

3 State Performance Plan Indicators that affect Preschool Programs directly.

SPP INDICATOR 6: Percent of preschool children with IEPs who received special education and related services in setting with typically developing peers (e.g., early childhood settings, home, and part-time early childhood/part-time early childhood special education settings)

SPP INDICATOR 7: Percent of preschool children with IEPs who demonstrate improved

- a. Positive social-emotional skills (including social relationships);
- b. Acquisition and use of knowledge and skills (including early language/communication and early literacy); and
- c. Use of appropriate behaviors to meet their needs.

SPP INDICATOR 12: Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays.

The complete State Performance Plan can be viewed online at the SEB website.



**NEW MEXICO
EARLY CHILDHOOD TRANSITION INITIATIVE**

**MISSION-VISION
and
PERFORMANCE OUTCOMES**

Mission: To support community teams in developing and/or improving their system of transitioning children and families from early intervention services to other services and supports.

Vision: All children and families will experience a smooth and effective transition as a result of collaborative intentional community planning.

Overall Performance Outcomes:

The following will be used to measure improvements in the system at the local and state level.

Smooth Means:

- ◆ Uninterrupted Services
 - ⇒ Early intervention services on IFSP are available and provided until the first day of services by receiving agency
 - ⇒ IEP is in place at least 15 days prior to transition
 - ⇒ Services and supports begin on the date specified on the IEP
- ◆ Evidence of an interagency planning process which incorporates family centered practices
 - ✓ Interagency agreements
 - ✓ Mutually developed policies and procedures
 - ✓ Formalized systems of communication and information sharing

Effective Means:

- ◆ Families informed of all options and all rights
- ◆ Timely Planning
 - ⇒ Transition planning initiated at least 6 months prior as evidenced by identified transition steps in the IFSP
 - ⇒ Transition Conference (90 Day Conference) occurs and includes participation of Part B (if child eligible for Part B) and other relevant parties
- ◆ High Level of Satisfaction
 - ⇒ A demonstrated high level of satisfaction related to the experience of transitioning from one system to another
 - ✓ Family
 - ✓ Sending agency
 - ✓ Receiving agency/agencies

PART B

Pages 14-21 contain the New Mexico Statutes, IDEA-Part B Regulations, and New Mexico Special Education Regulations pertaining to transition.

NEW MEXICO STATUTES PERTAINING TO TRANSITION NMSA 1978 (as amended by Chapter 27, N.M. Laws 2004)

Sec. 22-13-5. Special education

School districts shall provide special education and related services appropriate to meet the needs of all children requiring special education and related services. Regulations and standards shall be developed and established by the state board for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The state board shall monitor and enforce the regulations and standards. School districts shall also provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll his child. If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. Services for students age three through twenty-one may include, but are limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the state board and providing parent education. The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings including home, daycare centers, headstart programs, schools or community-based settings.

IDEA 2004, PART B REGULATIONS PERTAINING TO TRANSITION

PART 300: Assistance to States for the Education of Children with Disabilities

300.124 Transition of children from the Part C program to preschool programs.

The state must have in effect policies and procedures to ensure that-

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with 300.101 (b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a) (10) of the Act.

300.322 Parent participation

(a) *Public agency responsibility—general.* Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.*

(1) The notice required under paragraph (a)(1) of this section must—

- (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEEP Team meeting for a child previously served under Part C of the Act)...

(c) **Other methods to ensure parent participation.** If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with 300.328 (related to alternative means of meeting participation)..

(d) **Conducting an IEP Team meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as -

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) *Use of interpreters or other action, as appropriate.* The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) *Parent copy of child's IEP.* The public agency must give the parent a copy of the child's IEP at no cost to the parent.

Evaluations and Reevaluations

300.301 Initial evaluations.

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part,

(b) *Request for initial evaluation.*

Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) *Procedures for initial evaluation.*

The initial evaluation-

- (1) (i) Must be conducted within 60 days of receiving parental consent for the evaluation; or
- (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and
- (2) Must consist of procedures-
 - (i) To determine if the child is a child with a disability under § 300.8; and
 - (ii) To determine the educational needs of the child•••

300.304 Evaluation procedures.

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must-

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining-

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that-

(1) Assessments and other evaluation materials used to assess a child under this part-

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; •••

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

300.305 Additional requirements for evaluations and reevaluations.

(a) *Review of existing evaluation data.*

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must-

(1) Review existing evaluation data on the child, including-

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

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

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

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

(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational

needs of the child; or •••

300.306 Determination of eligibility.

(a) *General.* Upon completion of the administration of assessments and other evaluation measures -

- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
- (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) *Special rule for eligibility determination.* A child must not be determined to be a child with a disability under this part —

- (1) If the determinant factor for that determination is—
 - (i) Lack of appropriate instruction in reading including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
 - (ii) Lack of appropriate instruction in math; or
 - (iii) Limited English proficiency; and
- (2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) *Procedures for determining eligibility and educational need.*

- (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 300.8 and the educational needs of the child, each public agency must —
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background and adaptive behavior; and
 - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
- (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with 300.320 through 300.324.

300.300 Parental consent.

(a) *Parental consent for initial evaluation.* (1) (i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under 300.8 must , after providing notice consistent with 300.503 and 3000.504, obtain informed consent, consistent with 300.9 from the parent of the child before conducting the evaluation....

(3) (i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a) (1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part...

(b) *Parental consent for services.* (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child before the initial provision of special education and related services to the child.

300.323 When IEPs must be in effect.

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in 300.320

(b) *IEP or IFSP for children aged three through five.*

1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider and IFSP that contains the IFSP content (including the natural environment statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is –

- (i) Consistent with state policy; and
- (ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b) (1) of this section, the public agency must –

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP;

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) *Initial IEPs; provision of services.* Each public agency must ensure that -

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP

300.321 IEP Team

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services

300.101 Free appropriate public education (FAPE)

(b) *FAPE for children beginning at age 3.* (1) Each State shall ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

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

NEW MEXICO SPECIAL EDUCATION REGULATIONS PERTAINING TO TRANSITION

Title 6, Chapter 31, Part 2, New Mexico Administrative Code

6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

D. Evaluations and reevaluations.

(1) Initial evaluations.

(a) Each public agency must conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

(b) Request for initial evaluation. Consistent with the consent requirement in 34 CFR Sec. 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation.

(i) The initial evaluation must be conducted 60 calendar days of receiving parental consent for evaluation.

(ii) Each public agency must follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR Sec. 300.8; and (2) if the child requires special education and related services to benefit from their education program.

(iii) Each public agency shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team. •••

(f) The multi-disciplinary team including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation. •••

(2) Reevaluations •••

(d) Procedures for conducting evaluations and reevaluations

(i) The public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR Sec. 300.503;

(ii) The initial evaluation (if appropriate) and any reevaluations must begin with a review of existing information by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR Sec. 300.305(a)(2) •••

(iii) If it is determined that a child requires an individualized evaluation or reevaluation the public agency is required to follow the procedures established by the department.

