

# Birth to Three Early Intervention Program Policies and Procedures Manual



Revised 2022



*DELAWARE HEALTH AND SOCIAL SERVICES*

*Division of Public Health*

*Birth to Three Early Intervention Program*

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# PREFACE

## Purpose

This document encompasses the comprehensive policies and procedures for the development and implementation of the Delaware Birth to Three Early Intervention Program that is the statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities. The manual is based on the participation of Delaware in Part C of the Individuals with Disabilities Education Act (IDEA).

The Delaware Department of Health and Social Services (DHSS) is the lead agency for the Part C of IDEA program and the Secretary of DHSS has delegated to the Division of Public Health, Birth to Three Early Intervention Program, the responsibilities for assuring and implementing all components of the statewide system in compliance with policies under Part C of IDEA.

Annually, the DHSS submits a grant application to the Office of Special Education Programs (OSEP). By receiving federal grant dollars, DHSS agrees to:

- Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
- Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage);
- Enhance statewide capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families;
- Enhance the capacity of State and local agencies and early intervention service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care;
- Encourage the expansion of opportunities for children under three years of age who would be at risk of having a substantial developmental delay if they did not receive early intervention services; and
- Ensure compliance with the requirements of Part C of IDEA.

## Overview

The Individuals with Disabilities Education Act (IDEA 2004) was previously known as The Education for All Handicapped Children Act, P.L. 94-142 (1975) and originally mandated that free appropriate public education and related services be provided to children with disabilities ages 6-21. Amendments to IDEA were passed in 1986 (P.L. 99-457) and included Part H, providing an incentive to states to develop a system of coordinated, comprehensive, multidisciplinary, interagency programs of services for infants and toddlers, birth through two years of age, and their families.

The U.S. Congress reauthorized IDEA in 1997 and what was known as Part H became Part C. Based on the reauthorization of IDEA in 2004, revisions to Part C regulations in 34 CFR Part 303 were initiated. Final federal regulations for states' Part C services programs under Part C of the IDEA were published in the Federal Register on September 28, 2011 and were made effective on October 28, 2011. They are available at <https://sites.ed.gov/idea/statuteregulations/>.

## **MISSION**

The mission of Delaware's Birth to Three Early Intervention Program is to enhance the development of infants and toddlers with disabilities and/or developmental delays, and to enhance the capacity of their families to meet the special needs of these young children. This mission has been adopted by both the Interagency Coordinating Council (ICC) and DHSS. Guiding principles include:

- Family-centered focus - Delaware is committed to strengthening and supporting families, sensitivity to the family's right to privacy, and respect for multicultural preferences. As the primary influence in the child's life, and the most valuable source of information about the needs of the child and family, family members are key participants in each step of early intervention design and delivery. A critical function of early intervention service providers should be to enhance and build the confidence and competency of the family so that the family can support their child's development throughout the day as natural learning opportunities occur.
- Integration of services - The needs of infants and toddlers and their families require the perspectives of various disciplines; thus, services and supports should be planned, using a collaborative, multidisciplinary, interagency approach. Existing services and programs, both public and private, should be supported with appropriate linkages promoted.
- Universal application - Families of infants and toddlers with disabilities in all areas of the state should receive comprehensive, multidisciplinary assessments of their young children, ages birth through two years, and have access to all necessary early intervention services and supports.
- Cost effectiveness - The system maximizes the use of third-party payment and avoids duplication of effort. Initial evaluation for eligibility and service coordination are provided at no cost to the family. Delaware has instituted a System of Payments policy to ensure financial sustainability of the program.
- High quality services - Service should be provided at the highest standards of quality with early intervention service providers being required to meet appropriate licensing and credentialing guidelines.

## Section 1: DEFINITIONS

### **Policy Name:**

1. Definitions

### **Authority:**

Federal: 20 U.S.C §§1476, et seq.; 20 USC §1232g; 34 CFR Part 99; 34 CFR §§303.4-37, §303.321(b)

State: Delaware Code Title 16, Chapter 2, Subchapter II, §212

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the terms used throughout the policies and procedures, and to ensure consistent understanding and use of those terms.

## **Policy**

As used in these policies and procedures, unless the context requires otherwise:

**Abuse or abused child** is defined in the Delaware Code, Title 10, §901(1), and means that a person:

- A. Causes or inflicts sexual abuse on a child; or
- B. Has care, custody or control of a child, and causes or inflicts:
  - 1. Physical injury through unjustified force as defined in §468 of Title 11;
  - 2. Emotional abuse;
  - 3. Torture;
  - 4. Exploitation; or
  - 5. Maltreatment or mistreatment.

**Access to records** means the right of a parent to have the opportunity to inspect, review, and obtain copies of records related to evaluation, assessment, eligibility determination, development, and implementation of an Individualized Family Service

Plan, individual complaints pertaining to the child, and any other relevant information regarding his or her child and family, unless restricted under authority of applicable state law governing such matters as guardianship, separation, adoption, or divorce.

**Adaptive development** means the development of self-help skills such as feeding and dressing.

**At-risk** infant or toddler means a child, birth through two years of age, who would be at risk of experiencing a developmental delay if early intervention services were not provided to the child.

**Atypical development** means development or behaviors that fall outside the expected range of development in one or more of the five domains referenced in *Section 14: Multidisciplinary Evaluation and Assessment* of these policies and procedures and emerge in a way that is different from same age peers. They are not attributable to culture or personality and are different in quality, form, and function. Atypical development can be determined through informed clinical opinion of delay, even when evaluation tools do not establish eligibility.

**Child Abuse Prevention and Treatment Act (CAPTA)** means the CAPTA state grant program that provides states with flexible funds to improve their child protective service systems. Reauthorized by the Keeping Children and Families Safe Act of 2003, the program requires states to provide assurances in their five-year child and family services plan that the state is operating a statewide child abuse and neglect program. This program includes policies and procedures that address the needs of drug-exposed infants and provisions for referral of children under age three who are involved in a substantiated case of abuse and/or neglect to early intervention services under IDEA Part C.

**Child Development Watch** refers to the unit within the Birth to Three Early Intervention Program in the Department of Health and Social Services (DHSS) that has the operational responsibility for the early intervention programs that carry out Part C in Delaware. These responsibilities are set forth in Section 12 of these policies and procedures and include:

- A. Identification of Part C eligible children and their families;
- B. Service coordination for Part C eligible families;
- C. Evaluation for eligibility, assessment of the child, and family-directed assessment;
- D. Developing and maintaining the Individualized Family Service Plan;
- E. Arranging for the delivery of early intervention services; and
- F. Preparing for and carry out early childhood transition activities.

**Child Find** means the activities under Part C of IDEA that ensure that infants and toddlers in the state who are eligible for services are identified, located, and evaluated.

**Children experiencing homelessness** means children who lack a fixed, regular, and adequate nighttime residence to include, but not be limited to:

- A. Children who are sharing housing with other persons due to loss of housing, economic hardship, or a similar reason;
- B. Living in motels, hotels, trailer parks, camping grounds, cars, parks, public spaces, abandoned buildings;
- C. Substandard housing, such as emergency or transitional shelters or similar settings;
- D. Abandoned in hospitals; or
- E. Awaiting foster care placement.

**Closed-loop referral process** means the best practice to correspond to the primary referral source to acknowledge the receipt of referral of an infant and toddler to early intervention services.

**Coaching** means a relationship-based strategy used by appropriately trained personnel with a family member, other caregiver, or another provider to support what is already working to help a child develop and to increase their knowledge and use of new ideas to achieve child or family outcomes.

**Cognitive development** means a child’s mental processes of perception, memory, judgment, and reasoning, such as cause and effect, object permanence, or engaging in symbolic play.

**Communication development** means acquisition of communication skills, during pre-verbal or verbal phases of development; receptive and expressive language, including spoken and sign language means of expression; the use of augmentative communication devices; and speech production and perception. It also includes oral-motor development, specifically those neuromuscular and structural conditions affecting pre-speech oral-motor development, speech and sound productions, and feeding and swallowing processes. The term, when related to hearing, includes development of auditory awareness, auditory, visual, and kinesthetic skills, as well as auditory processing for speech or language development.

**Complaint procedures** means the Birth to Three Early Intervention Program’s procedures, as set forth in *Section 21: Dispute Resolution* of these policies and procedures, for receiving and resolving a complaint that the Birth to Three Early Intervention Program, a Regional Program, or an early intervention service provider has violated a requirement of Part C or of state early intervention policy. A complaint may be filed by a parent or another individual, or an organization.

**Confidentiality** means the protection of information that may identify a client to ensure privacy.

**Co-payment** means a specified dollar amount that an insured person must pay for covered health care services.

**Criteria** means standards on which a judgment or decision may be based.

**Day** means calendar day unless otherwise indicated.

**Deductible** means the amount that must be paid out-of-pocket before a health insurance company pays its share.

**Destruction** means the destruction of a child's physical and/or electronic early intervention record or ensuring that personally identifiable information is removed from a child's record so that the record is no longer personally identifiable.

**Development** refers to the progress and orderly changes in a child's physical, cognitive, communication, social or emotional, and adaptive abilities that result in the organization of complex systems of competencies and increases with maturity, growth, and experience and interaction with the environment.

**Developmental delay** in Delaware's Birth to Three Early Intervention Program is defined in *Section 13: Eligibility (C)* of these policies and procedures.

**Due process hearing** means the formal procedure carried out by an impartial hearing officer used to resolve a dispute involving an individual child or parent related to the proposal or refusal to initiate or change identification, evaluation, placement, and provision of early intervention services within 30 days of receipt of the request for a due process hearing. Delaware has adopted the Part C due process hearing procedures consistent with Part C of IDEA, §§303.435-438.

**Duration** means the specific and measurable period of time that a service is provided, specified by the actual service start and actual service end dates.

**Early Head Start** means a program funded under the Head Start Act, pursuant to 42 USC 9801, and carried out by a local agency or grantee that provides ongoing comprehensive child development services for pregnant women, infants, toddlers, and their families.

**Early intervention service providers** mean the local offices of the contracted providers who deliver early intervention services.

**Early intervention record** means the early intervention record that is directly related to a child referred to the Delaware Birth to Three Early Intervention Program and/or enrolled in early intervention services. The record is maintained by the early intervention program and/or its contractors for the purpose of evaluating and assessing a child referred to the program and for the delivery of services.

**Early intervention service provider** means an entity (public, private, or nonprofit) or individual that provides early intervention services under the Birth to Three Early Intervention Program.

**EDFacts** is a U.S. Department of Education initiative to govern, acquire, validate, and use high-quality performance data for education planning, policymaking, and management and budget decision-making to improve outcomes for infants and toddlers receiving early intervention services and school-age children and youth.

**Educational Surrogate Parent** means an individual appointed by the Birth to Three Early Intervention Program to act in the place of a parent in safeguarding an infant's or toddler's rights in the decision-making process regarding the multidisciplinary evaluation, determination of eligibility, multidisciplinary assessment of the child, the



family-directed assessment, development of the IFSP, delivery of early intervention services, and transition planning in accordance with *Section 20: Procedural Safeguards (L)* of these policies and procedures.

**Established condition** for an infant or toddler means a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development and is included in the Established Conditions list posted on the state website, which includes examples but is not an exhaustive list of such conditions.

**Everyday routines, activities, and places** means routines that are customarily a part of families' typical days including, but not limited to, mealtime, bath time, shopping, play time, and outdoor play. These include those activities a family does with the infant or toddler on a regular basis and places where the family participates on a regular basis, such as but not limited to home, place of worship, grocery store, and childcare.

**Evidence-based practices** mean practices that integrate research that has demonstrated efficacy and with consideration of the situation, goals, and values of the child, family, and professionals.

**Evidence-informed strategies** mean methods that use nationally recognized recommended practices to inform the effective delivery of early intervention services.

**Family-directed assessment** means a process using a Birth to Three Early Intervention Program-approved family assessment tool and interview with family members of an eligible child prior to the development of an initial Individualized Family Service Plan, in accordance with *Section 14: Multidisciplinary Evaluation and Assessment (A)(4)* of these policies and procedures. The purpose of the family-directed assessment is, with those family members who elect to participate in the assessment, to identify the family's resources, priorities, and concerns, and supports necessary to enhance the family's capacity to meet the developmental needs of the child.

**Family Educational Rights and Privacy Act (FERPA)** means the federal law that protects the privacy of students' "education records" under 20 USC, §1232g; 34 CFR Part 99. FERPA requirements apply to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. It protects the privacy of early intervention records, including access to, and disclosure of, personally identifiable information, and a parent's right to review, copy, and/or request amendments of their child's record.

**Family Service Coordinator** is the term Delaware uses as the name for the early intervention staff who delivers service coordination as defined in 34 CFR §303.34, in this policy, and in *Section 12: Service Coordination* of these policies and procedures.

**Frequency** means the number of days or sessions an early intervention service is provided, such as physical therapy provided two sessions per month or one time per week.

**Guardian** means a person appointed by the court or named in a will and charged with limited, temporary, or full guardian power and duties, pursuant to Delaware's Code, Title 12, Chapter 39, §3982(2).

**Health Insurance Portability and Accountability Act (HIPAA)** means the privacy rule that establishes national standards and requirements for electronic health care transactions and protects the privacy and security of individually identifiable health information.

**Individualized Family Service Plan (IFSP)** means a written plan for providing early intervention services to eligible children and their families that is:

- A. Based on the evaluation and assessment;
- B. Implemented with the informed written parental consent for any new service, update, refusal, or removal of a service or goal;
- C. Developed in accordance with IDEA, Part C, and its implementing regulations at 34 CFR:
  1. §303.342 — Procedures for IFSP development, review, and evaluation;
  2. §303.343 — IFSP Team meeting and periodic review; and
  3. §303.344 — Content of the IFSP.
- D. Includes early intervention services that are implemented as soon as possible, but no later than 30 days from the date informed written parental consent is obtained for each of the early intervention services in the IFSP.

**Individuals with Disabilities Education Act (IDEA)** is the federal statute (Public Law 108-446) that governs states' provision of early intervention and special education services to children with developmental delays or disabilities, ages birth through twenty-one. IDEA has four "parts." Part C of IDEA specifically defines requirements for early intervention services.

**Infant or toddler with a disability** means a child, birth through two years of age, who, in accordance with the criteria described in *Section 13: Eligibility* of these policies and procedures, needs early intervention because s/he is:

- A. Diagnosed with a physical or mental condition that has a high probability of resulting in a developmental delay, in Delaware referred to as "established condition;" or
- B. Experiencing a developmental delay in one or more of the following areas:
  1. Cognitive development;
  2. Physical development, including vision and hearing;
  3. Communication development;
  4. Social-emotional development; or
  5. Adaptive development.

**Informed clinical opinion** means the knowledgeable judgement of the evaluation team who use professional expertise and experience to determine the presence of a significant delay in one or more of the five domains of development referenced in *Sections 13: Eligibility for Delaware's Birth to Three Early Intervention Program* and *14:*

*Multidisciplinary Evaluation and Assessment* of these policies and procedures. Informed opinion of delay may be used as an independent basis to establish a child's eligibility and may be especially useful in situations where a clear developmental level cannot be gained through the typical evaluation process. Informed clinical opinion may not be used to negate the results of evaluation instruments used to establish eligibility.

**Informed written parental consent**, in accordance with *Section 20: Procedural Safeguards (J)*, means that the parent has been fully informed, in the parent's native language, of all information relevant to the activity for which consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released. Informed written parental consent also means that the parent understands and agrees in writing to the carrying out of the activity. Parental consent is voluntary and may be revoked in writing at any time. If parental consent is revoked by a parent, the revocation is effective on that day and does not apply to any actions that occurred before consent was revoked.

