

**MEMORANDUM OF UNDERSTANDING
CONCERNING
THE TRANSITION OF CHILDREN
AMONG
NEW MEXICO DEPARTMENT OF HEALTH,
NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

This Memorandum of Understanding is made and entered into among the New Mexico Public Education Department, hereinafter referred to as the "PED" and the New Mexico Department of Health, hereinafter referred to as the "DOH".

WHEREAS, Section 28-18-1.C NMSA 1978, states:

"If a child enrolled in the family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year."

WHEREAS, the State of New Mexico participates in the Individuals with Disabilities Education Act (IDEA), hereinafter referred to as the "Act";

WHEREAS, the PED is responsible for the implementation of Part B under the Act and ensuring that a Free Appropriate Public Education (FAPE) is available to all IDEA eligible children with disabilities age three years through twenty-one years;

WHEREAS, the DOH is the lead agency for implementing Part C under the Act and ensuring access to early intervention services for all eligible children;

WHEREAS, the federal regulations for Part B, "Assistance to States for the Education of Children with Disabilities" 34 CFR Part 300, Final Regulations dated August 14, 2006, require in section 300.124:

Transition of children from Part C to preschool programs.

"The State must have in effect policies and procedures to ensure that-

- (a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act.*
- (b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with 300.101(b); and*
- (c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act".*

WHEREAS, section 637(a)(9) of Part C of IDEA, provides that:

Transition to preschool programs

Each application must include a description of the policies and procedures to be used--

"(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how--

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 635(a)(10) will--

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than

- 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and
- (III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;
- (B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and
- (C) to establish a transition plan, including, as appropriate, steps to exit from the program"

WHEREAS, section 303.653 of the regulations to Part C of the Act requires that:

Transitional services.

"Each Council shall advise and assist the state educational agency [PED] regarding the transition of toddlers with disabilities to services provided under Part B of the Act, to preschool and other appropriate services."

NOW, THEREFORE, the PED and DOH in consideration of the mutual covenants and agreements herein contained, do hereby agree to the purpose, terms, and conditions of this Memorandum of Understanding.

I. PURPOSE OF AGREEMENT

The purpose of this agreement is to ensure the coordinated, smooth and effective transition of children and families as they move from early intervention services under Part C into Part B programs and services for the benefit of children and families residing in the State of New Mexico.

II. TERMS OF AGREEMENT

To carry out the purpose of this agreement, the parties agree to the following:

A. REGULATIONS, POLICIES AND PROCEDURES

- DOH and PED shall establish respective regulations, policies and procedures, aligned with IDEA 2004, that ensure the coordinated, seamless and effective transition of children and families participating in the Part C early intervention program who are eligible for participation in preschool programs under Part B, within the required timelines established by IDEA.
- The parties shall collaborate on the formulation of regulations, policies and procedures in order to ensure coordination and understanding among departments and agencies.

B. PARENT CHOICE — NEW MEXICO STATUTE PERTAINING TO TRANSITION

- The parties shall honor the parent's right to full disclosure of information in order to make informed decisions regarding when their child will transition as outlined below in NM State Statutes NMSA 1978 (as amended by Chapter 27, NM Laws 2004).

Sec. 28-18-1 Family Infant Toddler (FIT) Program Statute

- The parent may choose whether the eligible child shall participate in the Family Infant Toddler Program.
- If a child enrolled in the Family Infant Toddler Program has his or her third birthday during the school year, the child's parent shall have the option of having the child complete the school year in the family infant toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and has his third birthday during a school year may receive special education and related services from the beginning of that school year.

Sec. 22-13-5 Special Education Statute

- School districts shall also provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll the child.
- If a child receiving services in the department of health's family infant toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family infant toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year.
- The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings including home, daycare centers, head start programs, schools or community-based settings.

