



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

DIRECTOR

March 17, 2023

Ms. Jennifer E. Nix
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School & College Legal Services of California
5350 Skylane Boulevard
Santa Rosa, California 95403

Dear Ms. Nix:

This letter responds to your July 27, 2021, correspondence to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP) and a follow-up telephone discussion during which we clarified the questions raised by your inquiry. Your initial letter raised questions regarding the requirements under the Individuals with Disabilities Education Act (IDEA or Act) as they relate to children with disabilities who are transitioning from receiving early intervention services under Part C of the IDEA to being eligible for and receiving preschool services under Part B of the IDEA. While my staff provided you with initial responses during an August 31, 2021, telephone discussion, you requested a written response following that discussion. We apologize for the delay in responding in writing.

As background, the State lead agency (either directly or through its early intervention service (EIS) providers) is responsible for implementing the IDEA Part C requirements. The State educational agency (SEA) and local educational agency (LEA) are responsible for implementing the IDEA Part B requirements. To ensure a seamless transition, both IDEA Part C and Part B agencies must work closely together at the State and local level. At the State level, this coordination must include an interagency/intra-agency agreement between the State lead agency and the SEA that is on file with OSEP under 34 C.F.R. § 303.209(a)(3). The State lead agency and SEA also must report data annually to the Department on their implementation of early childhood transition requirements through indicators (C-8, B-11, and B-12) in the IDEA Part C and B State Performance Plan/Annual Performance Reports (SPP/APRs).

In this letter, OSEP is clarifying the respective IDEA Part C and B responsibilities in implementing these early childhood transition requirements in responses to the questions below related to: (1) transition plan – Part C responsibilities; (2) transition notification – Part C responsibilities; (3) transition conference – Part C responsibilities; (4) transition conference – Part B responsibilities; (5) referral from Part C – Part B responsibilities; (6) late referrals – Part B and Part C responsibilities; and (7) reporting – State lead agency and SEA responsibilities.

Transition Plan: Part C Responsibilities

Question 1: What are the State lead agency’s responsibilities under Part C of the IDEA regarding development of a transition plan for toddlers with disabilities, consistent with 34 C.F.R. § 303.209(d)?

OSEP Response: The State lead agency must ensure that a transition plan is established in the child’s individualized family service plan (IFSP) not fewer than 90 days (and at the discretion of all parties, not more than nine months) before the third birthday for *all* toddlers who are exiting Part C and not just those who are potentially eligible for Part B. 34 C.F.R. § 303.209(d). The transition plan must include certain content developed by the IFSP Team, which includes the child’s parent. The transition plan must include steps for the toddler with a disability and their family to exit from the Part C program and any transition services that the IFSP Team identifies are needed by that toddler and their family. 34 C.F.R. §§ 303.209(d)(3) and 303.344(h).

Transition Notification: Part C Responsibilities

Question 2: What are the State lead agency’s responsibilities under Part C of the IDEA regarding the transition notification to the SEA and LEA to ensure a seamless transition for toddlers with disabilities turning three years old who are identified as *potentially eligible* for preschool services under Part B of the IDEA, consistent with 34 C.F.R. § 303.209(b)?

OSEP Response: The State lead agency must ensure that it provides the SEA and LEA with notification of toddlers with disabilities who are identified as *potentially eligible* for preschool services under IDEA Part B. The purpose of the transition notification is to ensure that toddlers with disabilities and their families experience a smooth and effective transition from the early intervention services under Part C to preschool services under Part B or other appropriate services. Many States include in their policies a definition of which toddlers with disabilities are “potentially eligible” for preschool service under Part B.

For toddlers with disabilities who are exiting Part C and *potentially eligible* for Part B services, the State lead agency must notify, not fewer than 90 days before the toddler's third birthday, the SEA and the LEA for the area where the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law. 34 C.F.R. § 303.209(b)(1)(i). The transition notification to the LEA and SEA must include the child’s name, date of birth, and parent contact information (name, home and email address, telephone number). 34 C.F.R. §§ 303.209(b)(1)(i) and 303.401(d). The transition notification by Part C to the SEA and appropriate LEA is critical to ensure that Part B can meet its responsibilities. The purpose of the transition notification is to ensure implementation of the IDEA Part B child find mandate in 34 C.F.R. § 300.111. Thus, the transition notification to the LEA/SEA may also include the Part C service coordinator’s name and contact information as well as the language(s) spoken by the child and parent(s) to further assist the LEA and SEA in meeting their child find responsibilities.