**Initial assessment** means the assessment of the child and the family-directed assessment conducted before a child's first IFSP meeting, in accordance with *Section 14: Multidisciplinary Evaluation and Assessment* of these policies and procedures.

**Intensity** means whether an early intervention service is provided on an individual or group basis.

**Interagency Coordinating Council (ICC)** is the Governor-appointed council required under Part C of IDEA that is charged with advising and assisting the lead agency (i.e., the Department of Health and Social Services (DHSS)).

**Lead agency** means the DHSS as the agency designated by the Governor that receives funds and administers the state's responsibilities under Part C of IDEA.

**Length** means the length of time that a service is provided during each session, such as physical therapy for 60 minutes per session.

**Local Education Agency (LEA)** means the public education authority legally constituted within the state to perform the functions of public education in a city, county, township, school district, or other administration agency for its public elementary schools or secondary schools.

**Maintenance of Effort (MOE)**, also referred to as "non-supplant," means that the total amount of public state and local funds budgeted for expenditures in a current fiscal year for early intervention services shall at least be equal to the total amount of public state and local funds actually expended for early intervention services in the most recent preceding fiscal year for which information is available.

**Mediation** means voluntary procedures used by any party to resolve a complaint or dispute about the early intervention system, including matters arising prior to the filing of a due process complaint, as defined in *Section 21: Dispute Resolution* of these policies and procedures.

**Method** means how an early intervention service is provided that is appropriate for the individual child and family.

**Multidisciplinary assessment** means the procedures used, following the evaluation and/or the determination that the child is eligible for early intervention services, by qualified personnel before the child's first IFSP meeting and continuously throughout the child's period of eligibility for early intervention services, to identify:

- A. The unique strengths and needs of the child and the early intervention services appropriate to meet those needs; and
- B. The early intervention services appropriate to meet those needs throughout the period of the child's eligibility for early intervention; and

The multidisciplinary assessment includes the assessment of the child and the family-directed assessment, consistent with *Section 14: Multidisciplinary Evaluation and Assessment (A) and (D)-(F)* of these policies and procedures.

**Multidisciplinary assessment team** means a group that is made up of two or more qualified personnel who have different training and experience and who conduct the assessment, as defined in this policy, of a Part C eligible infant or toddler.

**Multidisciplinary evaluation** for early intervention services means the comprehensive, multidisciplinary procedures used by appropriate qualified personnel to determine an infant's or toddler's initial and continuing eligibility for participation in early intervention services, in accordance with *Section 14: Multidisciplinary Evaluation and Assessment (A)-(C)* of these policies and procedures. The multidisciplinary evaluation must include:

- A. Administration of an evaluation instrument;
- B. Taking the child's history, including information from the parent;
- C. Identifying the child's level of functioning in each of the five developmental areas;
- D. Gathering information from other sources; and
- E. A review of pertinent medical, educational, or other records.

**Multidisciplinary evaluation team** means a group that is made up of two or more qualified personnel who have different training and experience and who conduct the evaluation, as defined in this policy, to determine the Part C eligibility of an infant or toddler.

**Native language**, when used with respect to an individual who has limited English proficiency, means:

- A. The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child, except as provided below in "B;" and
- B. For evaluations and assessments conducted pursuant to *Section 14: Multidisciplinary Evaluation and Assessment* of these policies and procedures, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment.

Native language, when used with respect to an individual who is deaf or hard of hearing, blind, or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication.

**Natural environments** mean settings that are natural or typical for a same-aged infant or toddler without a disability and may include the home or community settings, in accordance with *Section 15: Individualized Family Service Plan (B)(9)(h) and (i)* of these policies and procedures.

**Neglect or neglected child** is defined in Delaware Code, Title 10, §901(18), and means a child who is in the care of a person who:

- A. Is responsible for the care, custody, and/or control of the child; and
- B. Has the ability and financial means to provide for the care of the child; and
  - 1. Fails to provide necessary care with regards to food, clothing, shelter, education, health, medical, or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being; or
  - 2. Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child's safety and general well-being; or
  - 3. Fails to provide necessary supervision appropriate for a child when the child is unable to care for that child's own basic needs or safety after considering such factors as the child's age, mental ability, physical condition, the length of the caretaker's absence, and the context of the child's environment.

**Parent**, within early intervention services,

- A. Means:
  - 1. The biological or adoptive parent of a child; or
  - 2. A guardian in a parental relation to the child authorized to act as the child's parent or authorized to make early intervention, educational, health, or developmental decisions, but not the State if the child is under the jurisdiction of a court; or
  - 3. An individual acting in the place of a biological or adoptive parent who is an adult relative caregiver who by blood, marriage, or adoption, is the great grandparent, grandparent, step grandparent, great aunt, aunt, great uncle, uncle, step parent, brother, sister, step brother, step sister, half-brother, half-sister, niece, nephew, first cousin, or first cousin once removed of a minor and with whom the minor resides, but who is not the legal custodian or guardian of the minor, in accordance with Delaware Code Title 13, §707(a)(3), or an individual who is legally responsible for the child's welfare; or

4. An educational surrogate parent who has been appointed in accordance with 34 CFR §303.422 and *Section 20: Procedural Safeguards (L)* of these policies and procedures, including a foster parent who has been appointed as an educational surrogate parent.
- B. Except as provided in (C) of this definition, the biological or adoptive parent, when attempting to act as the parent under Part C/early intervention and when more than one party is qualified under (A) of this definition to act as a parent, must be presumed to be the parent for purposes unless the biological or adoptive parent does not have legal authority to make early intervention service decisions for the child.
  - C. If a judicial decree or order identifies a specific person or persons under (A) of this definition to act as the “parent” of a child or to make early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of Part C/early intervention.
  - D. Under no circumstances may an early intervention service provider or an employee of a public agency that provides any services to a child or any family member of that child act as the “parent” or educational surrogate parent for that child for the purposes of making Part C/early intervention service decisions, including providing consent for evaluation for early intervention services, on behalf of the child. A foster parent is not considered an employee of an agency solely because he or she is paid by the agency to provide foster care for the child.

**Part C** means the part of IDEA of 2004 that addresses infants and toddlers, birth through two years of age, with developmental delays or disabilities, or physical or mental conditions with a high probability of resulting in significant delays in development, in accordance with 34 CFR §303, et seq.

**Participating agency** means, as used in early intervention services, any individual, agency, program or entity that collects, maintains, or uses personally identifiable information to implement the requirements and regulations of Part C of IDEA with respect to a particular child.

- A. This includes:
  1. The DHSS, Birth to Three Early Intervention Program – Administration and Birth to Three Early Intervention Program – Child Development Watch (operations);
  2. The DHSS, Division of Medicaid and Medical Assistance;
  3. The Department of Education, Office of Early Learning; and
  4. Any individual or entity that provides any Part C services, including service coordination, evaluations, and assessments, and other Part C services.
- B. This does not include:
  1. Primary referral sources; or

2. Public agencies, such as private entities or private health insurance carriers that act solely as funding sources for early intervention services.

**Personally identifiable information**, as used in early intervention services means, but is not limited to:

- A. The infant's or toddler's name or that of the parent or other family member;
- B. The address of the infant or toddler or their family;
- C. A personal identifier, such as a Social Security number or other biometric record;
- D. Other indirect identifiers, such as the child's date of birth, place of birth, or mother's maiden name;
- E. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty;
- F. Other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the early intervention community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or
- G. Information requested by a person who the early intervention agency or institution reasonably believes knows the identity of the child to whom the early intervention record relates.

**Physical development** means a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

**Potentially eligible for Part B preschool special education** means that for any child whose eligibility for Part C early intervention services has been determined, is over 26 months old and has an active IFSP, he or she shall be referred to the state education agency and local education agency in which the toddler resides to inform the receiving agency 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 *Section 19: Transition* of these policies and procedures.

**Prior written notice** for early intervention services means written notice, in accordance with *Section 20: Procedural Safeguards (K)* that is given to parents a reasonable time before a proposal or refusal to initiate or change the identification, evaluation, placement of the infant or toddler, or the provision of appropriate early intervention services to the child and family.

**Qualified personnel** means personnel who have met the state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations, assessments, or early intervention services in accordance with *Section 17: Comprehensive System of Personnel Development and Personnel Standards* of these policies and procedures.

**Referral** for early intervention services means a verbal or written notification from a referral source to the Birth to Three Early Intervention Program – Child Development Watch for the provision of information regarding an infant or toddler, birth through two

years of age, for evaluation and assessment, in order to identify those who are in need of early intervention services, in accordance with *Section 11: Referral* of these policies and procedures.

**Service coordination** means the activities carried out by a family service coordinator to assist and enable a child and their family to determine eligibility for Delaware's Birth to Three Early Intervention Program, and to receive the rights, procedural safeguards, and services that are authorized to be provided in accordance with *Section 12: Service Coordination* of these policies and procedures.

**Social or emotional development** means a child's ability to form secure relationships with others, experience and handle their own feelings, regulate their emotions, and get along with children and adults.

**Statewide data system** is the data collection system used to capture the electronic record data for a child referred to the Birth to Three Early Intervention Program. If eligible, information about their eligibility, multidisciplinary evaluation and assessment, early intervention services, transition, and other required data, is also captured.

**Telehealth**, also known as teleintervention, means a method of service provision that utilizes secure interactive videoconferencing to deliver early intervention services.

**Ward of the State** means any dependent, neglected, or abused child in the custody of the Department of Services for Children, Youth, and their Families.



## Section 2: GENERAL SUPERVISION REQUIREMENTS

### **Policy Name:**

2. General Supervision Requirements

### **Authority:**

Federal: 20 USC §1401, §1419, §§1431-1441, §1476, et seq.; GEPA §427; 34 CFR Part §303, et seq.

State: Delaware Code Title 16, Chapter 2, Subchapter II, §210 and §214

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2021

### **Purpose**

To define the responsibilities of the Birth to Three Early Intervention Program within the Department of Health and Social Services (DHSS), the lead agency under Part C of IDEA, and the governance structure that the Division of Public Health, Birth to Three Early Intervention Program implements to provide a system of statewide early intervention services.

### **Policy**

- A. It is the policy of the State of Delaware to provide services for an infant or toddler, birth through two years of age, with a disability and his or her family through a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services. The DHSS, designated as the lead agency by the State's Governor and Delaware Code Title 16, Chapter 2, Subchapter II, §210, et seq., receives the federal Part C funds to administer the State's responsibilities of the federal Part C statute and regulations.
- B. The Secretary of the DHSS designates the Division of Public Health, Birth to Three Early Intervention Program to carry out the functions and activities of administering Delaware's statewide system for Part C of IDEA.
- C. The Director of Community Health Services, within DHSS's Division of Public Health, has overall single line of authority over all components of the Birth to Three Early Intervention Program, and overall responsibility for ensuring DHSS'

compliance with all requirements of Part C of the IDEA and state early intervention policies and procedures. All the components of the Birth to Three Early Intervention Program are under the supervision of the Director of Community Health, including:

1. Birth to Three – Administration;
2. The Regional Program – Kent/Sussex, including both Child Development Watch (including family service coordinators) and the early intervention service provider agencies that provide early intervention services in Kent and Sussex Counties; and
3. The Regional Program – New Castle, including both Child Development Watch (including family service coordinators) and the early intervention service provider agencies that provide early intervention services in New Castle County.

Part of the Director of Community Health Services' overall responsibility and authority is to require that the Regional Programs comply with early intervention policies and procedures developed by Birth to Three – Administration and correct any findings of noncompliance identified by Birth to Three – Administration.

D. The Birth to Three Early Intervention Program shall provide services consistent with the following requirements:

1. The Delaware Code, Title 16, Chapter 2, Subchapter II.
2. The United States Code (USC), Title 20, Parts 1232, as amended January 2, 2013, 1401, 1419, 1431-1441 (the federal Individuals with Disabilities Education Act (IDEA) of 2004), USC Title 42, Part 1320, as amended (the Public Health Service Act), and Title 42, Part 9801 (the Head Start Act), and Title 42, Part 11431, as amended (McKinney-Vento Homeless Assistance Act) published by Office of the Law Revision Counsel of the U.S. House of Representatives, which are incorporated by reference; no later amendments or editions are included. These documents are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402 and can be found at [www.gpo.gov](http://www.gpo.gov). The documents may also be examined at any state publications depository library and at the Birth to Three Early Intervention Program's Office.
3. The Code of Federal Regulations (CFR), Title 34, Part 303 published by the Office of the Federal Register, National Archives and Records Administration, which is incorporated by reference; no later amendments or editions are included. The document is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402 and can be found on the Government Printing Office website at [www.gpo.gov](http://www.gpo.gov). The document may also be examined at any state publications depository library and at the Birth to Three Early Intervention Program's Office.
4. The General Education Provisions Act (GEPA), §427 of the Improving America's Schools Act of 1994 that applies to applicants for new grant awards under the federal Department of Education which is incorporated by

reference; no later amendments or editions are included. The document is for sale by the Superintendent of Documents, U.S Government Printing Office, Washington, D.C., 20402, and can be found on the Government Printing Office website at [www.gpo.gov](http://www.gpo.gov). The document may also be examined at any state publications depository library and at the Birth to Three Early Intervention Program's Office.

- E. The Birth to Three Early Intervention Program is responsible for the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and early intervention service providers receiving assistance under Part C of IDEA. These responsibilities include:
1. The monitoring of programs and activities to carry out Part C of IDEA (whether or not the programs or activities are administered by agencies, institutions, organizations, and early intervention service providers that are receiving assistance under Part C of the Act), to ensure that the State complies with Part C of IDEA, including:
    - a. Monitoring agencies, institutions, organizations, and early intervention service providers to carry out activities included in Part C of IDEA;
    - b. Enforcing any obligations imposed on those agencies, institutions, organizations, and early intervention service providers under Part C of IDEA;
    - c. Providing technical assistance, if necessary, to those agencies, institutions, organizations, and early intervention service providers;
    - d. Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and
    - e. Conducting the above activities, consistent with federal and state monitoring and enforcement, as outlined in 34 CFR §303.700, et seq., and any other activities required under those sections.
  2. The identification and coordination of all available resources for early intervention services within the State, including those from federal, state, local, and private sources;
  3. The assignment of financial responsibility and fiscal management;
  4. The development of procedures to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of IDEA in a timely manner, pending the resolution of any disputes among public agencies or early intervention service providers;
  5. The entry into formal interagency agreements or other written methods of establishing financial responsibility that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures to resolve disputes, and procedures to ensure timely

- provision of early intervention services pending resolution of disputes among public agencies or service providers; and
6. The implementation of eligibility requirements of Part C of IDEA.
- F. The Birth to Three Early Intervention Program has the operational responsibility for implementing the early intervention services to infants and toddlers, and their families, with developmental delays or disabilities in Delaware.
- G. In accordance with these policies and procedures, the Birth to Three Early Intervention Program's responsibilities include oversight of the Birth to Three Early Intervention Regional Programs and their contractors for the following, in accordance with these policies:
1. Identification of, potentially, Part C eligible children and their families;
  2. Referral and intake;
  3. Service coordination services for Part C eligible children and their families;
  4. Provision of procedural safeguards;
  5. Evaluation for eligibility, if eligible, the child assessment and family assessment;
  6. If eligible, development and implementation of the Individualized Family Service Plan (IFSP);
  7. Provision of and/or referral for early intervention services;
  8. Transition planning and related activities;
  9. Engagement in informal and formal dispute resolution;
  10. Data and fiscal accountability; and
  11. Monitoring the Birth to Three Early Intervention Program – Child Development Watch staff and its contractors to ensure compliance with Part C of IDEA and these policies and procedures.
- H. In accordance with these policies, procedures, and the Interagency Agreement, all state agencies and contractors participating in the provision of early intervention shall cooperate with the Birth to Three Early Intervention Program and the Interagency Coordinating Council (ICC) to ensure effective system implementation, coordination, and nonduplication of early intervention activities.
- I. The Birth to Three Early Intervention Program has an ongoing collaborative relationship with Delaware Head Start Programs that includes a letter of agreement to ensure that:
1. Effective communication occurs to ensure that children and families receive quality services;
  2. Eligible children are identified and enrolled in early intervention services; and that
  3. Defines which services and supports will be provided by each agency.