(iv) Each public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum of for a preschool child to participate in appropriate activities •••

E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children.

(1) Each public agency must ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR Sec. 300.304(c)(1).

(2) Each public agency must ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.

(3) Each public agency must consider information about a child's language proficiency in

determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency •••

(4) Each public agency must ensure that the child is assessed in all areas related to the suspected disability.

(5) Policies for public agency selection of assessment instruments include:

(a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and

(b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level. •••

F. Eligibility determinations.

(1) General rules regarding eligibility determinations

(a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306 and these or other department rules and standards.

(b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) Optional use of developmentally delayed classification for children aged 3 through 9

(a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.

6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged 2 through 5

(1) Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the ninety day transition planning conference arranged by local Part C providers.

(2) In particular:

a. Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

b. Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

c. Each LEA shall establish and implement procedures to support successful transition including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

d. Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

e. Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

f. Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program.

g. Each LEA shall initiate a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR Sec. 300.323, no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into Part B preschool services if the transition process is initiated after the start of the school year, whichever is

later, to ensure uninterrupted services This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents and appropriate early intervention providers who are knowledgeable about the child.

h. In compliance with 34 CFR Sec. 300.101 (b) (2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

i. Each public agency shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

PART C
Pages 22-26 contain the New Mexico Statutes, IDEA-Part C Regulations, and New Mexico Family Infant Toddler Regulations pertaining to transition.

NEW MEXICO STATUTES PERTAINING TO TRANSITION
NMSA 1978 (as amended by Chapter 27, N.M. Laws 2004)

Sec. 28-18-1. Department designation; authorization; payment system

- A. The department of health is designated as the lead agency for the development and administration of a statewide system of comprehensive, coordinated, multidisciplinary, interagency early intervention services for eligible children with or at risk of developmental delay and their families. The program shall be known as the "family, infant, toddler program".
- B. The parent may choose whether his eligible child shall participate in the family, infant toddler program.
- C. If a child enrolled in the family, infant, toddler program has his third birthday during the school year, the child's parent shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and has his third birthday during a school year may receive special education and related services from the beginning of that school year.
- D. The state department of public education, the human services department, the children, youth and families department and other publicly funded services shall collaborate with the department of health and continue to provide all services within their respective statutory responsibilities to eligible children. State and local interagency agreements shall delineate responsibility for provisions of the family, infant, toddler program.

IDEA 1997, PART C REGULATIONS PERTAINING TO TRANSITION

PART 303: Early Intervention Program for Infants and Toddlers with Disabilities

303.148 Transition to preschool programs.

Each application must include a description of the policies and procedures to be used to ensure a smooth transition for children receiving early intervention services under this part to preschool or other appropriate services, including--

- (a) A description of how the families will be included in the transition plans;
- (b) A description of how the lead agency under this part will--
 - (1) Notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law;
 - (2)
 - (i) In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive; or

(ii) In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;

(3) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(4) Establish a transition plan; and

(c) If the State educational agency, which is responsible for administering preschool programs under part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.

303.244 Content of an IFSP

(h) Transition from Part C services.

(1) The IFSP must include the steps to be taken to support the transition of the child, in accordance with Sec. 303.148, to--

(i) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include--

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

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

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in Sec. 303.322, and copies of IFSPs that have been developed and implemented in accordance with Secs. 303.340 through 303.346.

IDEA Reauthorization 2004, Part C Infants and Toddlers with Disabilities

From Section 63 the reauthorization of IDEA in 2004 adds the following language to the law related to transition:

“(9) a description of the policies and procedures to be used—

“(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how—

“(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (c); and

“(ii) the lead agency designated or established under section 635(a)(10) will—

“(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

“(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead

agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

“(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;

“(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

“(C) to establish a transition plan, including as appropriate, steps to exit from the program;

NEW MEXICO REQUIREMENTS PERTAINING TO TRANSITION FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

Title 7, Chapter 30, Part 8, New Mexico Administrative Code

7.30.8.13 Transition

- A. Transition planning shall begin early enough to allow the parents to exercise all their rights under state and federal statutes and regulations. Transition planning must be undertaken for each child and family at least 6 months before the child is eligible to transition from early intervention services. Transition planning shall be a process involving meeting(s) and progressive steps toward the smooth and effective transitioning of each child and family.
- B. In a timely manner, the early intervention provider shall notify the local education agency of children that reside in the geographic area served by the LEA that may be eligible for preschool special education services.
- C. Steps/actions shall be identified and included in the IFSP that support the child and family and ensure a smooth and effective transition. With involvement of parents, such steps/actions shall include, at a minimum:
 - 1. Discussions with the parents regarding future program/service options to include preschool special education services and other community services that may be available and appropriate; representatives from these programs and services shall be included in these discussions to ensure an informed decision;
 - 2. Preparing the child and family for changes and adjustments to a new setting;
 - 3. With parental consent and in accordance with regulation, the transmission of information, including evaluation and assessment information and copies of IFSPs to ensure continuity of services;
 - 4. Assisting parents/families to develop the skills and acquire the information needed for continued advocacy of their child needs.
- D. The parents of an eligible child participating in early intervention services who turns three (3) years of age during the public school year shall have the options of:
 - 1. Having the child complete the remainder of the school year in early intervention services or the public school's preschool special education services covered under the Individuals with Disabilities Act (IDEA); or
 - 2. They may elect to enroll the eligible child in the public school's preschool special education services from the beginning of that public school year in accordance with state law.
- E. Early intervention services shall be provided in accordance with the IFSP to eligible children and families until the first day of school of the LEA where the child is enrolled.
- F. With approval of the parents, a transition conference shall be convened at least 90 days prior to the anticipated date of transition from early intervention services but no later than 90 days prior to the child's third birthday. If the child may be eligible for preschool services including special education and related services offered through the local education agency, this conference shall include, at a minimum, the parents, the relevant early intervention service providers and the local education agency representative(s). Other relevant service providers should be invited to attend this meeting. The transition process must take into account availability of Head Start and other child care services in the community. The service coordinator shall convene and facilitate this conference to ensure the following actions:
 - 1. Review the child's service/program options;
 - 2. Renew, revise or establish a transition plan;

3. Ensure coordination of transition matters including the provision of uninterrupted services to the child and family; and
 4. With parental consent, the transmission of information, including evaluation and assessment information and copies of IFSPs to ensure continuity of services.
- G.** Representative(s) from the early intervention provider shall participate in meeting(s) to develop the IFSP, IEP, or IFSP-IEP, as appropriate.
- H.** At the request of parents, and in accordance with New Mexico Department of Health policy, service coordination shall be provided after exiting from early intervention services for the purpose of facilitating a smooth and effective transition.

