

Transition Alert

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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The 2007 Proposed Part C Rules and Transition

The U.S. Department of Education published on May 9 in the *Federal Register* a Notice of Proposed Rulemaking (NPRM) regarding proposed regulations to implement changes in the Part C Program – Early Intervention Program for Infants and Toddlers with Disabilities resulting from the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The following summary synthesizes the elements of the NPRM that directly affect transition policy and practice.

ORGANIZATION AND PURPOSES OF THE NPRM

The recent NPRM document is organized according to the sequence of the IDEA, and it departs from previous such regulatory documents for Part C by striving to state clearly and directly how a proposed regulation elaborates on the statute and reiterates or differs from previous policy. Thus it strives to eliminate the need for readers to conduct a side by side analysis of three documents, namely, the law itself, the existing regulations that explain the statute, and the proposed regulations. The NPRM attempts to align Part C policies and language for Early Intervention with those of Part B for older children with disabilities, and it specifies those continuities. The NPRM also cites reasons for proposed changes in a number of policies and requests comments and specific recommendations from the public on ways to improve the rules in other areas. The procedures for submitting comments appear at the end of this analysis.

PROPOSED RULES RELATED TO TRANSITION

Many of the proposed rules related to transition from Part C appear in section 303.209 of the NPRM. Transition elements of the proposed rule making are discussed below under six topics: purpose, transition practices, evidence-based transition planning, transition requirements to be specified in statewide systems, personnel development for transition planning, and state interagency coordinating councils. Each proposed rule will be described in turn. Where a proposed rule in the NPRM involves only renumbering, it will not be discussed here.

Purpose. According to the NPRM, Part C of the IDEA (2004) lists seven reasons for revising the law from previous versions. Two of the stated purposes relate to transition: namely, to ensure a seamless transition for children and families when they exit from the Part C program to other appropriate programs, and to provide States with the flexibility to provide early intervention services to children with disabilities who are age three and older. Thus, it is clear that the Congress continues to give high priority to effective transitions as it legislates regarding children with developmental delay or disability and their families.

Transition Practices. The NPRM suggests the following clarifications of existing practice:

- Service coordinators are responsible for functioning as the single point of contact for coordinating all services required by Part C of the Act across agency lines (proposed 303.33[a]). Service coordinators are specifically required to carry out seven functions, including facilitating the development of a transition plan from the Part C program to other services (proposed 303.33[b]).

- Proposed 303.118(a)(3) specifically lists a preschool program under Part B of the IDEA, Head Start, Early Head Start, and an elementary school under Part B of the law as programs to which children receiving services under Part C may transition. Possible receiving programs were not previously defined. If a toddler is referred for early intervention services under Part C within the nine-month period before the toddler's third birthday, the lead agency, as soon as possible after determining the child's eligibility, will notify the LEA for the area in which the toddler resides—or, if appropriate, the SEA—that the toddler on his or her third birthday will reach the age of eligibility for preschool or school services under Part B (proposed 303.209[B][2][II]).
- Proposed 303.209(c) would retain the current requirement that the State lead agency convene, with the approval of the family, a conference among the lead agency, the family, and the LEA to discuss any services under Part B that the toddler with a disability may receive. For any toddler with a disability who is potentially eligible for Part B services, this conference is to be convened not fewer than 90 days before nor more than 9 months before the toddler's third birthday (proposed 303.209[c][1]).
- The NPRM proposes in 303.344(h)(1) that transition planning in the IFSP continue to identify the programs to which children may transition from services under Part C except that subsections (ii) and (iii) expressly identify the following additional programs: (1) elementary school or preschool services and (2) early education, Head Start and Early Head Start or child care.
- If the toddler with a disability may not be eligible for services under Part B, the lead agency must make reasonable efforts to convene a conference with the lead agency, the family, and providers of other appropriate services to discuss services that the toddler may receive (proposed 303.209[c][2]).
- Proposed 303.209(d)(1) would continue current provisions that require a review of the toddler with a disability's program options for the period from the toddler's third birthday through the remainder of the school year.
- As at present, the lead agency must establish in the IFSP a transition plan for the child not fewer than 90 days nor, as recommended for revision, at the discretion of all parties, more than nine months before the toddler's third birthday (proposed 303.209 [d]). The transition plan would also be required to include steps for the toddler with a disability and his or her family to exit from the program. It would also be required to specify any transition services needed. However, in the event that a child continues in early intervention after age three following a State's policy decision to allow this course, the timeline requirements for transition conference and plan do not apply until not fewer than 90 days—and at the discretion of the parties to the conference, not more than nine months—before the time that the child is no longer expected to receive early intervention services (proposed 303.211[b][6]).
- If a state decides to make early intervention services available to children with disabilities age three and older, then proposed 303.21(c)(2) requires it to notify parents annually of the rights of parents to elect to receive services under Part C or Part B as well as explaining to them the differences between the two programs.
- If a child turns three and the child's eligibility under Part B has not yet been determined in a State that has adopted the option to provide Part C services beyond age three, then the lead agency must continue to provide Part C services to that child (proposed 303.430 [e][3][i]). Moreover, once a child turns three and has been determined ineligible for services under Part B, the Part C lead agency is not required to provide services to that child during the time of any due process hearing procedure that challenges the determination of ineligibility (proposed 303.430[3][ii]).

