



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

August 18, 2016

Regina Skyer
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Dear Ms. Skyer:

This letter responds to your December 23, 2015 inquiry to Dr. Melody Musgrove, former Director of the Office of Special Education Programs (OSEP), within the Office of Special Education and Rehabilitative Services, U.S. Department of Education (Department). In your correspondence, you requested guidance regarding multidisciplinary evaluations, eligibility, and screening procedures under Part C of the Individuals with Disabilities Education Act (IDEA). The IDEA Part C regulations set forth at 34 CFR §§303.1 through 303.734 require States to have policies and procedures to provide early intervention services (EIS) to eligible infants and toddlers with disabilities. Specifically, 34 CFR §303.300(c)(2) requires that the statewide system to provide early intervention services must include policies and procedures for evaluations as described in 34 CFR §303.321. OSEP's responses to your questions are provided below.¹ For clarity, we have addressed your multi-part inquiries as separate questions.

Question 1a: Are parents entitled to a complete multidisciplinary evaluation upon referring their child to the early intervention program?

Response: The Part C IDEA regulations at 34 CFR §303.321(a)(1) state that lead agencies must ensure that, subject to obtaining parental consent, each child under the age of three who is referred for evaluation or early intervention services and suspected of having a disability, receives a timely, comprehensive, multidisciplinary evaluation of the child unless the child's eligibility is established by medical or other records under 34 CFR §303.321(a)(3)(i). A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under Part C if those records indicate that the child's level of functioning in one or more of the developmental areas identified in 34 CFR §303.21(a)(1)² constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under 34 CFR §303.21. (See 34 CFR §303.321(a)(3)(i)). OSEP notes that if the child's

¹ The responses describe the Federal IDEA Part C regulatory requirements and do not analyze New York State's specific policies or procedures.

² The developmental areas specified in 34 CFR §303.21(a)(1) are: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development.

eligibility under Part C is established through medical or other records, the lead agency must still ensure that an assessment of the child is conducted, which includes the identification of the child's needs in each of the developmental areas in 34 CFR §303.21. (See 34 CFR §303.321(a)(3)(i) and (c)(1)(iii)).

Question 1b: What constitutes a multidisciplinary evaluation?

Response: IDEA Part C requires individual States to have policies and procedures that establish the specific details about what constitutes a multidisciplinary evaluation, and the IDEA Part C regulations delineate what must be addressed in such policies. Multidisciplinary is defined under 34 CFR §303.24, and means the involvement of two or more separate disciplines or professions and with respect to evaluation of the child and assessments of the child and family, may include one individual who is qualified in more than one discipline or profession.

Additionally, the regulation at 34 CFR §303.321(a)(2) defines evaluation to mean the procedures used by qualified personnel to determine a child's initial and continuing eligibility for Part C services. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility under Part C. All evaluations must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory. (See 34 CFR §303.321(a)(4)). Unless clearly not feasible to do so, all evaluations must be conducted in the native language of the child, in accordance with the definition of native language. (See 34 CFR §303.321(a)(5)).

While States determine the specific procedures used in an evaluation, under 34 CFR §303.321(b), no single procedure may be used as the sole criterion for determining a child's eligibility under IDEA Part C. Furthermore, evaluation procedures must include: (1) administering an evaluation instrument; (2) taking the child's history; (3) identifying each child's level of functioning in each of the developmental areas in §303.21(a)(1); (4) gathering information from other sources as necessary; and (5) reviewing medical, educational, or other records.

Question 1c: Who determines a child's eligibility?