National Early Childhood Technical Assistance Center

[Graphic Enhanced Page](#)

Federal Laws and Regulations Relating to Early Childhood Transitions

Individuals with Disabilities Education Improvement Act of 2004 (IDEA)

The IDEA was reauthorized and signed into law on December 3, 2004. For more information visit NECTAC's Web page on the [Individuals with Disabilities Education Improvement Act](#) (IDEA).

A new provision within Part C that may significantly impact when children transition from Part C is called the Part C Option - Flexibility To Serve Children 3 Years of Age Until Entrance Into Elementary School. This is an optional statewide system developed and implemented by the lead agency and the State Educational Agency available to children with disabilities who are eligible for services under Section 619 and previously received services under Part C. If a state adopts this policy, parents may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills) until state eligibility for kindergarten.

Minor changes in statutory language relevant to transition can be found in [Part C Sec. 637\(a\)\(9\)](#).

New statutory language found within the LEA Program of [Part B Sec. 614\(d\)\(2\)](#) requires the IEP team to consider the IFSP for children ages 3 through 5.

The [National Early Childhood Transition Center](#) (NECTC) has posted a [Transition Alert](#) (PDF: 60kb) detailing the impact the 2004 reauthorization has on early childhood transition.

IDEA Regulations

In the previous [Federal Regulations for Part C](#) Transition is referenced in three separate

sections within the regulations:

- General Requirements for a State Application - [303.148](#) Transition to Preschool Programs
- Content of the IFSP - [303.344](#) Transition from Part C Services
- Functions of the Council - [303.653](#) Transition Services

[Federal Regulations for Part B](#) as published in the Federal Register on August 14, 2006. Early childhood transition has 3 main citations under Part B:

- Transition of children from the Part C program to preschool programs - [Sec. 300.124](#)

The State must have in effect policies and procedures to ensure that--

[\(a\)](#) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

[\(b\)](#) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with Sec. 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with Sec. 300.101(b); and

[\(c\)](#) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

- Initial IEP Team meeting for a child under Part C - [Sec. 300.321\(f\)](#)

[\(f\)](#) In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

- IEP or IFSP for children aged three through five. - [300.323\(b\)](#)

[\(1\)](#) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using

the IFSP as the IEP is --

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must --

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

Early Head Start & Head Start Regulations referencing Transition to Section 619

[45 CFR 1304](#) Program Performance Standards for the Operation of Head Start Programs by Grantee and Delegate Agencies

[Sec. 1304.20](#) Child Health and Developmental Services - Scroll down to (f)(2)(i) and (f)(2)(iii) (*PDF: 59kb*)

[Sec. 1304.40](#) Family Partnerships - Scroll down to (h)(1)-(4) (*PDF: 59kb*)

[Sec. 1304.41](#) Community Partnerships - Scroll down to (c)(1)(i)-(iii) and (c)(2) (*PDF: 53kb*)

For more information on Early Head Start and its implementation visit the [Early Head Start National Resource Center](#).

For more information on Head Start and its implementation visit the [Head Start Bureau](#).

Links on this site are verified monthly. This page content was last updated on 02/17/2009 CF.



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DR. VERONICA C. GARCÍA
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

June 30, 2004

Memorandum

TO: Special Education Directors

FROM: Sam Howarth
State Director of Special Education

RE: Services to Two Year Olds

We have been asked to clarify the responsibility of school districts to serve children with disabilities before their third birthday.

NMSA 1978, Sec. 22-13-5 (as amended by Chapter 27, N.M. Laws 2004) says it is up to the parents.

If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program.

This section of statute goes on to clarify that those two-year olds who are eligible under Part B criteria (regardless of service under Part C) may receive services from the beginning of the school year when they turn three.

A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year.

The statutory use of "may" rather than "shall" derives from a previous sentence in this section, stating that parents are not required to enroll preschoolers with disabilities in school. The statutory use of

“may” rather than “shall” does not mean that districts have the option to decline service requested by parents of eligible two year olds.

This responsibility to serve eligible two year olds during the year when they turn three, at the parent’s discretion, is reinforced by NMSA 1978, Sec. 22-8-2 (as amended by Chapter 27, N.M. Laws 2004) that provides state funding for these students, defined as qualified students.

M. “qualified student” means a public school student who:...(4) is at least three years of age at any time during the school year and is receiving special education services pursuant to regulation...

Preschool students with disabilities generate approximately \$8000 per student through the state equalization guarantee (funding formula).

Please contact Harriet Forman, our preschool consultant, if you have any questions or comments about this memo. You can reach Ms. Forman at 827-6541.



NM EARLY CHILDHOOD TRANSITION INITIATIVE COMMUNITY-BASED TRANSITION TEAMS

Status As Of 7/09
(34 Transition Teams)



The table below is a listing of the community-based transition teams in New Mexico. Also listed is the designated coach and team leader for each team. Teams are comprised of representatives from:

- The Family Infant Toddler Program (FIT Provider)
- The Local Education Agency (LEA) or school district(s) within the service area of the FIT Provider
- The Regional Education Cooperation (REC) serving that school district, where applicable
- The Head Start grantee serving that area
- The BIE FACE programs serving that area
- The NM School for the Blind and Visually Impaired
- The NM School for the Deaf
- The CYFD TTAPS
- Parent organizations (PRO, EPICS)
- Family Members

FIT PROVIDER	LEA REC	HEAD START BIE FACE CHILD CARE	COACH INFO	TEAM LEADER INFO
Bethphage Laguna Pueblo NAPPR Growing In Beauty CMS Medically Fragile NMSBVI NMSD	Grants-Cibola	Mid West CAP Laguna Pueblo Acoma Pueblo Crownpoint Agency BIE FACE TTAP	Betty Lansdowne-PSN/CDD Phone: 272-8192 blansdowne@salud.unm.edu	Barbara Atencio Phone: 505-552-6952 biantonia@hotmail.com
DSI Growing In Beauty Pine Hill PMS- Roundtree Mosaic CMS Medically Fragile NMSBVI NMSD	Gallup-McKinley	Mid West CAP Crownpoint Agency Ramah Navajo BIE FACE TTAP	Betty Lansdowne-PSN/CDD Phone: 272-8192 blansdowne@salud.unm.edu	Regina Huffman Phone: 505-722-4383 rihdsi@msn.com
PMS-Roundtree Growing In Beauty CMS Medically Fragile NMSBVI NMSD	Aztec Bloomfield Central Farmington	PMS Shiprock Agency TTAP	Betty Lansdowne-PSN/CDD Phone: 272-8192 blansdowne@salud.unm.edu	Jyl Adair Phone: 505-327-7720 jyl_adair@pmsnet.org
PMS-Roundtree Abrazos CMS Medically Fragile NMSBVI NMSD	Cuba-REC 2	PMS Jemez Pueblo TTAP	Kate Dixon -PSN/CDD Phone: 934-6825 KaDixon@salud.unm.edu	Becky Gibson Phone: 505-289-3211x16 bgibson@cuba.k12.nm.us
ZEE, Inc. CMS Medically Fragile NMSBVI NMSD	Zuni	Zuni Pueblo TTAP	Cathy Riley-ECN/CDD Phone: 272-0764 cpriley@salud.unm.edu	Marcy Wyaco Phone: 505-782-5798 marcy_mars2003@yahoo.com

