

THE ORIGINS AND DEVELOPMENT OF “NATURAL ENVIRONMENT” IN THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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This paper discusses the origins and evolution of the phrase “natural environments” as it appears in Part C of the Individuals with Disabilities Education Act (IDEA), the federal law that governs early intervention, special education, and related services for children with disabilities. Under IDEA’s requirements, to the maximum extent appropriate, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.¹ In addition, states that participate in the Part C program must adopt policies and procedures to ensure compliance with this requirement.² IDEA defines natural environments as “settings that are natural or typical for a same-aged infant or toddler without a disability[.]”³

When originally enacted, IDEA’s predecessor, the Education of the Handicapped Act (EHA), made no mention of natural environments. The concept first appeared when the Department of Education promulgated regulations to implement the EHA Amendments of 1986. Beginning with its initial appearance, the concept has undergone the following developments:

- **1989 EHA regulations.** “Natural environment” appears in an explanatory note that discusses the appropriate locations for early intervention services.
- **1991 IDEA amendments.** “Natural environment” is incorporated into the text of the statute: early intervention services must now be provided in natural environments.
- **1993 IDEA regulations.** “Natural environment” is incorporated into the body of the regulations; early intervention services must be provided in natural environments. In addition, individual family service plans (IFSPs) must now specify the natural environments in which early intervention services will be provided.
- **1997 IDEA amendments.** Individual state programs must adopt procedures to ensure that early intervention services are provided in natural environments. Non-natural environments are appropriate only if outcomes cannot be achieved satisfactorily in natural environments. Written IFSPs must justify any services provided in non-natural settings.
- **2000 IDEA proposed regulations.** The Department of Education issues a notice of proposed rulemaking which seeks to clarify the meaning of natural environments. The proposed rules are later withdrawn.

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¹ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1432(4)(G).

² See 20 U.S.C. § 1435(a)(16); see also 34 C.F.R. § 303.167(c)(1).

³ Early Intervention Program for Infants and Toddlers with Disabilities, 34 C.F.R. § 303.26 (forthcoming Sept. 2011), available at <http://www2.ed.gov/policy/speced/reg/idea/part-c/idea-part-c-final-reggs.pdf>.

- **2004 IDEA amendments.** Congress adds a statutory provision, which emphasizes that parents, together with IFSP teams, determine the propriety of providing services in natural environments.
- **2007 IDEA proposed regulations.** The Department of Education issues a notice of proposed rulemaking. The proposed regulations would implement the 2004 Amendments.
- **2011 IDEA final regulations.** In September, 2011, the Department of Education released unofficial final regulations that implement the 2004 amendments and restructure the natural environment provisions.

A detailed exploration of the natural environment provisions follows.

1) **Education of the Handicapped Act Amendments of 1986: a family-based focus for infants and toddlers.**

IDEA's natural environment provisions can be traced to the Education of the Handicapped Act Amendments of 1986.⁴ These amendments marked the creation of EHA's Part H, a state grant program for children with disabilities from birth to age two. "The primary purpose of the early intervention program [was] to enhance the development of the infant," and in order to serve this new age group, the legislation called for a family-based approach to intervention.⁵ Thus, to receive federal funding, states needed to provide all eligible children with individualized family service plans (IFSPs) based on multi-disciplinary evaluations that assessed the needs of both the children and their parents.⁶ When the Department of Education promulgated regulations to implement the 1986 Amendments, it too noted a family focus at the core of Part H:

Part H recognizes the unique and critical role that families play in the development of infants and toddlers who are eligible under this Part. It is clear, both from the statute and the legislative history of the Act, that the Congress intended for families to play an active, collaborative role in the planning and provision of early intervention services.⁷

In hearings on the pending amendments, several witnesses appeared before the legislative committee and urged that this family-oriented focus meant that service locations should provide family-directed support. For example, one witness stated: "There is a need for in home, center and community based programs with an emphasis on the family. The parents have to know what to do

⁴ Education of the Handicapped (EHA) Amendments of 1986, Pub. L. 99-457, 100 Stat. 1145 (1986). See also Antonis Katsiyannis, Mitchell L. Yell & Renee Bradley, *Reflections on the 25th Anniversary of the Individuals with Disabilities Education Act*, Remedial and Special Education Journal Vol. 22 No. 6 at 324-334 (December 2001).

⁵ See S. Rep. No. 99-315, at 10 (1986) ("The primary purpose of early intervention programs is to enhance the development of the infant. To meet this goal, early intervention programs and services are focused on the infant and the family unit."). See also EHA Amendments of 1986, Pub. L. 99-457, § 671, 100 Stat. 1145 (1986) ("(a) FINDINGS—The Congress finds that there is an urgent and substantial need . . . (4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps. (b) POLICY—It is the policy of the United States to provide financial assistance to States—(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families[.]").

⁶ Archived Information: Implementation of the Part H Program, <http://www2.ed.gov/pubs/OSEP95AnlRpt/ch2a-1.html>.

⁷ Early Intervention Program for Infants and Toddlers with Disabilities; Final Rule, 54 Fed. Reg. 26,306. (June 22, 1989) (to be codified at 34 C.F.R. pt. 303).

with the child when they're not in school.”⁸ Similarly, another claimed that “[children are] best served in the home where the parents can learn to handle them right within the routine of normal child care.”⁹ Others urged that providers should furnish services in least restrictive environments. For some, this meant “within the family, and . . . [included] choices of programs that [were] home based, center based, regular daycare or other settings.”¹⁰ Others, however, defined least restrictive environments not as family-oriented settings, but rather, as integrated settings “with [a child’s] non-handicapped peers.”¹¹

Once passed into law, the new Part H program did not include a provision requiring or even encouraging the provision of services in integrated settings, but it did define “early intervention services” to include “family training, counseling, and home visits.”¹² Nonetheless, the testimony offered during subcommittee hearings articulated two key objectives—that service locations should aim to integrate disabled children with their non-disabled peers or alternatively, provide family-directed support—as principles underlying the choices between service locations. The new Part H program did not originally include a provision on natural environments, but these two principles continue to shape policies on service locations and inform the meaning of “natural environments” to this day.

2) Education of the Handicapped 1989 regulations: “natural environment” appears in an explanatory note and aims for integration.

In 1989, the Department of Education promulgated regulations to implement the 1986 EHA Amendments. The term “natural environments” made its first appearance in the EHA regulations as an explanatory note¹³ to § 303.12, which governed early intervention services. § 303.12(b), labeled *location¹⁴ of services*, stated: “to the extent appropriate, early intervention services must be provided in the types of settings in which infants and toddlers without handicaps would participate.”¹⁵ The note then followed, explaining:

[T]he appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments (e.g., the home, daycare centers or other community settings). Thus, it is recommended that services be community

⁸ The Education of the Handicapped Amendments of 1986: Hearings on S. 2294 Before the Subcomm. on Select Educ. of the H. Comm. on Educ. and Labor, 99th Cong. 230 (1986) (statement of John Watts on behalf of National Society for Children and Adults With Autism).

⁹ *Id.* at 206 (statement of Dr. Verna Hart on behalf of United Cerebral Palsy Associations, Inc.).

¹⁰ *Id.* at 171 (statement of Martha Ziegler on behalf of National Network of Parent Centers).

¹¹ *Id.* at 285 (statement of Joan Sylvester, executive director, Vermont Association for Retarded Citizens).

¹² EHA Amendments of 1986, Pub. L. 99-457, § 672(2)(E)(i), 100 Stat. 1145, 1146 (1986).

