

New Mexico Guidance: Children Transitioning from IDEA Part C to Part B

Individuals with Disabilities Education Act

New Mexico Public Education Department
New Mexico Department of Health



2019

New Mexico Guidance – Children Transitioning from IDEA Part C to Part B

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The revisions of this guidance document of the New Mexico Department of Health, Family Infant Toddler (FIT) Program and the New Mexico Public Education Department, Special Education Bureau (SEB) is the product of a collaboration among the state agencies, Center for Development and Disability, Health Science Center, University of New Mexico.

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MEMORANDUM

March, 1 2019

TO: Family Infant Toddler Program, Part C Providers
District Special Education Directors
Regional Education Coordinators/Directors
Charter School Special Education Coordinators
Transition Team Coaches

FROM: Deborah Dominguez-Clark, Special Education Director, Special Education Bureau
Jeanne DuRivage, Program Manager, Family Infant Toddler (FIT) Program

RE: PART C TO PART B TRANSITION REVISED GUIDANCE DOCUMENT

The Special Education Bureau of the New Mexico Public Education Department and the New Mexico Department of Health Family Infant Toddler (FIT) Program are pleased to provide you with the revised version of the *New Mexico Guidance: Children Transitioning from the Individuals with Disabilities Education Act (IDEA) Part C to IDEA Part B*, a technical assistance document.

This revised guidance document is a result of the collaboration between the New Mexico Public Education Department, the New Mexico Department of Health, and the Center for Development and Disability at the University of New Mexico.

The intent of the manual is to provide relevant information for early childhood providers (Part C and Part B) so they can assist and support families in navigating from one service system to the next. The transition process requires the collaboration of all parties involved in the transition. This will help to ensure that families are fully informed of the process as well as their rights throughout the process. A clear understanding of the transition process and parental rights will contribute to a smooth and effective IDEA Part C to Part B transition.

This technical assistance document provides clarification on the roles and responsibilities of Part C Providers and Part B staff, including notification and referral, planning for the transition conference, the transition conference, Initial Comprehensive Evaluation for Part B, eligibility determination requirements, and the initial Individualized Education Plan (IEP).

If you have any questions regarding the transition from Part C to Part B guidance, please contact the Special Education Bureau at (505) 827-1457 or contact the FIT Program at (505) 476-8974.

DEFINITION OF TERMS

APR – Annual Performance Report

CMS – Children’s Medical Services

DD – Developmental Delay

ECEP – Early Childhood Evaluation Program

EDT – Eligibility Determination Team

ESSA – Every Student Succeeds Act

FAPE – Free Appropriate Public Education

FERPA – Family Educational Rights and Privacy Act

FIT – Family Infant Toddler (FIT) Early Intervention Service Programs

FSC – Family Service Coordinator

IDA – Infant-Toddler Developmental Assessment

IDEA – Individuals with Disabilities Education Act

Part B – Assistance for Education of all school age children with disabilities

Part C – Services for infants and toddlers with disabilities (birth – 3) or risk for developmental delay and their families

IEE – Independent Educational Evaluation

IEP – Individualized Education Program

IFSP – Individualized Family Service Plan

JPA – Joint Powers Agreements

LEA – Local Education Agency

Public School

Charter School – PED approved

MOU – Memorandum of Understanding

NM DOH – New Mexico Department of Health

NM PED – New Mexico Public Education Department

NM PED-SEB – New Mexico Public Education Department, Special Education Bureau

NMSBVI – New Mexico School for the Blind and Visually Impaired

NMSD – New Mexico School for the Deaf

NM TEAM – New Mexico Technical Evaluation Assessment Manual

Parent – 34 C.F.R. 300.20, a “parent” is defined as a natural or adoptive parent of a child, a guardian (but not the State if the child is a ward of the state), a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare) or a surrogate parent who has been appointed in accordance with Section 300.515

PED – Public Education Department

PEI – Presbyterian Ear Institute

Potentially Eligible – Children found eligible under Part C’s “established condition” or “developmental delay” categories

PWN – Prior Written Notice

REC – Regional Educational Cooperative

REED – Review of Existing Evaluation Data

RTI – Response to Intervention

SPP – State Performance Plan

STARS – Student Teacher Accountability Reporting System

Throughout this document, the Family Infant-Toddler Program (FIT) is used interchangeably with Part C Program; and Local Education Agency (LEA) is used interchangeably with Part B Program.

PURPOSE

The purpose of this guidance document is to provide clarifying information on steps in the transition process that relate to initial evaluation and eligibility determination practices for the transition of young children and their families from Individuals with Disabilities Education Act (IDEA) Part C Early Intervention into IDEA Part B special education preschool services.

This guidance is meant to assist the New Mexico Family Infant Toddler (FIT) Program and New Mexico Local Educational Agencies (LEAs) to facilitate smooth and effective transitions for eligible families and children.

New Mexico will measure the success of transition for children and their families through the IDEA performance measures as outlined in the State Performance Plans (SPP) for the Public Education Department, Special Education Bureau (PED-SEB) and FIT agencies.

It should be noted that transition planning occurs with parent(s) of ALL children to ensure a smooth transition from the FIT program to preschool or other settings. FIT family service coordinators must follow the same transition requirements and timelines for children transitioning to other early care and learning settings, including Head Start.

PART C AND PART B SPP/APR INDICATORS

Part C Indicator C8 Effective Transition

Percent of all children exiting Part C who received timely transition planning to support the child's transition to preschool and other appropriate community services by their third birthday, including:

- A. IFSPs with transition steps and services;
- B. Notification to LEA, if child potentially eligible for Part B; and
- C. Transition conference, if child potentially eligible for Part B.

Part B Indicator B11 Child Find

Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation.

Part B Indicator B12 Effective Transition

Percent of children referred by Part C prior to age 3, who are found eligible for Part B and who have an IEP developed and implemented by their third birthday.