FIT PROVIDER	LEA/REC	HEAD START BIE FACE CHILD CARE	COACH INFO	TEAM LEADER INFO
Life Quest CMS Medically Fragile NMSBVI NMSD	Animas-REC 10 Lordsburg-REC 10	HELP TTAP	Michelle Staley- ENC/CDD Phone: 505-272-6511 Mstaley@salud.unm.edu	Don Smith Phone: 575-542-9361 doncsmith@lmsed.org
Life Quest CMS Medically Fragile NMSBVI NMSD	Cobre Silver	El Grito TTAP	Janet Alvarado-PSN/CDD Phone: 524-1115 jalvarado@salud.unm.edu	Kathy Coombs Phone: 575-538-6489 Coombsk1@wnmu.edu
Life Quest CMS Medically Fragile NMSBVI NMSD	Deming	HELP TTAP	Michelle Staley- ENC/CDD Phone: 505-272-6511 Mstaley@salud.unm.edu	Penni Frazier Phone: 575-543-1096 Penni.frazier@demingps.org
Life Quest CMS Medically Fragile NMSBVI NMSD	Reserve-REC 10 Quemado-REC 5	Mid West CAP TTAP	Teresa Rowilson Phone: 575-640-3479 trowilson@swrecnm.org	
Mescalero Apache CMS Medically Fragile NMSBVI NMSD	REC 9	Mescalero Apache	Michelle Staley- ENC/CDD Phone: 505-272-6511 Mstaley@salud.unm.edu	
REC # 9 CMS Medically Fragile NMSBVI NMSD	Capitan-REC 9 Carrizozo Corona Hondo Valley Ruidoso	REC 9	Likis Castanon-Vuicich-REC 9 Phone: 257-3105 likisv@hotmail.com	
Tresco-TOTS Apprendamos CMS Medically Fragile NMSBVI NMSD	Gadsden	TTAP	Michelle Staley- ENC/CDD Phone: 505-272-6511 Mstaley@salud.unm.edu	
Tresco-TOTS MECA CMS Medically Fragile NMSBVI NMSD	Hatch Valley- REC 10	HELP TTAP	Janet Alvarado-PSN/CDD Phone: (575) 524-1115 jalvarado@salud.unm.edu	Ramona Marquez Phone: 575-267-8290 rmarquez@hatch.k12.nm.us
Tresco-TOTS MECA Aprendamos CMS Medically Fragile NMSBVI NMSD	Las Cruces	Las Cruces Public Schools HS Dona Ana HS La Clinica TTAP	Janet Alvarado-PSN/CDD Phone: (575) 524-1115 jalvarado@salud.unm.edu	

FIT PROVIDER	LEA/REC	HEAD START BIE FACE CHILD CARE	COACH INFO	TEAM LEADER INFO
Tresco-TOTS CMS Medically Fragile NMSBVI NMSD	T or C-REC 10	HELP TTAP	Teresa Rowilson Phone: 575-640-3479 trowilson@swrecnm.org	Donna Bush Phone: 575-740-0940 dbush@torc.k12.nm.us
Zia Therapy CMS Medically Fragile NMSBVI NMSD	Alamogordo	HELP TTAP	Michelle Staley- ENC/CDD Phone: 505-272-6511 Mstaley@salud.unm.edu	Robyn Trujillo Phone: 575-439-3200 rmktrujillo@hotmail.com
Zia Therapy CMS Medically Fragile NMSBVI NMSD	Cloudcroft- REC 9	REC 9 TTAP	Likis Castanon-Vuicich-REC 9 Phone: 257-3105 likisv@hotmail.com	
Zia Therapy CMS Medically Fragile NMSBVI NMSD	Tularosa- REC 9	REC 9 TTAP	Likis Castanon-Vuicich-REC 9 Phone: 257-3105 likisv@hotmail.com	
Citizen's for DD Children's Workshop CMS Medically Fragile NMSBVI NMSD	Clayton- REC 3 Roy- REC 3 Des Moines- REC 3 Mosquero-REC 3	Eastern Plains TTAP	Betty Lansdowne-PSN/CDD Phone: 272-8192 blansdowne@salud.unm.edu	Barbara French Phone: 575-374-2104
Citizen's for DD Children's Workshop CMS Medically Fragile NMSBVI NMSD	Raton- REC 3 Cimarron-REC 3 Springer-REC 3 Maxwell-REC 3	Mora-Colfax TFRC TTAP	Betty Lansdowne-PSN/CDD Phone: 272-8192 blansdowne@salud.unm.edu	Rotating leadership Contact: Patricia Pompeo Phone: 575- 445-5674 X203 pzpompeo@bacavalley.com
Taos County ARC CMS Medically Fragile NMSBVI NMSD	Taos Penasco-REC 2 Questa- REC 2	YDI Taos Pueblo TTAP	Kate Dixon -PSN/CDD Phone: 934-6825 KaDixon@salud.unm.edu	Grace Coca Phone: 575-758-4274 ecd@taoscountyar.org

FIT PROVIDER	LEA/REC	HEAD START BIE FACE CHILD CARE	COACH INFO	TEAM LEADER INFO
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Las Cumbres CMS Medically Fragile NMSBVI NMSD	Chama Valley-REC 2 ----- Jemez Mountain- REC 2 ----- Mesa Vista-REC 2 ----- Dulce- REC 2	YDI ----- PMS ----- YDI Eight Northern Indian Pueblos ----- YDI Jicarilla Apache	Kate Dixon -PSN/CDD Phone: 934-6825 KaDixon@salud.unm.edu	Inez Ingle Phone: 505- 753-4123 iisb@mail.cybermesa.com
Las Cumbres CMS Medically Fragile NMSBVI NMSD	Espanola Pojoaque	YDI Eight Northern Indian Pueblos TTAP	Kate Dixon -PSN/CDD Phone: 934-6825 KaDixon@salud.unm.edu	Janese Curtis Phone: 505-753-4123 janese.curtis@lascumbres-nm.org
Las Cumbres CMS Medically Fragile NMSBVI NMSD	Los Alamos	TTAP	Mary Zarembo – ECN/CDD Phone 272-1043 mzarembo@salud.unm.edu	
New Vistas Citizen's for DD Children's Workshop CMS Medically Fragile NMSBVI NMSD	Las Vegas City-REC 4 Mora- REC 4 Wagon Mound-REC 4 WestLas Vegas-REC 4	West Las Vegas Mora-Colfax TTAP	Lisa Burciaga-Segura-REC 4 Phone: 454-1472 lsegura@nmhu.edu	Lisa Burciaga-Segura-REC 4 Phone: 505-454-147 lsegura@nmhu.edu
New Vistas CMS Medically Fragile NMSBVI NMSD	Santa Fe Pecos- REC 4 Pojoaque	PMS YDI Eight Northern Indian Pueblos TTAP	Kate Dixon -PSN/CDD Phone: 934-6825 KaDixon@salud.unm.edu	Susan Merrill Phone: 505-827-3703 Susan.Merrill@state.nm.us
CARC CMS Medically Fragile NMSBVI NMSD	Carlsbad	SNMCAC TTAP	Jennifer Brown – ECN/CDD Phone: 272-2300 jenbrown@salud.unm.edu	Arlene Waters & Johnnie Bradford Phone: 575-887-1570 carcwaters@plateautel.net