¹³ The final regulations contained a series of notes to provide explanatory material for meeting specific legal requirements. Where a note sets forth a permissible course of action, a State can either rely upon the note or take any other course of action that meets the applicable requirements. The explanatory note that appeared in the 1986 regulations has since been revised and relocated. See Section 4, *infra*.

¹⁴ In addition, “location” was defined in § 303.344 to mean “subject to § 303.12(b), where a service is provided (e.g., in the child’s home, early intervention centers, hospitals, and clinics, or other settings, as appropriate to the age and needs of the individual child).” This definition has since been changed. See Index, *infra* for current 34 C.F.R. § 303.344(d)(3) (“location” means the actual place or places where a service will be provided.”).

¹⁵ Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulation, 54 Fed. Reg. 26,306 (June 22, 1989) (to be codified at 34 C.F.R. pt. 303). See also Appendix, *infra*.

based, and not isolate an eligible child or the child's family from settings or activities in which children without handicaps would participate.¹⁶

The explanatory note, which adheres to the principle that service locations should integrate a child with his non-disabled peers, appeared in the regulations as a response to public criticisms of earlier-proposed regulations. The earlier-proposed draft contained just one provision that only briefly discussed service locations. That provision defined "special instruction," a component of early intervention services, as "instruction provided to infants and toddlers and their families by special educators or other qualified personnel."¹⁷ The provision further explained that "special instruction may be provided in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child."¹⁸

Public commenters criticized the proposed regulations for lacking both (1) a provision related to least restrictive environments and (2) a statement concerning the delivery of services in integrated settings with non-disabled children.¹⁹ Additionally, some commenters thought the definition of "early intervention services" should include services delivered in community-based settings.²⁰ The Secretary addressed these criticisms in the preamble of the final regulations; he agreed that the final regulations should address the provision of services for children and their families in "setting[s] that do not isolate the child or family members from activities or settings" in which non-disabled children and their families participate.²¹ The response was to add both § 303.12(b), "which requires services to be provided in an integrated setting to the extent appropriate" and its explanatory note.²²

3) Individuals with Disabilities Education Act Amendments of 1991: "natural environment" incorporated into the text of the statute.

In 1990, Congress renamed the Education of All Handicapped Children's Act as the Individuals with Disabilities Education Act.²³ A provision on natural environments first appeared in IDEA when Congress passed the IDEA Amendments of 1991.²⁴ As amended, the act defined early intervention services as developmental services which, "to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate."²⁵ The amendments also imposed a new requirement on the IFSP: written IFSPs now needed to contain "a statement of the natural environments in which early intervention services shall be appropriately provided."²⁶

Despite the reference to "natural environments," the statute provided no definition. Both the House and Senate reports leading up to the legislation, however, provided guidance that highlighted Congress' intent to integrate disabled infants and toddlers with their non-disabled peers:

¹⁶*Id.* at 26,313 (emphasis added). *See also* Appendix, *infra*.

¹⁷ Early Intervention Program for Infants and Toddlers with Handicaps; Notice of Proposed Rulemaking, 52 Fed. Reg. 44,352, 44,356 (Nov. 18, 1987). *See also* Appendix, *infra*.

¹⁸ *Id.*

¹⁹*See* Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulation, Analysis of Comments and Changes, 54 Fed. Reg. 26,306 (June 22, 1989) (to be codified at 34 C.F.R. pt. 303).

²⁰ *See id.*

²¹ *Id.*

²² *Id.* *See also* text of note *supra*, page 3.

²³ EHA Amendments of 1990, Pub. L. 101-476, 104 Stat. 1103 (1990).

²⁴ IDEA Amendments of 1991, Pub. L. 102-119, §§ 12,14, 105 Stat. 587, 596-97 (1991).

²⁵ IDEA Amendments of 1991, Pub. L. 102-119, § 12, 105 Stat. 587, 596 (1991).

²⁶ IDEA Amendments of 1991, Pub. L. 102-119, § 14, 105 Stat. 587, 597 (1991).

The [proposed] amendment authorizes the funding of Statewide projects . . . to redesign the delivery of early intervention services . . . from segregated to integrated environments. [This enables the Secretary] to assist programs, which have traditionally provided services to infants and toddlers with disabilities and their families in isolation from infants and toddlers without disabilities, to begin to provide early intervention services in natural environments, including the home and community settings in which children without disabilities would participate.²⁷

The reports also emphasized the flexibility involved in deciding the proper location of services:

The term “natural environments” refers to settings that are natural or normal for age peers who have no apparent disability. The descriptor “to the maximum extent appropriate” is not meant to qualify the appropriateness of the natural environment as the primary setting for the child. Rather, it is intended to allow flexibility and individualized programming for the infant or toddler with a disability. For example, the primary natural environment for an infant or toddler is the home. Where group settings are utilized, the infant or toddler with a disability should be placed in groups with age peers without disabilities, such as play groups, day care centers, or whatever typical group setting exists for infants and toddlers without disabilities.²⁸

While it is unclear the extent to which testimonies offered at legislative hearings influence the legislative process, the House and Senate reports closely track testimony offered during subcommittee hearings on the pending amendments. There, most discussions concerning natural environments focused on integrating disabled infants and toddlers with their non-disabled peers. For example, one expert testified and recommended that “services and supports should be provided in settings for infants and toddlers that are the same settings that would be natural for similar services and supports for infants and toddlers without disabilities.”²⁹ Echoing these claims, another expert stated that “segregation of [] children with disabilities into specialized programs does not make sense. As we strive for a community-based system of integrated services for persons with disabilities across the life span, we must start at the beginning.”³⁰ Although a family focus was still an essential element of the 1991 Amendments, at the same time, notions of integration also began to influence policymakers.

4) Individuals with Disabilities Education Act 1993 Regulations: “natural environment” incorporated into the body of the regulations.

In 1993, the Department of Education promulgated final regulations to implement the IDEA Amendments of 1991. Before final promulgation, the Department released a notice of proposed rulemaking, which explained that the regulations would define “natural environments” in conformity with the legislative history of the 1991 Amendments.³¹ Once adopted, the final regulations

²⁷ H.R. Rep. No. 102-198 at 9 (1991); S. Rep. No. 102-84 at 18 (1991) (repeating the House Report verbatim).

²⁸ H.R. Rep. No. 102-198 at 14 (1991); S. Rep. No. 102-84 at 21 (1991) (repeating the House Report verbatim).

²⁹ Reauthorization of Part H of the Individuals with Disabilities Education Act: Hearing before the Subcommittee on Disability Policy of the Committee on Labor and Human Resources, 102nd Cong. 111 at 122 (March 15, 1991) (statement of Dr. Philippa Campbell of Consortium of Citizens with Disabilities).

³⁰ Reauthorization of Part H of the Individuals with Disabilities Education Act: Hearing Before the Subcommittee on Disability Policy of the S. Committee on Labor and Human Resources, 102nd Cong. 167 (1987) (statement of Dr. Mary Bruder, Associate Pediatrics Professor, University of Connecticut School of Medicine; representing Consortium for Citizens with Disabilities).