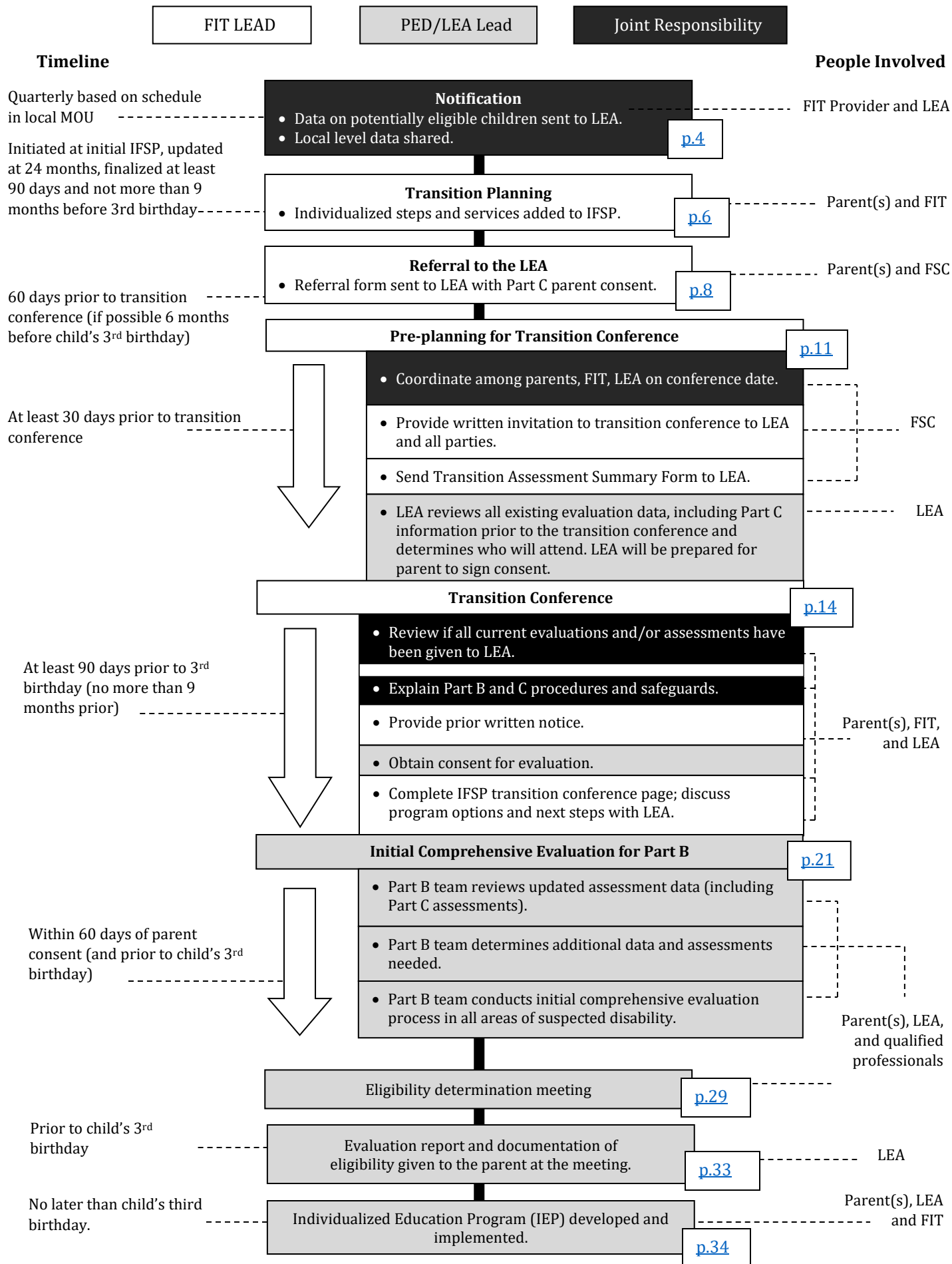
FORMAT: QUESTIONS, DISCUSSION, AND REGULATIONS

Each section in this manual is presented in Question and Answer format followed by discussion and federal and state regulatory references. The discussion clarifies the regulatory and rule references as needed and provides additional information about evidence-based and field-tested practices that have shown to be effective relating to the topic. Direct language from Federal Statutes or Regulations and New Mexico PED and FIT State Rules follow the discussions as appropriate.

NOTE: Links to current documents and forms used in the transition process may be found in the appendices of this guidance document.

TIMELINE OF STEPS FOR EARLY CHILDHOOD TRANSITION IN NEW MEXICO

Refer to Guidance Document for further clarification.



NOTIFICATION

- Data on potentially eligible children sent to LEA.
- Local level data shared.

1) *What is the requirement for notification of the LEA?*

Discussion

The FIT Program service provider agency must 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" is considered to be those children eligible under the Part C's "**established condition**" or "**developmental delay**" categories. The list should include children who will turn three within the next 12 months.¹ This will allow the LEA to conduct effective program planning and support efforts for LEAs to have eligibility determined and an Individualized Education Program (IEP) developed and implemented for eligible children by the child's third birthday.

The notification must include the child's first name, last name, middle initial, date of birth, the LEA in which the child resides, and contact information for the parent(s). IDEA Part C regulation §303.401(d) clearly states that Part C providers may disclose this information for the purpose of notification without the written consent of the parent(s), as it is needed to identify all children potentially eligible for services under IDEA Part B.

This notification will be provided to the LEA at least **quarterly**, in accordance with the specific dates agreed upon and documented in their local community transition team's Memorandum of Understanding (MOU).

The FIT program will also notify the Public Education Department, Special Education Bureau (PED-SEB), quarterly of all potentially eligible children statewide who will be turning three in the following twelve month period.

This notification provides the LEA with a list of children who will potentially transition to their school district within the next year so that the LEA can project future allocation of resources. The list can also help the LEA and the local FIT provider plan for upcoming transition conferences throughout the year. The LEA should work with the FIT family service coordinator, who will schedule the transition conferences. The LEA should not contact the family directly at this early stage of the transition process.

NOTE: In areas where multiple LEAs provide services, notification will be sent to each LEA from Part C.

¹ The list should be cumulative (i.e., each quarter, children turning three within the next 12 months will be added to the list).

Federal Regulations

34 CFR 303.209 (b) Notification to the SEA and appropriate LEA. (1) the State lead agency must ensure that –

(i) Subject to paragraph (b) (2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the Act, as determined in accordance with State law;

(ii) Subject to paragraph (b) (2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler’s third birthday and if that toddler may be eligible for preschool services under part B of the Act, the lead agency, as soon as possible after determining the child’s eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or

(iii) Subject to paragraph (b) (2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler’s third birthday and that toddler may be eligible for preschool services under part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

State Rules

7.30.8.13 TRANSITION (B)(1)

The FIT program shall provide notification to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following twelve month period. (2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following twelve month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child’s name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and (d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

6.31.2.11 (A) (5) (a)

Each LEA shall 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.

TRANSITION PLANNING

- Individualized steps and services added to IFSP.

2) *What is the role of the family service coordinator in transition planning with the family?*

Discussion

For all children receiving FIT services, the transition plan will be initiated at the child's initial Individualized Family Service Plan (IFSP) meeting and the family service coordinator will inform the parent(s) regarding the timelines for their child's transition.

At 24 months of age, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child, including home, Part B preschool special education, Head Start, childcare centers, private preschools, or other community-based settings, etc. The family service coordinator will assist the family in visiting any of these settings.

The family service coordinator shall discuss options for inclusive settings for preschool so that the child can be with typically developing peers. The discussion should include addressing the parents' need for child care (if they work or are in school) and how this might be arranged if the preschool is only half (1/2) day.

At least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting. This meeting will include the parent(s), other family members, as requested by the parent(s), an advocate or person outside of the family, as requested by the parent(s), a person or persons directly involved in conducting evaluations and assessments of the child and family, a person or persons who provide early intervention services to the child and family, and the family service coordinator and other individual(s), as applicable, such as personnel from: child care, Early Head Start, Home Visiting, medically fragile, Children's Medical Services (CMS), child protective services, physicians and other medical staff, and personnel from New Mexico School for the Blind and Visually Impaired (NMSBVI) and New Mexico School for the Deaf (NMSD).

The family service coordinator will work with the family to develop a plan that includes:

- Steps, activities and services to promote an effective transition for the child and family
- A review of program and service options, including Part B preschool special education, Head Start, NMSBVI, NMSD, private preschool, child care settings and available options for Native American tribal communities
- Documentation of when the child will transition
- The parent(s)'s need for child care if they are working or are in school, in an effort to avoid the child having to move between preschool settings
- How the child will participate in inclusive settings with typically developing peers
- Evidence that the parent(s) have been informed of the requirement to send notification to the LEA
- Discussions with and training of parent(s) 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
- A confirmation that the referral information has been transmitted, including the Assessment Summary Form, supporting documents and most recent IFSP

Federal Regulations

34 CFR Section 303.209 (d) Transition Plan.

The State lead agency must ensure that for all toddlers with disabilities –

- (1) (i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and (ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and 303.344(h);
- (2) It establishes a transition plan in the IFSP not fewer than 90 days--and at the discretion of all parties, not more than 9 months--before the toddler's third birthday; and
- (3) The transition plan in the IFSP includes, consistent with 303.344 (h) as appropriate (i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and (ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.

State Rules

7.30.8.13 (C) Transition Plan.

- (1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.
- (2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.
- (3) The following is the timeline for developing the transition plan:
 - (a) at the child's initial IFSP meeting, the transition plan shall be initiated and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;
 - (b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child and any plans to visit those settings; and
 - (c) at least 90 days, and not more than nine months, before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

3) *What is the responsibility of LEA staff during early transition planning process?*

Discussion

LEA staff are not required to participate in the meetings between FIT providers and the family members preceding the transition conference. LEAs are encouraged to routinely communicate with FIT providers about public school programs, activities, and resources. LEAs should coordinate with FIT providers to allow parents to learn more about services available through school districts and support parent and family involvement in the transition planning process. LEA staff are encouraged to be responsive to requests by FIT providers and families for information and opportunities to meet with school personnel, visit school programs and tour facilities.

NOTE: Part C can request a **Family Preschool Handbook** from the LEA prior to the transition conference to share with the family and support their understanding of Part B services for each LEA option.

Reference: FOCUS Essential Elements of Quality for all New Mexico Public Preschool Programs, Family Capacity Building Practices, #2, pages 3-4. (Appendix G)

State Rules

6.31.2.11(A)(4)

Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the transition planning conferences arranged by local Part C providers.

6.31.2.11(A)(5)

(b) Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

(c) Each LEA shall establish and implement procedures to support successful transitions, including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

(d) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

REFERRAL TO THE LEA

- Referral form sent to LEA with Part C parent consent.

4) *How is a child referred from FIT to the LEA?*

Discussion

The family service coordinator, with parental permission, will complete and submit the State Transition Referral Form to the LEA. The transition referral shall include, at a minimum, the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

Upon receipt of the referral form, the LEA staff is required to record the date of the written referral into the Student Teacher Accountability Reporting System (STARS) database, for children referred from Part C to Part B, regardless of eligibility. The data reported will be used to calculate the percentages for Part B SPP compliance Indicators 11 (60 day timeline) and Indicator 12 (Part C to Part B transition). Data for Indicator 11 must be submitted into STARS each reporting period date.

The Transition Referral Form (Appendix B) should be sent at least 60 days prior to the transition conference, and if possible at least six months prior to the child’s third birthday for all children eligible for Part C under “Established Condition” or “Developmental Delay.” Children who are eligible under the “at risk categories” may be referred if there is increased concern about their development.