C. THE TRANSITION PROCESS AND RESPONSIBILITIES

The parties agree to the following responsibilities in each of the following steps of the transition process:

1. TRANSITION PLANNING

DOH:

- By 24 months of age, but at least 6 months prior to the beginning of the school year in which the child turns three, the service coordinator and the family shall identify and document the specific steps and actions that will support the child and family through the transition. These individualized steps and actions shall be included in the IFSP.
- The Service Coordinator shall fully inform the family of the options regarding when their child may transition, in accordance with state statute. The service coordinator shall continue, throughout the transition process, to document the steps and actions in the IFSP.
- The service coordinator shall ensure that the family is fully aware of the array of service and program options available under Part B including home, daycare centers, head start programs, schools or community-based settings.
- The service coordinator will consider the parent(s) needs for childcare in the transition planning process.
- The Service Coordinator will submit a Transition Referral Form with parent consent to the Local Education Agency (LEA) at least 60 days prior to the Transition Conference, and if possible 6 months prior to the child's third birthday.
- With parent consent, the Service Coordinator will coordinate the completion and submission of the Transition Assessment Summary Form to the LEA at least 30 days prior to the Transition Conference.

PED:

- The PED will assure that the LEA will coordinate efforts with local early intervention providers to support parent and family involvement in the transition planning process.
- The PED will assure that LEA will coordinate with early intervention providers to facilitate visits by families to classrooms and/or learn about services provided by the school district.

2. THE TRANSITION CONFERENCE

DOH:

- The Service Coordinator will (with the approval of the parent(s)) convene and facilitate a transition conference at least 90 days and, at the discretion of all parties, nine months prior to the child's third birthday. If the family chooses to transition at the beginning of the school year in which their child turns 3, the transition conference would be held at least 90 days before the beginning of that school year.
- If the child is potentially eligible for Part B preschool services through the local education agency (LEA), then the LEA representatives must be invited to participate in the 90 day

transition planning conference. The invitation will be sent at least 30 days prior to the transition conference.

- With approval of the parents, other relevant service providers should also be invited (Head Start, child care providers, etc.).
- The family's service coordinator shall facilitate this meeting to ensure the following:
 - Review the child's service and program options.
 - Review the IFSP, evaluation, assessment information, and other relevant data/information.
 - With parental consent, the transmission of information, including evaluation and assessment information and IFSPs to the receiving agency.
 - Review whether all current evaluation and / or assessments have been given to the LEA.
 - With parental consent, refer child for an initial Part B evaluation.
- The service coordinator shall document all outcomes and decisions of the transition conference in the IFSP.

PED:

- The PED will assure that appropriate representatives from the LEA participate in the 90-day transition conference arranged by the designated early intervention provider.
- The PED will assure that the LEA will obtain the consent from the parent(s) to conduct the initial evaluation for Part B.
- The PED will assure that the LEA will schedule a date for a group of qualified professionals from the LEA and the parent(s) to review any existing data, including the IFSP, evaluations and information provided by parents or other data as allowed, as part of the process for determining eligibility for IDEA Part B.
- The PED will assure that the LEA will determine the need for additional evaluation, assessment, and information.
- The PED will assure that the LEA will provide the parents a copy of the procedural safeguards under the IDEA and obtain parental consent to conduct an initial evaluation.
- The PED will assure that the LEA will schedule a date for the IEP Team meeting, to determine possible eligibility under Part B of the IDEA.

3. EVALUATION FOR PART B SERVICES

DOH:

- With parental consent, DOH shall ensure the timely transmission of current evaluation and assessment information and copies of IFSPs to the LEA, in order to facilitate a coordinated and seamless transition from Part C to Part B.
- The service coordinator will complete the Transition Assessment Summary at least 30 days prior to the transition conference. Data should not be older than six months.

PED:

- The PED will assure that the LEA will provide and explain to the parent(s) in their native language or other mode of communication used by the parent(s) the Procedural Safeguards including prior written notice prior to the evaluation.
- The PED will assure that the LEA will determine eligibility for Part B services that includes the review and use of existing Part C evaluations and assessments and the IFSP information as part of the initial evaluation. Evaluations must have been administered within six months in order to be considered valid.
- The PED will assure that the LEA will schedule a date for initial evaluation.
- The PED will assure that the LEA will conduct the initial evaluation within 60 days of the Consent Form for Preschool Evaluation signed by the parent(s).
- The PED will assure that the LEA will conduct the initial evaluation in accordance with 34 CFR § 300.304 to include a variety of measures and sources, including functional, aptitude,

and achievement tests, and parent input, as well as information about the child's physical condition, social or cultural background.