³¹ Early Intervention Program for Infants and Toddlers with Disabilities; Notice of Proposed Rulemaking, 57 Fed. Reg. 18,986 (May 1, 1992) (“A definition of the term ‘natural environments’ derived from the legislative history of Public Law 102-119

incorporated the natural environment requirement into the body of the regulations for the first time. A definition now appeared in § 303.12(b) (formerly labeled *location of services*). As amended, § 303.12(b) stated:

Natural environment. (1) To the *maximum* extent appropriate to the needs of the child, early intervention services must be provided in *natural environments*, including the home and community settings in which children without disabilities participate. (2) As used in paragraph (b)(1) of this section, *natural environments* means settings that are natural or normal for the child's age peers who have no disability.³²

In addition, and consistent with the statutory amendments, § 303.344(d)(1)(ii) now required the IFSP to specify the natural environments in which early intervention services would be provided. Finally, the explanatory note that had initially appeared after § 303.12,³³ was modified and relocated. It now appeared after § 303.344, which governed the content of the IFSP. The language of the new note differed slightly from that of the earlier-published regulations. It now included a “maximum-extent-appropriate” caveat that added flexibility to the earlier rule by acknowledging that natural environments would not always be appropriate for the needs of each child. The following table shows the changes in the note’s language:

<u>1989 EHA REGULATIONS</u> <u>34 C.F.R. § 303.12, Note 1</u>	<u>1993 IDEA REGULATIONS</u> <u>34 C.F.R. § 303.344, Note 1</u>
“For these and other eligible children, <i>it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments.</i> ” ³⁴	“For these and other eligible children, early intervention services <i>must</i> be provided in natural environments . . . <i>to the maximum extent appropriate to the needs of the child.</i> ” ³⁵

In the preamble to the regulations, the Secretary also discussed concerns raised by the public during the comment stage of rulemaking. Public commenters requested a list of examples that would explain when a child should receive services in natural settings and inquired about the amount of flexibility providers had in determining a child’s natural environments. They also urged that the needs of the family not be ignored in determining service locations and suggested that, because center-based services could meet family needs for support and collegiality, such settings might be preferred for certain services.³⁶ In response, however, the Secretary stated only that:

would be included . . . The statute adds a requirement that an IFSP contain a statement of the natural environments in which early intervention services will appropriately be provided. This requirement would be incorporated in the regulations in § 303.344(d)(1)(ii) with a cross-reference to the ‘natural environments’ provisions in § 303.12(b). The regulatory requirement that the IFSP include the location of the services would be retained, and a new definition of ‘location’ would be added in § 303.344(d)(3).”.

³² Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulation, 58 Fed. Reg. 40,958, 40,961 (July 30, 1993) (to be codified at 34 C.F.R. § 302.12(b)) (emphasis added to reflect new changes). See also Appendix, *infra*.

³³ See Section 2, *supra*.

³⁴ Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulation, 54 Fed. Reg. 26,306 (June 22, 1989) (emphasis added to reflect changes).

³⁵ Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulation, 58 Fed. Reg. 40,958, 40,974 (July 30, 1993) (to be codified at 34 C.F.R. § 303.344) (emphasis added to reflect changes).

³⁶ *Id.* at 40,982.

[N]o further guidance is appropriate at this time . . . [D]ecisions on the location of service delivery are made in the development of the individualized family service plan . . . The Secretary contemplates that the range of available options will be reviewed at the IFSP meeting described in § 303.342, in which the parents of the child are full participants. With respect to the comment on center-based services, *the Secretary emphasizes that decisions on the location of service delivery must be made on an individualized basis in accordance with the needs of the child and the family.*³⁷

5) Individuals with Disabilities Education Act Amendments of 1997: Congress adds to the “natural environment” provisions.

The IDEA Amendments of 1997 introduced two modifications to the natural environment provisions.³⁸ First, IDEA now required individual states to adopt policies and procedures that would ensure:

- (A) to the maximum extent appropriate, early intervention services are provided in natural environments; and
- (B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.³⁹

Second, the statute provided that written IFSPs must contain “a justification of the extent, if any, to which the services will not be provided in a natural environment.”⁴⁰ As later explained by the Secretary of Education, these new amendments “[made] it clear that exceptions [to the natural environment requirement] are anticipated, and that *the provision of services in settings other than natural environments may be necessary under certain conditions.*”⁴¹ The IDEA amendments of 1997 also eliminated Part H and moved the Early Intervention Program to Part C.

6) Individuals with Disabilities Education Act 1998 Regulations: Department of Education implements Congress’ expansions.

In 1998, the Department of Education promulgated regulations to implement the 1997 IDEA Amendments. Two new regulations reflected the expanded natural environment provisions, repeating the 1997 statutory additions verbatim in §§ 303.167 and 303.344(d)(1)(ii).⁴² In addition, the regulations moved the definition of natural environments from § 303.12(b) to a new section, § 303.18, to make the definition easier to locate.⁴³ Despite the move, the definition did not change. The final regulations included the following provisions on natural environments, which had remained in effect for over a decade, finally updated by regulations promulgated in September of 2011:

§ 303.12 **Early intervention services.**

³⁷*Id.* (emphasis added).

³⁸ IDEA Amendments of 1997, Pub. L. 105-17, § 631, 111 Stat. 37, 106 (1997).

³⁹ *Id.* § 635 at 110.

⁴⁰ *Id.* § 636 at 111.

⁴¹ Early Intervention Program for Infants and Toddlers with Disabilities; Notice of Proposed Rulemaking, 65 Fed. Reg. 53,808 at 53,811 (Sept. 5, 2000) (emphasis added). *See also* Section 7, *infra*.

⁴² Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulation, 63 Fed. Reg. 18,289, 18,295 (April 14, 1998) (to be codified at 34 C.F.R. part 303).

⁴³ *Id.* at 18,290.

(b) *Natural environments.* To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.

§ 303.18 **Natural environments.**

As used in this part, *natural environments* means settings that are natural or normal for the child's age peers who have no disabilities.

§ 303.167 **Individualized family service plans.**

Each application must include—(c) Policies and procedures to ensure that—(1) To the maximum extent appropriate, early intervention services are provided in natural environments; and (2) The provision of early intervention services for any infant or toddler occurs in a setting other than natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

§ 303.344 **Content of an IFSP**

(d)(1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph(c) of this section, including—(ii) the natural environments, as described in § 303.12(b), and § 303.18 in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment.

Note 1: (Following § 303.344) With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.⁴⁴

7) **Individuals with Disabilities Education Act 2000 Notice of Proposed Rulemaking: Department of Education proposes clarifications to meaning of “natural environments.”**

In September 2000, the Department of Education issued a Notice of Proposed Rulemaking (NPRM), in which it attempted to clarify then-existing natural environment provisions.⁴⁵ The Secretary of Education later withdrew the proposed rules but indicated that withdrawal had resulted from an approaching statutory reauthorization to IDEA, and not from defects in the proposed

⁴⁴ Note 2: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

⁴⁵ Early Intervention Program for Infants and Toddlers with Disabilities; Notice of Proposed Rulemaking, 65 Fed. Reg. 53,808 (Sept. 5, 2000).

regulations.⁴⁶ Indeed, the withdrawal notice indicates that the natural environment provisions were, at the time of withdrawal, still issues of “intense interest.”⁴⁷ Thus, despite the withdrawal, the 2000 NPRM offers important guidance on the proper interpretation of “natural environments.”

a) Proposed changes suggest only minor revisions to the natural environment provisions.

