare the IEP with the following:

- a. A statement of the child's present levels of educational performance.
- b. A statement of annual goals including short-term instructional objectives.
- c. Objective criteria for determining, at least annually, whether the educational objectives are being achieved.
- d. A statement of the physical education program provided in one of the following settings:
  - (1) In the regular education program.
  - (2) In the regular education program with adaptations, modifications, or the use of assistive technology.
  - (3) Through specially designed instruction based on the goals and objectives included in the IEP.
- e. A statement of the transition services beginning at age 14 and annually, thereafter. When appropriate, include a statement of the inter-Agency responsibilities or linkages (or both) before the student leaves the school setting. If a specially designed instructional program is required, include the goals and objectives in the IEP.
- f. A statement of special transportation requirement.
- g. A statement of the amount of time a week that each special education and related service shall be provided to the child.
- h. The extent to which the child shall participate in regular educational programs, including the following:
  - (1) The projected date for the initiation and the anticipated length of IEP activities and services.
  - (2) Any statements requiring an adjusted school day or an extended school year program.

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

i. 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.

3. *Requirements for the Implementation of the IEP.* The DoDDS CSC shall:

a. Obtain parental agreement and signature before implementation of the IEP.

b. Provide a copy of the child's IEP to the parents.

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

d. Review and revise the IEP for each child at least annually in a CSC meeting.

e. Accept a child's current IEP when he or she transfers to the DoDDS if the CSC of the gaining school or the area CSC does the following:

(1) Notifies and obtains consent of the parents to use the current IEP and all elements contained in it.

(2) Involves the local DoD Component responsible for the delivery of the MRS of the medical requirements in the IEP.

(3) Initiates a CSC meeting to revise the current IEP.

(4) If necessary, initiates an evaluation of the child.

f. 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.

g. Ensure that at least one parent understands the special education procedures including the due process procedures described in appendix F 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.

h. Provide special education and related services, in accordance with the IEP. The Department of Defense and its constituent elements and personnel are not accountable if a child does not achieve the growth projected in the IEP.

i. Ensure that all provisions developed for any child entitled to an education by the DoDDS are fully implemented in schools or in non-DoDDS schools or facilities including those requiring special facilities, other adaptations, or assistive devices.

#### *D. Placement Procedures and Least Restrictive Environment*

1. A child shall not be placed by the DoDDS 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 a disability and with the consent of a parent and school officials may receive an initial placement in a special education program under procedures listed in paragraph C.3.e. of this appendix.

2. A placement decision requires the following:

a. A parent consent to the placement before actual placement of the child, except as otherwise provided in section F.2. of this appendix.

b. Delivery of educational instruction and related services in the least restrictive environment. 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.

c. The CSC to base placements on the IEP and to review the IEP at least annually.

d. A child shall participate, to the maximum extent, in school activities including meals, assemblies, recess periods, and field trips with children who are not disabled.

e. Consideration of factors affecting the child's well-being including the effects of separation from parents.

f. A child shall attend a DoDDS 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.

#### *E. Children With Disabilities Who Are Placed in a Non-DoDDS School or Facility*

Children with disabilities who are eligible to receive a DoDDS education, but are placed in a non-DoDDS school or facility by the DoDDS, shall have all the rights of children with disabilities who are enrolled in a DoDDS school. A child with a disability may be placed in a non-DoDDS school or facility only if required by the IEP.

#### *1. Requirements for a Non-DoDDS School or Facility Placement*

a. Placement in a non-DoDDS school or facility shall be made under the host-nation requirements.

b. Placement in a non-DoDDS 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 DoDDS regulations.

c. If the DoDDS places a child with a disability in a non-DoDDS school or facility as a means of providing special education and related services, the program of that institution including nonmedical care and room and board, as in the child's IEP, must be provided at no cost to the child or the child's parents. The DoDDS or the responsible DoD Component shall pay the costs in accordance with DoD 1010.13-R<sup>2</sup>.

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

(1) Be signed by an authorized DoDDS official before it becomes valid.