- The PED will assure that a group of qualified professionals from the LEA and the parent of the child must determine whether the child is a child with a disability in accordance with state and Federal regulations
- The PED will assure that the LEA shall provide a copy of the evaluation report and the documentation of the eligibility determination to the parent(s) and with parental consent, a copy of this documentation to the referring FIT provider.

4. THE INDIVIDUALIZED EDUCATION PROGRAM (IEP) PROCESS

PED:

- If the parent chooses for their child to remain in the Part C program, as allowed under State statute, early intervention services through the FIT Program will continue in accordance with the Individualized Family Service Plan (IFSP) under IDEA sec. 635(c)(2)(D). An IEP does not need to be developed while the child remains in the Part C Program.
- The PED will assure that the LEA shall conduct the initial IEP meeting no later than 15 days prior to the child's entry into the preschool program.
- The PED will assure that the LEA at the request of the parent must send an invitation to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition services.
- The PED will assure that the LEA will provide a copy of the Procedural safeguards to the parents.
- The PED will assure that the LEA will begin Part B services on the date specified on the IEP.

DOH:

- When invited, the service coordinator and appropriate early intervention staff shall participate in the IEP meeting conducted by the LEA.

5. PROVISION OF UNINTERRUPTED SERVICES

DOH:

- Early intervention services shall be provided in accordance with the IFSP to children and families until the date specified on the IEP.

PED:

- Preschool services will begin on the first day of school unless otherwise stated on the IEP.
- Special Education and related services will be provided by the start date for services specified on the child's IEP.
- The LEA shall initiate a meeting to develop the child's IEP no later than 15 days prior to the child's transition to Part B programs in order to ensure continuous and uninterrupted services.

6. POST TRANSITION SERVICE COORDINATION

DOH:

- Post transition service coordination shall be offered to the family as an option. If the parent(s) requests this service, it must be provided in accordance with the Family Infant Toddler Program's service standards.
- Post transition service coordination may involve visits with the family, consultation to staff of the receiving agency/agencies, an evaluation of the effectiveness of the transition process.
- Post transition service coordination activities must be documented in the IFSP.

D. FINANCIAL RESPONSIBILITIES

DOH:

- The Department of Health shall assume financial responsibility for evaluations, assessments, and services for children under IDEA Part C through the Family Infant Toddler Program, including children whose parent(s) choose for them to continue in the FIT Program until the beginning of the school year following their third birthday.

PED:

- The LEAs shall assume financial responsibility for evaluations, eligibility determinations and services for children under IDEA Part B. This includes children whose parent(s) choose for the child to receive FAPE at the beginning of the school year in which their child turns three.

E. TRAINING AND TECHNICAL ASSISTANCE

The parties shall jointly provide and support training and technical assistance to parents, early intervention providers, public school personnel, and head start personnel.

F. DATA SHARING

In accordance with IDEA Part C Sec. 303.148 (b) (1), the early intervention provider will: "notify the educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act" in order to facilitate collaboration between LEAs and local FIT provider agencies around the timely transition planning for children that have a potential to transition to IDEA Part B services.

DOH:

- The DOH shall assure that the FIT providers notify the LEA of children who reside in the LEA's educational jurisdiction and who are potentially eligible for Part B services. For this purpose "potentially eligible" shall be considered those children eligible under the established condition or "developmental delayed" category.
- The DOH shall assure that the FIT provider will provide this notification to the LEA at least quarterly. This notification shall include:
 - The first name, last name, middle initial, data of birth, LEA where the child resides, contact information for the parent(s).