Overall, the proposed rules would not have made many substantive changes to the natural environment provisions. Instead, they sought primarily to clarify the meaning of natural environments, with nearly all changes emphasizing the individualized nature of the IFSP process, an approach which, according to the Secretary, was consistent with the historical development of the natural environment provisions.⁴⁸ Furthermore, most proposed changes would have merely reorganized then-existing regulations to “highlight the crucial role that the IFSP team (including the parents) plays in implementing the natural environments provisions.”⁴⁹

In addition to restructuring the regulations for enhanced clarity, at proposed § 303.341, labeled “Policies and procedures on natural environments,” the changes sought to provide more detailed instruction on the processes involved in choosing service locations. One change stipulated that the IFSP team needed to make separate decisions about service locations for each service provided.⁵⁰ This reinforced the Secretary’s position that some services for a child were best provided in the home while others were better provided in group settings.⁵¹ Proposed § 303.341 also set forth a two-step decision-making process. First, the IFSP team needed to decide if providers could meet the child’s needs in a natural environment. Second, if providers could not meet the child’s needs in such a setting, could the IFSP team consider other, non-natural environments.⁵² Finally, proposed § 303.341 addressed family support services, clarifying that the natural environment provisions did not apply to “services listed in an IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child.”⁵³

The proposed rules would have also revised the requirement that the IFSP include a written justification of the extent to which providers furnished services in non-natural settings. The proposed changes provided that the written justifications must satisfy three new requirements: (1) include a statement describing the basis of the decision to provide services in non-natural environments; (2) be based on the needs of the child; and (3) “if appropriate, be based on the nature of the service required to meet the unique needs of the child.”⁵⁴ In explaining the proposed change, the Secretary noted services for certain types of disabilities demanded specialized settings. For example, auditory services for deaf children sometimes require quiet, noise-controlled settings while services for medically fragile children call for sterile environments.⁵⁵ Both the proposed rule and this explanation

⁴⁶ Early Intervention Program for Infants and Toddlers with Disabilities; Withdrawal of Notice of Proposed Rulemaking, 67 Fed. Reg. 1,410 (Jan. 10, 2002).

⁴⁷ *Id.*

⁴⁸ Early Intervention Program for Infants and Toddlers with Disabilities; Notice of Proposed Rulemaking, 65 Fed. Reg. 53,808, 53,809 (Sept. 5, 2000).

⁴⁹ *Id.* at 53,810.

⁵⁰ *See id.*, proposed § 303.341(b) at 53,843. *See also* Appendix, *infra*.

⁵¹ *See id.* at 53,810-53,811.

⁵² *See id.*, proposed § 303.341(b) at 53,843. *See also* Appendix, *infra*.

⁵³ *Id.*

⁵⁴ *Id.*, proposed § 303.341(c). *See also* Appendix, *infra*.

⁵⁵ *Id.* at 53,811.

were important because they explicitly acknowledged that, in certain circumstances, the unique nature of a child's services would require a deviation from the natural environment.

The most recent regulations do not refer to “nature of services” as a reason for departing from a child's natural environment, but the phrase is nonetheless incorporated into the analysis that appears in the preamble to the regulations. There, the Secretary states: “[W]e recognize that it may not always be practicable or appropriate for infant or toddler with a disability to receive an early intervention service in the natural environment based on either the *nature of the service or the child's specific outcomes*. For example, the IFSP Team may determine that an eligible child needs to receive speech services in a clinical setting that serve only children with disabilities in order to meet a specific IFSP outcome.”⁵⁶ Thus, although the 2011 regulations do not perfectly mirror those proposed in 2000, many of the same principles support both the proposed and adopted policies.

b) Preamble offers insight and corrects misunderstandings.

In the preamble to the NPRM, the Secretary offered a valuable discussion that shed light on the Department of Education's interpretation of natural environments. There, the Secretary articulated the basic principles behind the natural environment provisions:

The basic thrust of the natural environments provisions in the statute and regulations is that, to the maximum extent appropriate, early intervention services are provided in the home of each eligible child, or in community settings in which children without disabilities participate. *The basic principle underlying [the natural environment] requirement is that being in integrated settings with their nondisabled peers will enhance the development of eligible children under this part.* It also prepares the child and family, if the child is “Part B-eligible,” for the experience of receiving services in the least restrictive environment. For a child who is not eligible for part B services and may automatically be integrated in school and in life with nondisabled peers, the child and family would likewise be prepared.⁵⁷

The Secretary also addressed public concerns and corrected misconceptions surrounding natural environments. Importantly, public comment revealed that some had interpreted “natural environment” to mean that, “without exception, early intervention services must be provided *only* in the child's home, or in a community setting in which non-disabled children participate.”⁵⁸ But this limitation was not intended under IDEA.⁵⁹ Rather, the Secretary emphasized that both the statute and regulations, “[made] it clear that exceptions are anticipated, and that the provision of services in settings other than the natural environment may be necessary under certain conditions.”⁶⁰ The Secretary also explained that, even though some thought otherwise, requiring a justification for non-natural service locations helped ensure full consideration of each child's unique needs:

The statutory requirement that the IFSP include a justification of the extent, if any, to which a child will not receive services in a natural environment is a safeguard to ensure that the IFSP team, including the parent, has concluded—only after carefully

⁵⁶ Early Intervention Program for infants and Toddlers with Disabilities; Unofficial Final Regulations (forthcoming Sept. 2011) (manuscript at 154), available at <http://www2.ed.gov/policy/speced/reg/idea/part-c/idea-part-c-final-reg.pdf>.

⁵⁷ *Id.* at 53,810 (emphasis added).

⁵⁸ *Id.* at 53,811.

⁵⁹ *Id.*

⁶⁰ *Id.* at 53,810 (emphasis added).

reviewing all relevant information about the child—that one or more of the services in the child’s IFSP must be provided in a setting other than a natural environment.⁶¹

Finally, in response to public inquiries regarding the loss of parent-to-parent interactions in early intervention centers,⁶² the Secretary noted the importance of parent networking, support, and training that should be addressed as part of developing a child’s IFSP. But he also added:

[T]he parent's need cannot be used as a justification for not providing services to the child in a natural environment . . . *[A]ny justification for the child's services to take place in a setting other than a natural environment must relate to the child's individual needs.*

That said, the proposed regulations clarified that “the provisions on natural environments . . . do not apply to services listed in an IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child (e.g., participation of a parent in a parent-support program).”⁶³ Thus, although parental needs alone cannot justify non-natural settings, services intended solely to meet parent needs could occur outside a child’s natural environment.

8) Individuals with Disabilities Education Act Amendments of 2004: an emphasis on the family’s role in determining whether services occur in natural environments.

In 2004, Congress reauthorized IDEA, making only one revision to the natural environment provisions. The revision, at § 635(a)(16), emphasized the role parents play in deciding whether providers can adequately implement services in a child’s natural environments. It instructs that state systems must include policies and procedures to ensure that:

(B) the provision of early interventions services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, *as determined by the parent and the individualized family service plan team*, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.⁶⁴

The Conference Report released prior to congressional vote on the amendment emphasized the collaborative and family-inclusive nature of decisions concerning natural environments. It provided the following guidance on the revised language:

[T]here may be instances when a child’s [IFSP] cannot be implemented satisfactorily in the natural environment. The Conferees intend that, in these instances, the child’s parents and the other members of the [IFSP] team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided.⁶⁵

9) Individuals with Disabilities Education Act 2011 Regulations: Department of Education restructures and clarifies the meaning of the natural environment provisions.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Cite

⁶⁴ IDEA Amendments of 2004, Pub. L. 108-446, § 635(a)(16), 118 Stat. 2647, 2749 (2004).

⁶⁵ H.R. Conf. Rep. No. 108-779 at 238 (2004).

In 2007, the Department of Education issued a notice of proposed rulemaking⁶⁶ which set forth new regulations that would implement the 2004 IDEA Amendments. The proposed changes sought, in large part, to reorganize the regulations such that they would reflect the 2004 amendments and follow the structure of the statute. On September 6, 2011, the Department of Education released the unofficial⁶⁷ final regulations in which it had adopted nearly all the natural environment provisions proposed in 2007.⁶⁸

a) Final regulations restructure the natural environment provisions but make few substantive changes.