FIT PROVIDER	LEA/REC	HEAD START BIE FACE CHILD CARE	COACH INFO	TEAM LEADER INFO
ENMRSH CMS Medically Fragile NMSBVI NMSD	Clovis SantaRosa-REC 4 Tucumcari Vaughn-REC 5 Dora-REC 6 Elida-REC 6 Floyd-REC 6 Fort Sumner-REC 6 Grady-REC 6 House-REC 6 Logan-REC 6 Melrose-REC 6 Portales-REC 6 San Jon-REC 6 Texico-REC 6	Eastern Plains TTAP	Jennifer Brown – ECN/CDD Phone: 272-2300 jenbrown@salud.unm.edu	Erin Wood Phone: 575- 762-3718 ewood@enmrsh.org
Leaders CMS Medically Fragile NMSBVI NMSD	Eunice-REC 7 Hobbs-REC 7 Jal-REC 7 Lovington Tatum-REC 7	Child and Family Services TTAP	TBH – ECN/CDD	Virginia King Phone: 575-393-2658 vking@pvtnetworks.com
Pecos Valley REC#8 CMS Medically Fragile NMSBVI NMSD	Dexter-REC 8 Hagerman-REC 8 LakeArthur-REC8 Loving-REC 8 Artesia	SNMCAC TTAP	Cathy Riley-ECN/CDD Phone: 272-0764 cpriley@salud.unm.edu	
Tobosa Los Pasitos CMS Medically Fragile NMSBVI NMSD	Roswell	SNMCAC TTAP	Mara Brenner- PSN/CDD Phone: 505-272-0289 mbrenner@salud.unm.edu	Elaine Lipe Phone: 575-637-3526 elipe@risd.k12.nm.us
Alta Mira EASI NAPPR PB & J Presby HH Care RCI Abrazos FOCUS LosPasos/Selectt UNM-DCCP CMS Medically Fragile NMSBVI NMSD	Albuquerque Rio Rancho Bernalillo Jemez Valley-REC 4	YDI City of Albuquerque PMS Isleta Pueblo Five Sandoval Indian Pueblos Inc San Felipe Pueblo Santo Domingo Pueblo Jemez Pueblo TTAP	Jennifer Brown – ECN/CDD Phone: 272-2300 jenbrown@salud.unm.edu	Cindy Soohoo Phone: 505-298-6752 x 3321 soohoo@aps.edu

FIT PROVIDER	LEA/REC	HEAD START BIE FACE CHILD CARE	COACH INFO	TEAM LEADER INFO
Alta Mira CMS Medically Fragile NMSBVI NMSD	Estancia-REC 5 Moriarity Mountainair- REC 5	PMS TTAP	Maria Jaramillo-REC 5 Phone: 889-3412 mjaramillo@crecnm.org	
Casa Alegre CMS Medically Fragile NMSBVI NMSD	Magdalena- REC 5 Socorro	Alamo Navajo Mid West CAP	Michelle Staley- ENC/CDD Phone: 505-272-6511 Mstaley@salud.unm.edu	Kent Howell Phone: 575-835-8367 khowell@phs.org
La Vida NAPPR Casa Alegre FOCUS CMS Medically Fragile NMSBVI NMSD	Belen Los Lunas	Mid West CAP TTAP	Mara Brenner- ENC/CDD Phone: 505-272-0289 mbrenner@salud.unm.edu	Kimberly Diaz Phone: 505-865-4651 kimberly@lavidafelicidad.org

For additional information or assistance please contact:
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New Mexico Early Childhood Transition Initiative
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May 2009

Improving the transition process for young children, their families and the professionals who work with them through an examination of factors that promote successful transitions between infant/toddler programs, preschool programs, and public school programs for young children with disabilities and their families.

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Transition Alert

OSEP's Early Childhood Policy Letters Related to Transition

The United States Department of Education (USDOE) Office of Special Education and Rehabilitative Services (OSERS) have published three policy letters related to early childhood transition since 2000. The three letters are summarized below.

The first letter was written on February 11, 2004 and was in response to Ms. Elder, the Executive Director of the Texas Interagency Council on Early Childhood Intervention. Ms. Elder had requested guidance in reference to the release of referral information from Part C of the Individuals with Disabilities Education Act (IDEA) to the state education agency (SEA) or the local education agency (LEA) during the transition process. Particular clarification was requested for the circumstances in which parental consent is required before releasing referral information. Stephanie Smith Lee, the Director of OSEP at the time, stated that parental consent is required in these three circumstances: (a) When information about the child is being released from the lead agency to the LEA; (b) when evaluating a child to determine eligibility for Part B services; and (c) for the initial provision, after a child has been determined eligible for Part B services.

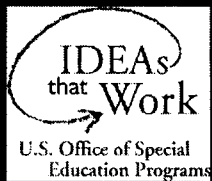
The second letter was written on August 9, 2005 and was in response to Ms. Hirsh, an Educational Consultant from the Virgin Islands. Ms. Hirsh requested clarification of IDEA requirements in the Virgin Islands. The clarification related the use of evaluations from Part C to determine eligibility for Part B services. Troy R. Justesen, the Acting Director of OSEP at the time, stated that evaluations conducted by Part C may be used to determine eligibility for Part B services, as long as parental consent is obtained before releasing any of the child's identifiable information to the LEA. States are encouraged, but not required, to use Part C evaluations.

The third letter was written on February 11, 2004 in response to Dr. Zahorchak, the Secretary of Education for the Pennsylvania Department of Education. Dr. Zahorchak requested clarification of the "stay put" regulation 34 C.F.R. §300.518(c) under Part B of IDEA, particularly in relation to the *Pardini vs. Allegheny Intermediate Unit* judicial decision of the U.S. Court of Appeals for the Third Circuit.

The regulation states:

If the complaint involves an application for initial services under this part [Part B] from a child who is transitioning from Part C of the Act to Part B and is no longer eligible from Part C services because the child has turned three, the public agency [under Part B] is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency (34 C.F.R. §300.518(c)).

The judicial decision from *Pardini vs. Allegheny Intermediate Unit* stated when there is a dispute over the appropriate special education and related services for a child transitioning from Part C to Part B of IDEA at age three, the Part B agency must provide the services the child was receiving under Part C as the "current educational placement" until the dispute is resolved. John H. Hager, the Assistant Secretary of OSEP, recommended each state consult with legal counsel before not providing services in dispute between the parent and the public agency as is stated in 34 C.F.R. §300.518(c) in light of the *Pardini vs. Allegheny Intermediate Unit* decision.