The transition notification must be consistent with any opt-out policy adopted by the State lead agency as part of the State’s early childhood transition policies under 34 C.F.R. §§ 303.209(a)(4) and 303.401(e) and on file with OSEP. If the State lead agency has adopted an opt-out policy, the EIS provider must inform the parents of a toddler with a disability of the intended transition notification disclosure and allow the parents a specified time to object. 34 C.F.R. § 303.401(e). If the parents object within the time period established by the State lead agency, the EIS provider cannot make the disclosure. 34 C.F.R. § 303.401(e).

Transition Conference: Part C Responsibilities

Question 3: What are the State lead agency and EIS provider’s responsibilities under Part C of the IDEA for convening a transition conference with the LEA to ensure a seamless transition for toddlers with disabilities turning three years old who are identified as *potentially* eligible for preschool services under Part B of the IDEA, consistent with 34 C.F.R. § 303.209(c)(1)?

OSEP Response: For a child exiting Part C who is potentially eligible for Part B preschool services, “the lead agency, with the approval of the family of the toddler, convenes a conference among the lead agency, the family and the LEA, not fewer than 90 days and at the discretion of all parties, not more than nine months before the toddler’s third birthday to discuss any services the toddler may receive under Part B.” 34 C.F.R. § 303.209(c)(1). The transition conference must meet the accessibility, convenience, and participant requirements for IFSP meetings in 34 C.F.R. §§ 303.342(d) and (e) and 303.343(a). The State lead agency must provide written notice of the transition conference to the family and other participants, which includes the LEA, early enough before the meeting date to ensure that they will be able to attend, under 34 C.F.R. § 303.342(d)(2).

The State lead agency may, but is not required to, combine the invitation to the transition conference in 34 C.F.R. § 303.209(c)(1) and the transition notification in 34 C.F.R. § 303.209(b). If the State lead agency does not invite the parents and the appropriate LEA to the transition conference, it has not met the IDEA transition conference requirements in 34 C.F.R. § 303.209(c)(1). If the State lead agency provides timely notification to the SEA and the appropriate LEA and the LEA fails to attend the transition conference, the State lead agency must still hold the transition conference to provide the family with information about Part B preschool services and may use the transition conference meeting to develop or revise the transition plan in the child’s IFSP.

Transition Conference: Part B Responsibilities

Question 4: What is the LEA’s responsibility under Part B when it is invited to attend the transition conference convened by the EIS provider under 34 C.F.R. § 303.209(c)(1)?

OSEP Response: The LEA must participate in the transition planning conference arranged by the EIS provider as failure to participate would be inconsistent with 34 C.F.R. § 300.124(c). The LEA’s failure to attend the transition conference when it was invited to the transition conference by the EIS provider makes it difficult for the LEA to meet all of its Part B responsibilities including ensuring that an Individualized Education Program (IEP) is developed and implemented by the child’s third birthday (if the child is eligible), as required by 34 C.F.R.

§ 300.124(b). The Part B LEA must work with the Part C EIS provider to ensure that the appropriate LEA is invited to, and participates in, the transition conference.

The purpose of the appropriate LEA participating in the transition conference is to ensure that toddlers exiting Part C and eligible for Part B “experience a smooth and effective transition.” 34 C.F.R. § 300.124(a). The LEA's participation is critical to the LEA being able to provide the parent with information about Part B preschool services, and start the process for consenting to an evaluation and conducting eligibility determinations under Part B.

Referral from Part C: Part B’s Responsibilities

Question 5: What are the SEA’s and LEA’s Part B responsibilities when the transition notification is received from Part C to ensure a seamless transition for toddlers with disabilities who were served under IDEA Part C and who are identified as potentially eligible for preschool services under IDEA Part B consistent with 34 C.F.R. §§ 300.124 and 303.209?

OSEP Response: The SEA must have in effect policies and procedures to ensure children participating in Part C early intervention, and who are potentially eligible for preschool programs under Part B, experience a smooth and effective transition to those programs. 34 C.F.R. § 300.124. The State lead agency’s transition notification to the SEA and appropriate LEA must be treated as a referral under Part B. An LEA must take certain specific steps upon receipt of Part C’s referral as described below.