Evidence-Based Transition Practices. Proposed rule 303.112 would be added to reiterate language from section 635(a)(2) of the IDEA that underscores that early intervention services (by implication including transition planning) must be based on scientifically based research “to the extent practicable.” It is proposed that this requirement must be included in each State's plan for its statewide system. As a result, transition planning strategies supported by research findings would need to be followed across the nation, including, according to the NPRM, populations of toddlers who live on Indian reservations and those whose families are homeless.

This emphasis on standards of research-based practices is further supported by the NPRM's proposed 303.344(d)(1) that requires that specific early intervention services contained in the IFSP (again, by implication including transition planning) be based on peer-reviewed research, to the extent practicable.

Transition Practices to be Specified for Statewide Systems. States are required to file with the U.S. Department of Education plans for their statewide systems. This NPRM defines proposed rules governing the contents of States' plans, including rules pertaining to transition, as follows:

1. Each state would be required to include in its application for Federal funds a description of the policies and procedures that the State will use to ensure a smooth transition for toddlers with disabilities leaving the early intervention program to attend preschool, school, or other appropriate services, or exit the program, and their families (proposed 303.209 [a][1]).
2. The same proposed regulation would add language to the State's application to ensure a smooth transition from the early intervention program to preschool, school, or other appropriate services for toddlers receiving services as a result of the State's election to make available early intervention services to children ages three and older.
3. Proposed 303.209(a)(2) would add language requiring States to describe how they would meet each of the requirements related to toddlers transitioning from services under Part C of IDEA to preschool and other programs.
4. All States would be required to establish an interagency or intra-agency agreement between the programs under Part C and those under Part B of IDEA to ensure a seamless transition between services under Part C and Part B (proposed 303.2099A0 [3][i and ii]).
5. The NPRM proposes in 303.209(a)(3)(ii) that this inter-program agreement be required to contain provisions for how the lead agency and the state education agency (SEA) will meet the requirements of Part C of the Act regarding local education agency (LEA) notification and transition conferences and plans. In addition, the agreement would be required to contain provisions for how the lead agency and the SEA would meet proposed requirements in 303.344(h) regarding IFSP content and transition steps and services as well as the Part B regulations pertaining to the transition of children from the Part C program to preschool programs, the initial IEP team meeting for a child under Part C, and the IEP or IFSP for children aged three through five.
6. The State application must also include a description of how families will be included in the transition plan (proposed 303.209(b)(1)).
7. Proposed 303.209(b)(2) would require that each State include in its application a description of how the lead agency will notify, at least nine months before the toddler's third birthday, the LEA for the area in which the toddler resides—or, if appropriate, the SEA—that the toddler on his or her third birthday will reach the age of eligibility for preschool or school services under Part B. Further, if the child's referral for early intervention services has occurred within nine months of the child's third birthday, then the lead agency, as soon as possible after determining the child's eligibility, will notify the LEA for the area in which the toddler resides—or, if appropriate, the SEA—that the toddler on his or her third birthday will reach the age of eligibility for preschool or school services under Part B.
8. As proposed in NPRM 303.206, each State's policies and procedures must require the referral for early intervention services of a child under the age of three who is involved in a substantiated case of child abuse or neglect or is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, consistent with proposed 303.302. The effect of this requirement would likely be more personnel and more agencies involved with these children's families in transition planning.
9. Each State's application would be required to describe the State's efforts to promote collaboration among Early Head Start programs, early education and child care programs, and early intervention services and include Head Start in the list of early education programs to which children in early intervention might transition (proposed 303.210).