NECTC is funded by the U.S.
Department of Education,
Office of Special Education
Programs, Cooperative
Agreement # H324V020003.

Also Available from NECTC

Many new documents are available on the website pertaining to the transitions of young children with disabilities.

Transition Alerts

At-a-glance information on new resources and materials related to transition.

Research Briefs

Short papers that provide a summary of research findings and conceptual work.

Research Spotlights

Short papers on research methods and tools used to gather data during NECTC studies.

Papers/Reports

Technical reports and papers presenting findings from NECTC studies.

Presentations

PowerPoint and Poster presentations conducted by NECTC researchers at national conferences and meetings.

Additional Resources

IDEA 2004: One-stop shop for information on IDEA 2004 and implications for transition.

Project Information

Brochures and information on the activities of NECTC, including timelines, study goals and timelines, and contact information for NECTC researchers and staff.

Measures and Instruments

Copies of measures and instruments used for NECTC studies.

On-Line Database

An on-line, searchable database of transition resources and materials. Bookmark this Site:

For more specific information on the activities of the center, go to <http://www.ihdi.uky.edu/nectc/> or contact the project office at 859-257-2081 or toll free at 866-742-4015.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 11 2004

Mary Elder
Executive Director
Texas Interagency Council on
Early Childhood Intervention
4900 N. Lamar Boulevard
Austin, Texas 78751-2399

Dear Ms. Elder:

This is in response to your letter to the Office of Special Education Programs (OSEP) and the Family Policy Compliance Office (FPCO) requesting guidance concerning the disclosure of referral information from a lead agency under Part C of the Individuals with Disabilities Education Act (IDEA) to the State education agency (SEA) or the local education agency (LEA) under Part B. The information being disclosed is about children who will shortly turn three and transition from receiving early intervention services under Part C to potentially receiving special education and related services under Part B. You specifically requested on behalf of Texas Interagency Council on Early Childhood Intervention (TXECI), the lead agency in Texas under Part C, clarification regarding the circumstances in which parental consent is required for disclosure of this information by the lead agency. OSEP has consulted with the FPCO in responding to your letter.

The IDEA requires each State to have policies and procedures to ensure a smooth transition for toddlers receiving early intervention services under Part C to preschool or other appropriate services, including a description of how the lead agency will notify the LEA for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under Part B. 20 U.S.C. §1437(a)(8)(A); 34 CFR §303.148. Section 637(a)(8)(A)(ii)(II) of the IDEA also requires the lead agency to convene a conference, with the approval of the parents of the child, among the lead agency, the family, and the LEA at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for preschool services under Part B, to discuss any such services that the child may be eligible to receive.

To help ensure a smooth transition, Congress also included specific requirements under Part B of the IDEA for LEAs regarding transition of children from Part C to Part B. Section 612(a)(9) of the IDEA and 34 CFR §300.132 require the SEA to ensure: that children served under Part C who will participate in Part B preschool programs experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8) of the IDEA; that by the third birthday of a child eligible under Part B, an individualized education program (IEP) or an individualized family service plan (IFSP) with appropriate content has been developed and is being implemented for the child; and that each LEA will participate in transition planning conferences arranged by the Part C lead agency.

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Additionally, the SEA is responsible for ensuring that the child find responsibilities under its program are met, even if the SEA, through an interagency agreement or other mechanism, delegates to the lead agency or another agency the primary role in child find for the birth through two population. 34 C.F.R. §300.125. Since the eligibility criteria under Parts B and C are different, the child find and evaluation procedures under Part C must be followed when the purpose is to locate, identify and evaluate infants and toddlers with disabilities who may be eligible for early intervention services under Part C; and the child find and evaluation procedures under Part B must be followed when the purpose is to locate, identify and evaluate children with disabilities who are in need of special education and related services under Part B. *See* 20 U.S.C. §§1412(a)(3)(A) and 1435(a)(5); 34 CFR §§ 300.125 and 303.321.

If an infant or toddler is determined eligible under Part C, that infant and toddler with a disability and the family receive the early intervention services identified in the child's IFSP under Part C. At least 90 days (or up to six months depending on the State) prior to a toddler reaching the age of three (the age of initial eligibility for services under Part B), the Part C lead agency must notify the LEA for the area where the child resides that the child will shortly reach the age of eligibility for preschool services under Part B. 20 U.S.C. §1437(a)(8)(A)(ii)(I). Both the SEA under Part B and the lead agency under Part C are subject to their respective child find statutory obligations under the IDEA. *See* 34 CFR §§300.125 (Part B) and 34 CFR §303.148(b)(1) (Part C).

The IDEA specifically provides that the protections of the Family Educational Rights and Privacy Act (FERPA) at 20 U.S.C. §1232g (FERPA) apply to both Part B and Part C. 20 U.S.C. §§1417(c) and 1442. Specifically, IDEA sections 617 and 642 define "a State's lead agency" as a "state educational agency," and an "early intervention service provider" as an "LEA" for purposes of FERPA. In addition, FERPA defines "educational agency or institution" to include "any public or private agency or institution which is the recipient of funds under any applicable program." 20 U.S.C. §1232g(a)(3); 34 CFR §99.1. "Applicable programs" means any program for which the U.S. Department of Education has administrative responsibility, including Parts B and C of the IDEA. 20 U.S.C. §1221(c)(1). Thus records maintained for purposes of Parts B and/or C by the lead agency, the SEA or the LEA on those children referred for, or receiving, services under the IDEA are covered as "education records" under FERPA, and must be disclosed only in accordance with FERPA's requirements.

Under the IDEA, in States where the SEA, through an interagency agreement or other mechanism, has included the lead agency's participation in the SEA's child find activities, the SEA, with the lead agency, can establish procedures that allow the lead agency to refer a child to the SEA without prior parent consent in order to meet the SEA's child find responsibilities under 34 CFR §300.125. The specific information that can be included in the referral without prior parental consent by the lead agency for these limited child find purposes are the child's name, date of birth, and sufficient parent contact information (as determined by the SEA) to the SEA and/or LEA so that the SEA and LEA can meet their respective child find responsibilities.

However, the SEA may meet its child find obligations in other ways. The SEA may require instead that the lead agency or any other agency that makes referrals under the State's child find system notify the parent that the child is being referred to the SEA for child find purposes and

allow the parent an opportunity to object; if the parent objects during the period provided for objection, then the IDEA does not require that the referral be made and, consequently in this situation, parental consent is required before the referral can be made. In a State that allows parents an opportunity to object to the child find referral, the lead agency may meet its child find referral obligations in other ways. For example, the lead agency may elect, but is not required, to convene an IFSP meeting to explain to the parent the child find purposes of the referral. If the parent continues to object to the referral, the lead agency may also require the parent to confirm in writing at the IFSP meeting that the parent objects to the referral. If the parent objects to the referral, the SEA and LEA may meet their respective child find obligations through other procedures, such as general public awareness campaigns and, under these circumstances, the IDEA does not require the referral to be made and the lead agency is no longer obligated to refer the child to Part B.