Response: As noted in the definition of "evaluation" described above, the lead agency uses qualified personnel³ to determine the eligibility of a child under Part C. There are multiple factors for how a child's eligibility is determined under Part C, including a State's definition of infant or toddler with a disability, the results of evaluation instruments, diagnosed physical or mental conditions, and informed clinical opinion. Qualified personnel use the State's procedures, including the use of informed clinical opinion when conducting an evaluation, to determine a child's initial and continuing eligibility. The lead agency must ensure that informed clinical opinion can be an independent basis for establishing eligibility, but informed clinical opinion may not be used to negate the results of evaluation instruments used to establish eligibility. (34 CFR §303.321(a)(3)(ii)). Under 34 CFR §303.322, if, based on the evaluation, the lead agency

³ "Qualified personnel" means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services. (34 CFR §303.31).

determines that a child is not eligible under Part C, the lead agency must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through the IDEA's dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

Question 2a: Is an early intervention official correct in telling a parent that their child will only be "screened" to determine eligibility?

Response: Under IDEA Part C, States have the option to adopt screening procedures. Screening procedures may be used to determine whether a child is suspected of having a disability. If a child is suspected of having a disability, or if the parent requests an evaluation, an evaluation must be conducted to determine eligibility, once parental consent for the evaluation is obtained.

The regulation at 34 CFR §303.320 states that the lead agency may adopt procedures to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability. If the lead agency or EIS provider proposes to screen a child, it must provide the parent prior written notice of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation at any time during the screening process. Additionally, the lead agency must obtain parental consent before conducting the screening procedures.

If the parent consents to the screening and the screening or other available information indicates that the child is suspected of having a disability, after notice is provided to the parent and once parental consent is obtained, an evaluation of the child must be conducted. If the child is not suspected of having a disability, the lead agency or EIS provider must ensure that notice of that determination is provided to the parent, and that the notice describes the parent's right to request an evaluation. Importantly, if the parent of the child requests and consents to an evaluation at any time during the screening process, an evaluation of the child must be conducted even if the lead agency or EIS provider has determined that the child is not suspected of having a disability. (34 CFR §303.320(a)(3)).

A parent has the right to request an evaluation even if the screening or other available information indicates that the child is not suspected of having a disability, instead of having to utilize the due process procedures to appeal that decision. Parents often can identify or suspect developmental delays in their children that may not be identified through a screening. For this reason, parents are able to request and receive an evaluation without the potential delay and expense of a due process hearing. As noted in the *Analysis of Comments and Changes*⁴, we believe this approach facilitates a comprehensive child find system tasked with identifying all infants and toddlers with disabilities. Additionally, because a child is only eligible for Part C services for a short period of time and providing services earlier rather than later can enhance the development of infants and toddlers with disabilities, time is of the essence with regard to identifying a child as an infant or toddler with a disability. Thus, it is important that parents

⁴ Early Intervention Program for Infants and Toddlers With Disabilities; Assistance to States for the Education of Children With Disabilities; Final Rule and Proposed Rule, *Analysis of Comments and Changes*, 76 Fed. Reg. 60140, 60142-60244 (September 28, 2011).

retain the right to request an evaluation at any time during the screening process. (See 76 Fed. Reg. 60193).

Question 2b: What constitutes a screening?

Response: Screening procedures are activities that are carried out by, or under the supervision of, the lead agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of EIS; and include the administration of appropriate instruments by personnel trained to administer those instruments. (34 CFR §303.320(b)). As noted in the *Analysis of Comments and Changes*, the Department believes it is important for a lead agency to have some flexibility in determining how best to implement screening in its State. (See 76 Fed. Reg. 60195).

Question 3: Is an early intervention official correct in telling a parent that a child is only entitled to be evaluated in a total of three areas of need for the child's entire tenure under the early intervention program?

Response: States are required to have policies and procedures for conducting timely, multidisciplinary evaluations to determine eligibility under Part C. Under 34 CFR §303.321(b), the State's procedures for an evaluation of the child must include identifying the child's level of functioning in each of the developmental areas in 34 CFR §303.21(a)(1). Under 34 CFR §303.21(a)(1), the developmental areas listed are: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development. Therefore, an evaluation of the child must include an identification of the child's level of functioning in each of those developmental areas. (See also, OSEP's letter to Anonymous, 102 LRP 12918 (September 25, 2000) (copy enclosed), stating that the evaluation of the child's level of functioning must be completed in all of those developmental areas.)

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the Department of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

Enclosure