NOTE: Please do not disclose social security numbers on the Transition Referral Form.

State Rules

7.30.8.13 D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA as least 60 days prior to the transition conference. The transition referral shall include at a minimum the child’s name, the child’s date of birth, the child’s address of residence, and the contact information for the parent(s) including name(s), address(es), and phone number(s).

5) *What should occur with late referrals (i.e., children referred to the FIT program within 90 days of their 3rd birthday)?*

Discussion

For children referred to the FIT program **fewer than 45 days** before the child’s third birthday, the early intervention provider agency **will not conduct intake or an evaluation to determine FIT eligibility**. The FIT program will let the family know of preschool options available in the community, e.g., preschool special education, Head Start, private preschools, etc., **and will assist with a referral to the LEA with the consent of the parent(s)**.

If the child is referred to the FIT Program **between 45 and 90 days** of the child’s third birthday and, therefore, the transition conference cannot be held at least 90 days before the child’s third birthday, the family service coordinator will discuss the process for transition with the family during the intake process and the transition plan will be incorporated into the initial IFSP. If the child is determined eligible under “Established Condition” or “Developmental Delay,” a referral must be sent to the LEA, with parental consent, as soon as possible. If the FIT provider determines that the child is potentially eligible for Part B services, the referral may be made prior to FIT eligibility determination and the development of an IFSP and transition plan, again with the parent’s consent. The family service coordinator should check the box *“90 day timeline for this meeting cannot be met due to child not being enrolled in the FIT Program at that time”* on the Transition Referral Form. LEA staff is required to document the date of a late referral in the STARS database and the corresponding noncompliance reason code.

NOTE: All referrals from Part C would be related to transition.

Federal Regulations

34 CFR 303.209 (b)(ii)

Subject to paragraph (b) (2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45, but less than 90, days before that toddler’s third birthday and if that toddler may be eligible for preschool services under part B of the Act, the lead agency, as soon as possible after determining the child’s eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler, on his or her

third birthday, will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;

(iii) Subject to paragraph (b) (2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

State Rules

7.30.8.13 D (2)

For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child. (3) For children referred to the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parental consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

7.30.8.7 K

"Consent" means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

6) *What should be done when the late referral occurs during the summer after the school year has ended?*

Discussion

The FIT provider and the LEA need to work together to establish arrangements regarding who in the LEA will be receiving referrals and other information through the summer months and specific dates when LEA personnel will be available. The FIT provider is responsible for meeting all timelines for Part C and will follow the transition process in working with the family. It is important that the family be given resources and understand the Part B evaluation process, Part B procedural safeguards, the IEP process, and how to follow up with the LEA.

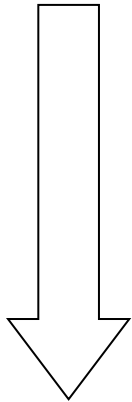
The family service coordinator will contact the LEA representative at the beginning of the school year to confirm receipt of FIT information, debrief on the current status, and support all efforts of determining Part B eligibility and, for the child who is Part B eligible, begin school as early as possible. The child shall transition from the FIT program when he or she turns three years old.

State Rules

6.31.2.11 (5) (H)

In compliance with 34 CFR Sec. 300.101 (b) (2), if a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.

PRE-PLANNING FOR TRANSITION CONFERENCE



- Coordinate among parents, FIT, LEA on conference date.
- Provide written invitation to Transition Conference to LEA and all parties.
- Send Transition Assessment Summary Form to LEA.
- LEA reviews all existing evaluation data, including Part C information, prior to the transition conference and determines who will attend. LEA will be prepared for parent to sign consent.

7) *What are the planning activities that need to occur by FIT Providers and LEA staff prior to the transition conference?*

Discussion

Coordinate among parents, FIT, LEA on conference date.

The family service coordinator will work with the family; the IFSP team, which includes parent(s) and two or more individuals from separate disciplines or professions, one of whom must be the family service coordinator; LEA representative(s); and other key providers to determine a **date for the transition conference** (must be **at least** 90 days prior to the child's third birthday and no more than 9 months prior) that will work for everyone, and the family will receive prior written notice of the transition conference.

Provide written invitation to transition conference to LEA and all parties.

With parental consent, the family service coordinator will send a **written invitation to the LEA at least 30 days prior to the transition conference** (Appendix D) and any other potential preschool providers with the details about the conference (e.g., Head Start, Home Visiting, tribal entities, early care providers, NMSBVI, and NMSD).

NOTE: In some instances there may be multiple LEAs invited to the transition conference. This may occur where multiple school districts and charter schools provide services and the family would like a representative from each to attend the transition conference.

NOTE: If parent declines having the LEA present at the transition conference, the transition conference still takes place and the FSC will document the parent's decision on the IFSP.

Send Transition Assessment Summary Form to LEA.

The FIT family service coordinator will request updated assessment information (including, but not limited to: observations and qualitative information as it pertains to the nature of the child’s needs, relationships with others, and/or impact on educational experiences; information from assessment tools, including scores and percentages of delay as applicable; Early Childhood Evaluation Program (ECEP) reports and/or reports from the child’s IFSP team including NMSD, NMSBVI, and/or PEI (when they are part of the IFSP team and providing ongoing services to the child) and/or other caregivers and community partners, e.g. – relatives, early care providers, Home Visiting, etc.

To support the use of Part C information in determining Part B eligibility, the FIT Transition Assessment Summary Form (Appendix C) will be completed by the child’s FIT team. The FIT team is encouraged to update the Infant-Toddler Developmental Assessment (IDA) information, including scores from the IDA and using Table 5 to determine if the child has at least a 30% delay. It is important that **ALL** attachments to the form include the child’s current IFSP, most recent ECO, and any current pertinent assessment information, including present levels of development in all areas/evaluation reports, ECEP report (if applicable), and other information that may support a Part B eligibility determination. Once the form is completed and attachments are gathered, parental consent will be obtained, and all will be sent to the LEA **at least 30 days prior to the transition conference**. Only information that originates with the FIT Program shall be sent. Assessment information is defined by FIT as current if it is **within 6 months** of the transition conference. Information should be as current to the date of completion of the Transition Assessment Summary Form as possible and can include information from the IDA, domain specific tools, and/or ongoing assessment tools, whichever is most current. FIT assessment tools may include:

- The IDA
- The HELP
- The AEPS
- The Oregon (for children with Visual Impairments)

NOTE: IDA– refer to page 26. The IDA is a comprehensive, multidisciplinary developmental assessment process designed for children from birth to three years old.

In order for the information to be used by the LEA, current assessments are defined as assessments conducted no more than **six months prior** to the date of the meeting of the Part B Eligibility Determination Team (EDT) meeting. It is important that both Part C and Part B communicate and plan effectively in order to utilize Part C information to support Part B eligibility determination.

LEA reviews Part C transition documents and determines who will attend.

It is important that the **LEA review all the information** sent by the Part C family service coordinator prior to the transition conference in order to determine who will attend the transition conference from Part B.

State Rules

7.30.8.13 E. Invitation to the transition conference:

The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least **30 days** prior to the transition conference.

7.30.8.13 F. Transition assessment summary:

(1) The family service coordinator shall submit a completed transition assessment summary form to the LEA at least **30 days** prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

7.30.8.13 G. Transition conference: The transition conference shall:

- (1) be held with the approval of the parent(s);
- (2) be held at least 90 days and no more than nine months prior to the child's third birthday;
- (3) meet the IFSP meeting attendance requirements of this rule;
- (4) take place in a setting and at a time that is convenient to the family;
- (5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;
- (6) with permission of the parent(s), include other early childhood providers (Early Head Start/Head Start, child care, private preschools, New Mexico School for the Deaf, New Mexico School for the Blind and Visually Impaired, etc.).

6.31.2.11 A. (3) (b)

The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team.

6.31.2.11.A (4)

Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies, as appropriate, shall make reasonable efforts to establish productive working relations with local Part C programs and, when given reasonable notice, shall participate in the transition planning conferences arranged by local Part C providers.