In general under FERPA, personally identifiable information about a child cannot be disclosed by a public agency without first obtaining parental consent unless there is a specific exception. Specifically, you ask whether the “directory information” exception, under FERPA at 20 U.S.C. §§1232g(a)(5) and (b)(1) might permit TXECI to disclose, without parental consent, certain personally identifiable information to the SEA or LEA to meet the statutory child find duties. While the directory information exception does not apply to this situation, we have concluded that another FERPA exception does apply.

The “directory information” exception under FERPA at 20 U.S.C. §§1232g(a)(5) and (b)(1) allows a public agency to disclose information designated as “directory information” to the public without first obtaining parental consent. FERPA does not allow “directory information” to be used to link to other categories of personally identifiable information, such as disability. The disclosure of the child find referral information under the IDEA by the Part C lead agency to the LEA or SEA is not disclosure of directory information because disclosing this information on only Part C children would identify these children as infants and toddlers with disabilities, which information is personally identifiable information not permitted to be released under FERPA. Thus, the child find referral information under the IDEA by the lead agency to the Part B agency does not fall under FERPA’s directory information exception.

However, we have concluded that FERPA and its implementing regulations do not require the lead agency to obtain parental consent when the IDEA requires the lead agency to make the disclosure. As more fully explained above, the IDEA requires the lead agency to disclose some limited personally identifiable information to the LEA and/or the SEA when the SEA, through an interagency agreement or other mechanism, has included the lead agency’s participation in the SEA’s child find activities under 34 CFR §300.125. The specific FERPA exception that allows referral for child find purposes without prior parent consent is the exception to disclosure of personally identifiable information to authorized representatives of state and local educational authorities in connection with the enforcement of Federal legal requirements which relate to any Federally-supported education programs. 20 U.S.C. §§1232g(b)(3) and (b)(5); 34 CFR §99.31(a)(3)(iv) and 34 CFR §99.35(a). In this case, the disclosure of child find referral information by the lead agency to the SEA and/or LEA is required to meet the statutory child find duties under Parts B and C of the IDEA. *See* 20 U.S.C. §§1232g(b)(3) and (b)(5); 34 CFR §§99.31(a)(3)(iv) and 99.35(a); 20 U.S.C §§1412(a)(3) and 1437(a)(8); 34 CFR §§300.125 and

303.148(b)(1). Under this FERPA exception, the education records disclosed by the lead agency to the SEA or LEA must be protected in a manner which will not permit the personal identification of Part C children and their parents to anyone other than the SEA or LEA and must be destroyed when no longer needed to enforce or to comply with the Federal legal requirements. Further, the lead agency must maintain, with the child's Part C records, a record that there has been a disclosure of personally identifiable information to the SEA and/or LEA from the child's education records. *See*, 34 CFR §99.32.

As noted earlier, under the IDEA, a State may adopt a policy of allowing parents an opportunity to object to the referral for child find purposes. Under such a policy, a parent may object during the period provided for objection. If the parent objects under this circumstance, the IDEA does not require referral of the child and, consequently in this situation, FERPA would require prior written parental consent before the referral can be made for child find purposes.

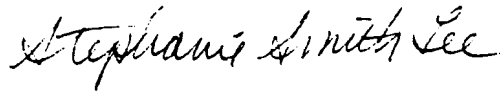
Disclosure of the same information by TXECI to the SEA or LEA, without consent, for a different purpose, however, is not permissible under either FERPA or Part C. Separate parental consent is required prior to each of the following stages under the IDEA for the: (1) transmission of other information about the child from the lead agency to the LEA; (2) evaluation of the child to determine eligibility under Part B; and (3) if the child is determined eligible under Part B, for the initial provision of special education and related services under Part B. 20 U.S.C. §§ 1414(a)(1)(C)(i) and 1436(e); 34 CFR §§ 303.342(e), 303.344(h)(2)(iii) and 300.505.

You also ask if a State may allow parents to refuse the transmission of information by the Part C agency if the parents do not want the SEA or LEA to contact them regarding a referral. The lead agency under Part C and the SEA and LEA under Part B have a statutory responsibility under the IDEA to ensure a smooth transition for each child and family and, under the IDEA's child find provisions, to ensure the identification, location and evaluation of each child eligible for services under Parts B and C of the IDEA. As discussed above, unless the SEA has adopted a procedure allowing parents an opportunity to object, the Part C lead agency must provide the name of the child, date of birth, and sufficient contact information, as determined by the SEA, to allow the SEA and LEA to fulfill their child find responsibilities; parental consent is not required for this disclosure. However, as noted above, the parent has the right under the IDEA to refuse to consent: (1) to having the child evaluated under Part B and (2) to the transfer of additional information from the child's Part C records.

Finally, you ask whether notice must be provided to a Part C family that identifying information will be sent to the LEA for child find purposes; while there is no such specific notice requirement under the IDEA or FERPA that applies to that situation, States may choose to do so. Under Part C, parents are notified of the transition conference by the lead agency at least 90 days prior to their child turning three and should be made aware of the referral by the lead agency to the LEA at that conference (or earlier if the State chooses to do so). Even if parents do not attend the transition conference, they have the right to inspect and review under the IDEA and FERPA their child's education records, which, as discussed above, contain a record that the SEA and/or LEA received personally identifiable information from their child's education records without parental consent.

I hope this information provides the clarification needed. If you need further assistance, please contact Terese Lilly, the OSEP Part C contact for Texas, at (202) 205-0151.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Smith Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Gene Lenz
Division of Special Education, TEA

LeRoy Rooker
Director, Family Policy Compliance Office



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG -9 2005

Ms. Eleanor Hirsh
Educational Consultant
9174 Rosegate
Christiansted, VI 00820

Dear Ms. Hirsh:

This letter is in response to your correspondence to Ms. Maral Taylor, in the Office of Special Education Programs (OSEP), United States Department of Education, seeking clarification on several issues regarding the provision of a free appropriate public education to preschool-aged children with disabilities in the Virgin Islands. Subsequent to sending your letter, you and Ms. Nancy Treusch, Office of Special Education Programs, discussed the issues raised in your letter. As explained in that conversation, these issues overlap with some of the issues addressed in OSEP's ongoing compliance and enforcement interventions with the Virgin Islands Department of Education (VIDE). During the conversation, you requested a written explanation of the requirements under the Individuals with Disabilities Education Act (IDEA) on the issues of: (1) pre-referral activities and timeliness of referrals for initial evaluation to determine eligibility for special education and related services; (2) use of evaluations conducted under Part C to determine eligibility under Part B; and (3) placement options for preschool-aged children with disabilities.