10. Proposed 303.211 discusses at length the conditions under which States might choose to make early intervention services available to children beginning at three years of age until the children enter, or are eligible under State law to enter kindergarten or elementary school. Obviously such a decision and its conditions must be discussed in the application of a State that decides to pursue this course.
11. Proposed 303.521 continues the longstanding regulations regarding use of Part B funds to serve infants and toddlers. This is yet another approach that states may consider to ease the strains of transition.

Personnel Development for Effective Transition Planning. Proposed 303.118(a)(3) continues to support training in coordination of transition services under personnel development and now would make it mandatory to include such training under the State's Comprehensive System of Personnel Development (CSPD).

State Interagency Coordinating Council (SICC). Proposed rule 303.604(a)(3) requires each State's SICC to foster interagency coordination and collaboration regarding transition. Proposed 303.604(b) requires the SICC to advise and assist the lead agency regarding the transition of toddlers with disabilities to preschool and other appropriate services. Proposed 303.605(a) allows the SICC to advise and assist the lead agency and SEA in providing appropriate services for children with disabilities birth through age five including the transition from services under Part C to other appropriate services.

As this synthesis from the NPRM shows, the proposed rules related to transition do not take bold new directions. Rather, they clarify and define existing legislation and rules in an effort to make transition planning more effective for the child, family, and service providers who share in its success.

PROCEDURES FOR SUBMITTING COMMENTS ON A PROPOSED REGULATION

Public Meetings to hear comments will be conducted during the following dates and times, with specific locations posted in the *Federal Register*: June 4, 2007, 4:00 p.m. to 7:30 p.m. in Portland, Oregon; June 6, 2007, 4:00 p.m. to 7:30 p.m. in Oklahoma City, Oklahoma; June 11, 2007, 4:00 p.m. to 7:30 p.m. in Indianapolis, Indiana; June 14, 2007, 3:00 p.m. to 7:30 p.m. in Washington, D.C.

Comments may also be submitted electronically through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>. Select "Department of Education" from the agency drop-down menu, then click "Submit." In the Docket ID column, select ED-2007-OSERS-131 to add or view public comments and to view supporting and related materials available electronically. Instructions for using the site are available through the sites "User Tips" link.

Comments may also be received by the Department of Education via postal mail, commercial delivery, or hand delivery. Comments should have the ID Docket noted at the top: ED-2007-OSERS-131. Address comments to Alexa Posny, U.S. Department of Education, 400 Maryland Avenue, SW, Room 4109, Potomac Center Plaza, Washington, DC 20202-2600.

Note that the Department of Education will not accept comments by fax or e-mail. The Department's policy is to have all comments submitted available for public viewing on the Federal eRulemaking Portal (see address above). Comments submitted will be posted without change, including personal identifiers and contact information.



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Available Products

Several documents have been developed that may be of interest to professionals who work with young children with disabilities. These documents are available on the web site. Additional documents will be posted on a regular basis.

Project Information

Briefing Paper

An in-depth overview of the National Early Childhood Transition Center activities.

Orientation to NECTC

Information about the activities of NECTC in a PowerPoint format.

NECTC Brochure

A general overview of NECTC activities.

Resources

Current IDEA Regulations Related to Early Childhood Transition

Information on current IDEA regulations. New information on IDEA re-authorization and changes in transition regulations will be posted here when available.

Transition Materials

The NECTC seeks your help in identifying transition strategies and practices that have been evaluated to determine their effectiveness. This includes

- Training materials and/or models for early childhood personnel developed at a local, state or national level
- Transition models
- State and/or local policy documents, support materials, and guides
- Research studies that address transition issues.
- A materials acquisition brochure is available on our website.

Coming Soon

Practice Briefs

Short papers that provide information on currently identified practices and strategies that support the transition process for children, families, programs, communities and states.

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.