The 2011 regulations made few substantive changes to the natural environment provisions but resulted in a significant reorganization of their content. For example, the regulations removed redundant provisions⁶⁹ and collapsed the definition of natural environments into one section, rather than having it divided across two separate sections (i.e. §§303.12(b) and 303.18).⁷⁰ Consistent with the 2004 amendments, the new regulations also reflected the role played by the family in determining the child's service locations: § 303.126(b) provides that services can occur "in settings other than the natural environment that are most appropriate, *as determined by the parent and the IFSP Team*, only when intervention services cannot be achieved satisfactorily in a natural environment."⁷¹ In addition to these changes, the regulations also clarify the process involved in determining a child's service locations, noting, in particular, that decisions to provide services in non-natural settings should be "based on the child's outcomes that are identified by the IFSP Team."⁷² The final regulations include the following provisions on natural environments:

§ 303.13 Early intervention services.

(a) General. Early intervention services means developmental services that—(8) To the maximum extent appropriate, are provided in natural environments, as defined in §303.26 and consistent with §§303.126 and 303.344(d).

§ 303.26 Natural environments.

Natural environments means settings that are natural or typical⁷³ for a same-aged infant or toddler without a disability, may include the home or

⁶⁶ Early Intervention Program for Infants and Toddlers with Disabilities; Notice of Proposed Rulemaking, 72 Fed. Reg. 26,456 (May 9, 2007).

⁶⁷ The Part C regulations are posted on the department's website at <http://www2.ed.gov/about/offices/list/osers/news.html>. The regulations become effective upon publication in the Federal Register.

⁶⁸ See Appendix, *infra* for a comparison of the 2007 proposed and the 2011 final regulations.

⁶⁹ See Early Intervention Program for Infants and Toddlers with Disabilities; Notice of Proposed Rulemaking, 72 Fed. Reg. 26,456, 26,463 (May 9, 2007) ("Current § 303.167(c) would be removed because the requirements regarding IFSPs and natural environments would be included in proposed §§303.13(a)(8), 303.26, and 303.344(d)(1)(ii).") See also *id.* at 26,457 ("[T]hese proposed regulations do not contain notes following the regulatory text as in the current regulations. Where necessary and relevant, language from the notes in the current regulations has been incorporated into the proposed regulations.").

⁷⁰ See Early Intervention Program for Infants and Toddlers with Disabilities; Final Regulations, § 303.26 (forthcoming Sept. 2011) (manuscript at 275), available at <http://www2.ed.gov/policy/speced/reg/idea/part-c/idea-part-c-final-regs.pdf>.

⁷¹ *Id.* at 288.

⁷² *Id.*, §303.344(d)(1)(ii)(B)(3) at 319.

⁷³ See *id.*, Analysis of Comments and Changes at 45 ("The term 'normal' was introduced into the regulations implementing the Individuals with Disabilities Education Act Amendments of 1991 and at that time, 'normal' was commonly used and accepted.

community settings,⁷⁴ and must be consistent with the provisions of §303.126.

§ 303.126 Early intervention services in natural environments.

Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided—

- (a) To the maximum extent appropriate, in natural environments; and
- (b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team,⁷⁵ only when early intervention services cannot be achieved satisfactorily in a natural environment.

§ 303.344 Content of an IFSP.

- (c) Results or outcomes. The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family[.]
- (d) Early intervention services. (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including—
 - (ii) (A) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.
 - (B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be--
 - (1) Made by the IFSP Team (which includes the parent and other team members);
 - (2) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and

However, we agree with commenters that ‘normal’ is less commonly used today and have replaced the word ‘normal’ with the word ‘typical’ in the definition of natural environments in §303.26.”).

⁷⁴ *Id.* (“[T]he reference to community settings was [inadvertently] not included in the proposed regulations. We have added a reference to ‘community settings’ in § 303.26 to ensure greater conformity with the statutory language, to address commenters’ concerns, and to clarify that the term natural environments includes not only the home but community settings in which one finds same-aged children who do not have disabilities (diagnosed conditions, developmental delays, or, at the State’s option, at-risk children).”).

⁷⁵ *Id.* (“[The IFSP Team] includes the parent and may include other family members who are invited by the parent . . . [F]amily members may attend an IFSP meeting if requested by the parent, and if feasible to do so. [But, the] parent—not the lead agency—determines whether to invite additional family members to IFSP meetings.”).

- (3) Based on the child's outcomes that are identified by the IFSP Team in paragraph (c) of this section;

b) Preamble offers additional insight into the meaning of natural environments.

In the preamble to the final regulations, the Secretary addressed a number of public comments regarding natural environments, many of which touched on the flexibility involved in determining service locations. For example, two commenters recommended that natural environments include clinical settings, "particularly when the service requires the use of specialized equipment that cannot be transported to the child's home."⁷⁶ In response, the Secretary took what was the clearest position to date on hospital and clinical settings: "We do not believe that a clinic, hospital, or service provider's office is a natural environment for an infant or toddler without a disability; therefore, such a setting would not be natural for an infant or toddler with a disability."⁷⁷ But, consistent with earlier guidance on natural environments, the Secretary cushioned this bold statement by emphasizing that the individualized nature of natural environment decisions makes room for exceptions:

§303.344(d)(1) requires that the identification of the early intervention service needed, as well as the appropriate setting for providing each service to an infant or toddler with a disability, be individualized decisions made by the IFSP Team based on that child's unique needs, family routines, and developmental outcomes. If a determination is made by the IFSP Team that, based on a review of all relevant information regarding the unique needs of the child, the child cannot satisfactorily achieve the identified early intervention outcomes in natural environments, then services could be provided in another environment (e.g. clinic, hospital, service provider's office).⁷⁸

The Secretary's analysis of public comments also shed light on the requirement that the IFSP team consider the child's IFSP outcomes when deciding to provide services in non-natural settings. For example, the Secretary stated:

When developing outcomes for the IFSP, the IFSP Team must consider the needs of the child based on the results of the evaluation and assessments of the child and the family pursuant to §303.344(a) and (b). Once the outcomes are developed the IFSP Team, including the parent, determines which early intervention services are necessary to achieve the expected outcomes and the settings in which those services will be provided.⁷⁹

This statement not only shows that the IFSP team must consider the unique needs of the child and the family in order to determine the IFSP outcomes, it also highlights the process involved in determining service locations. The IFSP team must first determine the child's outcomes and only then determine service locations. This process is important because it means a child's outcomes can

⁷⁶ *Id.* at 44.

⁷⁷ *Id.*

⁷⁸ *Id.* See also *id.* at 154 ("[W]e recognize that it may not always be practicable or appropriate for an infant or toddler with a disability to receive an early intervention service in the natural environment based either on the nature of the service or the child's specific outcomes. For example, the IFSP Team may determine that an eligible child needs to receive speech services in clinical settings that services only children with disabilities in order to meet a specific IFSP outcome.").

⁷⁹ *Id.* at 155.

and should not be proscribed by a rigid and inappropriate interpretation of service locations. Rather, the location of services should be tailored to the outcome.

10) The Office of Special Education Programs emphasizes the need to make individualized decisions for each child.

