

# **Interagency Agreement between Department of Health and Human Services, Department of Public Instruction, and ND Office of Administrative Hearings**

May 2023

## **Parties**

The parties to this Interagency Agreement are the Department of Public Instruction, the Department of Health and Human Services, and the ND Office of Administrative Hearings.

The Department of Public Instruction (DPI) is responsible for Special Education for children ages three (3) through twenty-one (21) and the Head Start Collaboration office.

The Department of Health and Human Services (DHHS) administers the Medicaid program and Developmental Disabilities Division.

The ND Office of Administrative Hearings will serve as the designation of mediation for the resolution of disputes.

## **DHHS and DPI agree to the following terms:**

### **1. Content and authorization for Interagency Agreement**

The Developmental Disabilities Division is authorized to enter into this Interagency Agreement by the North Dakota Department of Health and Human Services (DHHS) and the North Dakota Office of Special Education is authorized to enter into this Interagency Agreement by the North Dakota Department of Public Instruction (DPI). DHHS is further complying with the Part C regulations of the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §303.209(a)(3)(ii), which requires a transition Interagency Agreement to address how the lead agency and the State Education Agency (SEA) will meet the IDEA early childhood transition requirements.

The specific Part C regulations addressed are 34 C.F.R. §303.209(b) through (f) Transition to preschool and other programs, §303.344(h) Transition from Part C services, §303.401(d) Disclosure of information and §303.401(e) Option to inform a parent about intended disclosure.

The specific Part B regulations addressed are 34 CFR §300.101(b) Free and Appropriate Public Education (FAPE) for children beginning at age three, §300.124 Transition of children from the Part C program to preschool programs, §300.321(f) Initial IEP Team meeting for child under Part C and §300.323(b) IEP or IFSP for children aged three through five. Beginning at age three, the IFSP may not serve as the IEP.

### **2. Effective Date of the Interagency Agreement**

The term of this Interagency Agreement shall begin May 24, 2023 and shall remain in effect until modifications are deemed necessary and mutually acceptable changes are agreed upon in writing. This agreement shall be reviewed annually by all parties to evaluate and ensure appropriate and effective implementation of described regulations and practices.

This Interagency Agreement may be voluntarily terminated by any party by giving 30 days written notice to the other parties. In the event the federal and/or state laws should be amended so as to render the fulfillment of the Interagency Agreement not feasible, any party shall be discharged from further obligation created under the terms of this Interagency Agreement.

### **3. Dissemination, Implementation and Supervision**

Each party will disseminate this Interagency Agreement to that program's respective local agencies, grantees, and contractors. Each party will participate in ongoing communication to implement this Interagency Agreement. The Department of Health and Human Services and the Department of Public Instruction will support a joint annual meeting of the ICC (Part C) and IDEA (Part B) advisory committees to address implementation questions and provide updates as appropriate.

The parties agree to collaborate on the review and alignment of regulations, policies and procedures in order to ensure coordination and understanding among departments and agencies at the state and local level.

### **4. Purposes of this Agreement**

To delineate the procedures for the transition of children with disabilities from the Part C Program of the Department of Health and Human Services to the Department of Public Instruction.

To ensure families' rights to services for which they are eligible, to delineate responsibilities of and coordination and communication among the DHHS, DPI, Early Intervention (Service Coordinators (DDPM) and/or Infant Development) and Local Education Agencies (LEAs) in implementing transition requirements, and to establish uniformity statewide that will be a coordinated, unduplicated, and seamless system for serving children ages birth through five with developmental delays or disabilities according to the IDEA, Parts B and C.

### **5. Implementation of policy and procedures located in the *“Understanding Early Childhood Transition: A Guide for Families and Professionals”***

The Guideline was completed, and regional trainings were provided in fall 2012. Part B and Part C providers will use the Guideline to implement the Transition process and provide guidance to families.

Revisions were made to the Transition Guideline in 2017 and subsequent training was provided to the field & guidance was provided to families.