8) *What considerations need to be made for children who turn three over the summer and will need Part B eligibility determined by their third birthday?*

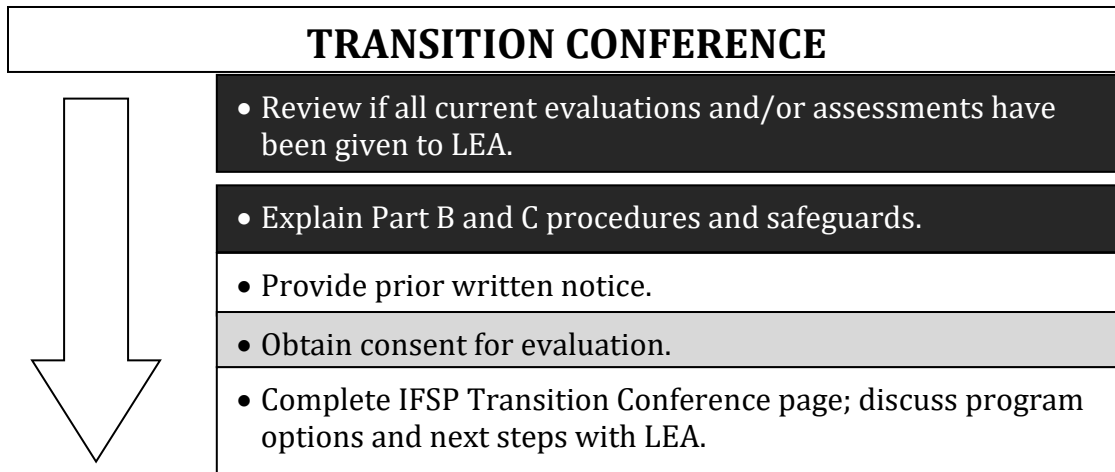
Discussion

If the child's **third birthday** falls within the summer months, transition activities need to occur **early enough to allow sufficient time for all transition activities to take place** so that the LEA is prepared to provide Part B needed special education and related services. The transition team participants may need to consider meeting earlier in order to meet all timelines. Transition activities include referral to the LEA (60 days prior to the transition conference) coordinating the transition conference, including sending a written invitation and the Transition Assessment Summary Form to the LEA (at least 30 days prior to the transition conference), the transition conference (at least 90 days prior to the third birthday, not more than 9 months prior), and the Initial Evaluation for Part B (within 60 days of parental consent and prior to the child's third birthday). Consideration needs to be made for family scheduling and availability for all activities.

State Rules

6.31.2.11 A (5) (h)

In compliance with 34 CFR Sec. 300.101 (b) (2), if a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency must engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.



9) *Who convenes and attends the transition conference?*

Discussion

The FIT program is legally responsible for convening the transition conference. It is the responsibility of the family service coordinator to send a written invitation to the LEA representative to attend the transition conference (at least 30 days prior to the conference) with the approval of the parent(s).

It is the legal responsibility of the LEA representative to participate in the transition conference if it is determined that the child may be potentially eligible for Part B services.

Minimally, attendees to the transition conference should include the parent(s) and two or more individuals from separate disciplines or professions within the FIT program, one of whom must be the family service coordinator, LEA representative(s) and any other agency considered for future services. Other attendees might include Head Start, child care, home visiting, medically fragile, CMS, child protective services, physicians and other medical staff, NMSBVI, and NMSD. In addition, families may want to include other family members, an advocate or person outside of the family. All transition conference attendees are invited with parent permission.

Family service coordinators and LEA staff should schedule the conference **earlier than 90 days** before the child’s third birthday, as this is a minimum timeline. The law allows up to nine months for the conference to be scheduled. Family service coordinators should communicate frequently with LEA personnel to coordinate the scheduling of conferences to promote LEA participation and attendance.

LEA personnel are required to participate in the transition conference; however, **if the LEA does not respond** to timely attempts to schedule the conference or does not attend the conference, **the FIT Provider agency must still hold a transition conference.** If the FIT Provider agency conducts the transition conference in a timely manner, it reports this as compliance under Annual Performance Report (APR) Indicator 8C, even if the LEA representative did not attend the conference. The family service coordinator must provide parents at the conference with information about Part B preschool services, including a description of the Part B eligibility definitions, state timelines and process for consenting to an evaluation and conducting eligibility determinations under Part B. After holding the

transition conference, a subsequent transition conference may be scheduled with the LEA so that the family can be fully informed.

NOTE: Parents to be fully informed

State Rule 7.30.8.13 (G)(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so.

Federal Regulations

34 CFR § 300.124 Transition of children from the Part C program 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; ... (c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

Part C IDEA 2004 Statute: 20 USC 1437(a)(9)(A)(ii)(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 LEA *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.

State Rules

7.30.8.13 (G) Transition Conference: The transition conference shall:

- (1) be held with the approval of the parent(s);
- (2) be held at least 90 days and no more than nine months prior to the child's third birthday;
- (3) meet the IFSP meeting attendance requirements of this rule;
- (4) take place in a setting and at a time that is convenient to the family;
- (5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;
- (6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

6.31.2.11 (A) (5)(e)

Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

NOTE: Transition conference will take place in a setting and time convenient for the family.

10) Does the LEA need to complete any forms prior to its participation in the transition conference?

Discussion

There is no specific form that the LEA needs to complete. The LEA must review the current (within 6 months of the transition conference) Transition Referral Form, Assessment Summary Form and ALL other information provided by the FIT program before attending the meeting. It is highly recommended the LEA complete the Review of Existing Evaluation Data (REED) form provided in the New Mexico Technical Evaluation Assessment Manual (NM TEAM) 2017.

Links to the FIT Transition Referral Form, Transition Assessment Summary Form and the Review of Existing Evaluation Data (REED) may be found in Appendix B, C and G respectively in this document.

NOTE: In order for the Part C Assessment information to be utilized as part of the Part B evaluation, there should be no delay between the transition conference and the LEA EDT meeting so that information is current as per State Rule 6.31.2.11 A. (3) (b) The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team.

11) What occurs during the transition conference?

Discussion

The family service coordinator will facilitate the meeting to include a review of the parent(s)'s preschool and other service options for their child; a review of and, if needed, a finalization of the transition plan; a review of the current IFSP, the Assessment Summary Form, existing evaluation data and other pertinent information with parental consent; an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation; as appropriate, discussions of communication considerations (if the child is deaf or hard of hearing), and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language; discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.; documentation of the decisions made on the transition page and signatures on the Transition Conference signature page, which shall be included as part of the IFSP. Copies of the Transition Conference page and signature page shall be sent to all participants with parental consent.

Ideally, the family should already know some of this information prior to the transition conference as transition planning occurs over time as a responsibility of the family service coordinator's role. Learning about program options and services in advance of the transition conference facilitates the development of a transition plan with steps and services outlined in the child's IFSP.

In order to support determination of eligibility and the child's transition on his or her third birthday, the LEA representative must provide prior written notice regarding consent to evaluate. The contents of the prior written notice must include:

- A description of the actions proposed by the LEA,
- A description of each evaluation or assessment to be used, and
- A statement regarding Part B Parent and Students Rights and a copy of the Part B Procedural Safeguards.

NOTE: It is highly recommended the REED process be used by the LEA to support the review of existing evaluation data to identify whether any additional information is needed to determine eligibility.

Federal Regulations

IDEA Statute—Part C section 637(a)(9) (A)(ii).

The lead agency designated or established under section 635(a)(10) will— ... (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 (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.

Part B Regulations 34 CFR § 300.124

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

34 CFR § 300.503 Prior notice by the public agency; content of notice

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 CFR § 300.504 Procedural safeguards notice

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—(1) Upon initial referral or parental request for evaluation.

State Rules

7.30.8.13 (G) (7)

Transition conference: The transition conference shall be facilitated by the family service coordinator to include:

- (a) a review of the parent(s)'s preschool and other service options for their child;
- (b) a review of and, if needed, a finalization of the transition plan;
- (c) a review of the current IFSP, the assessment summary and any other relevant information;
- (d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parental consent;
- (e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation;

- (f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.
- (g) discussion of issues, including enrollment of the child, transportation, dietary needs, medication needs, etc.
- (h) documentation of the decisions made on the transition page and signatures on the Transition Conference signature page, which shall be included as part of the IFSP. Copies of the Transition Conference page and signature page shall be sent to all participants.

12) *Can parent consent for Part B initial evaluation be obtained at the transition conference?*

Discussion

Yes. The LEA representative secures parental consent for initial evaluation during the transition conference (Appendix E). Parents must fully understand what signing consent means and the resulting actions that will occur. Therefore, the LEA representative is responsible for providing and describing Part B Procedural Safeguards to the parents. **It is the choice of the parent as to whether they sign the consent during the transition conference, as it is not a legal requirement of the transition conference. Parents may need more time to consider their options and should not be pressured to make a decision during the conference.** Allowing time for decision-making is one reason why the conference should be held more than **90 days** before a child's third birthday. Parents have a legal right to refuse to sign consent if they have definitely decided not to proceed with the Part B initial evaluation and eligibility determination process.

NOTE: At this time, the LEA obtains parent consent to gather any third party information not given by Part C as part of HIPPA rule (e.g., medical evaluations, community agency evaluations/notes not part of the Part C system).

NOTE: If parent needs additional time and declines to sign consent at the transition conference, the LEA will pursue parent consent in a timely manner.