IDEA requires the Secretary of Education to publish in the Federal Register, on a quarterly basis, a list of documents released by the Department of Education in which it has described its interpretations of IDEA.⁸⁰ The list includes reply letters drafted by the Office of Special Education Programs (OSEP)⁸¹ in response to public inquiries concerning the proper interpretation of both the statute and regulations. These policy letters provide important guidance on the meaning of “natural environments.” They have repeatedly emphasized that decisions on natural environments must be individually tailored to the unique needs of each child and that, because Part C services are so individualized, “no one setting is appropriate for all services for all infants and toddlers.”⁸² In one letter, for example, OSEP responded to a public complaint that some state agencies had interpreted the meaning of natural environments so narrowly as to limit a child’s home as the sole therapy location. Consistent with its previous guidance, OSEP pointed to the individualized nature of natural environment decisions and concluded that such an interpretation would conflict with both the Part C statute and regulations.⁸³

OSEP’s policy letters have also provided guidance on the provision of early intervention services in center-based programs. It has consistently stated the following:

Many center-based programs that formerly served only children with disabilities have now integrated children without disabilities, creating a daycare or preschool program constituting a natural environment. IFSPs are not required to include a justification for services in such a setting; a justification is needed, however, for services in settings that are not natural environments.⁸⁴

⁸⁰ IDEA, 20 U.S.C. § 1406(f) (“The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this title or the regulations implemented pursuant to this title.”).

⁸¹ See Office of Special Education Programs Policy Letters Regarding Natural Environments, <http://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/tpnatenv.html>.

⁸² See, e.g., Letter from Troy R. Justesen, Acting Director, OSEP, to Sandy L. Morris, Program Director, Infant and Toddler Early Intervention Program (June 7, 2005), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2005-2/morris060705natenvir2q2005.pdf>, cited by OSEP List of Correspondence, 70 Fed. Reg. 53,172 (Sept. 5, 2005); Redacted Letter from Kenneth R. Warlick, Director, OSEP (Nov. 1, 2000), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2000-4/redact110100naturalenv.4q2000.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 16,100 (March 22, 2001); Redacted Letter from Kenneth R. Warlick, Director, OSEP (May 12, 2000), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2000-2/redact051200natenv2q2000.pdf>, cited by OSEP List of Correspondence, 65 Fed. Reg. 83,218 (Dec. 29, 2000).

⁸³ Redacted Letter from Kenneth R. Warlick, Director, OSEP (Nov. 1, 2000) (citing 34 C.F.R. § 303.344(d)), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2000-4/redact110100naturalenv.4q2000.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 16,100 (March 22, 2001).

⁸⁴ Letter from Troy R. Justesen, Acting Director, OSEP, to Sandy L. Morris, Program Director, Infant and Toddler Early Intervention Program (June 7, 2005), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2005-2/morris060705natenvir2q2005.pdf>, cited by OSEP List of Correspondence, 70 Fed. Reg. 53,172 (Sept. 5, 2005); Redacted Letter from Kenneth R. Warlick, Director, OSEP (Nov. 1, 2000), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2000-4/redact110100naturalenv.4q2000.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 16,100 (March 22, 2001). See also Redacted Letter from Stephanie S. Lee, Director, OSEP (July 30, 2002), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2002-3/redact0730023q2002.pdf>, cited by OSEP List

Although group settings limited exclusively to children with disabilities do not normally constitute natural environments, an IFSP team may nonetheless conclude that such settings are the appropriate service locations if providers cannot achieve intervention outcomes in the natural environments.⁸⁵ Importantly, OSEP has stated that “[i]t is critical that appropriate services and supports, designed to maximize the child’s potential development, be provided *regardless of the setting in which the child receives the services*.”⁸⁶ Thus, for example, if a center-based program better addressed developmental delays and provided a more concentrated emphasis on therapies, the natural environment requirement should not automatically prohibit services in this setting.⁸⁷ Indeed, OSEP has stated clearly that it “would be concerned if early intervention services were provided to any young child in a setting that did not support the child’s needs.”⁸⁸

11) OSEP verification visit in Illinois: defective systems of supervision.

IDEA requires each state to ensure satisfaction of Part C’s requirements and to supervise service providers for compliance with applicable statutory and regulatory provisions,⁸⁹ and the Secretary of Education then oversees the states’ supervision programs.⁹⁰ As part of this oversight, OSEP conducts periodic verification visits to the states during which it assesses the efficacy of their general supervision systems. After a November 2010 verification visit in Illinois, OSEP issued a letter criticizing the state’s supervision system: it had failed to adequately monitor service providers’ compliance with IDEA’s natural environment requirements.⁹¹ The problem was not, however, that the state failed to detect incidents of noncompliance. Rather, Illinois had measured compliance—or the lack thereof—by inappropriate standards. Specifically, the state impermissibly measured compliance strictly on data, making determinations of compliance based solely on the percentage of children provided Part C services in natural environments.

According to OSEP, however, “a specific percentage of children receiving or not receiving services in natural environments is not, in and of itself, noncompliance, and it is not appropriate for the State to make findings of noncompliance based solely on such a percentage.”⁹² Instead, the state

of Correspondence, 68 Fed. Reg. 6,725 (Feb. 10, 2003); Letter from Patricia J. Guard, Acting Director, OSEP, to Senator Richard Shelby (August 6, 2001), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2001-3/shelby080601environment.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 14,292 (March 9, 2001); Letter from Patricia J. Guard, Acting Director, OSEP, to Congressman Skelton (June 14, 2001), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2001-3/shelby080601environment.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 48,122 (Sept. 18, 2001).

⁸⁵ See Letter from Troy R. Justesen, Acting Director, OSEP, to Sandy L. Morris, Program Director, Infant and Toddler Early Intervention Program (June 7, 2005), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2005-2/morris060705natenvir2q2005.pdf>, cited by OSEP List of Correspondence, 70 Fed. Reg. 53,172 (Sept. 5, 2005); Redacted Letter from Stephanie S. Lee, Director, OSEP (July 30, 2002), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2002-3/redact0730023q2002.pdf>, cited by OSEP List of Correspondence, 68 Fed. Reg. 6,725 (Feb. 10, 2003); Redacted Letter from Kenneth R. Warlick, Director, OSEP (Nov. 1, 2000), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2000-4/redact110100naturalenv.4q2000.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 16,100 (March 22, 2001).

⁸⁶ Letter from Patricia J. Guard, Acting Director, OSEP, to Congressman Skelton (June 14, 2001), *available at* <http://www2.ed.gov/policy/speced/guid/idea/letters/2001-3/shelby080601environment.pdf>, cited by OSEP List of Correspondence, 66 Fed. Reg. 48,122 (Sept. 18, 2001) (emphasis added).

⁸⁷ See *id.*

⁸⁸ *Id.*

⁸⁹ IDEA §§ 616, 642, 20 U.S.C. § 1416.

⁹⁰ *Id.*

⁹¹ Letter from Melody Musgrove, Director, Office of Special Education Programs, to Honorable Michelle R.B. Saddler, Secretary, Illinois Department of Human Services (Feb. 15, 2011), *available at* <http://www2.ed.gov/fund/data/report/idea/partcvltr/cvvltr10-il.pdf>. See also Illinois Part C Verification Visit Letter Enclosure, *available at* <http://www2.ed.gov/fund/data/report/idea/partcvltr/cvvenclousure10-il.pdf>.

⁹² *Id.*

must determine compliance according to IDEA's statutory and regulatory requirements, and under these requirements, "determination of the service setting identified on the child's IFSP must be individualized for each child by the child's IFSP team[.]"⁹³ OSEP contacts have confirmed that the state should individually review each IFSP for compliance with IDEA's requirements. In essence, the IFSP must state whether services occur in natural environments, and if they do not, the IFSP must provide a justification for the deviation.⁹⁴

CONCLUSION

Part C's natural environment provisions began as an explanatory note in regulations that implemented a newly enacted early intervention program. At the time of original enactment, the early intervention program did not aim to integrate infants and toddlers with disabilities in settings with their non-disabled peers. Instead, the statute's primary focus was to enhance the development of infants and toddlers with disabilities by means of family-directed services. Nonetheless, with the appearance of the natural environment explanatory note, integration became an important issue to policymakers.