## TERMS OF THE AGREEMENT

To carry out the intent and purposes of this agreement, the parties agree to the following:

- **Transition Notification and Referral to Part B**

**DHHS will ensure that:**

- Part C early intervention will refer children potentially eligible for Part B services by 2 years, 6 months to the LEA where they live. The information sent to the LEA includes the child's name, date of birth, parent's contact information, which includes their name, address and phone number, and referral date of LEA notification.
- The Part C Coordinator will compile the data into a spreadsheet. This information will be shared electronically and discussed jointly with the SEA on a every other month basis.
- The local early intervention program will notify the LEA of residence at 2 years, 6 months for the toddler receiving Part C services that the toddler is potentially eligible for Part B preschool special education services and will shortly turn three years of age and be exiting the program. Notification of a potentially eligible child must be provided no later than 90 days before a child's third birthday. The LEA Notification only occurs for children who are considered potentially eligible for Part B services. The notification serves as a referral to the LEA. LEA Notification for a potentially eligible child may be part of the invitation to the transition planning conference convened at 2 years, 7 months.
- Notification of a possible transition is provided to the SEA and LEA of residence as soon as possible after determining a toddler's eligibility if a toddler is determined eligible for early intervention services more than 45 days, but less than 90 days, before their third birthday.
- If a toddler is referred to the ND DHHS fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of IDEA, ND DHHS, with parental consent required under §303.414, DHHS will assist families in connecting them with their local school district.
- IFSP teams use the state definition of "potentially eligible" in their determination and referral to LEAs. DHHS defines "potentially eligible" as those children on an IFSP at the age of 2 years, 6 months, or older.
- Content of the notification to the SEA and LEA of residence will include:
  - Child's name
  - Child's date of birth
  - Parent contact information, including names, addresses, and telephone numbers
  - Referral date of LEA notification
  - Content of the notification may also include Service Coordinator name and contact information and primary language used by the family
- Early Intervention Service (EIS) providers have policies and procedures to inform parents of a toddler of the intended disclosure of information called the LEA

Notification and permit a parent to object to the LEA Notification by implementing an opt out policy. The policy will provide 10 days after the child has turned 2 years, 5 months for a parent to object to the LEA Notification. The opt out policy developed by DHHS will be in writing and will address:

- The EIS provider will disclose the following information as part of the LEA Notification:
  - Child's name;
  - Child's date of birth;
  - Parents' names;
  - Parents' address;
  - Parents' phone number(s);
  - Referral date of LEA Notification;
  - Name of the DD Program Manager and their contact information; and
  - Primary language of the family.
- Parents will be informed of the notice and this option to opt out at an annual IFSP meeting or periodic review closest to when the child will turn two years five months old.
- Parents will be informed verbally at the meeting and will be given a standardized form that they will sign to indicate their decision to opt-out.
- Parents will have ten days, or no later than the time their child is two years, five months old, to return the form with a signature if they decide to opt-out.
- Parents must opt out in writing, by signing the standardized form and returning it to their EIS provider or Service Coordinator.

**DPI will ensure that:**

- LEAs will consider the LEA Notification as a referral for Part B services.
- LEAs provide parents with procedural safeguards before or during the transition conference.
- LEAs understand that providing procedural safeguards to the family does not initiate the Part B timeline for initial evaluation. The timeline starts when parents provide consent for initial evaluation.

- **Transition Planning Conference to Discuss Services**

**DHHS will ensure:**

- At the discretion of all parties, the local early intervention programs will convene a transition planning conference for potentially eligible toddlers at 2 years, 7 months and no later than 90 days before the third birthday.
- The local early intervention programs will invite the LEA representative with the parent's verbal approval.
- The local early intervention programs will invite any other relevant service providers with the parent's verbal approval.