- J. Delaware has both large urban concentrations and rural areas necessitating attention to appropriate and fair distribution of resources in all early intervention programs.
  - 1. Funds and resources are not distributed in a population-driven formula since areas of greatest need may not have the largest population.
  - 2. The Birth to Three Early Intervention Program shall ensure that resources are made available under Part C for all geographic areas and counties within the State of Delaware.
  - 3. The Birth to Three Early Intervention Program shall ensure allocation of funds under Part C are distributed appropriately to all early intervention programs.
  - 4. The Birth to Three Early Intervention Program shall review all fund allocations at least annually to ensure equitable distribution of resources.
- K. The Birth to Three Early Intervention Program shall ensure that the statewide early intervention system is in effect and that appropriate early intervention services are available to all eligible children and their families by:
  - 1. Ensuring that the public is informed about early intervention services and that parents know how to make referrals to gain access to services;
  - 2. Conducting child find activities, including outreach and public awareness activities in the community to identify all potentially eligible children;
  - 3. Maintaining the Central Directory that includes a coordinated system of information and referral services for families of infants and toddlers with disabilities; and
  - 4. Disseminating information to primary referral sources, hospitals, health care providers, and parents with a special emphasis on premature infants or infants with physical risk factors associated with learning or developmental complications.
- L. The Birth to Three Early Intervention Program ensures that traditionally underserved groups, including Native Americans; other racial and ethnic minorities; low income, homeless, and rural families; and children with disabilities who are in foster care are meaningfully involved in the planning and implementation of all requirements of Part C through participation on the State ICC and other planning activities of the program.
- M. The Birth to Three Early Intervention Program ensures that these families have access to culturally competent services within their local geographical areas through:
  - 1. Provider recruitment and training;
  - 2. Customized materials; and
  - 3. Individualized services.
- N. To meet the requirements under the GEPA, the Birth to Three Early Intervention Program:

1. Ensures that culturally and socio-economically diverse populations of infants and toddlers with disabilities and their families are served through the Birth to Three Early Intervention Program;
  2. Is strongly committed to equal access and treatment for all infants and toddlers with disabilities and their families;
  3. Works closely with the ICC to identify and address any barriers for families; and
  4. With its partner agencies, ensures that the statewide system of early intervention services provides an environment free from discrimination and harassment based upon gender, race, national origin, color, disability, or age.
- O. The Birth to Three Program maintains a comprehensive system of personnel development in accordance with *Section 17: Comprehensive System of Personnel Development and Personnel Standards* of these policies and procedures, to ensure qualified staff provide early intervention services statewide.

## **Procedures**

*This section intentionally left blank*

## Section 3: PUBLIC PARTICIPATION

### **Policy Name:**

3. Public Participation

### **Authority:**

Federal: 20 USC §1231d, §1221e-3, and §1437(a)(8); 34 CFR §303.208

State: Delaware Code Title 16, Chapter 2, Subchapter II, §218

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the responsibilities of the Birth to Three Early Intervention Program to ensure that the public is informed and has an opportunity to provide input before early intervention policies or procedures are created or revised and finalized.

## **Policies**

- A. At least 60 days prior to submitting its annual application for Part C funds, including any policies, procedures, descriptions, methods, certifications, assurances, and other information required in the application, to the U.S. Office of Special Education Programs, the Birth to Three Early Intervention Program shall publish the application in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.
- B. Before adopting any new policy or procedure, including any revision to an existing policy or procedure needed to comply with Part C of IDEA, the Birth to Three Early Intervention Program shall:
  1. Hold public hearings on the new policy or procedure (including any revision to an existing policy or procedure);
  2. Provide notice of such hearings at least 30 days before the hearings are conducted to enable public participation; and

3. Provide an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, early intervention service providers, and the members of the Interagency Coordinating Council (ICC), to comment for at least 30 days on the new policy or procedure, including any revision to an existing policy or procedure needed to comply with Part C.
- C. The information about the public review period and the annual grant application for funds under Part C of IDEA, including any policies, procedures, descriptions, methods, certifications, assurances, and other information required in the application, shall be made available on the Birth to Three Early Intervention Program website and distributed widely via email to the general public.
- D. The general public to be notified of the public participation process shall include, but is not limited to:
1. Individuals with disabilities;
  2. Parents of infants and toddlers with disabilities;
  3. Early intervention service providers; and
  4. Members of the ICC.
- E. Comments from the public shall be considered by the Birth to Three Early Intervention Program - Administration and may result in modifications to the final application and/or the policies and procedures.

## **Procedures**

*This section intentionally left blank*



## Section 4: INTERAGENCY COORDINATING COUNCIL

### **Policy Name:**

4. Interagency Coordinating Council

### **Authority:**

Federal: 20 USC §1441; 34 CFR, §§303.600-605; 42 USC §9837(b)(b)(1)(A)(i); and §642B(b)(1)(A)(i) Head Start Act

State: Delaware Code Title 16, Chapter 2, Subchapter II, §214 and §217

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

New

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To assure that the Birth to Three Early Intervention Program maintains the Delaware Interagency Coordinating Council (ICC) in accordance with Part C of the Individuals with Disabilities Education Act (IDEA) and the policies and procedures within these policies.

## **Policies**

- A. The Delaware ICC advises and assists the lead agency in its Part C responsibilities, including:
  1. The identification of sources of fiscal and other support for early intervention services;
  2. Assignment of financial responsibility to the appropriate agency;
  3. Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find in accordance with *Section 10: Child Identification*, monitoring under *Section 8: Monitoring*, financial responsibility and provision of early intervention services under *Section 5: Fiscal Management*, *Section 6: System of Payments*, and *Section: 16: Early Intervention Services* of these policies and procedures, to ensure full participation, coordination, and cooperation of all appropriate public agencies in the state;
  4. Preparation of applications and amendments for the Part C annual grant; and

5. Development of policies and procedures to facilitate a smooth, seamless system of transition for toddlers with developmental delays or disabilities to preschool services under Part B, or other services or programs as appropriate, in accordance with *Section 19: Transition* of these policies and procedures.
- B. Under IDEA Section 641(e)(1)(D) and 34 CFR §303.604(c), the State's ICC must prepare and submit to the Secretary of the U.S. Department of Education and to the Governor an annual report on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State. The ICC may either: (1) prepare and submit its own annual report to the Department and the Governor, or (2) provide this certification with the State lead agency's State Performance Plan/Annual Performance Report (SPP/APR) under Part C of IDEA.
- C. The authorized activities of the Council are to:
1. Advise and assist the Department of Health and Social Services (DHSS) and the Delaware Department of Education regarding the provision of appropriate services to children with disabilities from birth through age five;
  2. Advise appropriate state agencies about the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services; and
  3. Coordinate and collaborate with the Delaware Early Childhood Council in accordance with Section 642B(b)(1)(A)(i) of the Head Start Act and other interagency early learning activities, as appropriate.
- D. The composition of the ICC shall be composed as follows:
1. At least 20 percent of the members shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities ages twelve or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger;
  2. At least 20 percent of the members shall be public or private providers of early intervention services;
  3. At least one member shall be from the State legislature;
  4. At least one member shall be involved in personnel preparation;
  5. At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies;
  6. At least one member shall be from the State Educational Agency (SEA) responsible for preschool services to children with disabilities and shall have

sufficient authority to engage in policy planning and implementation on behalf of such agency;

7. At least one member shall be from the agency responsible for the State Medicaid and Children's Health Insurance Program (CHIP) Program;
8. At least one member shall be from a Head Start or Early Head Start agency of program in the state;
9. At least one member shall be from a State agency responsible for childcare;
10. At least one member shall be from the agency responsible for the State regulation of private health insurance;
11. At least one member shall be a representative designated by the Office of the Coordinator of Education of Homeless Children and Youth;
12. At least one member shall be from the State child welfare agency responsible for foster care;
13. At least one member shall be from the State agency responsible for children's mental health; and
14. Other members as determined by the Governor.

E. Appointments to the ICC:

1. Members, including the chair, shall be appointed by the Governor.
2. Members appointed by the Governor shall reasonably represent the population of the state.
3. Members are appointed for three-year terms and members can be reappointed for consecutive terms at the discretion of the Governor.
4. Any replacement appointment to the ICC to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.
5. A member may resign or may be removed by the Governor at any time.

F. Members of the ICC:

1. Shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the ICC and
2. Are prohibited from casting a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

G. Meetings of the ICC:

1. Shall occur, at a minimum, on a quarterly basis, and in places it determines necessary;
2. Shall be publicly announced sufficiently in advance of the dates that they are to be held to ensure that all interested parties have an opportunity to attend;

3. To the extent appropriate, be open and accessible to the public; and
4. As needed, provide for interpreters for persons who are deaf or other necessary services for members and participants; and
5. Federal Part C funds may be used to pay for those services.

## **Procedures**

PR-A. The operational procedures of the ICC are defined in the *Delaware Interagency Coordinating Council By-Laws*.

PR-B. Persons interested in applying for a position on the ICC shall complete the application form that is available at the Office of the Governor Boards and Commissions.

## **Guidance and Related Documents**

*Boards and Commissions Application Form:*

<http://governor.delaware.gov/boards-commissions>

*Delaware Department of Health and Social Services, Policy Memorandum Number 70: Inclusion:*

<https://dhss.delaware.gov/dhss/inclusion/files/pm70inclusionpolicy.pdf>

*Interagency Coordinating Council:*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/iccbylaw.pdf>

## Section 5: FISCAL MANAGEMENT

### **Policy Name:**

5. Fiscal Management

### **Authority:**

Federal: 20 U.S.C §1432(4)(B), §§1435(a)(10)-(12), §§1437(a)(2) and (b), §1438, §1439(a), §1440; 34 CFR §303.1, §§303.201-303.205, §§303.120-122, §§303.221-303.226, §303.500 et seq; 2 CFR Part 200, EDGAR, and ED Guidance

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(7); and Chapter 10

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

New

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the fiscal responsibilities of the Birth to Three Early Intervention Program within the Department of Health and Social Services (DHSS), the Lead Agency under Part C of IDEA, and the requirements to facilitate the coordination of payment for early intervention services from federal, state, local, and private sources.

## **Policies**

A. Implement the Birth to Three Early Intervention Program, including:

1. The assurance that Part C funds are used as payor of last resort;
2. The identification and coordination of resources for early intervention services;
3. Assignment of financial responsibility, including fiscal controls for funds and property;
4. Maintenance of a System of Payments policy, including a sliding fee scale and cost participation by families that is described in *Section 6: System of Payments* of these policies and procedures;
5. Prohibition against supplanting, also known as maintenance of effort (MOE), as defined in *Section 1: Definitions* of these policies and procedures, is met;

6. The assurance that Part C funds shall not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including that Federal Part C funds:
    - a. Are not commingled with state funds and
    - b. Are used to supplement the level of state and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those state and local funds.
  7. The allowance to use federal Part C funds in order to prevent a delay in the timely provision of early intervention services in those cases when there is a pending reimbursement from an agency or entity who is ultimately responsible;
  8. Monitoring of funds and assuring the federal Part C funds are encumbered and expended within the required timelines; and
  9. The development and annual submission of the federal Part C grant, including the budget.
- B. The Birth to Three Early Intervention Program assumes the fiscal responsibilities noted above through its annual Part C application to the Office of Special Education Programs (OSEP).
- C. The Birth to Three Early Intervention Program:
1. Does not elect to include in its grant application the option under 34 CFR 303.211 and
  2. Does not make use of Part C funds for the provision of free appropriate public education (FAPE) to toddlers with disabilities from their third birthday to the beginning of the following school year.
- D. The Birth to Three Early Intervention Program does not provide services for at-risk infants and toddlers but does use federal Part C funds to ensure an effective, interagency child find system.
- E. Fiscal Controls
1. The Birth to Three Early Intervention Program ensures that fiscal control and fund accounting procedures have been adopted as necessary to ensure proper disbursement of, and accounting for, federal funds paid under Part C of IDEA.
  2. The Birth to Three Early Intervention Program maintains a policy in effect pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy includes:
    - a. A requirement that all early intervention services provided by the Birth to Three Early Intervention Program and its intra-agency and interagency partners must meet the requirements defined in these policies;

- b. The mechanisms that the Birth to Three Early Intervention Program uses in arranging for these services, including the process by which contracts or other arrangements are made;
- c. The basic requirements that must be met by any individual or organization seeking to provide these services; and
- d. The Birth to Three Early Intervention Program assurance that when arranging for services, State Procurement policies are followed.

F. The Birth to Three Early Intervention Program maintains procedures that:

- 1. Provide, or purchase through contracts, early intervention services as defined in *Section 16: Early Intervention Services* of these policies and procedures, from early intervention service providers that meet the qualifications as defined by the Birth to Three Early Intervention Program in *Section 17: Comprehensive System of Personnel Development and Personnel Standards* of these policies and procedures;
- 2. Establish and maintain necessary cost accounting systems according to general accounting principles and Delaware’s Office of Management and Budget (OMB) *Budget and Accounting Policy Manual* to properly record, and allocate separately, the revenue and expenses for federal Part C of the IDEA funds, state-funded early intervention services, Medicaid funds, and private health insurance funds that are billed through the Birth to Three Early Intervention Program – Child Development Watch, local funds, and other funds used for the purchase of early intervention services; and
- 3. Ensure that Part C of IDEA funds are:
  - a. Used only as payor of last resort;
  - b. May be used to reimburse a parent for copayments and deductibles for early intervention services documented on his or her child’s IFSP; and
  - c. For purposes of accounting, not commingled with any other funds received.

G. The Birth to Three Early Intervention Program maintains a signed interagency agreement between the following state agencies that have financial and/or service provision responsibilities for infants and toddlers in the Birth to Three Early Intervention Program:

- 1. Department of Education;
- 2. Department of Services for Children, Youth, and Their Families; and
- 3. Department of Health and Human Services.

H. The Birth to Three Early Intervention Program maintains methods for resolving intra-agency or interagency disputes about early intervention payments, services, or other matters to ensure that there is a timely resolution of the issues and that no services for a child or family enrolled in the Birth to Three Early Intervention Program are delayed or denied because of the dispute between agencies.

- I. The Birth to Three Early Intervention Program requires that any early intervention program or provider agency that expends \$750,000 or more during the program or agency's fiscal year in federal awards shall have a single or program-specific audit conducted for that year.
- J. The Birth to Three Early Intervention Program ensures that it:
  1. Makes reports in the form of and containing the information that the OSEP may require; and
  2. Keeps records and affords access to those records as OSEP may find necessary to ensure compliance with the requirements of Part C of IDEA, the correctness and verification of reports, and the proper disbursement of funds provided under Part C of IDEA.

## Procedures

PR-A In circumstances related to interagency or intra-agency disputes about fiscal matters, the Birth to Three Early Intervention Program fiscal staff fields all of the initial fiscal disputes and brings them to the attention of the Part C Coordinator. The Part C Coordinator works with the Department's Budget Office and Unit Director for resolution.