When Congress passed subsequent reauthorizations of and amendments to IDEA, it eventually incorporated the natural environment requirement into the statute. The Department of Education responded with new rules that incorporated the requirement into the body of the Part C regulations. Along the way, as public questions and concerns arose concerning the proper interpretation of natural environments, both Congress and the Departments of Education made additions, qualifications, and clarifications to IDEA's natural environment provisions.

Part C's natural environment provisions aim, to the extent appropriate to the needs of each child, to integrate disabled infants and toddlers with their non-disabled peers. The requirement, however, is not a rigid one. The statute and regulations allow, indeed require, flexibility for deviations and demonstrate that natural environment considerations are broader than simple location labeling as natural or non-natural. Moreover, Congress, the Secretary of Education, and the Office of Special Education Programs have each repeatedly instructed that natural environments should be determined on a case-by-case basis that takes into account the unique needs of both the child and his or her family, and the expected IFSP outcomes. In defining natural environments, states must not rigidly dictate what is and is not considered a natural environment; nor may they rigidly define what can and cannot serve as a justification for providing services in a non-natural environment. By providing flexibility in the application of natural environment, children and family outcomes can be better achieved.

⁹³ *Id.*

⁹⁴ Telephone Interview with Barabara Thomas, OSEP State Contact for Illinois, Office of Special Education Programs (August 17, 2011).

Appendix: Development of Natural Environment Statutory and Regulatory Provisions

Statutory Amendments (new language italicized)	Regulatory Action (new language italicized)
<p style="text-align: center;"><u>1986 EHA Amendments, Pub. L. No. 99-457</u></p> <p style="text-align: center;"><i>PART H – HANDICAPPED INFANTS AND TODDLERS FINDINGS AND POLICY</i></p> <p>SEC. 671. (a) <i>FINDINGS.—The Congress finds that there is an urgent and substantial need . . . (4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.</i></p> <p>(b) <i>POLICY.—It is the policy of the United States to provide financial assistance to States—</i></p> <p>(1) <i>to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services or handicapped infants and toddlers and their families . . . and</i></p> <p>(3) <i>to enhance its capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to handicapped infants, toddlers, and their families.</i></p> <p>SEC. 672. <i>As used in this part—</i></p> <p>(2) <i>“Early intervention services” are developmental services which . . . (E) include—(i) family training, counseling, and home visits[.]</i></p>	<p style="text-align: center;"><u>1997 EHA Proposed Regulations, 52 Fed. Reg. 44,352</u></p> <p>§ 303.14 Special Instruction</p> <p>(a) <i>As used in this part, “special instruction” means instruction provided to infants and toddlers and their families by special educators or other qualified personnel.</i></p> <p>(b) <i>Special instruction may be provided in the child’s home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child.</i></p> <hr/> <p style="text-align: center;"><u>1989 EHA Final Regulations, 54 Fed. Reg. 26,306</u></p> <p>§ 303.12 Early Intervention Services</p> <p>(b) <i>Location of services.</i> <i>To the extent appropriate, early intervention services must be provided in the types of settings in which infants and toddlers without handicaps would participate.</i></p> <p><i>Note 1: With respect to the requirement in paragraph (b) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments (e.g., the home, daycare centers or other community settings). Thus, it is recommended that services be community based, and not isolate an eligible child or the child’s family from settings or activities in which children without handicaps would participate</i></p> <p>§ 303.344 Content of IFSP</p> <p>(d) <i>Early intervention services.</i></p> <p>(1) <i>The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family . . . including—</i></p> <p>(i) <i>The frequency, intensity, location, and method of delivering the services . . .</i></p> <p>(2) <i>As used in paragraph (d)(1)(i) of this section—</i></p> <p>(ii) <i>“Location” means, subject to § 303.12(b), where a service is provided (e.g., in the child’s home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child.</i></p>
<p style="text-align: center;"><u>1991 IDEA Amendments, Pub. L. No. 102-119</u></p> <p>Sec. 672. <i>As used in this part—</i></p> <p>(2) The term “early intervention services” are developmental services which—</p> <p style="padding-left: 40px;"><i>(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate.</i></p> <p>Sec. 677(d) <i>CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—</i></p> <p>(5) <i>a statement of the natural environments in which early intervention services shall</i></p>	<p style="text-align: center;"><u>1993 IDEA Final Regulations, 58 Fed. Reg. 40,958</u></p> <p>§ 303.12 Early Intervention Services</p> <p>(b) <i>Natural environments.</i></p> <p>(1) <i>To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.</i></p> <p>(2) <i>As used in paragraph (b)(1) of this section, natural environments means settings that are natural or normal for the child’s age peers who have no disability.</i></p>

Statutory Amendments (new language italicized)	Regulatory Action (new language italicized)
<p><i>appropriately be provided.</i></p>	<p>§ 303.344 Content of an IFSP. (d) <u>Early intervention services.</u> (1) <i>The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including-</i> (ii) <i>The natural environments, as described in § 303.12(b), in which early intervention services will be provided;</i> (iii) <i>The location of the services . . .</i> (3) <i>As used in paragraph (d)(1)(iii) of this section, <u>location</u> means the actual place or places where a service will be provided.</i></p> <p>Note 1: With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers could be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services <i>must be provided in natural environments</i> (e.g., the home, child care centers, or other community settings) <i>to the maximum extent appropriate to the needs of the child.</i></p>
<p align="center"><u>1997 IDEA Amendments, Pub. L. No. 105-17</u></p> <p>Sec. 635 Requirements for a statewide system. (a) IN GENERAL.— A statewide system described in section 633 shall include, at a minimum, the following components: <i>(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—</i> (A) <i>to the maximum extent appropriate, early intervention services are provided in natural environments; and</i> (B) <i>the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.</i></p> <p>Sec. 636 Individualized Family Service Plan (d) CONTENT OF A PLAN.—The individualized family service plan shall be in writing and contain— (5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a <i>justification of the extent, if any, to which the services will not be provided in a natural environment.</i></p>	<p align="center"><u>1998 IDEA Final Regulations, 63 Fed. Reg. 18,290</u></p> <p>§ 303.12 Early Intervention Services (b) <u>Natural environments.</u> To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.⁹⁵</p> <p>§ 303.18 Natural Environments As used in this part, <u>natural environments</u> means settings that are natural or normal for the child’s age peers who have no disabilities.⁹⁶</p> <p>§ 303.167 Individualized family service plans. [Each application must include]: (e) <i>Policies and procedures to ensure that—</i> (1) <i>To the maximum extent appropriate, early intervention services are provided in natural environments; and</i> (2) <i>The provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only if early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.</i></p> <p>§ 303.344 Content of an IFSP. (d) <u>Early intervention services.</u> (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including— (ii) The natural environments, as described in § 303.12(b) and § 303.18 in which early intervention services will be provided, and a <i>justification of the extent, if any, to which</i></p>

⁹⁵ Paragraph (b)(2), as it appeared in earlier adopted regulations, was now removed.
⁹⁶ This language is identical to that which had previously appeared in § 303.12(b)(2).