Federal Regulations

34 CFR § 300.300 Parental consent.

(a) Parental consent for initial evaluation. (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

34 CFR § 300.9 Consent.

Consent means that--

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

State Rules

7.30.8.13

G. The transition conference shall: (7) be facilitated by the family service coordinator to include: (e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation.

13) *What happens if a family that has been referred to Part B refuses to provide consent for an initial evaluation?*

Discussion

Parents have a right to refuse to sign consent if they decide not to proceed with the Part B initial evaluation and eligibility determination process.

If the parent does not consent to proceeding with the Part B evaluation and eligibility determination process, they are choosing to not receive services under Part B of IDEA.

Parents who decide not to proceed with the Part B evaluation and eligibility determination process should be given contact information for the LEA in which they reside. It should be made clear that after they exit the FIT program, they may contact the LEA in the future and request an initial evaluation. **The LEA is responsible for documenting the status of the child and tracking that information in STARS. Documentation of refusal to provide consent is also in the Parent Consent for Evaluation Form (Appendix E).**

Federal Regulations

34 CFR § 300.300 Parental consent.

- (a) Parental consent for initial evaluation
 - (iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (b)(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedure under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

34 CFR § 300.9 Consent.

Consent means that--

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

14) *Can a child's eligibility be determined at the transition conference?*

Discussion

No. The transition conference is not the time to determine eligibility for IDEA Part B services, as evaluations are not conducted at this conference. The transition conference provides an opportunity for the family to meet a representative of the LEA and learn more about the steps in the process of determining possible eligibility. Review if all current evaluations and assessments have been given to the LEA and the LEAs summary of information for the child is complete. At this time the LEA can add additional information to the REED as needed.

Federal Regulations

34 CFR§ 300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures—

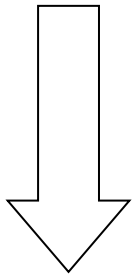
(1) A group of qualified professionals and the parent of the child determine whether the child is a child with a disability...

State Rules

Subsection (A)(5) (f) of 6.31.2.11 provides:

“Each LEA shall designate a team, including parents and qualified professionals, to review existing evaluation data for each child entering the LEA’s preschool program in compliance with 34 CFR Sec. 300.305 and, based on that review, to identify what additional data, if any, are needed to determine the child’s eligibility for Part B services or to develop an appropriate program.”

INITIAL COMPREHENSIVE EVALUATION FOR PART B



- Part B team reviews updated assessment data (including Part C assessments).
- Part B team determines additional data and assessments needed.
- Part B team conducts initial comprehensive evaluation process in all areas of suspected disability.

15) *What is the LEA's responsibility for conducting an initial comprehensive evaluation?*

Discussion

The LEA is responsible for obtaining written informed written parental consent and conducting the evaluation within 60 days. The initial comprehensive evaluation process will be conducted in all areas of suspected disability. The purpose of the initial comprehensive evaluation is to determine if the child is a child with a disability and if the child requires special education and related services to benefit from the education program. Prior to conducting evaluations to determine eligibility, the LEA team must review any existing data,

NOTE: If the LEA decides not to evaluate a preschooler who has been referred to special education the LEA must provide the parent with prior written notice of that decision. This notice **MUST** include:

- The fact that the evaluation is being refused;
- The reasons for refusing to provide the evaluation including the information used to make the decision;
- A copy of the parent's rights including what they can do to dispute the agency's decision
- Sources for the parent to contact to obtain assistance in understanding special education requirements; and
- A description of other options and other factors the LEA considered in reaching this decision.

If the parent disagrees with the decision not to evaluate his or her child, there are a number of formal procedures available to attempt to dispute the decision including requesting mediation, filing a state complaint, or filing a due process complaint. [34CFR 300.300 (a) (I), 300.503 and 300.504] (Appendix J)

including evaluations and information provided by parents and the FIT Program, assessments, and teacher observations.

As part of the Part B evaluation procedures, the team must use a variety of assessment tools and strategies to gather functional and developmental information about the child, including information from the parents and information related to enabling the child to be involved, and progress, in age-appropriate activities. Other factors to consider are health, vision, hearing, social emotional development, academic readiness, cognitive, communication, adaptive behavior and physical development. The LEA may consider the assessments that the FIT Providers have provided, including the information provided on the Transition Assessment Summary Form and attachments. Specific evaluations considered necessary for determining eligibility but not available from the FIT Provider are the responsibility of the LEA to complete, including hearing and vision.

NOTE: Parental consent should not be signed the day of the assessment as it signals a delay in the identification process. Parental consent is to be obtained in a timely manner after referral, Child Find or at the Transition Conference. If parent is not ready to sign consent at the transition conference, then parent consent is to be obtained in a timely manner after the transition conference.

All tools and strategies must yield relevant information that directly assists in determining the educational needs of the child and be sufficiently comprehensive to determine the need for special education and related services. The LEA should use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. The instruments should be used in accordance with documented instructions and for the purpose for which they were designed. The LEA should ensure the assessments and evaluation materials used to assess a child are selected and administered so as not to be discriminatory on a racial or cultural basis and are provided in the child's native language or mode of communication most likely to yield accurate information.

As part of a parent's procedural safeguards under Part B, a parent has the right to have an Independent Educational Evaluation (IEE) at no cost to the parent(s). The parent may also request an IEE if the LEA has first conducted an evaluation with which they disagree. The parent also has a right to receive a copy of their child's evaluation report and documentation of eligibility at no cost at the meeting.

Note: Hearing and vision screening should be current within one year.

Federal Regulations

34 CFR § 300.15 Evaluation.

Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

34 CFR § 300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.304 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under § 300.8; and

(ii) To determine the educational needs of the child.

34 CFR § 300.304(b) Evaluation procedures

...the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 CFR § 300.305 Additional Requirements for Evaluations and Reevaluations

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including-

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--(i)(A) Whether the child is a child with a disability, as defined in Sec. 300.8, and the educational needs of the child.

34 CFR § 300.502 Independent educational evaluation

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

State Rules

6.31.2.10

- E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children.
1. Each public agency must ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR Sec. 300.304(c)(1).
 2. Each public agency must ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.
 3. Each public agency must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the public agency with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1).
 4. Each public agency must ensure that the child is assessed in all areas related to the suspected disability.
 5. Policies for public agency selection of assessment instruments include:
 - (a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and
 - (b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level.
 6. Public agencies in New Mexico shall devote particular attention to the foregoing requirements in light of the state's cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.

6.31.2.11 (A) (3)

To ensure effective transitioning from IDEA Part C programs to IDEA Part B programs, each public agency must conduct a full and individual initial comprehensive evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.300, 300.301, 300.302, 300.304 and 300.305, and other department rules and standards, before the initial provision of Part B special education and related services to a child with a disability. (a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability.

INITIAL COMPREHENSIVE EVALUATION FOR PART B

16) *What is considered an initial comprehensive evaluation for Part B?*

Discussion

The purpose of an initial comprehensive evaluation is to see if the child is a child with a disability as defined by IDEA, to gather information that will help determine the child's educational needs (the nature and extent of special education and related services), and to guide decision making about an

appropriate educational program for the child including participation in age appropriate preschool activities.

Initial comprehensive evaluations must be conducted according to the requirements established by IDEA 34 CFR 300.301–311. Evaluation teams are required to follow the NM TEAM to guide their efforts. The NM TEAM includes specifics on what comprises an initial comprehensive evaluation in each of the eligibility categories as well as Initial Evaluation Eligibility Worksheets that are provided to assist LEAs as they work through the initial evaluation eligibility process.

The initial comprehensive evaluation is a process with specific requirements and steps. Multiple sources of information and data are needed to determine eligibility. Assessments, evaluations, observations, and other required data will be gathered throughout the initial evaluation process. The components of the initial comprehensive evaluation must be administered, reviewed, and/or gathered by personnel licensed by the State of New Mexico and/or the PED.

Refer to the Part B Preschool Initial Evaluation Checklist (Appendix F) to support evaluation team efforts to meet requirements. The decisions required in the evaluation process must be made by a team of professionals and must include the parents of the child.

As a part of the initial comprehensive evaluation, a group of qualified professionals must review existing evaluation data on the child including:

- Any evaluations, assessments, and information provided by the parents and
- Information provided by FIT, including the Transition Assessment Summary Form and accompanying documentation that will include information gathered through the use of assessment tools, parent interviews, and observational information.

Reviews may be conducted without a meeting. On the basis of that review (refer to Part B Preschool Existing Data Review Checklist in Appendix F), the REED (which includes the evaluation plan) from the NM TEAM (Appendix G) and input from the child's parents, identify what additional data, **if any**, are needed to determine whether the child is a child with a disability, as defined in IDEA 34 CFR 300.8 and the educational needs of the child, including the need for special education and related services.