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

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

2. *Cost of Tuition For Non-DoDDS School or Facility.* The Department of Defense is not authorized to fund non-DoDDS placement unless it is directed by the DoDDS Area Superintendent in coordination with the Director, DoDDS; or it is directed by an impartial hearing officer or court of competent jurisdiction. A valid IEP must document the necessity of the placement in a non-DoDDS school or facility.

#### *F. Procedural Safeguards for Children and Parents*

Parents of children with disabilities are afforded procedural safeguards to ensure that their children receive a free public education consistent with appendix F to this part.

##### *1. Notice of Procedural Safeguards*

a. Parents shall be provided a written notice in a reasonable time before one of the following:

(1) Receiving a proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of free public education to the child.

(2) Receiving refusal from the DoDDS to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free public education.

b. The notice shall inform the parent of the following:

(1) Parental procedural rights detailed in appendix F to this part.

(2) A description of the action proposed or refused by the DoDDS with a brief explanation for the decision.

c. The notice shall be provided so as to ensure the parent's understanding. That may be achieved by using simplified language, delivering the notice in the parent's native language, or using an interpreter or other person selected by the parents.

##### *2. Parental Consent*

a. 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:

(1) Initiation of formal evaluation procedures.

(2) Initial educational placement.

(3) Change in educational placement.

b. If the parent refuses consent to any formal evaluation or initial placement in a special education program, the DoDDS or the parent may do the following:

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

(2) Request mediation.

(3) Initiate an impartial due process hearing under appendix F to this part, to show cause as to why an evaluation or placement in a special education program should or should not occur without such

<sup>2</sup> See footnote 1 to section A. of this appendix.

consent. If the hearing officer sustains the DoDDS position in the impartial due process hearing, the DoDDS 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.

### 3. *Independent Evaluation*

a. A parent is entitled to an independent evaluation at the expense of the DoDDS if the parent disagrees with the DoDDS evaluation of the child and successfully challenges the evaluation in an impartial due process hearing. An independent evaluation provided at the DoDDS expense must do the following:

- (1) Conform to the requirements of this part.
- (2) Be conducted, when possible, in the area where the child resides.
- (3) Meet DoD standards governing persons qualified to conduct an educational evaluation including an evaluation for MRS.
- b. If the final decision rendered in an impartial due process hearing sustains the DoDDS evaluation, the parent has the right to an independent evaluation, but not at the DoDDS expense.

c. The DoDDS, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

4. *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.

### 5. *Due Process Rights*

a. The parent of a child with a disability or the DoDDS has the opportunity to file a written petition for an impartial due process hearing at the DoDDS expense under appendix F to this part. The dispute may concern issues effecting a partial child's identification, evaluation, or placement, or the provision of a free and appropriate public education.

b. While an impartial due process hearing or judicial proceeding is pending, unless the DoDDS and a parent of the child agree otherwise, the child shall remain in the present educational setting, subject to the disciplinary procedures prescribed in section H. of this appendix.

6. *Dispute Resolution—Other Complaints.* 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 2500.10.<sup>3</sup>

### G. *Confidentiality of Records*

The DoDDS officials shall maintain all student records, in accordance with DoD Directive 5400.11.<sup>4</sup>

### H. *Disciplinary Procedures*

All regular disciplinary rules and procedures applicable to children receiving

educational instruction in the DoDDS shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the following provisions:

1. Before suspending or expelling a child with a disability, the CSC or, a child with a disability in a non-DoDDS school, authorized DoDDS officials, shall determine the following:

- a. Whether the behavioral conduct is the result of the child's disability.
- b. If any change in the educational placement is needed.
2. If it is determined that the child's conduct results in whole or part from the disability, the child may not be subject to any regular disciplinary rules and procedures and the following procedures must be followed:
  - a. The child's parents shall be notified of the right to have an IEP meeting before any change in the child's educational placement.
  - b. The CSC or authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.
  - c. The child may not be suspended for more than 10 days during a school year.

3. A child with a disability may be suspended on an emergency basis 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. The following conditions apply:

- a. The child's parents shall be notified immediately of that suspension and of the time, purpose, and location of the CSC meeting and of their right to attend the meeting.
- b. That suspension remains in effect only for the duration of the emergency.