Part B Procedural Safeguards Notice and LEA Decision to Conduct an Initial Evaluation:

Upon receipt of the referral from Part C, the LEA must provide the child’s parent with a copy of the procedural safeguards notice as required under 34 C.F.R. § 300.504. Further, the LEA must take one of two actions. If the LEA suspects the child has a disability under Part B, the LEA must request the parent’s consent to conduct an initial evaluation to determine the child’s eligibility for services under Part B (34 C.F.R. § 300.300) and, if the parent provides consent, conduct the evaluation. However, if the LEA does not suspect that the child has a disability under Part B, the LEA must provide the parent written notice consistent with 34 C.F.R. § 300.503 which explains, among other things, the basis for its decision and a statement that the parents have protections under the Part B procedural safeguards. These safeguards include the parent’s right to request a due process hearing or file a State complaint if the parent believes the LEA should evaluate the child.¹

Initial Evaluation: In general, IDEA requires that all children served in Part C and referred to Part B who are suspected of having a disability under Part B: (1) must be evaluated and their eligibility determined under Part B; and (2) if determined eligible, must have an IEP developed and implemented by their third birthday. 34 C.F.R. §§ 300.101(b), 300.124(b), and 303.209. With the parent’s consent, the LEA must conduct the initial evaluation of a child suspected of

¹ For more information, see 71 Fed. Reg. 46540, 46636 and OSEP Memorandum 11-07 (Jan. 21, 2011). Also, see Question B-2 in OSEP’s [Questions and Answers on Part B Child Find](#) (Aug. 24, 2021).

having a disability under IDEA in accordance with the specified procedures and within the 60-day timeline or its State-established timeline consistent with 34 C.F.R. § 300.301.

Eligibility Determination: Upon completion of assessments and other evaluation measures, a group of qualified professionals and the child’s parent determines whether the child is a child with a disability under Part B and the educational needs of the child. 34 C.F.R. § 300.306(a)(1). The LEA must provide a copy of the evaluation report and the documentation of determination of the child’s eligibility at no cost to the parent. 34 C.F.R. § 300.306(a)(2).

Initial IEP Meeting and Development of the IEP: A meeting to develop the IEP for a child must be conducted within 30 days of a determination that the child needs special education and related services, and as soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with their IEP. 34 C.F.R.

§ 300.323(c). For toddlers with disabilities who are referred from Part C to Part B, the 60-day evaluation timeline in 34 C.F.R. § 300.301(c)(1) and the 30-day IEP meeting timeline in 34 C.F.R. § 300.323(c)(1) are subject to the requirement that a child who transitions from Part C to Part B has an IEP developed and implemented by the time the child reaches age three. Thus, the 90-day Part C transition notification period prior to the toddler’s third birthday is the minimal time period necessary for an LEA to meet its responsibilities to ensure that an IEP is developed and implemented by the child’s third birthday. 71 Fed. Reg. 60174 (Sept. 28, 2011).

The LEA is responsible, if the parent requests it, for inviting the service coordinator or other representative of the Part C system to the initial IEP Team meeting to assist with the smooth transition of services, under 34 C.F.R. § 300.321(f). It is a good practice for the LEA to document how it invited the Part C service coordinator, the date the invitation was sent, and a copy of the invitation or notes from a phone call extending the invitation.

Late Referrals: Part C and Part B Responsibilities

Question 6: What are the Part C and Part B responsibilities for transition of children who are referred to IDEA Part C less than 90 days from the child’s third birthday?

OSEP Response: Part C responsibilities vary, depending on whether the child was referred to Part C either between 45 and 90 days before the child’s third birthday, or fewer than 45 days before the child’s third birthday.² If the child is referred to Part C and the State lead agency determines the child to be eligible for Part C early intervention services between 45 and 90 days prior to the toddler’s third birthday, the State lead agency must notify the SEA and appropriate LEA as soon as possible after the toddler’s eligibility determination. 34 C.F.R.

§ 303.209(b)(1)(ii). The transition notification must be consistent with any opt-out policy that the State lead agency has adopted. 34 C.F.R. § 303.209(b)(2).

² Additional information about Part C and Part B responsibilities for children referred to Part C 135 days or less before a child’s third birthday, including a timeline, is available at Early Childhood Technical Assistance Center. (2018) [Federal IDEA Part C & Part B Transition Requirements for Late Referrals](#).