If the LEA has determined that sufficient data exist and that no additional data are needed, it is not necessary for LEA evaluation teams to perform additional assessments as part of the initial evaluation process. Although data from assessment instruments are required as part of the Part B initial evaluation process, if the instruments and procedures used by the FIT program meet all of the requirements in IDEA 34 CFR 300, that information can be used by Part B to make the determinations needed.

If the data is not sufficient and additional information is needed, LEA evaluation teams are responsible for gathering that information, administering any needed assessments and other evaluation measures and following required guidance and regulations.

17) *Can LEAs use assessments and evaluation information from the FIT Program in determining a child's eligibility for Part B services?*

Discussion

Yes. It is the responsibility of the LEA to conduct an initial evaluation in order to determine eligibility for Part B services. The LEA must ensure that a full and individual initial evaluation has been conducted before determining the child's eligibility for special education. The initial evaluation must be conducted within 60 days of parent consent.

The LEA must review *existing* evaluation data, completed within six months of the consent for evaluation, as part of the initial evaluation. The LEA is required to draw information from a variety of sources such as parent input and teacher recommendations as well as information about the child's physical condition, social or cultural background, and adaptive behavior. This may include existing IDEA Part C assessment data conducted within six months. Part C programs have substantial, pertinent information, both qualitative and quantitative, if it has been collected within six months of consent for Part B evaluation. However, **IDEA Part C data cannot be the sole source for determining eligibility for IDEA Part B services. No single measure or assessment can be the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child. Information provided by the parents of the child and observations by service providers are other sources of information that may support a determination that the child is a child with a disability and the educational needs of the child.** NM TEAM page 30

NOTE: For preschool children transitioning from services under Part C of IDEA to Part B, the evaluation and IEP **must** be in place on or before the date of the child's third birthday. It is best to complete this before the end of the school year for any child with a birthday in the summer. There are only a few exceptions to this requirement: If the parents refuse to provide consent for the evaluation or initial services, if the parent fails or refuses to produce child for the evaluation, if Part C referred the child less than 90 days before the child's birthday, or if the child moves out of district.

Federal Regulations

34 CFR § 300.305 Additional Requirements for Evaluations and Reevaluations

- (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—
- (1) Review existing evaluation data on the child, including-
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (iii) (Observations by teachers and related services providers; and
 - (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--(i)(A) Whether the child is a child with a disability, as defined in Sec. 300.8, and the educational needs of the child.

State Rules

Subsection (A)(5)(f) of 6.31.2.11 states that "Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, **if any**, are needed to determine the child's eligibility for Part B services or to develop an appropriate program in a manner that is consistent with Paragraph (3) of Subsection A of this section. The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13.NMAC."

Subsection (A) (3) (b) of 6.31.2.11 provides: “The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team. (c) The Part B eligibility determination team must consider educationally relevant medical assessments as part of the review of existing evaluation data. The determination of eligibility may not be made solely on the basis of medical assessments. If the team considers medical assessments conducted more than six months prior to the date of the meeting, the team must document the appropriateness of considering such medical assessments.”

18) What is the IDA and can it be used to support determining Part B eligibility?

Discussion

Yes. IDA used by the FIT Program can be used to support determining Part B eligibility. The IDA is a *comprehensive, multidisciplinary developmental assessment process* designed for children from birth to three years old. The IDA contains information from multiple sources, including parent interview, health and medical records, developmental observations, which include the use of the IDA Protocol, and examination of specific developmental and behavioral considerations across eight developmental domains. The IDA provides *definitive* information regarding whether or not a child has special needs and the nature of those needs. The IDA must be administered by at least *two professionals* of differing disciplines. The IDA is designed to provide a detailed description of developmental functioning, determine eligibility for services, and inform the design of intervention strategies. The IDA gives a criterion-referenced score based on the relationship between the child’s chronological age and specific developmental milestones that the child has reached, resulting in a percentage of delay in each developmental domain.

Validity and Reliability of the IDA:

The IDA is considered to be a valid instrument and has generally been rated high in both reliability and inter-rater reliability. To provide empirical data on the characteristics of the Provence Profile, the results of 100 children between birth and three years of age were analyzed and reported. The item scores for these children were taken from IDA records in a training center which collected the results of IDA assessments administered by practitioners at 23 service agencies. Reliability coefficients for the Provence domain scores are generally quite high, ranging from .90 to .96 for ages 1 to 18 months and .79 to .96 for ages 19-36 months. Inter-rater reliabilities range from .91 to .95 for seven of the eight domains and .81 for the remaining domain.

19) Does a child referred from FIT as potentially eligible, defined by Part C’s “established condition” or “developmental delay” categories need to go through developmental screening or the Response to Intervention (RTI) process before he or she can move forward with the evaluation?

Discussion

No. While screening may be appropriate for children coming into Part B with a referral from the community or a parent, children coming from the Part C FIT program do not need to go through developmental screening. Children referred from FIT under the “established condition” or “developmental delay” category have already had an evaluation and ongoing assessments and more comprehensive information available through FIT than screening would provide, and are considered potentially eligible. The child would not need to go through developmental screening that, in this case, is not an efficient use of resources and would cause a delay in the Part B evaluation process. Developmental screening is used to determine if skills are progressing as expected or if there is cause for concern regarding a child’s, behavioral, motor, language, social, cognitive, perceptual, and

emotional skills, which would require further evaluation. It does not lead to a decision about whether a child has a developmental delay or a disability. It is the evaluation and eligibility determination process that documents the existence of a delay in development or a particular disability.

The RTI process safeguards children who are struggling academically and behaviorally to be identified early and provided needed interventions in a timely and effective manner. It provides children who need additional support with targeted, individualized supports and more intense interventions, ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation. Children referred from the FIT program have had ongoing targeted interventions and individualized supports and continue to be in need of FIT services and supports. They are ready to move forward with a Part B initial evaluation. The RTI process is not needed for children referred from FIT and would only serve to delay the evaluation process.

Federal Regulations

34 CFR § 300.302 Screening for instructional purposes is not an evaluation.

The screening of a student by a teacher or specialist for determining appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Other Sources

OSEP Letter to Musgrove (2010) (<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>)

The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR 300.304-300.311, to a child suspected of having a disability under 34 CFR 300.8...It would be inconsistent with the evaluation provisions at 34 CFR 300-301 through 300.311 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.

OSEP Letter to Brekken (2010)

(<http://www2.ed.gov/policy/speced/guid/idea/letters/2010-2/brekken060210rti2q2010.pdf>)

The IDEA does not require, or encourage an LEA to use an RTI approach prior to a referral for evaluation or as part of determining whether a 3-, 4-, or 5-year-old is eligible for special education and related services. IDEA section 614 (b) (6) (B) and its implementing regulation at 34 CFR 300.307 (a) (2) require States to adopt criteria for determining whether a child has a *specific learning disability* as defined in 34 CFR 300.8(c)(10), and these criteria, among other factors, must permit the use of a process based on the child's response to scientific research-based intervention (known as RTI)...The category of specific learning disability is generally not applicable to preschool children

with disabilities. The IDEA, and the Part B regulations do not address the use of an RTI model for children suspected of having other disabilities.

NOTE: Every Student Succeeds ACT (ESSA) requires the use of evidence-based curriculums and interventions which show data that have statistically significant evidence to show that they are effective at producing results and improving outcomes when implemented. See PEDs ESSA (Appendix I).

ELIGIBILITY DETERMINATION MEETING

20) *How is eligibility determined for Part B services?*

Discussion

Eligibility is determined after the initial evaluation procedures are complete, including the careful review of existing evaluation and assessment information, observations, and input from the parents. (Appendix G)

A team of qualified professionals, including the parents, determines whether the child meets the New Mexico Part B eligibility requirements. The LEA may choose to use the state-recommended Eligibility Determination Worksheet in the NM TEAM. The LEA must, at no cost to the parent, provide a copy of the evaluation report and the documentation of the child's eligibility at the meeting. With parent consent, documentation of the eligibility determination for Part B will also be sent to the referring FIT provider. LEAs will document parent consent in prior written notice.

Federal Regulations

34 CFR §300.306 Determination of eligibility.

- (a) General. Upon completion of the administration of assessments and other evaluation measures—
 - (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and
 - (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent...
- (c) Procedures for determining eligibility and educational need.
 - (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
 - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.
 - (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

State Rules

6.31.2.11(A)(5)(f)

Each LEA shall designate a team, including parents and qualified professionals, to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305 and, based on that review, identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program.