1. During a dispute, the Birth to Three Early Intervention Program is responsible for assigning financial responsibility to the appropriate agency, dependent upon the facts and nature of the situation.
2. If during the course of the resolution of the dispute, it is determined that the assignment of financial responsibility was inappropriately made, then the Birth to Three Early Intervention Program shall reassign financial responsibility to the appropriate agency and make arrangements for reimbursement of any expenditures incurred by the agency that was originally assigned financial responsibility.
3. Through the dispute resolution above, the Birth to Three Early Intervention Program ensures that services are provided to children who are eligible for the Birth to Three Early Intervention Program and their families in a timely manner regardless of disputes regarding financial or other responsibilities.

PR-B. The Birth to Three Early Intervention Program shall enroll early intervention service providers who agree to provide services to eligible children and families and utilize all available funding sources so that the federal Part C funds are the payor of last resort.

PR-C. When possible, the two programs will encourage early intervention service providers to participate in the Medicaid managed care provider network.

## Guidance and Related Documents

*State of Delaware, Office of Management and Budget (OMB):*

<https://budget.delaware.gov/accounting-manual/documents/budget-accounting-manual.pdf?ver=0114>



## Section 6: SYSTEM OF PAYMENTS

### **Policy Name:**

6. System of Payments

### **Authority:**

Federal: 20 U.S.C §§1435(10)(B)-(F), §§1438(1)-(2); 34 CFR §§303.520-528

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(7)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Technical revisions only 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define policies and procedures developed to comply with the IDEA 2004 statute and regulations for Part C (effective October 28, 2011). These policies and procedures describe that, when families with children who are eligible to receive early intervention services through Delaware's Birth to Three Early Intervention Program, they may share in the cost of early intervention services for their child by paying insurance premiums and by allowing early intervention service providers to access their insurance coverage. Also, depending on the private insurance plan, out-of-pocket expenses may be incurred due to deductibles, co-pays, and/or co-insurance.

## **Policies**

- A. The Delaware Health and Social Services (DHSS), Birth to Three Early Intervention Program assures that families shall not be charged for the cost of the following required functions, including:
1. Child find activities;
  2. Evaluations and assessments to determine initial and ongoing eligibility;
  3. Service coordination;
  4. Development, review and evaluation of the Individualized Family Service Plan (IFSP) or Interim IFSP;
  5. Transition services; and

6. Administrative and coordinative activities related to procedural safeguards, also known as Parent Rights.

## B. Family Fees

1. The inability of a family to pay for services shall not result in a delay or denial of early intervention services, and if the family meets the State's definition of inability to pay, all early intervention services must be provided at no cost to the family.
  2. The ability of an eligible child's family to pay for early intervention services is defined using the part of the Department of Health and Social Services Sliding Fee Scale that applies to families above 290% of the poverty level.
  3. The inability to pay is defined as a family living at or below 290% of the federal poverty level.
  4. The following conditions shall apply to family fees:
    - a. Families living above 290% of the federal poverty level who have been denied access to public and private insurance, will pay 100% of cost-sharing or fees, although exemptions may be made due to financial hardships.
    - b. Families with public benefits or insurance, or private insurance, will not be charged disproportionately more than families who do not have public benefits or insurance, or private insurance.
    - c. Families will not be charged an amount that exceeds the actual cost of providing a particular early intervention service, factoring in any amount received from other sources of payment for that service.
    - d. Families living at or below 290% of the federal poverty level are determined to have the inability to pay and are exempt from any cost-sharing or fees.
    - e. For those families with the inability to pay, if the parent consents to using private insurance to pay for early intervention services, the Birth to Three Early Intervention Program pays the co-pay and/or deductibles.
    - f. Ability to pay, family fees, copayments, and deductibles shall be discussed during the initial Individualized Family Service Plan (IFSP) meeting.
    - g. Notification of the determination of family fees shall be provided once the family submits the required documentation, and annually thereafter.
- C. Delaware's Birth to Three Early Intervention Program is permitted, but not required, to use Part C or other funds to pay for costs such as deductibles, co-pays, or co-insurance.

- D. Part C funds may be used to prevent a delay in the timely provision of early intervention services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.
- E. The following shall be adhered to by the Department of Health and Social Services in developing Part C/Early Intervention provider contracts with vendors:
1. Vendors shall agree to bill Third Party insurance, including Medicaid, Delaware Healthy Children's Insurance Program (hereafter referred to as CHIP), and families, with informed written parental consent, if required.
  2. Client fees shall be based on the DHSS Sliding Fee Scale when families are over 290% of poverty, referenced in *Section F(2)* of this policy, and when use of public or private insurance is denied by the family.
  3. No client fees shall be charged if parents are below 290% of the poverty level.
- F. If a parent wishes to contest the imposition of a fee or the State's determination of the parent's ability to pay, he or she may:
1. Request and participate in mediation in accordance with *Section 21: Dispute Resolution (C)* of these policies and procedures; and/or
  2. File a state complaint in accordance with *Section 21: Dispute Resolution (B)* of these policies and procedures; and/or
  3. Request a due process hearing in accordance with *Section 21: Dispute Resolution (D)* of these policies and procedures; and/or
  4. Use any other procedure established by the State for the speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights, including the right to pursue, in a timely manner, the options in *F(1)-(3)* above.
- G. The family service coordinator shall inform parents of their procedural safeguards under this policy by providing parents with a copy of the System of Payments policy when obtaining informed written parental consent for the provision of early intervention services at the initial, annual, or review of the IFSP, in accordance with *Section 15: Individualized Family Service Plan* of these policies procedures and:
1. Inform the family that deductibles, co-pays, and co-insurance fees are the financial responsibility of the family, unless it is determined the family is unable to pay; and
  2. Explain and provide a copy of the *System of Payments Policy* handout to each family during the initial home visit conducted by the family service coordinator as part of discussion of the *Guide to Parent Rights*.
- H. Use of both public and private insurance to pay for early intervention services:
1. Families who have both private insurance and public benefits or insurance shall be informed that payment for services shall be billed in the following sequential order:

- a. First to be billed is private insurance;
  - b. Second to be billed is public benefits or insurance; and
  - c. Third to be billed is the federal Part C payor of last resort fund.
2. When families have both private insurance and public insurance, the use of private insurance is a prerequisite to the use of public insurance if the parent has provided informed written parental consent, in accordance with *Section 20: Procedural Safeguards* of these policies and procedures, to use private insurance to pay for early intervention services for his or her child, and includes:
  - a. Informed written parental consent for the initial provision of an early intervention service in the IFSP and
  - b. Each time informed written parental consent for services is required due to an increase in frequency, length, duration, or intensity in the provision of services in the child's IFSP, in accordance with *Section 20: Procedural Safeguards* of these policies and procedures.
- I. A family service coordinator shall provide a copy of the *System of Payments Policy* handout to the parent during the initial home visit covering procedural safeguards and shall inform the family:
  1. Of the potential costs that the parent may incur as a result of using their private insurance to pay for early intervention services;
  2. That the policy shall be offered to the parent again anytime informed written parental consent is needed to increase services in the child's IFSP;
  3. In cases where these out-of-pocket expenses are high and the family cannot pay the full cost without causing financial hardship, the family may request to complete the *Delaware Early Intervention Financial Assistance Form* for consideration of financial assistance towards a reduction or waiver of these costs based on the family's ability to pay; and
  4. That no other cost shall be billed to families after out-of-pocket expenses for early intervention services.
- J. Any available private and public health insurance, including any medical program administered by the Secretary of Defense, such as Tricare, shall be utilized to pay for Part C services, provided informed written parental consent has been provided.
- K. Financial hardship is defined as when families are willing but unable to meet their financial obligations because of unexpected events or unforeseen changes that impact cash flow, including but not limited to:
  1. A change in income or expenditures;
  2. Any significant and/or ongoing medical expense(s);
  3. A change in employment status (i.e., loss of job or reduced hours);

4. A significant life effect (i.e., divorce, relationship breakdown, injury, illness or death in the family); or
5. An emergency or natural disaster.

L. Use of public benefits or insurance to pay for early intervention services:

1. Parents shall not be required to sign up for or enroll in a public benefits or insurance program as a condition for their child to receive early intervention services if that child or parent is not already enrolled in a public benefits or insurance program.
2. The family service coordinator shall provide prior written notice, using the *Notification of Medicaid Assess Form* prior to using Medicaid and the Delaware Heathy Children's Insurance Program, and in addition:
  - a. The family service coordinator shall obtain informed written parental consent prior to the program using public insurance of a child or parent if that child or parent is enrolled in such a program after being determined eligible for early intervention services;
  - b. If the parent does not provide written parental consent for the use of the child's or parent's public insurance when such written parental consent is required, the early intervention services identified in the IFSP shall still be made available for those services which the parent has provided written consent for initiation; and
  - c. Because Medicaid and the Delaware Heathy Children's Insurance Program are administered by the DHSS, the same agency that administers the Birth to Three Early Intervention Program, the family service coordinator is not required to gain informed written parental consent for disclosure of personally identifiable information for billing purposes from parents who are enrolled in these two public benefits and insurance programs.
3. The Birth to Three Early Intervention Program assures that the use of Medicaid and CHIP shall not:
  - a. Decrease available lifetime coverage or any other insured benefit for the child or parent;
  - b. Result in the child's parents paying for services that would otherwise have been paid for by the public benefits or insurance program;
  - c. Result in any increase in premiums or cancellation of public benefits or insurance for the child or parents; and
  - d. Risk the loss of eligibility for the child or the child's parents for home- and community-based waivers based on total health-related costs.

M. Families without insurance:

1. The DHSS Sliding Fee Scale shall be applied as described above when families are uninsured and do not qualify for Medicaid or the Delaware Healthy Children's Insurance Program.
2. If a family does not have insurance, they and their child shall not be denied or delayed receiving early intervention services because they are unable to pay.

## **Procedures**

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## **Guidance and Related Documents**

*System of Payments Policy Handout:*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/systmpymntspolcy.pdf>

*Consent to Access Family's Health Insurance Form:*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/fmlyhlthinsconsentfrm.pdf>

*Notification of Medicaid Access Form:*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/medcdaccsnotiffrm.pdf>

*Birth to Three Early Intervention Program Financial Assistance Form:*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/prtcfincialasstncefrm.pdf>

*Delaware DHSS Sliding Fee Scale (Policy Memorandum #37):*

<https://www.dhss.delaware.gov/dhss/admin/policy/files/pm37.pdf>

## Section 7: DATA COLLECTION

### **Policy Name:**

7. Data Collection

### **Authority:**

Federal: 20 USC §1416(b)(2)(C)(ii)(II); §§1435(a)(9), (10)(A), (14); and §1442; 34 CFR, §§76.720, 80.25, §§303.11-12, §303.120, §303.511(e), §303.700(a)(1), §303.700(b), §303.700(d)(2), §303.701(c)(2), §303.702(b)(1)(ii), §303.704, and §§303.720-724

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(8)(b)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

New

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the administrative requirements used to ensure that the Department of Health and Social Services (DHSS), Birth to Three Early Intervention Program, has a statewide data system for compiling and reporting timely and accurate data that meets the requirements of Part C of IDEA. These data play a critically important role in decision-making to ensure that the state has a system that supports the developmental outcomes of infants and toddlers with disabilities and their families, as well as ensures the early intervention services are provided in compliance with federal and state regulations.

## **Policies**

A. The Birth to Three Early Intervention Program ensures:

1. Delaware has a system for compiling and reporting timely and accurate early intervention data;
2. The data system includes a description of the process that the Birth to Three Early Intervention Program uses to collect and compile data about infants or toddlers with disabilities receiving early intervention services;

3. Data compiled reflect the data targets established in the State Performance Plan (SPP) and the priority areas to monitor and analyze the compliance and performance of the Birth to Three Early Intervention Regional Programs in implementing Part C of IDEA;
  4. All staff entering client data into the state's electronic record database are employees of DHSS and are appropriately trained with the understanding of process data flow and methodology logic of the data system; and
  5. The data described that are publicly reported do not result in disclosure of data identifiable to individual children.
- B. For reporting purposes, the Birth to Three Early Intervention Program shall:
1. Ensure all results compiled through data extracts from the states electronic record database are valid and reliable;
  2. Annually report publicly through an Annual Performance Plan (APR) on the performance of the Birth to Three Early Intervention Regional Programs about the targets established in the SPP through the following indicators and data sources:
    - a. Indicator 1: Timely provision/delivery of early intervention services (Monitoring Data);
    - b. Indicator 2: Services provided in the Natural Environment (Child Count and Settings Data);
    - c. Indicator 3: Early Childhood Outcomes (COS Data);
    - d. Indicator 4: Family Involvement (Family Survey Data);
    - e. Indicator 5: Child Find – Birth to One (Child Count Data);
    - f. Indicator 6: Child Find – Birth to Thirty-Six Months (Child Count Data);
    - g. Indicator 7: The 45-Day Timeline (Monitoring Data);
    - h. Indicator 8a: Early Childhood Transition – Transition Steps (Monitoring Data);
    - i. Indicator 8b: Early Childhood Transition – Notification of potentially Part B-eligible infants and toddlers – (Transition Notification Report Data); and
    - j. Indicator 8c: Early Childhood Transition – Transition Conferences held within the timeline of at least 90 days before and not more than nine months prior to the toddler's third birthday, at the discretion of the IFSP team (Monitoring Data).
  3. Annually collect and report data for the Child Count and Settings Report:
    - a. The number and percentage of infants and toddlers with disabilities in Delaware receiving early intervention services on any date between October 1 and December 1 each year, and



- b. The race, gender, and ethnicity of infants and toddlers who are receiving early intervention services, and including any children reported by tribes and tribal organizations (Annual Child Count).
- 4. Annually collect and report data for the Exiting Report:
  - a. The number and percentage of infants and toddlers with disabilities in Delaware receiving early intervention services who stopped receiving early intervention services during the year, and
  - b. The race, gender, and ethnicity of those infants and toddlers, who, from birth through age two, stopped receiving early intervention services (Exiting Count).
- 5. Annually report the number of due process complaints, the number of hearings conducted, the number of mediations held, and the number of settlement agreements reached through such mediations (APR, Indicators 9 and 10).
- 6. Ensure that as soon as practicable, but no later than 120 days following submission of the report, the state and local performance data are:
  - a. Posted on the Birth to Three Early Intervention Program website;
  - b. Distributed to the media; and
  - c. Distributed to early intervention service programs.

## **Procedures**

PR-A. The Birth to Three Early Intervention Program shall:

- 1. Ensure that new staff profiles in the statewide data system will be created as soon as possible and no more than three days after receiving notification of request for creation;
- 2. Provide training on Delaware's electronic record data system as soon as possible and within two weeks of the profile creation;
- 3. Provide the opportunity for continuous technical assistance regarding Federal data reporting requirements; and
- 4. Provide the opportunity for continuous refresher training for all staff about data entry into Delaware's electronic record data system.

PR-B. The Birth to Three Early Intervention Regional Programs' data responsibilities shall include:

- 1. Requesting access to Delaware's electronic record data system for all new staff through State-approved channels in a timely manner once the new staff member has had a delaware.gov email address established;
- 2. Ensuring that all staff are trained by the Birth to Three Early Intervention Program Data Manager or designee to enter required data into the Delaware's electronic record data system;

3. Ensuring that all data entered into Delaware's electronic records data system are:
  - a. Valid and reliable and
  - b. Entered in a timely manner to ensure accurate data extracts.
4. Collaborating with the Birth to Three Early Intervention Program to develop and implement quality assurance procedures for data reporting requirements for federal and state purposes, so as not to duplicate efforts;
5. Ensuring access for federal representatives from OSEP, technical assistance advisors, the Birth to Three Early Intervention Program staff, and other qualified individuals specified by federal and state leadership, to aggregate or non-aggregate data captured in Delaware's electronic record data system; and
6. Maintaining a complete file of all early intervention records, documents, communications, and other written and/or electronic materials that pertain to the operation of an early intervention program or the delivery of early intervention services for infants and toddlers who have been referred to the program to include, but not be limited to documentation of:
  - a. Referral information;
  - b. Case/progress notes;
  - c. Insurance and system of payments information;
  - d. Informed written parental consents;
  - e. Evaluation and assessment;
  - f. Eligibility determination;
  - g. Prior Written Notice forms;
  - h. The Individual Family Service Plan (IFSP);
  - i. Child Outcomes measurements;
  - j. Early intervention services;
  - k. Transition steps and conference information;
  - l. Medical records as needed to assist in determining eligibility for the infant and toddler; and
  - m. Correspondence with the family, early intervention service providers, and other individuals involved with the infant and toddler during their time with the Birth to Three Early Intervention Program.

## Section 8: MONITORING

### **Policy Name:**

8. Monitoring

### **Authority:**

Federal: 20 USC §1416(b)(2)(C)(ii)(II); §1435(a)(9), §1435(10)(A), §1435(14); and §1442; 34 CFR, §76.720, §80.25, §303.120, §303.511(e), §303.700(a)(1), §303.700(b), §303.700(d)(2), §303.701(c)(2) and §303.702(b)(1)(ii)

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(7)(b)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To provide policies and procedures for the Birth to Three Early Intervention Program monitoring system within the Department of Health and Social Services (DHSS), Division of Public Health, that focuses on improving early intervention results and functional outcomes for eligible infants and toddlers with disabilities and their families, and ensuring compliance with federal and state regulations, standards, and requirements.

## **Policies**

A. The Birth to Three Early Intervention Program is responsible for the:

1. Public supervision and monitoring of early intervention programs and its early intervention service providers and contractors to improve the quality of services to children and families as well as to ensure compliance with federal and state laws;
2. Provision of technical assistance to early intervention programs, family service coordinators, early intervention service providers, and contractors;
3. Identification in which early intervention services program(s) noncompliance occurred, the percentage level of noncompliance in each of those sites, and the root cause(s) of the noncompliance;

4. Provision of timely, written notification to the Birth to Three Early Intervention Program, early intervention program, or early intervention service provider if noncompliance is identified, and meeting the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification (i.e., the date on which the State provided written notification to the Birth to Three Early Intervention Program, early intervention program, or early intervention service provider of the noncompliance); and
  5. Identification and coordination of available resources for early intervention services within Delaware to include those from federal, state, local and private resources.
- B. The Birth to Three Early Intervention Program's primary focus of Delaware's monitoring activities shall be to improve early intervention results and functional outcomes for all infants and toddlers with disabilities, as well as ensuring compliance through collaborative data review and planning with the Birth to Three Early Intervention Regional Programs and other early intervention service providers. When warranted, improvement and/or correction plans shall be developed and implemented.
- C. The Birth to Three Early Intervention Program carries out its monitoring responsibilities in the following ways:
1. Annually the Birth to Three Early Intervention Program shall submit to the Office of Special Education Programs (OSEP) the State Performance Plan (SPP) and the Annual Performance Report (APR);
  2. Effective implementation of Delaware's *Birth to Three Early Intervention Program Policies and Procedures*;
  3. Data policies and processes;
  4. Integrated monitoring activities;
  5. Improvement, correction, incentives, and sanctions;
  6. Effective dispute resolution;
  7. Technical assistance and professional development; and
  8. Fiscal management and monitoring.
- D. Based on the results of data collected during the annual chart review and monitoring process, the Birth to Three Early Intervention Program shall make annual determinations of the Birth to Three Early Intervention Regional Programs and early intervention service providers, using the four categories designed by the U.S. Department of Education, OSEP, as to the program's implementation of the requirements of IDEA Part C:
1. Meets requirements;
  2. Needs assistance;
  3. Needs intervention; or

4. Needs substantial intervention.
- E. Annual local program determinations are distributed to individual programs and are used to guide the level of technical assistance provided to the program to ensure improvements and compliance, if needed.
- F. Integrated monitoring activities include the following:
  1. Self-assessment procedures;
  2. Desk audits of program data;
  3. Focused data verification and analysis;
  4. On-site record reviews; and
  5. Any other methods as determined by the Birth to Three Early Intervention Program.
- G. The Birth to Three Early Intervention Program monitors informal and formal dispute resolution data for each early intervention program to identify issues that warrant technical assistance, training, or corrective actions.
- H. The Birth to Three Early Intervention Program shall enforce the requirements of IDEA Part C and these policies and procedures using one or more of the following enforcement mechanisms:
  1. Assistance in identifying root cause of barriers to improvement or compliance and in the development of strategies to address the challenges;
  2. The provision of information to the Birth to Three Early Intervention Regional Program of available state-approved sources of technical assistance, including a documented plan for addressing the areas of concern about adherence to policies and procedures or quality of practices within a specific time period;
  3. The provision of targeted technical assistance and training to specific staff within a program;
  4. The requirement of a collaborative effort between the Birth to Three Early Intervention Program and the Birth to Three Early Intervention Regional Program to develop a corrective action or improvement plan to address systems issues that are impeding progress;
  5. Imposition of special conditions until improvements are made;
  6. Withholding funds, in whole or in part, to the early intervention program; or
  7. In extreme situations, suspending or terminating the funding for the early intervention program.

## **Procedures**

- PR-A. The SPP and APR are posted on the Department's website at <https://dhss.delaware.gov/dhss/dph/birthtothree/policyreports.html>

1. The SPP includes:
  - a. Measurable indicators of the State's performance in specific statutory priority areas under Part C of IDEA;
  - b. Measurable and rigorous targets for the indicators; and
  - c. Improvement activities, timelines, and resources that describe how the state will improve the implementation of the priority areas.
2. The measurable indicators include:
  - a. Compliance indicators that have required targets of 100%, and
  - b. Performance indicators that have measurable and rigorous targets that are set by the state with broad stakeholder involvement.

PR-B. The Birth to Three Early Intervention Program annually reports 618 data to the OSEP and the public. These data include the following:

1. The number and percentage of children ages birth to one year old and ages birth through two years old, by race, gender, and ethnicity who are receiving early intervention services on December 1 of each year;
2. The number and percentage of children by race, gender, and ethnicity who, from birth through two years, who stopped receiving early intervention services because of program completion or for other reasons; and
3. The number of written, signed complaints filed with the Birth to Three Early Intervention Program, and the number of mediations held that resulted in a mediation agreement.

PR-C. The annual determination levels are used to describe a program at one of the following using the indicators and factors identified in *PR-D(1)-(5)* of these policies and procedures:

1. Meets Requirements: Local program performance is at or above the target percentage for the State Performance Plan compliance indicators and other factors.
2. Needs Assistance: Local program performance on the compliance indicators is below the target percentage for one or two consecutive years and other factors.
3. Needs Intervention: Local program performance on the compliance indicators is below the target percentage for three consecutive years and other factors.
4. Needs Substantial Intervention: Local program performance on a given indicator is below the target percentage for four consecutive years.

PR-D. When the Birth to Three Early Intervention Program makes the annual local program determinations, it takes into consideration each of the following:

1. Performance on compliance indicators;
2. Whether data submitted by the Birth to Three Early Intervention Regional Program is valid, reliable, and timely;
3. Uncorrected noncompliance from monitoring and other sources, and lack of timely correction of noncompliance based on the compliance indicators;
4. Any audit findings; and
5. At the discretion of the Birth to Three Early Intervention Program, may also consider:
  - a. Performance on performance indicators, and
  - b. Other information.

PR-E. The Birth to Three Early Intervention Program shall ensure that any instance in which a SPP/APR compliance indicator (Indicators 1, 7, and 8) is performed less than 100% or where there are other instances of noncompliance with a Part C requirement, a finding of noncompliance shall be issued to the early intervention program.

PR-F. When there is a finding of noncompliance, the following shall occur:

1. The Birth to Three Early Intervention Program issues a written notification of the requirement with which noncompliance is identified;
2. A summary of the data that details noncompliance; and
3. The requirement that the noncompliance be corrected as soon as possible, but no later than one year from the date of the written notification of the finding of noncompliance.

PR-G. The Birth to Three Early Intervention Program shall carry out monitoring activities to ensure that correction of noncompliance is verified and that a program has corrected all instances of noncompliance by:

1. A review of data that demonstrate correction of each individual instance of noncompliance;
2. A review of data that demonstrate that any required actions took place, although late, for timeline-specific requirements, unless the child is no longer receiving early intervention services; and
3. A review of subsequent data that demonstrate full compliance at 100%.

PR-H. If noncompliance is not corrected by the early intervention program within one year of the written notice and finding of noncompliance, the Birth to Three Early Intervention Program may impose sanctions, such as:

1. Revised and more stringent improvement strategies in the Program Correction Action Plan;
2. Onsite visits to further drill down about root causes of the noncompliance;
3. Additional data reporting requirements; and

4. Extensive training and technical assistance to staff to assist them in understanding the requirements related to the indicator(s) in which the noncompliance has occurred.



## Section 9: CENTRAL DIRECTORY AND PUBLIC AWARENESS

### **Policy Name:**

9. Central Directory and Public Awareness

### **Authority:**

Federal: 20 U.S.C §1432(5), §1435(a)(1), §1435(3), and §1435(5-7), §1437(a)(6); 34 CFR §§303.116-117, and §303.300

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(3) and §213(5)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

New

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the types of activities that are in place to ensure that families and the general public are knowledgeable about the statewide early intervention services and that infants and toddlers who may have developmental delays or disabilities are identified in a timely manner.

## **Policies**

- A. Birth to Three Early Intervention Program shall maintain a Central Directory that is accessible to the general public:
  1. On the Birth to Three Early Intervention Program's website at <https://dhss.delaware.gov/dhss/dph/birthtothree/centraldirresource.html>;
  2. In written copies provided to locations, such as early intervention programs, libraries, and offices of key primary referral sources; and
  3. Available upon individual request.
- B. The Central Directory includes accurate, up-to-date information about:
  1. Public and private early intervention services, resources, and experts available in the State;

2. Professional and other groups, including parent support and training and information centers, such as those funded under Part C of IDEA, that provide assistance to infants and toddlers with disabilities eligible under Part C of IDEA and their families; and
  3. Research and demonstration projects being conducted in the State related to infants and toddlers with disabilities.
- C. The Birth to Three Early Intervention Program works with special education Administrative Units, the Interagency Coordinating Council, and other community members as necessary in order to develop a coordinated program of public awareness focused on the identification of infants and toddlers with developmental delays or disabilities who may be eligible for early intervention services.
- D. The Birth to Three Early Intervention Program shall prepare and disseminate printed materials for the Birth to Three Early Intervention Program to primary referral sources, including hospitals, physicians, and other health providers, to share information with parents about the availability of early intervention services, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications.
- E. Public awareness materials for parents and professionals about the availability of early intervention Part C services include information describing:
1. The Birth to Three Early Intervention Program, and
  2. The child find system, including:
    - a. The purpose and scope of the child find activities;
    - b. How to make referrals for evaluations and early intervention services;
    - c. How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services;
    - d. The Central Directory of services; and
    - e. The requirement that parents of toddlers with disabilities are informed of the availability of public preschool special education services under 619 of IDEA not fewer than 90 days prior to the toddler's third birthday.

## **Procedures**

PR-A. Public awareness activities provide information to the general public about the Birth to Three Early Intervention Program to the following sources:

1. Families;
2. Hospitals;
3. Physicians and other healthcare providers;
4. Social service agencies;
5. Childcare programs;

6. Education agencies; and
7. Other professionals.

PR-B. The Birth to Three Early Intervention Program develops and distributes brochures, the *Guide to Parent Rights* in English, Spanish, and Haitian Creole, and the website link to the Central Directory.

PR-C. The Central Directory contains information about, and provides links to:

1. Birth to Three Early Intervention Regional Programs and professionals and other groups across the State who provide assistance to eligible children and their families, including contact information;
2. Websites of service and advocacy agencies;
3. Laws and regulations; and
4. Links to other websites that provide information about research and demonstration projects being conducted in the State.

PR-D. The information contained within the Central Directory on the Early Intervention Program website shall be reviewed at least annually and updated, if necessary.

### **Guidance and Related Documents**

*Birth to Three Early Intervention Program website resources and Central Directory:*  
<https://dhss.delaware.gov/dhss/dph/birthtothree/centraldirresource.html>

## Section 10: CHILD IDENTIFICATION

### **Policy Name:**

10. Child Identification

### **Authority:**

Federal: 20 USC §1432(5), §1435(a)(1), § 1435(3) and §§1435(5-7), §1437(a)(6); 34 CFR §§303.115-117, §§303.300-303, §303.310 and §§303.320-322

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(3)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the policies and procedures that are followed to ensure that all infants and toddlers in Delaware who are potentially eligible for early intervention services are located, identified, and referred to the Birth to Three Early Intervention Program for evaluation.

## **Policies**

- A. The Birth to Three Early Intervention Program shall have a comprehensive child find system that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this part that will reduce the need for future services. The child find system shall also include a system for making referrals so that timely identification, in accordance with *Section 11: Referral* of these policies and procedures, shall occur.
- B. The Birth to Three Early Intervention Program shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two years of age, to the Birth to Three Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services.
- C. The Birth to Three Early Intervention Program ensures that all infants and toddlers with disabilities in the State who are eligible for early intervention services under Part C of IDEA are identified, located, and evaluated including:

1. Indian (Native American) infants and toddlers with disabilities residing on reservations geographically located in the State, including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the State based, in part, on the information provided by them to the Birth to Three Early Intervention Program;
  2. Infants and toddlers with disabilities who are homeless, in foster care, and wards of the State; and
  3. Infants and toddlers with disabilities.
- D. The Birth to Three Early Intervention Program ensures that a referral shall be made of an infant or toddler, birth through two years of age, who:
1. Is the subject of a substantiated case of child abuse or neglect, or
  2. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.
- E. The Birth to Three Early Intervention Program, with the assistance of the Interagency Coordinating Council, ensures that an effective method is developed and implemented to identify children who are in need of early intervention services and is:
1. Coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs relevant to Part C, including Indian tribes that receive payments under IDEA Part C, and other Indian tribes, as appropriate, and
  2. Coordinated with the efforts of the following:
    - a. The program at the Delaware Department of Education authorized under part B of the Act;
    - b. The Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V);
    - c. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act;
    - d. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000;
    - e. Head Start Act (including Early Head Start programs under section 645A of the Head Start Act);
    - f. Supplemental Security Income program under Title XVI of the Social Security Act;
    - g. Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency

and the State agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA);

- h. Childcare programs in the State;
  - i. Programs that provide services under the Family Violence Prevention and Services Act;
  - j. Early Hearing Detection and Intervention (EHDI) systems administered by the Centers for Disease Control (CDC); and
  - k. The Children's Health Insurance Program (CHIP).
3. The Part C child find system will be consistent with Part B of IDEA (34 CFR 300.111).

F. The Birth to Three Early Intervention Program ensures that:

- 1. There will not be unnecessary duplication of effort by the programs and
- 2. It will make use of the resources available through each public agency and early intervention provider in the State to implement the child find system in an effective manner.

## **Procedures**

*This section intentionally left blank*

## Section 11: REFERRAL

### **Policy Name:**

11. Referral

### **Authority:**

Federal: 20 U.S.C §1412(a)(3)(A), §1431, §1434(1), §1435(a)(2), §§1435(5)-(6), §1435(c)(2)(G), §1437(a)(6) and §1437(10), and 1§441; 34 CFR §303.303.

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(3)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the requirements and procedures for a referral of an infant or toddler with, or suspected of having, a developmental delay or disabilities to the Birth to Three Early Intervention Program as soon as possible, but in no case more than seven days after the infant or toddler has been identified.

## **Policies**

- A. The Birth to Three Early Intervention Program ensures the referral of an infant or toddler, birth through two years of age, who is:
  1. At risk of experiencing a developmental delay should early intervention services not be provided; or
  2. Is the subject of a substantiated case of child abuse or neglect; or
  3. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.
- B. The Birth to Three Early Intervention Program shall identify primary referral sources who are required to refer an infant or toddler with or suspected of having a developmental delay or disabilities to the Birth to Three Early Intervention Program as soon as possible, but in no case more than seven days after the infant or toddler has been identified.
- C. Primary referrals sources are defined as:

1. Hospitals, including prenatal and postnatal care facilities;
2. Physicians;
3. Parents, including parents of infants and toddlers;
4. Childcare programs and early learning programs;
5. Local education agencies (LEAs) and schools;
6. Public health facilities;
7. Other public health or social service agencies;
8. Other clinics and health care providers;
9. Public agencies and staff in the child welfare system, including child protective service and foster care;
10. Homeless family shelters; and
11. Domestic violence shelters and agencies.

D. For referred infants and toddlers and their families, the initial evaluation, initial assessment, and initial IFSP meeting are completed within 45 days of referral, in accordance in with *Section 13: Eligibility, Section 14: Multidisciplinary Evaluation and Assessment, Section 15: Individualized Family Service Plan, and Section 20: Procedural Safeguards* of these policies and procedures.

## **Procedures**

PR-A. The Birth to Three Early Intervention Program shall work collaboratively with primary referral sources to understand the need for a timely referral.

PR-B. If the Birth to Three Early Intervention Program – Child Development Watch receives a referral for a toddler within 45 days of the toddler’s third birthday, with informed written parental consent, the referral shall be made directly to the local Part B/ 619 school district representative for screening and evaluation to determine eligibility for the Part B preschool special education program.

PR-C. Upon receipt of a referral, the Birth to Three Early Intervention Program – Child Development Watch staff shall ensure that data entered into Delaware’s electronic record data system for tracking and reporting is:

1. Valid and reliable, and
2. Includes complete and accurate information from the referral source to assist in the assignment of the family service coordinator.

PR-D. The Birth to Three Early Intervention Program – Child Development Watch shall ensure compliance with the closed-loop referral process as defined in *Section 1: Definitions* of these policies and procedures.

PR-E The Birth to Three Early Intervention Program – Child Development Watch shall define an assignment process of the referral to a family service coordinator.



## Section 12: SERVICE COORDINATION

### **Policy Name:**

12. Service Coordination

### **Authority:**

Federal: 20 USC, §1435(a)(4), §1426(d)(7); 34 CFR, §303.34, §303.343(a)(1)(iv), §303.344(g), §303.345(b)(1), and §303.521(b)(3)

State: Delaware Code Title 16, Chapter 2, Subchapter II, §212(h)(7)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

### **Purpose**

To define the qualifications, required training, and responsibilities of a family service coordinator.

### **Policies**

- A. Service coordination services (case management) means services provided by a family service coordinator to assist and enable an infant or toddler with a disability and their family to receive services and rights, to include procedural safeguards, required under Part C of IDEA.
- B. The Birth to Three Early Intervention Program shall:
  1. Ensure the provision of one family service coordinator for each infant and toddler with a disability and their family by the Birth to Three Early Intervention Program – Child Development Watch;
  2. Ensure that all Birth to Three Early Intervention Program – Child Development Watch staff are trained on the responsibilities of service coordination based on federal regulations to include, but not be limited to:
    - a. Serve as a single point of contact for the infant and toddler and their family;
    - b. The active and ongoing service coordination process involving:

- i. Coordinating evaluations and assessments;
- ii. Facilitating and participating in the development, review and evaluation of Individualized Family Service Plans (IFSPs);
- iii. Conducting referral and other activities to assist in identifying available early intervention service providers, as determined by the IFSP team;
- iv. Gaining access to, coordinating, facilitating, and monitoring the delivery of services to ensure that the services are provided in a timely manner;
- v. Conducting follow-up activities to determine that appropriate services are being provided;
- vi. Informing families of their rights and procedural safeguards and related resources;
- vii. Coordinating the funding sources for services;
- viii. Coordinating the other services identified in the IFSP that are needed or are being provided, but that are neither required nor funded under Part C of IDEA; and
- ix. Facilitating the development of a transition plan to preschool, school, or other services upon the child's exit from the Birth to Three Early Intervention Program that shall include ensuring a transition conference is conducted in accordance with *Section 19: Transition* of these policies and procedures.

C. A family service coordinator shall:

1. Meet personnel standards as defined in *Section 17: Comprehensive System of Personnel Development* of these policies and procedures, and those of the hiring agency, and
2. Complete the following:
  - a. Early intervention orientation training as soon as possible, but no later than 60 calendar days from date of hire, and
  - b. Other required training as determined by the Birth to Three Early Intervention Program – Administration and the Birth to Three Early Intervention Program – Child Development Watch.

D. The family service coordinator is responsible for ensuring that required information for each child referred for early intervention services is provided for entry into the statewide database in accordance with *Section 7: Data Collection* of these policies and procedures.

E. Family service coordinators are responsible for maintaining early intervention records as defined in *Section 7: Data Collection PR-B(6)(a)-(m)* of these policies and procedures.

## **Procedures**

PR.A. The service coordination assignment may change during the time the infant or toddler is eligible for early intervention services when:

1. The needs of the infant or toddler or the family may be better served by a different professional on the team, or
2. The family requests a change of family service coordinators.

PR-B. The family service coordinator shall maintain at least monthly contact with a parent whose child is enrolled in early intervention services, including written, electronic, or phone communication, and shall document the contact in the child's record.

PR-C. The family service coordinator shall maintain regular contact with the infant's or toddler's IFSP team to ensure that services are meeting the child's and family's needs.

## Section 13: ELIGIBILITY FOR DELAWARE'S BIRTH TO THREE EARLY INTERVENTION PROGRAM

### Policy Name:

13. Eligibility for Delaware's Infants and Toddlers Early Intervention

### Authority:

Federal: 20 U.S.C §1432(3) and (5), §1435(a)(1) and (3); 34 §303.10, §303.111, §303.21, §303.310 and §§303.321-322.

State: Delaware Code Title 14, 925; Title 16, Chapter 2, Subchapter II, §212(3), §213(2) and §213(3)

### Office:

Department of Health and Social Services, Birth to Three Early Intervention Program

### Last Review Date:

Revised May 13, 2022

### OSEP Approval Date:

June 27, 2022

### Effective Date:

July 1, 2022

## Purpose

To define the policies and procedures related to the eligibility criteria for early intervention services in Delaware for infants and toddlers, birth through two years of age.

## Policies

- A. An infant or toddler, birth through two years of age, shall be eligible for early intervention services if he or she has an established diagnosed physical or mental condition as defined in Subsection 13, B below, or a developmental delay as defined in Subsection 13.C, below.
- B. Eligibility Based On Established Conditions
  1. To establish eligibility based on the presence of an established condition as defined in *Section 1: Definitions* of these policies and procedures, the diagnosis must be confirmed by a licensed professional.
  2. The Birth to Three Early Intervention Program maintains an extensive list of established conditions that includes examples but is not an exhaustive list of diagnosed physical or mental conditions that have a high probability of resulting in developmental delay.

3. An infant or toddler who qualifies for a birth mandate educational classification, according to Delaware Department of Education, specifically under the Code for Autism, Deaf-Blindness, Deafness, Hearing Impairment, and Visual Impairment Including Blindness, shall qualify as an established condition for early intervention services.
4. The eligibility of an infant or toddler who has an established condition continues as long as the specific established condition exists, and the child is under three years of age.
5. A child with a diagnosed established condition and the child's family are eligible to receive early intervention services, whether or not the child is exhibiting developmental delay at the time of the diagnosis. Such a child and the child's family have all of the same rights under Part C of the IDEA and these policies and procedures as children with developmental delays. The Individualized Family Service Plan (IFSP) Team, including the parent, must, for each infant or toddler with an established condition, determine on an individualized basis, the appropriate outcomes and early intervention services to be included in the child's IFSP to meet the unique needs of the child and family.
6. No evaluation is needed for an infant or toddler with an established condition; however, a multidisciplinary assessment, as defined in *Section 1: Definitions* and consistent with the multidisciplinary assessment requirements in Section 14 of these policies and procedures, is required to develop the IFSP.

C. Eligibility Determination for Developmental Delay:

1. An infant or toddler is considered to be experiencing a developmental delay that establishes eligibility for Part C if, as measured by appropriate diagnostic instruments and procedures, the child exhibits one or more of the following criteria:
  - a. A delay of 25% or greater when compared to age-expected level of development in one or more of the following developmental domains: communication (receptive and/or expressive), cognition, physical/motor (including gross motor, fine motor, hearing, vision, and health), social-emotional, adaptive; or
  - b. At least 1.66 deviation below the mean in any developmental domain when measured by a normed, standardized instrument.
2. Developmental delay shall be determined through a timely, comprehensive, multidisciplinary evaluation that is defined in *Section 14: Multidisciplinary Evaluation and Assessment* of these policies and procedures and includes informed clinical judgment by the multidisciplinary team that utilizes qualitative and quantitative information. This process shall be clearly documented in the multidisciplinary team report.

## **Procedures**

*This section intentionally left blank*

## Section 14: MULTIDISCIPLINARY EVALUATION AND ASSESSMENT

### **Policy Name:**

14. Multidisciplinary Evaluation and Assessment

### **Authority:**

Federal: 20 U.S.C §1417(c), §1432(4)(F), §1435(a)(3), §1435(a)(5), §§1436(a)(1)-(2), §1439(a)(2), §1439(a)(6), and §1442; 34 CFR §303.31, §303.113, §§303.321-322, and §303.404

State: Delaware Code Title 16, Chapter 2, Subchapter II, §212(3) and §213(2)

### **Office:**

Department of Health and Social Services, Division of Management Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the policies and procedures related to the multidisciplinary evaluation that is used to determine eligibility for early intervention services and, for an eligible child, the multidisciplinary assessment of the child, and a family-directed assessment.

## **Policies**

A. The Birth to Three Early Intervention Program ensures that:

1. Informed written parental consent is obtained for each child, birth through two years of age, who is referred for a multidisciplinary evaluation and assessment for early intervention services and suspected of having a disability;
2. A timely and comprehensive multidisciplinary evaluation, as defined in *Section 1: Definitions* of these policies and procedures, is conducted by qualified personnel to determine a child's initial and continuing eligibility for Delaware's Birth to Three Early Intervention Program, unless the infant or toddler is eligible due to an established condition, in accordance with *Section 13: Eligibility for Delaware's Birth to Three Early Intervention Program (A) and (B)* of these policies and procedures;

3. A timely, initial multidisciplinary assessment, as defined in *Section 1: Definitions* of these policies and procedures, is conducted for an eligible child to identify the unique strengths and needs of the infant or toddler and the appropriate services to meet those needs.
  4. A family-directed assessment is conducted in accordance with (E) of this policy.
  5. All multidisciplinary evaluations and assessments of the child and family must be conducted by qualified personnel:
    - a. In a nondiscriminatory manner, and
    - b. Selected and administered so as not to be racially or culturally discriminatory.
  6. Qualified personnel must use informed clinical opinion when conducting a multidisciplinary evaluation and assessment of the child. In addition, the Birth to Three Early Intervention Program ensures that informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C of IDEA even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under (B) of this policy.
  7. All multidisciplinary evaluations and assessments of a child are selected and conducted in the native language of the child, unless clearly not feasible to do so; and
  8. The multidisciplinary assessment of the child- and family-directed assessment, described in (D) and (E) of this policy, may occur simultaneously with the multidisciplinary evaluation, provided the requirements of (B), (D), and (E) of this policy are met.
- B. The Birth to Three Early Intervention Program ensures that for all multidisciplinary evaluations:
1. No single procedure may be used as the sole criterion for determining a child's eligibility;
  2. They are conducted by qualified personnel;
  3. The multidisciplinary evaluation includes each of the following:
    - a. An evaluation instrument;
    - b. The child's history (including interviewing the parent);
    - c. Identification of the child's level of functioning in each of the developmental areas:
      - i. Physical development (including vision, hearing, gross and fine motor development, quality of movement, and health status);



- ii. Cognitive development (including mental processes of perception, memory, judgment, and reasoning, such as cause and effect, object permanence, or engaging in symbolic play);
      - iii. Communication development (including expressive and receptive language, and other skills as defined in *Section 1: Definitions* of these policies and procedures);
      - iv. Social or emotional development (ability to form secure relationships with others, experience and handle their own feelings, regulate their emotions, and get along with children and adults); or
      - v. Adaptive development (self-help skills, such as feeding and dressing).
    - d. Inclusion of information from other sources, such as family members, other caregivers, medical providers, social workers and educators to understand the full scope of the child's unique strengths and needs; and
    - e. The review of medical, educational or other records.
- C. A child's medical and other records may be used to establish eligibility for early intervention services (without conducting an evaluation of the child) if those records indicate that the child's level of functioning in one or more of the developmental areas, identified in (B)(3)(c)(i)-(v) of this policy, constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability as defined in *Section 1: Definitions* of these policies and procedures. If the child's Part C eligibility is established in this manner, the Birth to Three Early Intervention Program must ensure that a multidisciplinary assessment of the child and a family-directed assessment are conducted in accordance with (D) and (E) of this policy.
- D. The Birth to Three Early Intervention Program must ensure that all multidisciplinary assessments of the child:
- 1. Are conducted by qualified personnel;
  - 2. For initial child assessment, include review of the results of the multidisciplinary evaluation;
  - 3. Include the personal observations of the child; and
  - 4. Identify the child's needs in each developmental area.
- E. The Birth to Three Early Intervention Program must ensure that the family-directed assessment is conducted by qualified personnel and:
- 1. Conducted in the native language of the family, unless clearly not feasible to do so;
  - 2. Is voluntary on the part of each family member participating in the assessment;

3. Is based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
  4. Includes the family's description of its resources, priorities, and concerns related to enhancing their child's development.
- F. The Birth to Three Early Intervention Program must ensure that ongoing assessments of the child and family are conducted at least annually prior to the annual IFSP and meet the requirements in (D)(1), (3)-(4) and (E)(1)-(4) of this policy.

## Procedures

PR-A. Standardized, norm-reference evaluation measures, to be determined by the Birth to Three Early Intervention Program, can be used as a multi-domain testing process or in single areas of stated concern to provide standard scores (standard deviation or percentile).

PR-B. The Birth to Three Early Intervention Program for each child will:

1. Obtain informed written parental consent for the evaluation and, if applicable, the assessment for an eligible infant or toddler;
2. Obtain informed written parental consent to disclose personally identifiable information, consistent with *Section 20: Procedural Safeguards (H)* of these policies and procedures, that may be requested to inform the multidisciplinary evaluation and/or assessment of the infant or toddler;
3. Provide prior written notice to the parent a reasonable time before the Early Intervention Program or early intervention service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler for the provision of early intervention services in accordance with *Section 20: Procedural Safeguards (K)* of these policies and procedures;
4. Provide procedural safeguards to the family, including a description of Delaware's dispute resolution policies as defined in *Section 21: Dispute Resolution* of these policies and procedures, as well as in the *Guide to Parent Rights*, as needed;
5. Conduct the multidisciplinary evaluation through measures established by the Birth to Three Early Intervention Program;
6. Determine whether the child is eligible for the Birth to Three Early Intervention Program; and
7. If the child is eligible, complete a multidisciplinary child assessment and family-directed assessment through measures established by the Birth to Three Early Intervention Program.