Under Part C, if a child is referred to the State lead agency fewer than 45 days before that toddler's third birthday, the State lead agency is not required to conduct the initial evaluation to determine eligibility under Part C, an assessment, or an IFSP meeting. However, if the State lead agency suspects that the child may be a child with a disability eligible for preschool services or other services under Part B of the IDEA, the State lead agency, with parental consent, if required under 34 C.F.R. § 303.414, must refer the toddler to the SEA and appropriate LEA. 34 C.F.R. § 303.209(b)(1)(iii).

If a child was referred to the State lead agency less than 90 days before the child's third birthday and the child is suspected of being a child with a disability under Part B, OSEP encourages the LEA to make every effort to complete the evaluation, determine eligibility, and develop and implement an IEP by the child's third birthday or as soon as possible after the third birthday.

Reporting Responsibilities: Part C and Part B Responsibilities

Question 7: What are the State lead agency's and SEA's responsibilities for reporting on compliance with the early childhood transition requirements related to a child's transition from Part C to Part B?

OSEP Response: Both the State lead agency and the SEA must report to OSEP on the State's compliance with IDEA's early childhood transition requirements. The State lead agency must report annually on early childhood transition requirements under IDEA Part C SPP/APR Indicator 8A (Transition Plan), 8B (Transition Notification), and 8C (Transition Conference). The SEA must report annually on early childhood transition requirements under IDEA Part B SPP/APR Indicator 11 (Timely Evaluation) and Indicator 12 (Early Childhood Transition).³

IDEA Part C SPP/APR: In Indicator 8A, the State lead agency reports on its compliance with the requirement to ensure an IFSP with transition steps and services is developed at least 90 days, and at the discretion of all parties, not more than nine months, prior to the toddler's third birthday. In Indicator 8B, the State lead agency reports the percentage of toddlers with disabilities exiting Part C with timely transition planning for whom the State lead agency has notified (consistent with any opt-out policy adopted by the State) the SEA and the appropriate LEA where the toddler resides at least 90 days prior to the toddler's third birthday for toddlers potentially eligible for Part B preschool services. In Indicator 8C, the State lead agency reports the percentage of toddlers with disabilities exiting Part C with timely early childhood transition planning for whom the State lead agency has conducted the transition conference held with the approval of the family at least 90 days, and at the discretion of all parties, not more than nine months, prior to the toddler's third birthday for toddlers potentially eligible for Part B preschool services. The State lead agency's reporting under Indicator 8C must reflect compliance with all of the transition conference requirements, including notification to the parents and the appropriate LEA.

³ To access the SPP/APR Measurement Tables for Part B and Part C, see [Resources for Grantees - Individuals with Disabilities Education Act](#).

IDEA Part B SPP/APR: In Indicator 11, the SEA reports the percentage of children who were evaluated within 60 days of receiving parental consent for an initial evaluation, or if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. 34 C.F.R. § 300.301(c)(1). The SEA must include when reporting its Indicator B-11 data, children who transitioned from Part C to Part B and who were evaluated to determine their eligibility under Part B. In Indicator 12, the SEA reports on its compliance with the requirements to ensure children referred to Part B by Part C prior to age three who are found eligible for Part B, have an IEP developed and implemented by their third birthdays.

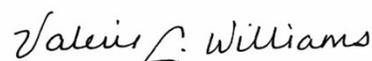
Conclusion

The State lead agency and the SEA are responsible for ensuring a smooth and effective transition for toddlers with disabilities exiting Part C who are potentially eligible for Part B preschool services. The State lead agency and SEA must have a transition agreement and policies and procedures to ensure effective coordination and communication at the State and local levels. By working together, along with parents, the State lead agency, EIS provider, SEA, and LEA can facilitate a smooth and effective transition for toddlers with disabilities from their participation in early intervention programs under Part C to Part B preschool programs.

We note that Section 607(d) of the IDEA prohibits the Secretary of the Department from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of Section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA Section 607(e), this response is provided as informal guidance and is not legally binding. It represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Further, please note that OSEP responds to these matters, generally, and not in the context of any specific due process complaint or State complaint that may be pending or resolved.

We hope this information is helpful. If you have any further questions, please do not hesitate to contact Kathryn Austin, OSEP's State Lead for California, at kathryn.austin@ed.gov or 202-245-6975.

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs