

## **IDEA PART C GRANT APPLICATION TECHNICAL ASSISTANCE CHECKLIST EARLY CHILDHOOD TRANSITION AGREEMENTS**

This IDEA Part C Grant OSEP Checklist for Early Childhood Transition Agreements describes the specific content requirements for Early Childhood transition agreements, which are required by 34 CFR §303.209(a)(3)(i) of the final IDEA Part C regulations published on September 28, 2011. The final regulations are referred to in this Checklist as the regulations and the prior regulations are referred to as prior or previous regulations.

### **Requirements for Early Childhood Transition Agreements**

Under the IDEA Part C regulations in 34 CFR §303.209(a)(3)(i)(A), if the State lead agency is not the State educational agency (SEA), the State lead agency must have on file with OSEP as part of its IDEA Part C application transition policies and procedures, an interagency agreement on transition. In a change from the prior regulation, if the lead agency is the SEA, 34 CFR §303.209(a)(3)(i)(B) requires an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act.

**If the Transition Agreement is also serving as a method by the State to ensure the provision of, and financial responsibility for Part C services, then the Agreement** must meet the requirements in Subpart F of the regulations (including use of funds, payor of last resort, and, if applicable, system of payments) and the provisions in §303.511(b) and (c) regarding timely resolution of intra-agency and interagency disputes and provisions to ensure that service provision is not delayed or denied to a child because of disputes between agencies over financial or other responsibilities. (IDEA sections 637(a)(2) and 640 and 34 CFR §303.511)

### **Content of Transition Agreements**

The Part C regulations in 34 CFR §303.209(a)(3)(ii) require the transition interagency or intra-agency agreement to address how the lead agency and the SEA will meet the IDEA Part C early childhood transition requirements in 34 CFR §303.209(b) through (f) (including any policies adopted by the lead agency under 34 CFR §303.401(d) and (e), and §303.344(h)) and the IDEA Part B early childhood transition requirements in 34 CFR §§300.101(b), 300.124, 300.321(f) and 300.323(b).

## **I. IDEA Part C Early Childhood Transition Requirements**

- A. Transition Notification** – The lead agency must specify how it will notify the SEA and the LEA (where the toddler receiving Part C services resides) that a toddler who is receiving Part C services and who is potentially eligible for services under the Part B section 619 preschool program will shortly turn three years old and exit the Part C program. (IDEA section 637(a)(9)(A)(ii)(I) and 34 CFR §303.209(b))
- *New 90-day Timeline:* The State must provide this Transition Notification at least 90 days prior to the toddler's third birthday.
    - If the lead agency determines that the toddler is eligible for early intervention services more than 45 days but less than 90 days before that toddler's third birthday, the State must provide the Transition

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Notification as soon as possible after determining the toddler's eligibility and notify the SEA and the LEA (where the toddler receiving Part C services resides) that a toddler who is receiving Part C services is potentially eligible for services under the Part B section 619 preschool program.

- If a child is referred to the lead agency fewer than 45 days before the toddler's third birthday, the lead agency is not required to conduct an evaluation, assessment, or initial Individualized Family Service Plan (IFSP) meeting. If that child may be eligible for preschool services under Part B of the IDEA, the lead agency, with parental consent (if applicable and required under §303.414, must refer the toddler to the SEA and the LEA where the toddler resides.
- *New Requirement- Population to Whom Notification Applies:* The State must conduct this Transition Notification only for children potentially eligible for services under the Part B preschool program. The State lead agency and the SEA may want to include a definition or process for determining which Part C children receiving services are considered "potentially eligible for Part B preschool services."
- *New Requirement—Notification to the SEA:* The lead agency must specify how it will notify the SEA in addition to the LEA where the toddler resides.
- *Opt-Out Policy:* While not a new requirement, the regulations codify the requirement that the Transition Notification must occur unless the State has adopted an opt-out Policy under §§303.209(c) and 303.401(e). The State must review its Opt-Out policy to make sure that the Transition Notification can occur within the new required timeline (at least 90 days prior to the toddler's third birthday). The State's Transition Notification policy must include the details of any opt-out policy adopted by the State lead agency. If the State adopts an Opt-Out Policy, it must comply with §303.401(e), which allows a State, through policies and procedures, to require EIS providers to inform the parents of a toddler with a disability of the intended disclosure and allow the parents a specified time to object. If the parents object within the period established by the State, the EIS provider cannot make the disclosure. The Department has previously advised States that such opt-out policies must be in writing and must address—
  - The information that will be disclosed as part of the Transition Notification (child's name and date of birth, and parent contact information). The State may also include the name of the service coordinator and the service coordinator's contact information.
  - When parents will be notified of the right to opt out.
  - How parents will be notified of the right to opt out.
  - The length of time a parent has to notify the lead agency that the parent is electing to opt out.
  - How parents can opt out (i.e., orally or in writing).

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- The content of the notice must inform parents of: (a) the information to be disclosed (child's name & date of birth & parent contact information); (b) the right of the parent to opt out of disclosure; (c) the period of time that the parent has to notify lead agency that parent is opting out; and (d) how parents can opt out (i.e., orally or in writing).

- B. Transition Conference to Discuss Services --** With the family's approval, the lead agency must conduct a transition conference for a toddler with disabilities who is receiving Part C services and who will be exiting the Part C program.
- **Subject Matter:** There is no change in the subject matter in the regulations. The regulations continue to require a conference for a toddler with a disability who may be eligible for Part B services to discuss any services the toddler may receive under Part B. If a toddler with a disability is not potentially eligible for preschool services under Part B then reasonable efforts should be made to hold a conference to discuss other appropriate services that the toddler may receive. (IDEA section 637(a)(9)(A)(ii)(II) and (III) and 34 CFR §303.209(c))
  - **Timeline Requirement:** The window for this timeline was broadened from six months to nine months by the IDEA 2004 amendments. Thus, while it is not a new requirement, the revised window timeline is now adopted in the Part C regulations. If the toddler may be eligible for Part B preschool services, then the conference must be no later than 90 days before the toddler's third birthday, but, at the discretion of all parties, may now occur up to nine months (instead of the prior six months) before the toddler's third birthday. (IDEA section 637(a)(9)(A)(ii)(II) and (III) and 34 CFR §303.209(c))
  - **Required Parties:** The parties required in the conference are unchanged under the regulations. For a toddler who may be eligible for preschool services under Part B, the conference includes the lead agency, the family of the toddler, and the LEA. For a toddler who is not potentially eligible for such services, the conference should include the lead agency, the family of the toddler and providers of other appropriate services. (IDEA section 637(a)(9)(A)(ii)(II) and (III) 34 CFR §303.209(c))
- C. Procedures for Transition Plan –** The lead agency must have policies to ensure that each infant and toddler with a disability exiting the Part C program has in place in the IFSP a transition plan. Under the regulations, the transition plan must include the following components and process.
- **Review of Program Options:** While this is not a new requirement, the regulations expressly incorporate this requirement as part of developing the transition plan. The plan must review the program options for the toddler for the period from the toddler's third birthday through the remainder of the school year. (IDEA section 637(a)(9)(B) and 34 CFR §303.209(d)(1)(i))
  - **Involving the Family in the Transition Plan:** While this is not a new requirement, the regulations expressly incorporate this requirement as part of developing the transition plan. The lead agency must include the family in the

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development of the transition plan. (IDEA section 637(a)(9)(A)(i) and 34 CFR §§303.209(d)(1)(ii) and 303.344(h))

- ***New Timeline Requirement:*** The regulations adopted a new timeline for the transition plan, which timeline is the same as the timeline for conducting a transition conference for Part C children who may be potentially eligible for Part B preschool services. The lead agency must establish a transition plan in the IFSP not fewer than 90 days, but at the discretion of all parties up to 9 months, before the toddler's birthday. (IDEA section 637(a)(9)(C) and 34 CFR §303.209(d)(2))
- ***Transition Steps and Services:*** The transition plan in the IFSP must include, consistent with 34 CFR §303.344(h), any appropriate steps for the toddler to exit the Part C program and any transition services needed by that toddler and his or her family. (IDEA sections 636(a)(3) and 637(a)(9)(C) and 34 CFR §§303.209(d)(1)(ii) and (2)(i) and (ii))  
The transition steps must include the following two new confirmations, confirmation that: (1) Child find information has been transmitted to the LEA or other relevant agency (consistent with any opt-out policy adopted by the State lead agency) and (2) Part C has transmitted additional information such as the most recent evaluation, assessments, and IFSP (with parent consent, if applicable under 34 CFR §303.414).

**D. Combining Transition Conferences with the Meeting to Develop the Transition Plan** – The regulations expressly allow the transition conference and IFSP meeting to develop the transition plan to be combined into one meeting, as long as they meet the requirements in 34 CFR §§303.342(d) and 303.343. (34 CFR §303.209(e))

**E. Applicability of Transition Requirements** – The regulations clarify that the transition notification, transition conference and transition plan requirements apply to all Part C children approaching their third birthday and specify which requirements apply in States that elect to offer Part C services beyond age three under §303.211.

**II. IDEA Part B Early Childhood Transition Requirements**

**A. Developing and Implementing the IEP by Third Birthday for Child Eligible under Part B** – In order to ensure a smooth and effective transition for children with disabilities who received Part C services and are eligible for Part B preschool services, the State must have policies and procedures in place to ensure that an IEP, or if consistent with IDEA sections 614(d)(2)(B) and 636(d), an IFSP, has been developed and is being implemented by the child's third birthday. (IDEA section 612(a)(9) and 34 CFR §§300.101(b) and 300.124(b))

**B. LEA participating in the Transition Conference** – Each affected LEA must participate in transition conferences arranged by the lead agency for toddlers with

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disabilities who may be eligible for preschool services under Part B. (IDEA section 612(a)(9) and 34 CFR §300.124)

- C. Inviting the Service Coordinator for Initial IEP Meeting** – At the request of the parent, an invitation to the initial IEP meeting must be sent to the Part C service coordinator, or other Part C service representative, if the child previously received Part C services. (IDEA section 614(d)(1)(D) and 34 CFR §300.321(f))
- D. Considering the IFSP at the initial IEP Team meeting and Using IFSP as an IEP if Permitted Under State Policy–**
- For all children who transition from Part C services to Part B, the IEP team must consider the IFSP that contains the IFSP content (including the natural environments statement) described in IDEA section 636(d) and its implementing regulation when developing the initial IEP.
  - In addition, 34 CFR §300.323(b) provides that the IFSP may serve as the IEP for 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 three during the school year) under the following conditions: (a) using the IFSP as the IEP is consistent with State policy and agreed to by the agency and the child’s parents; (b) the child’s parents are provided with a detailed explanation of the differences between an IEP and an IFSP; (c) written informed consent is obtained from the parents if the parents choose an IFSP; (d) the IFSP contains the IFSP content, including the natural environments statement; (e) the IFSP includes an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy skills for children with IFSPs who are at least three years of age; and (f) the IFSP is developed in accordance with the IEP procedures under Part B of the IDEA. (IDEA section 614(d)(2)(B) and 34 CFR §300.323(b))