6.31.2.10

F. Eligibility determinations.

(1) General rules regarding eligibility determinations

- (a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306.
- (b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

6.31.2.7(B)(2) "Child with a disability"

means a child who meets all requirements of 34 CFR Sec. 300.8 and who:

- (a) is aged 3 through 21 or will turn 3 at any time during the school year;
- (b) has been evaluated in accordance with 34 CFR Secs. 300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including intellectual disability; a hearing impairment including deafness; a speech or language impairment; a visual impairment including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury and other health impairment; a specific learning disability; deaf-blindness; or being developmentally delayed as defined in 6.31.2.7(B)(4) NMAC and who has not received a high school diploma; and
- (c) at the discretion of each local educational agency and subject to the additional requirements of Subsection 2 of Paragraph F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

6.31.2.7(B) (19) NMAC

as authorized by 34 CFR §§ 300.8 and 300.39, "special education" in New Mexico may include speech-language pathology services.)

21) *Under What Circumstances Can the Category of Developmental Delay Be Considered for Part B Eligibility?*

Discussion

The eligibility category of Developmental Delay (DD) can only be used by LEA personnel for children who do not qualify for special education under any other disability category following the initial comprehensive evaluation. Being classified as DD will not, in itself, qualify a child for special education; it must be documented that being developmentally delayed adversely affects educational performance. To be eligible for special education and related services under this category, a child must have a documented disability and require specially designed instruction. As a result of the disability, there must be an adverse effect on the child's educational performance to the degree that the child requires special education and related services. Since the NMAC statutory changes in 2009,

it is no longer possible for a child to be eligible under this category solely based on professional judgment.

If a district has opted to use Developmental Delay², then a group of qualified individuals is required to review all data collected through the initial comprehensive evaluation to determine if the child is a child with developmental delays in at least one of five areas in accordance with the NM Administrative Code for Part B: communication development, cognitive development, physical development, social or emotional development, or adaptive development. It is important to consider developmentally appropriate skill levels and behaviors for the child's age level. For clarification of the five recommended areas, a checklist is available in the NM TEAM. (See NMAC definition below and NM TEAM)

State Rules

Subsection (F)(2) of 6.31.2.10 Optional use of developmentally delayed classification for children aged 3 through 9

- (a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.
- (b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A child who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.

Subsection (B)(4) of 6.31.2.7 NMAC states that Developmentally Delayed “means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC,” which specifies in part that “The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other available disability category.”

- 22) ***Can a child be determined to have a developmental delay if the only area of need is in the physical development, which may be delays in fine and/or gross motor?***

Discussion

Yes. A child must be eligible as having developmental delay that adversely affects educational performance and as a result of that disability requires special education and related services. If the child does not require special education services, and only requires a related service by an occupational therapist or physical therapist, then the child is not considered to have a disability, and, thus, is not eligible to receive special education services.

² Districts are not required to use the category of Developmental Delay.

Special education services for a child with a developmental delay in the area of physical development may include instruction in the development of age appropriate skills such as being able to navigate the educational environment and completing everyday tasks, such as getting dressed, completing puzzles, and grasping objects, including writing and using utensils.

Federal Regulations

34 CFR 300.8 (a)(2) (i) Child with a disability

Subject to paragraph (a) (2) (ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a) (1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

34 CFR 300.34 (a) Related services.

General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

23) *What is the difference between a related service provided by a speech language pathologist and specially designed instruction provided by a speech language pathologist?*

Discussion

In New Mexico, “special education” can include speech language pathology services.

The EDT must determine that the child has a speech or language impairment that adversely affects their involvement and progress in the general education curriculum, including extracurricular and non-academic activities, or their participation in developmentally appropriate activities.

A speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child’s educational performance. (34 CFR Sec. 300.8(c)(11))

In order for speech language pathology services to be considered a special education service, the IEP team must determine the child requires specially designed instruction by a speech language pathologist. If the IEP team determines that the child requires specially designed instruction by the special education teacher and also requires services from a speech language pathologist, the speech language pathology services in this case would be considered a related service.

State Rules

6.31.2.7(B) (19)

(b) Speech-language pathology services must meet the following standards to be considered special education:

- (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC;
 - (ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects the child's educational performance;
 - (iii) the speech language pathology service consists of specially designed instruction to enable the child to access the general curriculum and meet the educational standards of the public agency that apply to all children; and
 - (iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC
- (c) If all of the above standards are met, the service will be considered special education rather than a related service.

**EVALUATION REPORT AND DOCUMENTATION OF ELIGIBILITY
SENT TO PARENT.**

24) *How will the FIT program know if a child has been determined eligible by Part B?*

Discussion

LEAs, with parental consent, have the option of sharing the evaluation report and documentation of eligibility with the FIT provider. Although this is encouraged, it is not required. For more information refer to the "Timeline of Steps for Early Childhood Transition in New Mexico" at the beginning of the document.

State Rules

6.31.2.10

F. Eligibility determinations.

(1) General rules regarding eligibility determinations

- (a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306.
- (b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

Family service coordinators will contact the LEA to verify if child was made eligible for Part B. The child's eligibility will be documented in the child's record.

25) *What if a parent disagrees with the results of the LEA evaluation?*

Discussion

If a parent disagrees with the evaluation conducted by the LEA, the parent has the right to an independent educational evaluation (IEE) at no cost to the family under certain circumstances. This includes the LEA's option to file a request for a due process hearing to show that the evaluation is

appropriate. If the evaluation is found to be appropriate, the parent would have the right to an independent educational evaluation, but not at the LEA's expense. There are extensive procedures that must be followed by the LEA when a parent requests an IEE, which can be obtained from the LEA in which the child resides.

Federal Regulations

34 CFR § 300.502 Independent Educational Evaluation.

(a) General.

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this subpart—(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

INDIVIDUALIZED EDUCATION PROGRAM (IEP) DEVELOPED.

- 26) *What are the provisions for developing an initial IEP for children transitioning from Part C to Part B and does the IEP need to be in place by the child's third birthday?*

Discussion

According to 34 CFR §§ 300.323(b)(1) and 300.124(b), the IEP **must** be in place by the child's third birthday.

The initial IEP meeting for a preschool child with a disability must occur **within 30 calendar days** from the determination that the child is a child with a disability and eligible for special education and related services.

For the child transitioning from the FIT Program, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the FIT family service coordinator or other representatives of the FIT system to assist with the smooth transition of services. This occurs through the parental notice required prior to the IEP meeting. The notice includes, but is not limited to, information about time, location and purpose of the meeting, and that the parents may invite the Part C family service coordinator or other representatives of the Part C system to the initial IEP team meeting.

The IEP team is required to consider the content of the of the child's IFSP when developing the child's first IEP.

NOTE: Following the completion of the IEP meeting, the parents should be given a copy of the completed IEP document and encouraged to communicate with the school about their child. If appropriate, the student should also be fully informed of the provisions in the IEP and what is expected of him or her.

Federal Regulations

34 CFR § 300.124 Transition of children from the Part C program to preschool programs.

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

- (a) 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);

34 CFR § 300.323 When IEPs must be in effect.

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.b) IEP or IFSP for children aged three through five. (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

- (i) Consistent with State policy; and
- (ii) Agreed to by the agency and the child's parents

34 CFR § 300.321 (f) Initial IEP Team meeting for a child under Part C.

In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

34 CFR § 300.322 (b) (1) (ii)

Inform the parents of the provisions in § 300.321 (f)(relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

IDEA 2004 Conference Report (108th Congress November 17, 2004)

"The Conferees recognize that ensuring a smooth transition from the Part C system to the preschool program or school is vital for a child's educational success. It is the Conferees' intent that during the initial IEP meeting for a child transferring from the Part C program the types of services the child received as part of the IFSP are discussed. The Conferees understand that services provided through the Part B program may differ in frequency, duration, and environment; however, the IEP team should explain the changes in services in the initial IEP meeting. The Conferees do not intend that a state or district reduce any service a child would be otherwise eligible for under Part B."

34 CFR § 300.323(1)

A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and (2) as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

34 CFR §300.101 (b) Free Appropriate Public Education (FAPE) for children beginning at age 3.

(1) (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with 300.323 (b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

State Rules

6.31.2.11 A (5) (g) Development of IFSP, IEP or IFSP-IEP.

(i) The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes the parents. For children transitioning from Part C programs to Part B programs, the team must also include one or more early intervention providers who are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system.

7.30.8.13 I (1)

The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval. (2) the family service coordinator, with parental consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

27) Is the LEA responsible for providing transportation to and from school for speech services for preschool children identified as speech only?

Discussion

Yes. Speech only preschool children are eligible for transportation services. If the child requires transportation as a related service, it must be considered and documented in the IEP. If not, the transportation must be provided as a regular service. Either way, the child has a right to be transported to and from school, in and around school buildings and, if applicable, utilize specialized equipment in order to receive the speech services the child is entitled to under state and federal law.

Federal Regulations

§ 300.34 Related services.

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services...