4. If it is determined that the child requires a change in educational placement, the CSC or, in the case of a child with a disability in a non-DoDDS school, authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

## Appendix C to Part 57—The National Advisory Panel (NAP) on the Education of Dependents With Disabilities

### A. *Membership*

The NAP shall meet as needed in publicly announced, accessible meetings open to the general public and shall comply with DoD Directive 5105.4<sup>1</sup>. The NAP members, appointed by the Secretary of Defense, or designee, shall include at least one representative from each of the following groups.

1. Persons with disabilities
2. The DoDDS special education teachers
3. The DoDDS regular education teachers.
4. Parents of children, ages 3 to 21, inclusive, who are receiving special education from the DoDDS.
5. The staff personnel of the DoDDS Headquarters.

6. Special education program managers from the DoDDS field activities.

7. Representatives of the Military Departments and overseas commands, including providers of related services.

8. Providers of the DoD early intervention services.

9. Other appropriate persons.

### B. *Activities*

1. The NAP shall perform the following activities:

a. Review information about improvements in service provided to children with disabilities, ages 3 to 21, inclusive in the Department of Defense.

b. Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

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

d. Review the findings of fact and decisions of each impartial due process hearing conducted under appendix F of this part.

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

f. Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the special education program.

g. Comment publicly on rules or standards about the education of children with disabilities, ages 3 to 21, inclusive.

h. Perform such other tasks as may be requested by the USD(P&R) or the Director, DoDDS.

2. The NAP members shall serve under appointments that shall be for a term not to exceed 3 years.

### C. *Reporting Requirements*

Submit an annual report of the NAP's activities and suggestions to the USD(P&R) and the Director, DoDDS, by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.<sup>2</sup>

## Appendix D to Part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services

### A. *Committee Membership*

The committee shall meet at least twice yearly to facilitate collaboration in early intervention, special education, and Medically Related Services (MRS) in the Department of Defense. The committee shall consist of the following members:

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. Representatives of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

<sup>3</sup> Copies of the appropriate forms are available at every school office.

<sup>4</sup> See footnote 1 to section A. of this appendix.

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup> See footnote 1 to section A. of this appendix.

4. Representatives from the DoD school systems (domestic and overseas).
5. Representatives 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 (overseas and domestic) in the coordination of services among providers of early intervention, special education, and MRS.
3. Ensure compliance in the provision of early intervention services for infants and toddlers and special education and related services for children ages 3 to 21, inclusive.
4. Oversee the coordination of early intervention, special education, and related services.
5. Review the recommendations of the NAP and the Early Intervention ICC to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).
6. Promote the coordination of services and information sharing among the providers of early intervention, special education, and MRS.
7. Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and MRS in the DoDDS or the EIP through the Military Departments.

### Appendix E to Part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention

#### A. Council Membership

The USD(P&R) shall appoint members to the ICC. The Council shall meet at least yearly in publicly announced, open meetings that are accessible to the general public and shall comply with DoD Directive 5105.4.<sup>1</sup> The Council shall be comprised of the following:

1. *Parents.* At least 20 percent of the members shall be parents with infants or toddlers with disabilities or children ages 12 or younger with disabilities, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler or a child age 6 or younger.
2. Representatives of the Surgeons General of the Military Departments.
3. Representatives of the family support programs of the Military Departments.
4. Representatives from the ASD(HA).
5. Representative(s) from the DoDDS.
6. A representative from the GC, DoD.

#### B. Responsibilities

1. Advise and assist the Military medical Departments in the performance of their responsibilities, particularly the identification of appropriate resources and Agencies for providing early intervention services and the promoting of inter-Component agreements.

2. Advise and assist the DoDDS on the transition of toddlers with disabilities to preschool services.
3. Identify strategies to address areas of conflict, overlap, duplication, or omission of early intervention services.
4. Review policy memoranda on effective inter-Department and inter-Component collaboration.
5. Review reports of technical assistance and monitoring activities and make recommendations to improve the policies, procedures, programs, and delivery of early intervention services.
6. Make recommendations based on program and operational information for changes in the policy, procedures, budget, organization, and general management of the EIPs.
7. Provide advice and technical assistance in the establishment, membership, and operation of installation or command level ICCs.
8. When necessary, establish committees for short-term purposes comprised of parents of children with disabilities, service providers, and representatives of professional groups.
9. Submit an annual report of its activities and suggestions to the USD(P&R) by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.<sup>2</sup>

#### C. Procedures

1. The USD(P&R) shall nominate and select all members to the ICC to include those listed in section A.1. of this appendix.
2. Appointments shall be for a term not to exceed 3 years except for DoD personnel who are not representing the parent category of membership.
3. The USD(P&R), or designee, shall call and conduct the meeting of the Council.

### Appendix F 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 Instruction and, as the case may be, the cognizant Military Department or the DoDDS are afforded impartial mediation and/or impartial due process hearings and administrative appeals about the provision of early intervention services, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with 20 U.S.C. 921 *et seq.* and 1400 *et seq.*

#### B. Mediation

1. Mediation may be initiated by either a parent or the Military Department concerned, or the DoDDS to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the FAPE provided to, a child age 3 to 21, inclusive. The cognizant Military Department, rather than the DoDDS,

shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a formal due process hearing authorized by this appendix. Any request by the DoDDS or the Military Department for a hearing under this appendix shall state how that requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

#### C. Hearing Administration

1. The Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by sections D. through G. 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 territory or possession of the United States who are independent of the DoDDS or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the Government, by counsel, and by persons with special knowledge or training with respect to the problems of individuals with disabilities. The DOHA Department counsel normally shall appear and represent the DoDDS 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 Department responsible under this Instruction for delivering early intervention services shall either provide its own counsel or request counsel from DOHA.

#### D. Hearing Practice and Procedure

##### 1. Hearing

- a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services 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 Department concerned shall be the only parties to a hearing conducted under this appendix.

- b. 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 DoDDS, may

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup> See footnote 1 to section A. of this appendix.

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 DoDDS shall be the only parties to a hearing conducted under this appendix.

c. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DOHA. The petitioner shall deliver a copy of the petition to the opposing party (i.e., the parent or the school principal, for the DoDDS, or the military MTF commander, for the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete on mailing. When the DoDDS or the Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

d. An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, within 15 calendar days of 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 on mailing.

e. In 10 calendar days after receiving 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.

f. The questions for adjudication shall be based on the petition and the answer, if a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

g. The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

h. 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" (Rules 1-1102) of 28 U.S.C., serving as a guide.

i. 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 DoDDS or the Military Department concerned and to call and question witnesses.

j. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the DoDDS or the Military 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, if the parents have the right to an

open hearing on waiving in writing their privacy rights and those of the individual with disabilities.

k. 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.

l. 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.1.m. of this appendix.

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

n. The hearing officer shall decide when the record in a case is closed.

o. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix, is pending.

## 2. Discovery

a. Full and complete 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.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the DoDDS or the Military Department concerned shall be made available free of charge to a parent.

## 3. Witnesses; Production of Evidence

a. 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.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoDDS or the Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. 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 be shown, on motion of a party.

d. 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.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, on the certification provided for in paragraph D.3.d. of this appendix, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

## 4. Hearing Officer's Findings of Fact and Decision

a. 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.

b. The Director, DOHA, shall forward to the Director, DoDDS, or to the Military Department concerned, and to the NAP or the ICC, as appropriate, 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.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. The DoDDS or the Military Department concerned shall implement a decision as soon as practicable after it becomes final.

## E. 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 issue a decision in the period fixed by paragraph D.1.o. of this appendix.

2. The DoDDS or the Military Department concerned may oppose a request to waive that 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 D.1.h. of this appendix. A party submitting such documents shall provide copies to all other parties.

## F. 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, within 5 calendar days of receipt of the findings of fact and decision. 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 10 calendar days of filing 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 15 calendar 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 60 calendar days of receiving timely submitted replies under section F.2. of this appendix. The DOHA Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

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 20 U.S.C. 921 *et seq.* and 1400 *et seq.*, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this Instruction 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.

