



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

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William Eiserman, Ph.D.
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and Management
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Dear Dr. Eiserman:

This letter responds to your correspondence to Ruth Ryder, former Acting Director of the U.S. Department of Education's (Department's) Office of Special Education Programs (OSEP). In that letter, you asked about the evaluation process for an infant or toddler suspected of being deaf or hard of hearing to determine eligibility for early intervention services (EIS) under Part C of the Individuals with Disabilities Education Act (IDEA). OSEP's responses are provided below. We regret the delay in responding.

We note that section 607(d) of the IDEA prohibits the Secretary 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. This response 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.

In your letter, you ask whether screening should be included as part of an evaluation for an infant or toddler suspected of being deaf or hard of hearing, as well as information on the applicable evaluation timelines and required protocols. The Part C IDEA regulations at 34 C.F.R. § 303.321(a)(1) require that State lead agencies must ensure that, subject to obtaining parental consent, each infant or toddler 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 unless the child's eligibility is established by medical or other records under 34 C.F.R. § 303.321(a)(3)(i). Evaluation means the procedures used by qualified personnel¹ to determine a child's initial and continuing eligibility for Part C services. 34 C.F.R. § 303.321(a)(2)(i). The Part C regulations at 34 C.F.R. § 303.321 require that the evaluation and

¹ 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 C.F.R. § 303.31.

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assessment of an infant or toddler be based on informed clinical opinion, and include the following –

- (i) A review of pertinent records related to the child's current health status and medical history.
- (ii) An evaluation of the child's level of functioning in each of the following developmental areas:
 - (A) Cognitive development.
 - (B) Physical development, including vision and hearing. (emphasis added)
 - (C) Communication development.
 - (D) Social or emotional development.
 - (E) Adaptive development.
- (iii) An assessment of the unique needs of the child in terms of each of the developmental areas, including the identification of services appropriate to meet those needs.

While States determine the specific procedures used in an evaluation, under 34 C.F.R. § 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 the 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.

If a child is determined eligible as an infant or toddler with a disability, an assessment must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following —

- (i) A review of the results of the evaluation conducted under paragraph (b) of this section;
- (ii) Personal observations of the child; and
- (iii) The identification of the child's needs in each of the developmental areas in 34 C.F.R. § 303.21(a)(1).

A family-directed assessment also must be completed in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must —

- (i) Be voluntary on the part of each family member participating in the assessment;
- (ii) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
- (iii) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development. 34 C.F.R. § 303.321(c).

Under IDEA Part C, States also have the option to 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 or EIS provider must obtain parental consent before conducting the screening.

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. Additionally, if the lead agency or EIS provider has determined that the child is not suspected of having a disability and 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. 34 C.F.R. § 303.320(a)(3).

With very limited exceptions, any screening under 34 C.F.R. § 303.320 (if the State has adopted a policy and elects, and the parent consents, to conduct a screening of a child), the initial evaluation, and the initial assessments of the child and family under 34 C.F.R. § 303.321, and the initial individualized family service plan (IFSP) meeting under 34 C.F.R. § 303.342 must be completed within 45 days from the date the lead agency or EIS provider receives the referral of the child. 34 C.F.R. § 300.310.

You ask when a previous hearing screening (such as a newborn hearing screening outcome or a hearing screening result provided by an Early Head Start program or a health care provider), can meet the Part C evaluation requirements. As discussed above, the evaluation and assessment of an infant or toddler includes very specific requirements and permits a review of pertinent records related to the child's current health status and medical history to establish eligibility. If, after a review of these records, the lead agency or EIS provider determines additional information is needed to make an eligibility determination or determine the child's service needs, an evaluation must be completed under 34 C.F.R. § 303.321(b).

You also ask how Part C programs ensure that a hearing screening or evaluation is also completed in a timely manner when a child is determined to be eligible for Part C services based on an established condition. 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 either that: (1) the child's level of functioning in one or more of the developmental areas identified in 34 C.F.R. § 303.21(a)(1) constitutes a developmental delay or (2) the child has an established physical or mental condition that has a high probability of resulting in developmental delay (and includes conditions such as sensory impairment or deafness) under 34 C.F.R. § 303.21(a)(2). Therefore, if a child who is determined to be eligible for Part C services based on an established condition is also suspected of being deaf or hard of hearing, the lead agency or EIS provider must complete an assessment of the child under 34 C.F.R. § 303.321. This child assessment must be conducted by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs and, as noted above, include the identification of the child's needs in each of the developmental areas in 34 C.F.R. § 303.21(a)(1), which include physical development (including vision and hearing).

Finally, you ask if an initial evaluation has been initiated and the child requires treatment to resolve any temporary medical conditions before the hearing evaluation can be completed (for

example, a child has otitis media which can take a month or more to resolve), how should Part C programs ensure that the child remains actively in the eligibility determination process if the hearing evaluation requires more than 45 days to complete. Under 34 C.F.R. § 303.310(b), the 45-day timeline does not apply for any period for exceptional family circumstances such as when the child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records. *See* 34 C.F.R. §303.310(b). The situation you describe above appears that it may qualify as an "exceptional family circumstances." In such situations, the lead agency or EIS provider must document in the child's early intervention records the exceptional family circumstances. The lead agency or EIS provider also must complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances no longer exist and develop and implement an interim IFSP, to the extent appropriate and consistent with 34 C.F.R. § 303.345. *See* 34 C.F.R. § 303.301(c).

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/

Laurie VanderPloeg
Director
Office of Special Education Programs