(16) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability

State Rules

Standard for providing transportation for eligible children

6.41.4.7 DEFINITIONS:

D. Eligible student

(1) Students eligible for transportation services under federal and state statutes or under the Public Education Department's "Hazardous Walking Regulation." State statutes provide that students are eligible for transportation services if school bus routes are:

1. One mile one-way for students in grades K through 6,
2. 1½ miles one-way for students in grades 7-9, and
3. 2 miles one-way for students in grades 10-12.

(2) Students with special needs are entitled to transportation as defined in Subparagraphs (a) through (c) of Paragraph (1) of Subsection D of 6.41.4.7 NMAC, or as specified in the definition of "transportation as a related service."

R. Transportation as a related service

Transportation modifications and/or supportive services specified in the IEP, as required to assist a child with disabilities to benefit from educational services in the least restrictive environment. If modifications and/or supportive services are not required, transportation is not a related service. When the child's needs do not require modifications, transportation is provided as a regular service if the child is eligible.

28) *When does a child need to transition out of the FIT Program?*

Discussion

Children will transition from the FIT Program at the time of their third birthday. For example: If the child's third birthday falls on a weekend, the child would transition on the Monday (being the next school day) after that weekend, or if the child's third birthday falls during the winter or spring break, he or she would transition on the first school day after that break.

For children whose third birthday is in the summer and for whom there is a gap in services, early intervention personnel, as part of the transition planning, are encouraged to give the family ideas and activities to do with their child during the gap in services.

State Rules

7.30.8.13 H. Transition Date:

(1) The child shall transition from the FIT program when he or she turns three years old. (2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B): (a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or (b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

29) *How will follow-up family service coordination and follow-up consultation services be provided for families from the FIT program?*

Discussion

Follow-up family service coordination will be available for up to **one month** after the child has successfully transitioned to preschool or another appropriate setting. Early intervention consultation

after transition is available for up to **four hours total** (to be completed within 30 calendar days) across all services/disciplines that the child was receiving under the IFSP, so that early intervention personnel can provide consultation to the LEA, Head Start, or other early childhood staff regarding the child's intervention needs. For example: If the LEA start date is August 15, the family service coordinator and the team would have until September 15 to provide the follow-up consultation services with the preschool staff to make sure the transition from the FIT program was smooth and effective for the child and family.

State Rules

7.30.8.13 J. Follow-up family service coordination:

At the request of the parents, and in accordance with New Mexico department of health policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

30) *Should there be a Memorandum of Understanding (MOU) between the LEA and local FIT Provider to outline the transition process to ensure that children being referred from Part C to Part B have an IEP in place by their third birthday and receive a Free Appropriate Public Education (FAPE)?*

Discussion

Yes. A MOU is required and should outline the early childhood transition process in detail for both Part C and Part B to ensure that children and their families have a smooth transition process and that FAPE will be provided to children entering the Part B program.

The MOU should address specific procedures at the local level in order to promote a smooth and effective transition for the children and their families. The MOU should be reviewed, and revised as necessary, at least annually.

Developing an MOU is a process of ongoing meeting and dialogue between partners to gain an understanding of the requirements each partner is obligated to meet, the internal procedures each agency follows to meet those requirements, and the agreement each partner makes to support efforts to have a smooth and effective transition experience for each child and family. The MOU Work Sheet (see Appendix K) is a tool available to support teams to develop a community MOU that will meet the unique needs of their team and partners.

Samples of MOUs developed by New Mexico Community Transition Teams are available at the NM Early Childhood Transition website at <http://www.cdd.unm.edu/ecln/Transition/transitionTeamsMOU.html> as a resource.

State Rules

6.31.2.9 Public Agency Responsibilities

- (a) Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and

regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.

(b) Public agency funding and staffing.

- (1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.
- (2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memoranda of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

31) *What signatures are required on the MOU?*

Discussion

MOUs must be signed by stakeholders only. Stakeholders include LEAs (ensure all LEAs are included), Part C providers, and agencies providing services (to include Regional Education Cooperatives (RECs), NMSBVI and the NMSD. Parent advocacy groups and other partners are encouraged, but are not required to sign the MOU.

32) *Will MOUs continue to be tied to LEA funding?*

Discussion

The LEAs submitting their annual IDEA Part B funding applications will be required to adhere to the following:

1. LEAs must meet assurances annually.
2. LEAs must submit any revisions to their MOU with their annual IDEA B funding applications.
3. MOUs will continue to be tied to LEA funding.
4. Changes to the MOU will require an addendum-signed by the LEA, Part C providers and any other agency providing services.
5. LEAs must submit the four-year revision of their MOU as part of their IDEA Part B funding application.

33) *How many years is the MOU valid?*

Discussion

In accordance with the state MOU between the New Mexico Department of Health (NM DOH) and NM PED-SEB, the local MOU is valid for four years.

34) *What is the first day of school?*

Discussion

The first day of school for schools within a school district is **the first day of school** as posted on the district's annual school calendar, filed with PED.

35) *Can the first day of school be different for preschool children or children with disabilities?*

Discussion

All children must be treated equally; holding children with disabilities to a lesser standard would be discrimination. If for some reason the start date is different than the first day of school for all other children and the child is not transitioning after the school year begins, the IEP implementation date and the start date must be determined by the IEP team.

36) *May children residing in one district receive services in or by another district?*

Discussion

Yes. Children may receive services in a district other than the district of residence if there is an agreement between two districts to provide special education services that the other district cannot provide. In this instance, the home district would be responsible to provide transportation for the child to receive their special education services in the other district.

If a parent chooses to enroll a child who is transitioning from Part C to Part B in another school district under the open enrollment act, they would need to go through the transition process with the district of residence to determine if their child is eligible to receive special education services under Part B. Once eligibility is determined, the parent may seek to enroll their child in another district. The decision of a district to enroll an out-of-district child is a local decision determined by local policy set forth in Section 22-1-4 NMSA 1978. Transportation in the instance of open enrollment would be the responsibility of the parent.

Federal Regulations

34 CFR §300.17 Free appropriate public education.

Free appropriate public education or FAPE means special education and related services that—(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§ 300.320 through 300.324.

State Rules

Subsection B (7) of 6.31.2.7

The educational jurisdiction of a public agency includes the geographic area, age range, and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including joint powers agreements (JPA) or memoranda of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

- 37) *What transition activities are required for children leaving early intervention who are not considered potentially eligible for Part B and are not transitioning to Part B preschool special education services?***

Discussion

Some children leaving FIT will not be transitioning to Part B preschool special education services. The FIT program is legally responsible for the transition plan, planning activities, meeting all timelines, and convening the transition conference for ALL FIT children and families. The family service coordinator will support the child and family through the transition process and assist them in exploring options such as Head Start, private preschool, child care settings and available options for Native American tribal communities, or home, if no other options are available. With the approval of the family, potential partners will be invited to transition conferences to discuss the appropriate services the child might receive.

APPENDICES

Contents / Links

A. New Mexico Early Childhood Transition

- <http://www.cdd.unm.edu/ecln/transition>
 - [Transition Guidance](#)
 - [Transition Team MOUs](#)
 - [Transition Team Lists](#)
 - [Transition Tip Sheets](#)
 - [Transition Resources](#)

B. FIT Transition Referral Form

- <http://www.cdd.unm.edu/ecln/FIT/ChildRecordForms.html>
- <http://www.cdd.unm.edu/ecln/Transition/supportForms.html>

C. FIT Transition Assessment Summary Form

- <http://www.cdd.unm.edu/ecln/FIT/ChildRecordForms.html>
- <http://www.cdd.unm.edu/ecln/Transition/supportForms.html>

D. Sample Transition Conference Invitation

- <http://www.cdd.unm.edu/ecln/FIT/ChildRecordForms.html>
- <http://www.cdd.unm.edu/ecln/Transition/supportForms.html>

E. Parent Consent Form for Preschool Evaluation

- <http://www.cdd.unm.edu/ecln/Transition/supportForms.html>

F. Part B Preschool Initial Evaluation Checklist

- <http://www.cdd.unm.edu/ecln/Transition/supportForms.html>

G. Review of Existing Evaluation Data (REED) and Evaluation Plan (TEAM)

- Located in the NM TEAM: Technical Evaluation and Assessment Manual:
<https://webnew.ped.state.nm.us/wp-content/uploads/2018/02/NM-TEAM-2018-1.pdf>

H. FOCUS Essential Elements of Quality for all New Mexico Public School Preschool Programs

- http://www.cdd.unm.edu/ecln/ped-focus/pdfs/FOCUS_Essential_Elements.pdf

I. Every Student Succeeds Act (ESSA)

- <https://webnew.ped.state.nm.us/information/essa-new-mexico/>

J. Understanding IDEA: What it means for preschoolers with disabilities and their families

K. Memorandum of Understanding Work Sheet

- <http://www.cdd.unm.edu/ecln/Transition/supportForms.html>