**DPI will ensure that:**

- LEA representatives attend transition planning conferences for which they are invited and share information about Part B services and the process for determining eligibility.
- LEA representatives provide procedural safeguards for the parents if they have not already done so.
- **2.9 Meeting**  
**DHHS will ensure that:**
  - EIS providers attend 2.9 meetings for which they are invited and share information about Part C's involvement.
  - Attend the eligibility determination meeting
  - Respond to invitation to attend the IEP meeting by the LEA at the request of the parent
  - At the eligibility and IEP meetings, provide any updated assessment information, most recent IFSP, and knowledge of the child's strengths, needs and styles of learning
  - Conduct IFSP review and update Transition Plan to include early childhood special education eligibility information and review eligibility re-determination for Developmental Disabilities Program Management

**DPI will ensure that:**

- A mutually agreed upon time and place for the meeting is determined.
- A Joint Prior Notice of the eligibility determination and IEP meetings to the family are provided.
- The information with the team and the family regarding assessment results, the current IFSP and issues of concern are reviewed.
- An integrated written assessment report (IWAR) is developed with the team.
- LEA representatives inform the family that they may invite Early Intervention staff to the IEP meeting.
- **Procedures for Transition Plan**

**DHHS will ensure that:**

- Infants and toddlers with disabilities exiting the Part C program have an IFSP in place with a transition plan which includes the following required components and processes:
  - Establishes a plan for toddlers potentially eligible for Part B services that is developed not fewer than 90 days before the child's third birthday and at the discretion of all parties up to 9 months before the child's third birthday.
  - Reviews the program options for a toddler for the time period from the child's third birthday through the remainder of the school year.
  - Involves the family in the development of the plan.
  - Includes appropriate steps for exiting the program and any transition services needed by the toddler and family.
    - The steps must include:

- Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition:
  - Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;
  - Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the child.
- Includes specific transition steps for transmitting child find information to the LEA and other relevant agencies which must be consistent with the State's opt out policy.
  - Includes additional steps for the transmission of additional information such as the most recent evaluations, assessments and IFSP with parent consent.

- **Combining Transition Planning Conference with the Meeting to Develop the Transition Plan**

The regulations expressly allow the transition planning 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 (e) and 303.343(a). (34 CFR § 303.209(e))

These regulations must also be met if the Transition Planning Conference is held separately from the meeting to develop the Transition Plan.

- **Applicability of Transition Requirements**

The regulations clarify that the LEA 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.

## **IDEA Part B Early Childhood Transition Requirements**

1. **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 §612(a)(9) and 34 CFR §§300.101(b) and 300.124(b))
2. **LEA participating in the Transition Planning Conference** – Each affected LEA must participate in transition planning conferences arranged by the lead agency for toddlers with disabilities who may be eligible for preschool services under Part B. (IDEA §612(a)(9) and 34 CFR §300.124(c))

- 3. 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 §614(d)(1)(D) and 34 CFR §300.321(f))
  
- 4. IEP Team must consider the IFSP when developing the initial IEP** - For all children who transition from Part C services to Part B, the IEP team must consider an 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. §300.323(b)

## SIGNATURES

The following parties are in agreement with the terms outlined above and enter into this agreement as of May 24, 2023. While this agreement will be reviewed annually for appropriateness, it will remain in effect until one or more parties request a change or give a 30-day notice to terminate their participation in this Interagency Agreement.

Christopher Jones  
Christopher Jones (May 10, 2023 08:13 CDT)

Signature

Chris Jones

Printed Name

Executive Director

Title

ND Dept. of Health and Human Services  
Agency

05/10/2023

Date

Kirsten Baesler

Signature

Kirsten Baesler

Printed Name

Superintendent

Title

ND Dept. of Public Instruction  
Agency

05/10/2023

Date

Tim Dawson

Tim Dawson (May 11, 2023 07:57 CDT)

Signature

Tim Dawson

Printed Name

Director

Title

ND Office of Administrative Hearings  
Agency

05/11/2023

Date













# 20230509 - Part C Interagency Agreement HHS Name Change - May 2023


Final Audit Report

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