PED:

- The PED will assure that each LEA will survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.
- The PED will assure that the LEAs will enter all student aggregate data into STARS, for students who were referred from Part C to Part B, regardless of eligibility, including those whose parents choose for them not to receive services or those families who choose for their child to remain in Part C. These data will be used to calculate the percentages for Part B State Performance Plan Indicator 11 (60 day timeline) and Indicator 12 (Part C to Part B transition).

G. ACCOUNTABILITY

- PED and DOH will provide representation to the Interagency Coordinating Council (ICC).
- The parties shall ensure the coordination of transition matters at the local level by fostering the development of local level community based interagency agreements.
- The parties shall demonstrate accountability related to the indicators in the Part C and Part B State Performance Plan (SPP) and Annual Performance Report (APR) that address early childhood transition.

III. Administering Agencies

The parties to this Memorandum of Understanding shall jointly administer this agreement and be responsible for a timely and full review every four years. An interim review may be conducted as needed.

IV. Payment and Property

No payment or property will be exchanged between or among the parties as a result of this Memorandum of Understanding.

V. Effective Date, Amendment, and Termination of Memorandum of Understanding

The Memorandum of Understanding shall be effective when signed by the respective agency heads as parties. The parties shall accomplish evaluation and review of this Memorandum of Understanding every four years and interim reviews may be conducted as necessary. Agreed upon changes shall be executed in writing by the parties. This Memorandum of Understanding shall be ongoing and shall not be terminated unless a party gives forty-five (45) days advance written notice to the other party of its intent to terminate its participation in the Memorandum of Understanding.

VI. Provisions

Each party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this Agreement. Each party shall be liable for its acts or failure to act in accordance with this Agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act.

VII. Dispute Resolution

The dispute resolution process for both intra- and interagency disputes about payments for services or other matters related to New Mexico's Part C program will be fulfilled in compliance with 34 CFR §303.523(c). This dispute resolution process does not replace the procedural safeguards—due process, mediation, and state-level complaint—available to families.

DOH and PED are responsible for resolving intra- and interagency disputes regarding financial responsibility for services or other matters related to New Mexico's Part C program according to the following procedures:

- I. Staff of the involved agenc(ies) attempt to resolve the dispute within 30 days.
- II. If it appears by the 30th day that the involved agenc(ies) will not be able to resolve the dispute, the following will occur:
 - A. The early intervention service provider, LEA representative or agency representative will submit a written explanation of the dispute to the Deputy Secretary of DOH and the Deputy Secretary of Learning and Accountability for PED.
 - B. Within 15 days, the deputy secretaries shall meet in person or by phone to resolve the dispute consistent with this Memorandum of Understanding and related federal and state statutes and regulations.
 - C. Within 5 days of reaching the resolution, written notification of the resolution will be provided to the parties, as well as the chairperson of the Interagency Coordinating Council and the chairperson of the IDEA Advisory Panel,
 - D. If the deputy secretaries are unable to agree on a resolution or if either party to the complaint disagrees with the resolution, the dispute may be appealed to the Secretary of DOH and Secretary of PED. Appeals must be brought to the Secretaries and no later than 45 days from the date of the decision rendered in subsection (B).
 - E. The Secretaries may resolve the issues on appeal and render a written decision or may arrange for a hearing conducted by a hearing officer. If a hearing is held, a hearing officer appointed by the Secretaries shall conduct it. The Secretaries may affirm, reverse, or modify the proposals of the hearing officer.
 - F. During the pendency of an interagency dispute, the early intervention service provider is responsible to provide the services required by the approved IFSP for eligible children and their families.
 - G. Nothing in this agreement shall be construed to limit any existing substantive or procedural protections of state or federal law or regulations.

IN WITNESS WHEREOF, the PED and DOH have caused this Memorandum of Understanding to be executed.

Veronica C. Garcia

Veronica Garcia, Ed.D., Secretary of Education
NM Public Education Department

11.19.09

Date

Alfredo Vigil MD

Dr. Alfredo Vigil MD, Secretary
NM Department of Health

12/17/09

Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Rodolfo Ventes

Office of General Counsel, PED

Date:

11/18/09

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Ramona H. Schmitt

Office of General Counsel, DOH

Date:

12/18/09