On December 3, 2004, President Bush signed into law P.L. 108-446, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), which became effective on July 1, 2005. A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on June 21, 2005. 70 FR 35782. You may submit written comments on the proposed regulations until September 6, 2005. Final regulations will be issued subsequent to the Department's analysis and consideration of the public comments.

In its Federal Fiscal Year (FFY) 2005 application, VIDE assured OSEP that throughout the period of the grant award, VIDE will operate consistent with all requirements of PL 108-446 and applicable regulations and VIDE will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than July 1, 2006.

1. Pre-referral activities and timeliness of referrals for initial evaluation to determine eligibility

Under Virgin Islands' law, VIDE makes a free appropriate public education (FAPE) available to all children with disabilities ages 3 through 21 residing in the state consistent with section

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612(a)(1) of IDEA. This obligation includes a full and individual initial evaluation of the child, at no cost to parents, to determine a child's eligibility for special education and related services, subject to informed parental consent in accordance with section 614(a)(1) of IDEA. Section 614(a)(1)(C)(i) of IDEA requires that an initial evaluation to determine whether a child is a child with a disability must be conducted within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.

Section 614(b)(2)(A) of IDEA requires that a variety of assessment tools and strategies be used to gather relevant functional, developmental, and academic information about a child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities.) Under section 614(c)(1) of IDEA, as part of an initial evaluation, if appropriate, the IEP team, and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based, local, or State assessments and classroom-based observations, and observations by teachers and related services providers. Information from pre-referral interventions conducted prior to getting parental consent for an initial evaluation can be used in making the eligibility determination

2. Use of evaluations conducted under Part C to determine eligibility under Part B

Section 612(a)(9) of IDEA requires the SEA to ensure that children participating in early intervention programs under Part C, and who will participate in preschool programs under Part B, experience a smooth and effective transition from Part C to preschool programs under Part B. Section 637(a)(9) of Part C of IDEA requires the Part C lead agency to ensure a smooth transition for children receiving early intervention services to preschool, school, or other appropriate services including, in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, convening a conference among the lead agency, the family, and the LEA not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any services that the child may receive. OSEP has encouraged States to use results from child assessments completed under Part C when determining eligibility for Part B. Under 34 CFR §300.571 (which applies to Part C through 34 CFR §303.402), parental consent must be obtained before personally identifiable information from evaluation and assessment records under Part C is disclosed by the lead agency to the local educational agency (LEA) (subject to the exceptions identified in 34 CFR §300.571 and 34 CFR Part 99).¹ As noted above, section 614(c)(1) of IDEA permits an LEA to review existing data regarding a child with a disability, including a child who has been referred by the lead agency, as part of an initial evaluation. However, the statutory language does not specifically require the LEA to use Part C assessment information to determine eligibility for preschool special education and related services under

¹ The implementing regulations to IDEA '97 are still in effect except where changes have occurred due to amendments in IDEA 2004.

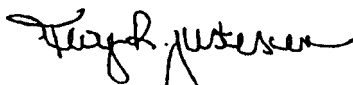
Part B. Parents may make this information available to the Part B eligibility group for their consideration.

3. Placement options for preschool-aged children with disabilities

Under section 612(a)(5)(A) of the IDEA, the SEA must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The full continuum of alternative placements at 34 CFR §300.551, including integrated placement options, such as community based settings with typically developing peers, must be available to preschool children with disabilities. Under section 614(d)(1)(A)(i)(V) of IDEA, the IEP must contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. If the IEP team determines that a preschool-aged child's IEP is to be implemented in a setting with other nondisabled children and a particular program where non-disabled peers are educated does not have enrollment slots available, then the LEA must locate other placements where the child's IEP can be implemented consistent with the placement decision made by the placement team.

We hope that the information provided in this letter addresses your concerns as expressed in your letter and telephone conversation with OSEP staff. We encourage you to comment on the proposed rules published in the Federal Register.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Dr. Carrie Johns, State Director of Special Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Gerald L. Zahorchak, D.Ed.
Commonwealth of Pennsylvania
Department of Education
333 Market Street
Harrisburg, Pennsylvania 17126-0333

FEB 2 - 2007

Dear Dr. Zahorchak:

I write to respond to your December 14, 2006 letter to Secretary Spellings seeking clarification of the so-called "stay-put" regulation in 34 C.F.R. §300.518(c) under Part B of the Individuals with Disabilities Education Act (IDEA).

The IDEA stay-put regulation, which implements IDEA section 615(j), was added to the final Part B regulations that were issued on August 14, 2006, and became effective on October 13, 2006. It provides that:

If the complaint involves an application for initial services under this part [Part B] from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency [under Part B] is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
34 C.F.R. §300.518(c).

Specifically, you asked how the Pennsylvania Department of Education (PDOE) might implement 34 C.F.R. §300.518(c) in light of the judicial decision of the U.S. Court of Appeals for the Third Circuit in *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181 (3d Cir. 2005), *cert. denied*, 126 S.Ct. 1646 (2006) which held that, under section 615(j) of the IDEA, when there is dispute about the provision of appropriate special education and related services to a child transitioning at age three from Part C to Part B of the IDEA, the Part B public agency must provide the educational services that were provided to the child under Part C by the Part C lead agency as the "current educational placement" while the dispute is pending. As you know, in this litigation, the Department took a position that disagreed with the position ultimately taken by the Court in its opinion in the *Pardini* case, and we believe that the provisions of the new regulations correctly interpret the IDEA.

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Your letter referred to a telephone conversation on this issue between Dr. JoLeta Reynolds from our Office of Special Education and Rehabilitative Services (OSERS) and PDOE Acting Chief Counsel Greg Dunlap in late November 2006. Your letter requests further clarification of the State's options given the new regulation. As Dr. Reynolds indicated, if PDOE implemented the interpretation of the IDEA set out in the *Pardini* decision, it would not be in violation of 34 C.F.R. §300.518(c), since, under the regulation, public agencies are not required to, but may if a public agency and parents agree, continue to provide educational services pending the resolution of an administrative hearing or judicial decision filed under IDEA section 615. States may always adopt provisions that are more protective of children with disabilities than the provisions in IDEA (as long as it does not violate other provisions of the IDEA).

As to whether the adoption of 34 C.F.R. §303.518(c) on the stay put provision relieves states in the Third Circuit, including Pennsylvania, from providing services during the pendency of due process hearings to children who are no longer eligible under Part C, we would recommend that each State confer with its legal counsel to assess potential options and the possible litigation risk from failing to provide services. While we certainly believe our regulation is a valid interpretation of IDEA section 615(j), and that courts generally give deference to the Department's regulation, we cannot predict how a court within the jurisdiction of the Third Circuit, or the Third Circuit itself would rule on this issue given its previous opinion.

Please feel free to contact this office if you have further questions. We appreciate your efforts on behalf of children with disabilities.

Sincerely,



John H. Hager

cc: Dr. JoLeta Reynolds