## Section 15: INDIVIDUALIZED FAMILY SERVICE PLAN

### **Policy Name:**

15. Individualized Family Service Plan

### **Authority:**

Federal: 20 USC §1435(a)(4), §1436, §1437(a)(9), and §1439(a)(3), 34 CFR § 303.20, §303.24, §303.114, §303.126, §§303.340-346 and §§303.404-405

State: Delaware Code Title 16, Chapter 2, Subchapter II, §§213(4) and §214

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

## **Purpose**

To define the requirements for the development, required participants, and components of the Individualized Family Service Plan (IFSP) that serves as the written plan for providing early intervention services to an infant or toddler with a disability and his or her family.

## **Policies**

- A. The IFSP shall serve as the written plan for an infant or toddler, from birth through two years of age, receiving early intervention services. Costs related to the development, review, and evaluation of IFSPs shall be provided at no cost to the parent(s).
- B. The Birth to Three Early Intervention Program shall ensure:
  1. IFSP meetings are conducted:
    - a. In settings and at times that are convenient for the family and
    - b. 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.
  2. Meeting arrangements must be made with, and a written invitation provided to, the family and other participants early enough before the interim, initial, annual, six-month, or periodic reviews of the IFSP meeting date to ensure that they will be able to attend;

3. The initial IFSP meeting must occur within 45 days from the date of referral to Delaware's Birth to Three Early Intervention Program;
4. The only acceptable reasons for exceeding the 45-day timeline (SPP Indicator 7) are reasons of exceptional family circumstances, such as, but not limited to, preference of the family to postpone the evaluation and assessment or IFSP meeting, or illness of the child;
5. Should the IFSP meeting not be conducted within 45 days from the date of the referral, reasons for the exceptional family circumstances and nonexceptional family circumstances must be documented in the child's record;
6. An interim IFSP shall be developed to provide a temporary early intervention service prior to completion of an evaluation and assessment, only when the service is determined by qualified professionals to be immediately necessary and when the following conditions are met:
  - a. A child has been determined to be eligible for early intervention services;
  - b. Informed written parental consent is obtained;
  - c. The interim IFSP includes the name of the family service coordinator who will be responsible, consistent with §303.344(g), for implementing the interim IFSP and coordinating with other agencies and persons;
  - d. The interim IFSP includes the early intervention services that have been determined to be needed immediately by the child and the child's family; and
  - e. A multidisciplinary evaluation and, if the child is determined to be eligible for early intervention services, a multidisciplinary assessment are completed within 45 days of the date of the referral.
7. The IFSP is developed by the IFSP team whose members include:
  - a. Parent of a child;
  - b. Family service coordinator;
  - c. Persons directly involved in conducting the evaluations and assessments;
  - d. As appropriate, a person or persons who will be providing early intervention services to a child or family; and
  - e. Additional participants, including, but not limited to, the following:
    - i. Other family members, as requested by a parent, if feasible to do so, and
    - ii. An advocate or person outside of a family, as requested by a parent.

8. If any person who conducted an evaluation and/or assessment is unable to attend an IFSP meeting, arrangements must be made for the person's involvement through other means, including the one of the following:
  - a. Participating in a telephone or Internet web conference;
  - b. Having a knowledgeable authorized representative attending the meeting in his or her place; or
  - c. Making pertinent records available for use at the meeting.
9. The contents of the IFSP include:
  - a. The name of the child and family service coordinator designated by the public agency to be responsible for implementing the IFSP;
  - b. The results of the multidisciplinary evaluation and assessment;
  - c. A statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments;
  - d. With the family's concurrence, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child, as identified in the family-directed assessment;
  - e. A statement of measurable results or measurable outcomes expected to be achieved for the child (including pre-literacy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine:
    - i. The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made, and
    - ii. Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP, are necessary.
  - f. A statement that includes, to the extent appropriate, medical or other supports and services necessary to achieve an outcome on the IFSP, but not required under early intervention services definitions and funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources;
  - g. A statement of specific early intervention services, based on peer-reviewed research, to the extent practicable, that are necessary to meet the unique needs of the child and family to achieve the results or outcomes identified in the IFSP in accordance with *Section 16: Early Intervention Services* of these policies and procedures, and that describe each of the following:

- i. Length of time the service is provided during each session of that service (e.g., one hour of service);
- ii. Duration of a given service, meaning the specific and measurable period of time an early intervention service is provided that includes:
  - 1. The projected start date for each early intervention service, which must be as soon as possible after the parent consents to the service and no longer than 30 calendar days from the date of the informed written parental consent, in accordance with *Section 16: Early Intervention Services (B)(3)*, and
  - 2. The anticipated end date of the service (such as the date the child is expected to achieve results or outcomes in his or her IFSP).
- iii. Frequency, usually shown as number of days or sessions that an early intervention service will be provided (e.g., one time per week);
- iv. Intensity of the service, which refers to whether it is provided on an individual or group basis;
- v. Method for how the service is provided (e.g., coaching, sign language instruction, or supervision of a paraprofessional);
- vi. Location, which describes the actual place or places where a service will be provided; and
- vii. Payor responsibility for each service (e.g., Part C funds, State funds, Medicaid, private insurance).
- h. A determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability in the natural environment for that child to the maximum extent appropriate; and
- i. Justification for not providing a particular early intervention service in the natural environment must:
  - i. Be made by the IFSP team, including the parent;
  - ii. Be based on the child outcomes that are identified by the IFSP team members;
  - iii. Identify the location of the early intervention service; and
  - iv. Identify the payment arrangements.

C. The Birth to Three Early Intervention Program ensures that:

- 1. Once the IFSP is developed by the parent and other IFSP team members, the contents of the IFSP shall be fully explained to the parents and prior written

- notice, in accordance with *Section 20: Procedural Safeguards (K)*, shall be provided to the parent that describes the services that will or will not be provided to the child and family;
2. The informed written parental consent, as required in *Section 20: Procedural Safeguards (J)*, must be obtained prior to provision of any early intervention services described in the IFSP; and
  3. Each early intervention service must be provided as soon as possible, and no case later than 30 days, after the parent provides informed written consent for that service, as required in *Section 16: Early Intervention Services (B)(3)(a)*.
- D. The Birth to Three Early Intervention Program ensures that a review of the IFSP for a child and the child's family is conducted every six months, or more frequently if conditions warrant, or if the family requests such a review.
1. The purpose of the periodic review is to determine:
    - a. The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made, and
    - b. Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.
  2. The required participants for a periodic review are:
    - a. Parent of a child;
    - b. Other family members, as requested by a parent, if feasible to do so;
    - c. Family service coordinator; and
    - d. An advocate or person outside of a family, if the parent requests that the person participate.
  3. If conditions warrant, provisions must be made for the participation of other representatives, such as persons directly involved in conducting assessments or early intervention service providers.
  4. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.
- E. A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family.
1. The results of any current evaluations and other information available from the assessments of the child and family conducted under *Section 14: Multidisciplinary Evaluation and Assessment* of these policies and procedures must be used in determining the early intervention services that are needed and that will be provided;
  2. The required participants for an annual IFSP are consistent with those in *(B)(7)* and *(8)* of this policy; and

3. The content of an annual IFSP must meet the requirements in (B)(9) of this policy.
- F. The IFSP must include the steps and services to be taken to support the smooth transition of the child from Part C services, in accordance with the policies and procedures in *Section 19: Transition*, and include:
1. The steps and services to be taken to support the smooth transition of the child from Part C services to:
    - a. Preschool special education services under Part B of IDEA to the extent that those services are appropriate, or
    - b. Other appropriate services.
  2. The steps required in (F)(1) meet all of the criteria in *Section 19: Transition (C)(3)(b)(i)-(vi)* of these policies and procedures.

## **Procedures**

- PR-A. The family service coordinator is responsible for assuring development and implementation of the IFSP and coordination with other agencies and persons.
- PR-B. It is the responsibility of the family service coordinator to assist the family in preparing for the IFSP meeting, including an orientation to the IFSP process prior to the initial IFSP team meeting, providing the family with their parental rights, and providing an invitation to the meeting.
- PR-C. Unique cultural characteristics and preferences of families should be taken into consideration in IFSP planning and the contents of the IFSP must be fully explained to the parent before asking for their informed written parental consent for services.

## **Guidance and Related Documents**

### *Guide to Parent Rights*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/2021parentrights.pdf>



## Section 16: EARLY INTERVENTION SERVICES

### **Policy Name:**

16. Early Intervention Services

### **Authority:**

Federal: 20 USC §1432(4), §1435(a)(2), §1436(a)(2), §§1436(d)(4)-(5); 34 CFR §303.13, §303.16, §303.32, §303.442(d)(i) and §303.444

State: Delaware Code Title 16, Chapter 2, Subchapter II, §212(2)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

### **Purpose**

To describe the early intervention services that are provided to eligible infants and toddlers and their families through the Birth to Three Early Intervention Program.

### **Policies**

- A. Early intervention services mean developmental services that:
1. Are provided under public supervision;
  2. Are selected in collaboration with the parents;
  3. Are provided at no cost, except where subject to these policies and procedures and *Section 6: System of Payments* of these policies and procedures, including a schedule of sliding fees;
  4. Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist in supporting their infant's or toddler's development, as identified in the Individualized Family Service Plan (IFSP) in any one or more of the following areas, including:
    - a. Physical development (including vision, hearing, gross and fine motor development, quality of movement, and health status);

- b. Cognitive development (including mental processes of perception, memory, judgment, and reasoning, such as cause and effect, object permanence, or engaging in symbolic play);
  - c. Communication development (including expressive and receptive language, and other skills as defined in *Section 1: Definitions* of these policies and procedures);
  - d. Social or emotional development (ability to form secure relationships with others, experience and handle their own feelings, regulate their emotions, and get along with children and adults); or
  - e. Adaptive development (self-help skills, such as feeding and dressing).
5. Meet the Delaware program standards, including the requirements of Part C of the IDEA;
  6. Are provided by qualified personnel;
  7. To the maximum extent appropriate, are provided in natural environments, as defined in *Section 1: Definitions* and consistent with *Section 15: Individualized Family Service Plan (B)(9)(h) and (i)* of these policies and procedures;
  8. Include strategies that are intended to support the day-to-day routines, activities, and places that promote learning opportunities for an individual child and family; and
  9. Are provided in conformity with an IFSP.
- B. The Birth to Three Early Intervention Program assures that:
1. Early intervention services are:
    - a. Based on scientifically based research to the extent practicable;
    - b. Are available statewide to all infants and toddlers with disabilities and their families; and
    - c. Are provided to meet the unique developmental needs of an eligible infant or toddler designed to:
      - i. Enhance the capacity of a parent or other caregiver to support a child's well-being, development, and learning;
      - ii. Support full participation of a child in his or her community; and
      - iii. Meet a child's developmental needs within the context of the concerns and priorities of his or her family and the family's daily activities and routines.
  2. All available resources that pay for early intervention services shall be identified and coordinated, including, but not limited to, federal, state, local, and private sources;

3. Early intervention services are initiated in a timely manner, as determined by the State of Delaware, to the maximum extent possible using the following criteria:
  - a. Delaware defines timely service delivery (SPP Indicator 1) as the actual service start date for an early intervention service to be within 30 days of the informed written parental consent for that service.
  - b. A statement of reason for exceptional and non-exceptional family circumstance surrounding a delay in service provision shall be documented in the child's electronic record in the statewide database with supplemental documentation in the paper record, if appropriate.
4. Early intervention services include the following:
  - a. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping) maintenance, or replacement of that device.
  - b. Assistive technology service means any service that directly assists a child in the selection, acquisition, or use of an assistive technology device, such as:
    - i. The evaluation of the needs of a child, including a functional evaluation of the child in the child's customary environment;
    - ii. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
    - iii. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
    - iv. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
    - v. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
    - vi. Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to or who are otherwise substantially involved in the major life functions of children with disabilities.
  - c. Audiology services include:

- i. Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;
  - ii. Determination of the range, nature, and degree of hearing loss and communication functions by use of audiological evaluation procedures;
  - iii. Referral for medical and other services necessary for the habilitation or rehabilitation of a child with a disability who has an auditory impairment;
  - iv. Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;
  - v. Provision of services for prevention of hearing loss; and
  - vi. Determination of the child's individual amplification, including selection, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluation of the effectiveness of those devices.
- d. Family training, counseling, and home visits mean services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child with a disability in understanding the special needs of the child and enhancing the child's development.
- e. Health services are services necessary to enable an otherwise eligible child to benefit from the other early intervention services.
- i. Health services include:
    - 1. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services, and
    - 2. Consultation by physicians with other service providers concerning the special health care needs of eligible infants and toddlers that will need to be addressed in the course of providing other early intervention services.
  - ii. Health services shall not include services that are:
    - 1. Surgical in nature (cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);
    - 2. Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose);
    - 3. Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical

- device that is surgically implanted, including a cochlear implant;
4. Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and
  5. Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.
- iii. Nothing in this section on health services limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child’s IFSP as being needed to meet the child’s developmental outcomes.
  - iv. Nothing in this section prevents early intervention program personnel from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of a child are functioning properly.
- f. Medical services mean services provided by a licensed physician for diagnostic or evaluation purposes to determine a child’s developmental status and need for early intervention services.
  - g. Nursing services include:
    - i. The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;
    - ii. The provision of nursing care to prevent health problems, restore, or improve functioning, and promote optimal health and development; and
    - iii. The administration of medications, treatments, and regimens prescribed by a licensed physician.
  - h. Nutrition services include:
    - i. Conducting assessments of:
      1. The child’s nutritional history and dietary intake;
      2. Anthropometric, biochemical, and clinical variables;
      3. Feeding skills and feeding problems; and
      4. Food habits and food preferences.
    - ii. Developing and monitoring of appropriate plans to address the nutritional needs of children eligible under Part C, based on the findings of the assessments above; and

- iii. Making referrals to appropriate community resources to carry out nutrition goals.
  - i. Occupational therapy includes:
    - i. Services designed to address the functional needs of a child related to adaptive development; adaptive behavior; play; and sensory, motor, and postural development.
    - ii. These services are designed to improve the child's functional ability to perform tasks in home and community settings and include:
      - 1. Identification, assessment, and intervention;
      - 2. Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and to promote the acquisition of functional skills; and
      - 3. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
  - j. Physical therapy includes:
    - i. Those services identified to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation.
    - ii. Physical therapy services include:
      - 1. Screening, evaluation, and assessment of children to identify movement dysfunction;
      - 2. Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
      - 3. Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.
  - k. Psychological services include:
    - i. Administering psychological and developmental tests and other assessment procedures;
    - ii. Interpreting assessment results;

- iii. Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
  - iv. Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation about child development, parent training, and education programs.
- I. Sign language and cued language services include:
- i. Teaching sign language, cued language, and auditory/oral language;
  - ii. Providing oral transliteration services, such as amplification; and
  - iii. Providing sign and cued language interpretation.
- m. Social work services include:
- i. Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
  - ii. Preparing a social or emotional developmental assessment of the child within the family context;
  - iii. Providing individual and family/group counseling with parents and other family members, and appropriate social skill-building activities with the child and his/her parents;
  - iv. Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of a child and his/her family that affect the child's maximum utilization of early intervention services; and
  - v. Identifying, mobilizing, and coordinating community resources and services to enable the child and his/her family to receive the maximum benefit from early intervention services.
- n. Special instruction includes:
- i. The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
  - ii. Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the child;
  - iii. Providing families with information, skills, and support related to enhancing the skill development of the child; and
  - iv. Working with the child to enhance his/her development.
- o. Speech-language pathology services include:

- i. Identification of a child with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
    - ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation of a child with communication or language disorders and delays in development of communication skills; and
    - iii. Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.
  - p. Transportation and related costs include the cost of travel and other costs that are necessary to enable a child and his/her family to receive early interventions services.
  - q. Vision services include:
    - i. Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorder, delays, and abilities that affect early childhood development;
    - ii. Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders or both; and
    - iii. Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.
5. Nothing in this policy prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified above in (A) and (B) of this policy.