Statutory Amendments (new language italicized)	Regulatory Action (new language italicized)
	<p><i>services will not be provided in a natural environment.</i></p> <p>Note 1:(Following § 303.344) With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.</p> <hr/> <p style="text-align: center;"><u>2000 IDEA Proposed Regulations, 65 Fed. Reg. 53, 808</u></p> <p>§ 303.12 Early intervention services.</p> <p>(a) <u>General.</u> As used in this part, the term <u>early intervention services</u> means developmental services that—(8) To the maximum extent appropriate to the needs of the child, are provided in natural environments, as defined in § 303.18.</p> <p>(b) <i>[Subparagraph (b) provision on natural environment removed and substance incorporated into § 303.18.]⁹⁷</i></p> <p>§ 303.18 Natural environments.</p> <p>As used in this part, the term <u>natural environments</u>—</p> <p>(a) Means settings that are natural or normal for an eligible child’s age peers who have no disabilities; and</p> <p>(b) Includes—</p> <ol style="list-style-type: none"> (1) the home; and (2) Community settings in which children without disabilities participate. <p>§ 303.167 Individualized family service plans.</p> <p>Each application must include the following:</p> <p>(c) Policies and procedures on natural environments that meet the requirements of §§ 303.341 and 303.344(d)(3).</p> <p>§ 303.341 Policies and procedures on natural environments.</p> <p>(a) <u>General.</u> Each system must have in effect, in accordance with paragraphs (b) through (d) of this section, policies and procedures to ensure that—</p> <ol style="list-style-type: none"> (1) to the maximum extent appropriate, early intervention services are provided in natural environments; and (2) The provision of early intervention services for eligible children occurs in a setting other than a natural environment only if <i>the IFSP team, based on the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c), determines that</i> early intervention cannot be achieved satisfactorily for the child in a natural environment. <p>(b) <u>Determination of natural environment for each IFSP service.</u></p> <ol style="list-style-type: none"> (1) <i>The IFSP team for each eligible child under this part must determine, for each early</i>

⁹⁷ This change would include, in one place, the full text of the definition of “natural environments” rather than having the provisions divided across two separate sections (i.e. §§ 303.12(b) and 303.18). See 65 Fed. Reg. 53,808, 53,810 (Sept. 5, 2000).

Statutory Amendments (new language italicized)	Regulatory Action (new language italicized)
	<p><i>intervention service to be provided to the child, if the child's needs can be met in a natural environment.</i></p> <p>(2) <i>If, after making the determinations required by paragraph (b)(1) of this section, the team determines that a specific service for the child must be provided in a setting other than a natural environment (such as in a center-based program that serves children with disabilities, or another setting appropriate to the age and needs of the child), a justification that meets the requirements of paragraph (c) of this section must be included in the child's IFSP.</i></p> <p>(c) <u><i>Justification.</i></u> <i>The justification required in paragraph (b)(2) of this section must—</i></p> <p>(1) <i>Include a statement describing the basis of the IFSP team's decision to provide a specific early intervention service for the child in a setting other than a natural environment;</i></p> <p>(2) <i>Be based on the identified needs of the child and the projected outcomes as determined by the evaluation and assessment required in § 303.322 and the information required in § 303.344(a) through (c); and</i></p> <p>(3) <i>If appropriate, be based on the nature of the service required to meet the unique needs of the child.</i></p> <p>(d) <u><i>Services to parents or other family members.</i></u> <i>The provisions on natural environments in this part do not apply to services listed in an IFSP that are intended to meet the needs of the parents or other family members and not the needs of the child (e.g., participation of a parent in a parent-support program).</i></p> <p>§ 303.344 Content of IFSP</p> <p>(d) <u><i>Early intervention services.</i></u></p> <p>(1) <u><i>Statement of services.</i></u> <i>The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section. The statement must include the information required in paragraphs (d)(2) through (d)(4) of this section.</i></p> <p>(3) <u><i>Natural environments—location of services.</i></u> <i>In accordance with § 303.341, the IFSP must—</i></p> <p>(i) <i>Specify the natural environments (locations or settings) where each early intervention service will be provided; and</i></p> <p>(ii) <i>Include a justification of the extent, if any to which each service will not be provided in a natural environment.</i></p>
<p align="center"><u>2004 IDEA Amendments, Pub. L. No. 108-446</u></p> <p>Sec. 635. Requirements for Statewide System.</p> <p>(a) IN GENERAL.— A statewide system described in section 633 shall include, at a minimum, the following components: (16) Policies and procedures to ensure that, consistent with section 636(d)(5)—</p> <p>(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and</p> <p>(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, <i>as determined by the parent and the individualized family service plan team</i>, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.</p>	<p align="center"><u>2007 IDEA Proposed Regulations, 72 Fed. Reg. 26,456</u></p> <p>Reorganization of natural environment provisions:</p> <ul style="list-style-type: none"> • Content of § 303.12 moved to § 303.13. Content of § 303.12(b) included in § 303.26. • Content of § 303.18 moved to § 303.26 • Content of § 303.167 moved to § 303.114 <p>§ 303.13 Early intervention services.</p> <p>(a) <u><i>General.</i></u> <i>Early intervention services means developmental services that—</i></p> <p>(8) <i>To the maximum extent appropriate, are provided in natural environments, as defined in § 303.26 and consistent with § 303.126</i></p>

Statutory Amendments (new language italicized)	Regulatory Action (new language italicized)
	<p>§ 303.26 Natural Environments. <u>Natural environments</u> means settings that are natural or normal for an infant or toddler without a disability, <i>may include the home, and must be consistent with the provisions of § 303.126.</i></p> <p>§ 303.114 Individualized family service plans (IFSPs). Each system must include, for each infant or toddler with a disability in the State, an IFSP that meets the requirements of §§ 303.340 through 303.345, including service coordination services in accordance with the IFSP.</p> <p>§ 303.126 Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with §§ 303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided—</p> <ul style="list-style-type: none"> (a) To the maximum extent appropriate, in natural environments; and (b) <i>In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be provided satisfactorily in a natural environment.</i> <p>§ 303.344 Content of an IFSP.</p> <ul style="list-style-type: none"> (d) <u>Early intervention services.</u> (1) the IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including— <ul style="list-style-type: none"> (ii) (A) The natural environment setting in which/h early intervention services will be provided (Subject to paragraph (D)(1)(ii)(B) of this section), including, if applicable, a justification of the extent, if any, to which an early intervention service will not be provided in a natural environment. (B) <i>The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that child and service, must be—</i> <ul style="list-style-type: none"> (1) <i>Made by the IFSP team (which includes the parents and other team members); and</i> (2) <i>Consistent with the provisions in §§ 303.13(a)(8), 303.25 (native language requirement) and 303.126; and</i> (3) <i>Based on the child’s outcomes that are identified by the IFSP team in paragraph (c).</i>
	<p style="text-align: center;"><u>2011 IDEA Regulations</u></p> <p>§ 303.13 Early intervention services. <u>Early intervention services</u> means developmental services that—</p> <ul style="list-style-type: none"> (8) To the maximum extent appropriate, are provided in natural environments, as defined in §303.26 and consistent with §§303.126 <i>and 303.344(d).</i> <p>§ 303.26 Natural environments. <u>Natural environments</u> means settings that are natural or <i>typical</i> for a <i>same-aged</i> infant or toddler without a disability, <i>may include the home or community settings,</i> and must be consistent with the provisions of §303.126.</p>

Statutory Amendments (new language italicized)	Regulatory Action (new language italicized)
	<p>§ 303.126 Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided—</p> <ul style="list-style-type: none"> (a) To the maximum extent appropriate, in natural environments; and (b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be <i>achieved</i> satisfactorily in a natural environment. <p>§ 303.344 Content of an IFSP.</p> <ul style="list-style-type: none"> (d) <u>Early intervention services.</u> <ul style="list-style-type: none"> (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including— <ul style="list-style-type: none"> (ii) (A) <i>A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.</i> (B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that <i>infant or toddler with a disability</i> and service, must be-- <ul style="list-style-type: none"> (1) Made by the IFSP Team (which includes the parent and other team members); (2) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and (3) Based on the child's outcomes that are identified by the IFSP Team in paragraph (c) of this section;