#### *G. 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<sup>1</sup>.

Dated: January 9, 1997.

L.M. Bynum,  
*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 97-888 Filed 1-16-97; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### RIN 1024-AC30

### Badlands National Park, Commercial Vehicles

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is implementing this final rule to

exempt local commercial vehicle traffic on the 5.8 miles of park roads between the park's Northeast and Interior Entrances from the general prohibition on the use of NPS roads by commercial vehicles. The Superintendent will retain sufficient discretion: To require permits for local commercial vehicles traveling within or through the park; establish terms and conditions of such permits; and annually establish and adjust fees for such use based on current administrative costs. The rule will prohibit the transportation of hazardous materials on all park roads, except in limited circumstances. The rule will also prohibit certain oversize/overweight vehicles on all park roads, except in limited circumstances.

**EFFECTIVE DATE:** This rule is effective on February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Irvin L. Mortenson, Superintendent, Badlands National Park, P.O. Box 6, Interior, SD 57750. Telephone 605-433-5361.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

South Dakota Route 240, from Exit 131 on Interstate 90, passes through the northeast corner of Badlands National Park, traversing the Badlands "Wall" at Cedar Pass and intersects with South Dakota Route 377 which, in turn, connects with South Dakota Route 44 at the town of Interior. In 1929, Congress passed legislation authorizing the establishment of Badlands National Monument, subject to the condition "that the State of South Dakota first construct 30 miles of highways through the 'proposed park' area in a manner satisfactory to the Secretary of Interior." After the State of South Dakota completed the highway construction, Badlands National Monument was proclaimed on January 25, 1939. In 1941, the State relinquished ownership to roads within the Monument's boundary.

A general park regulation, 36 CFR 5.6, prohibits commercial traffic in National Parks. Under the final regulation, local commercial traffic would be allowed to use the park road connecting the Northeast entrance and the Interior entrance. The transportation of certain hazardous materials and oversize/overweight vehicles on park roads will be prohibited, except as permitted by the Superintendent. The NPS may allow transportation of certain hazardous materials on park roads as necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the Superintendent.

The paving of South Dakota Highway 44 in 1986 considerably changed the park's recreational and commercial vehicle patterns and number. In December of 1989, in response to these increases, Badlands National Park mailed over 500 "scoping brochures" to various organizations, agencies and individuals seeking public participation in the development of alternatives for the management of commercial traffic in the park. A public scoping meeting was held on January 24, 1990, in Interior, South Dakota, attended by approximately 115 people. Following the public meeting, written comments also were solicited. Public input was received during review of the environmental assessment prepared for the regulation of commercial traffic. This review occurred in April of 1990. Public comments received during that time and NPS review of the issues are reflected in the proposed rule.

##### Existing Conditions

Local commercial vehicles and some long haul trucks continue to travel through the Badlands National Park's northeast corner on 5.8 miles of park road between the Northeast and the Interior Entrances. South Dakota Route 240 connects with the Badlands Loop Road at the Northeast Entrance and South Dakota Route 377 connects to the park road at the Interior Entrance. South Dakota Routes 240 and 377 are exterior to park boundaries and are maintained by the State of South Dakota only up to the park boundaries. Inside the park, road maintenance is the responsibility of the NPS.

South Dakota Routes 240 and 377 are two-lane, paved rural highways designed for a 55-mph speed limit for all vehicle types. The park roads are two-lane, paved roads designed for 45 mph and 25 mph speed limits. Their purpose, as defined by the *Park Road Standards for the National Park System*,

\* \* \* "(R)emains in sharp contrast to that of the Federal and State highway systems. Park roads are not intended to provide fast and convenient transportation; they are intended to enhance visitor experience while providing safe and efficient accommodation of park visitors and to serve essential management access needs. They are not, therefore intended nor designed as continuations of the State and Federal-aid network."

##### Conclusion

Based on available data on road use and relevant environmental analysis, the impact of local commercial traffic on park roads within Badlands National Park is not sufficient to compel the NPS to prohibit all local commercial traffic on park roads between the Northeast

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.