## Procedures

- PR-A. The IFSP team determines which early intervention services are needed for the infant or toddler and their family to include length, duration, frequency, intensity, method, and location of the service.
- PR-B. If a natural environment requirement creates a barrier to the implementation of the IFSP due to unique community or family circumstances, the IFSP team will work to develop creative strategies that are consistent with the natural environment policy and that are responsive to the needs of the child and family.
- PR-C. The IFSP will identify the qualified early intervention personnel to support specific strategies; activities are made by the IFSP members and in accordance with the personnel standards defined in *Section 17: Comprehensive System of Personnel Development* of these policies and procedures.



## **Guidance and Related Documents**

*Delaware Personnel Standards and Guidelines Matrix:*

[https://dhss.delaware.gov/dhss/dph/birthtothree/files/depersstdguidematrix\\_2014.pdf](https://dhss.delaware.gov/dhss/dph/birthtothree/files/depersstdguidematrix_2014.pdf)

## **Section 17: COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT AND PERSONNEL STANDARDS**

### **Policy Name:**

17. Comprehensive System of Personnel Development and Personnel Standards

### **Authority:**

Federal: 20 USC §1432 (F)(i-xii), and §1435 (a)(9) and § 1435(b); 34 CFR §303.19(a), §303.31 and §§303.119(a)-(d)

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(6)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

### **Purpose**

To describe the comprehensive system of personnel development and personnel standards that ensure qualified personnel are available statewide to provide to early intervention services to eligible infants and toddlers and their families.

### **Policies**

- A. The Birth to Three Early Intervention Program ensures that early intervention services are provided by qualified providers who meet the state personnel standards for each early intervention service.
- B. The Birth to Three Early Intervention Program develops and maintains the following:
  1. Qualification standards that are consistent with state-approved certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services;
  2. Annual regulatory training;
  3. Other training that promotes best practices in early intervention;
  4. A training calendar and other information about available training and technical assistance for personnel;

5. Through monitoring activities, the identification of training and technical assistance needs among family service coordinators, supervisors, early intervention service providers, and contractors;
  6. A personnel development plan that addresses:
    - a. Training personnel to implement innovative strategies and activities for the recruitment and retention of early intervention service providers;
    - b. Promoting the preparation of early intervention service providers who are fully and appropriately qualified to provide early intervention services; and
    - c. Training personnel to coordinate transition services for children with disabilities who are transitioning from an early intervention service program to a preschool program under Part B of IDEA, Head Start, Early Head Start, or another appropriate program.
- C. Early intervention service providers shall maintain current and accurate documentation, including certifications, licensing, endorsements, and registrations, and shall register and update his or her information at least annually, with the Birth to Three Early Intervention Program.
- D. An early intervention service provider shall complete all required training as defined by the Birth to Three Early Intervention Program.
- E. Qualified personnel who provide early intervention services under Part C may consist of the following:
1. Audiologists;
  2. Family therapists;
  3. Nurses;
  4. Occupation therapists;
  5. Orientation and mobility specialists;
  6. Pediatricians and other physicians for diagnostic and evaluation purposes;
  7. Physical therapists;
  8. Psychologists;
  9. Registered dietitians;
  10. Social workers;
  11. Early childhood special educators, including teachers of children with hearing and visual impairments;
  12. Speech and language pathologists; and
  13. Vision specialists, including ophthalmologists and optometrists.
- F. The personnel identified above in (E) of this policy do not comprise an exhaustive list of the types of qualified personnel that may provide early intervention services.

Nothing in this section prohibits the identification of another type of personnel that may provide early intervention services in accordance with Part C of IDEA, provided such personnel meet the qualified personnel requirements.

## **Procedures**

PR-A. The Birth to Three Early Intervention Program determines the provision of trainings and coaching supports to new staff, especially in relation to:

1. Social or emotional development of young children, and
2. Supporting families in participating fully in the development and implementation of the child's IFSP.

PR-B. The Birth to Three Early Intervention Program works collaboratively with interagency partners to provide ongoing professional development, especially related to personnel standards that are consistent with personnel standards funded under the Delaware Early Childhood Council.

## **Guidance and Related Documents**

*Delaware Personnel Standards and Guidelines Matrix:*

[https://dhss.delaware.gov/dhss/dph/birthtothree/files/depersstdguidematrix\\_2014.pdf](https://dhss.delaware.gov/dhss/dph/birthtothree/files/depersstdguidematrix_2014.pdf)

## Section 18: CHILD AND FAMILY OUTCOMES MEASUREMENTS

**Policy Name:**

18. Child and Family Outcomes

**Authority:**

Federal: 20 USC §1416(A); 34 CFR §§303.701-702

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(8)

**Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

**Last Review Date:**

New

**OSEP Approval Date:**

August 17, 2021

**Effective Date:**

January 3, 2022

### Purpose

To describe the policies and procedures that the Birth to Three Early Intervention Program and its partner agencies follow to collect and report data on the progress made by children and families receiving early intervention services.

### Policies

- A. The Birth to Three Early Intervention Program, Birth to Three Early Intervention Program – Child Development Watch, and its contractors shall participate in the state program to measure child outcomes and shall ensure that each eligible child who receives early intervention services for six months or longer receives child outcomes entry and exit ratings that are determined to use information gathered through the procedures and timelines defined in the Delaware *Child Outcomes Manual*.
- B. The Birth to Three Early Intervention Program ensures that Birth to Three Early Intervention Program – Child Development Watch, and contractors who are responsible for documenting and reporting child outcomes progress data, are trained in the methods required by the Birth to Three Early Intervention Program and participate in required technical assistance activities.
- C. Child outcomes shall measure the percent of infants and toddlers with an Individualized Family Service Plan (IFSP), who:
  1. Have positive social or emotional skills (including social relationships);

2. Acquire and use knowledge and skills (including early language/communication); and
  3. Use appropriate behaviors to meet their needs.
- D. The Birth to Three Early Intervention Program shall ensure the annual distribution of the statewide *Family Outcomes Survey* to each parent who has a child who is participating in early intervention services for at least six months.
- E. The *Family Outcomes Survey* shall measure the percent of families who have a child participating in early intervention services for at least six months who report that early intervention services have helped the family:
1. Know their rights;
  2. Effectively communicate their child's needs; and
  3. Help their child develop and learn.
- F. The *Family Outcomes Survey* shall also measure additional factors as determined by the Birth to Three Early Intervention Program.

## **Procedures**

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## **Guidance and Related Documents**

*Child Outcomes Manual:*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/earlychildhoodmanual0518.pdf>

## Section 19: TRANSITION

**Policy Name:**

19. Transition

**Authority:**

Federal: 20 USC §1412(a)(3), §1412 (a)(9), §1436(a)(3), §1437(a)(9)); 34 CFR §303.209, §303.344(h), §303.211 and §303.401; and EMAPS User Guide

State: Delaware Code Title 16, Chapter 2, Subchapter II, §§213(7), §214, and §215

**Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

**Last Review Date:**

2015, revised 2020 and 2021

**OSEP Approval Date:**

October 21, 2021

**Effective Date:**

January 3, 2022

**Purpose**

To describe the policies and procedures that the Birth to Three Early Intervention Program and its partner agencies use to ensure a smooth transition for infants and toddlers with disabilities, birth through two years of age, and their families as they transition out of early intervention services.

**Policies**

- A. The Birth to Three Early Intervention Program shall ensure that transition planning occurs for any infant or toddler who is:
  1. At age three, transitioning to preschool or other appropriate services for toddlers with disabilities [State Performance Plan (SPP)/Annual Performance Report (APR) Indicators 8A-C] or
  2. Are exiting early intervention services for other reasons.
    - a. No longer eligible for Part C prior to reaching age three;
    - b. Not eligible for Part B, exit with referrals to other programs;
    - c. Not eligible for Part B, exit with no referrals;
    - d. Part B eligibility not determined;
    - e. Deceased;
    - f. Moved out of state;

- g. Withdrawal by parent (or guardian); or
  - h. Attempts to contact the parent and/or child were unsuccessful.
- B. The Birth to Three Early Intervention Program develops and maintains an Operations Agreement between the lead agency and the state education agency (SEA), the Delaware Department of Education, for the following circumstances:
1. Not fewer than 90 days before the third birthday of the toddler enrolled in early intervention services if that toddler may be eligible for preschool services under Part B of IDEA, the Birth to Three Early Intervention Program notifies the SEA and the local education agency (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 IDEA, as determined in accordance with State law (SPP Indicator 8B).
  2. In addition to the notification described in (B)(1) of this policy, for a toddler who has been determined to be eligible for early intervention within the timeframe of more than 45 but less than 90 days before that toddler's third birthday and may be eligible for preschool services under Part B of IDEA, the family service coordinator shall, as soon as possible after the child's eligibility is determined, notify 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 IDEA, as determined in accordance with State law.
  3. As required by 34 CFR §§303.401(d) and 303.209(b)(1)(i), the notifications required under 19.B.1 and 19.B.2, above, must include the following information:
    - a. The child's name;
    - b. The child's date of birth.
    - c. Parent contact information (including parents' names, addresses, and telephone numbers).
    - d. FSC name; and
    - e. Date of referral to the Birth to Three Early Intervention program.
  4. If a toddler is referred to the Birth to Three Early Intervention Regional Program fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of IDEA, the Birth to Three Early Intervention Program, with informed written parental consent required, refers the toddler to the SEA and the LEA to the area in which the toddler resides, but the Birth to Three Early Intervention Program is not required to conduct a multidisciplinary evaluation, assessment, or an initial Individualized Family Service Plan (IFSP) meeting in accordance with *Section 11: Referral (PR-B)* of these policies and procedures.
- C. A family service coordinator shall facilitate, with the IFSP team, the development of a transition plan within an IFSP to support a smooth transition (Indicator 8A):



1. Not fewer than 90 days, and at the discretion of all parties, not more than nine months prior to the child's third birthday; or
  2. As soon as possible for a child referred at a later age whose eligibility was established, and an IFSP was developed fewer than 90 days and more than 45 days prior to the child's third birthday.
  3. The transition plan shall be developed by the IFSP team, including the family, and shall include at a minimum, the following:
    - a. A description of transition steps and services the IFSP team determines necessary to support a smooth transition from early intervention services to preschool special education services under Part B of IDEA or other appropriate services and
    - b. A description of transition steps includes each of the following:
      - i. As appropriate, how the child and his or her family will exit from early intervention services;
      - ii. A review by the Birth to Three Early Intervention Program of the program options for the toddler for the period from the toddler's third birthday through the remainder of the school year;
      - iii. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
      - iv. Confirmation by the Birth to Three Early Intervention Program that the basic personally identifiable information, has been transmitted to the LEA;
      - v. With informed written parental consent, confirmation of the transmission of additional information needed by the LEA to ensure continuity of services from early intervention services to preschool special education services, including a copy of the most recent evaluations and assessments of the child and the family, and the most recent IFSP;
      - vi. Procedures to prepare a child for changes in service delivery and strategies to help a child adjust to and function in a new setting; and
      - vii. Any transition services and other activities that the IFSP team identifies as needed by the child, or his or her family, to support the transition of the child.
- D. The family service coordinator shall, with informed written parental consent, provide the LEA with current information for a child who is potentially eligible regarding the child's early intervention services, including assessment information, and a copy of the most current IFSP in order to assist in transition planning.

- E. With documented verbal or written parental approval, the family service coordinator shall convene a transition conference no later than 90 days and, at the discretion of all participants, no earlier than nine months prior to a child's third birthday (SPP Indicator 8C) to discuss any services the toddler may receive under Part B of IDEA. For any transition conference and meeting to develop a transition plan, meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meetings date to ensure that they will be able to attend.
1. For a child who is potentially eligible for preschool special education services, the participants at a transition conference shall include:
    - a. The parent or parents of the toddler;
    - b. Other family members, as requested by the parent, if feasible to do so;
    - c. An advocate or person outside of the family, if the parent requests that the person participate;
    - d. The FSC designated by the Birth to Three Early Intervention Program to be responsible for implementing the IFSP;
    - e. A person or persons directly involved in conducting the evaluations and assessments of the toddler;
    - f. As appropriate, persons who will be providing early intervention services under Part C to the child or family; and
    - g. A representative of the school district if the toddler is potentially eligible to receive preschool special education services.
  2. The Part B regulations, at 34 CFR §300.124(c), require that a representative of the LEA participate in a transition conference arranged by the Birth to Three Early Intervention Program.
  3. The family service coordinator shall make reasonable efforts to convene a transition conference for a child who is not potentially eligible for preschool special education services to discuss appropriate services that the child may receive, with the documented verbal or written approval of the parent. The following participants shall attend the conference:
    - a. Parent of a child who is approaching three years of age;
    - b. Family service coordinator; and
    - c. Providers of other appropriate services.
- F. If the transition conference is held in combination with the IFSP meeting to develop the transition plan, the requirements of *Section 15: Individualized Family Service Plan (F)*, in addition to *(C)(3)(b)(i)-(vi)* of this policy, shall be met.
- G. The Birth to Three Early Intervention Program shall terminate early intervention services on a child's third birthday, or earlier for a child whose parent elects to begin Part B of IDEA preschool special education services provided through an

Individualized Education Plan prior to the child's third birthday in lieu of receiving IDEA Part C early intervention services.

**Procedures**

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## Section 20: PROCEDURAL SAFEGUARDS

### Policy Name

20. Procedural Safeguards

### Authority:

Federal: 20 USC, §1232f and §§1232g et seq., §1401(23), §1415(e), §1439(a)(2), §§1439(a)(5-7), and §1442; 34 CFR Parts 76, 80, and Part 99; 34 CFR §303.7, §303.9, §§303.25-27, §303.29, §303.34, §303.37, §303.123, §§303.400 et seq.

State: Delaware Code Title 16, Chapter 2, Subchapter II, §§214-216

### Office:

Department of Health and Social Services, Birth to Three Early Intervention Program

### Last Review Date:

Revised 2020

### OSEP Approval Date:

August 17, 2021

### Effective Date:

January 3, 2022

## Purpose

To define the established procedural safeguards that meet the requirements of the Individuals with Disabilities Education Act (IDEA) and the procedures used to ensure the effective implementation of those safeguards.

## Policies

### A. Confidentiality:

1. Parents referred to the Birth to Three Early Intervention Program are afforded the right to confidentiality as defined in *Section 1: Definitions* of these policies and procedures, of personally identifiable information, including the right to written notice of, and informed written parental consent to, the exchange of that information among agencies, consistent with federal and state laws.
2. This applies to the protection of personally identifiable information of a child and the child's family that is contained in early intervention records at the collection, maintenance, usage, storage, disclosure, or destruction stage by any participating agency (Birth to Three Early Intervention Program, Department of Education, or any service-providing agency or individual contractor).

3. Each participating agency, as defined in *Section 1: Definitions* of these policies and procedures, shall designate one person to be responsible for ensuring the confidentiality of personally identifiable information.
4. All persons collecting, exchanging, or using personally identifiable information shall receive training and instruction regarding state policies and procedures.
5. Each agency or early intervention service provider shall maintain, for public inspection, a current list of the names and positions of employees who have access to personally identifiable information.
6. When a Birth to Three Early Intervention Regional Program or early intervention service provider operates other programs in addition to an approved Birth to Three Early Intervention Regional Program that follow other documentation and/or confidentiality requirements, early intervention records are subject to and:
  - a. Must meet the requirements of all applicable early intervention-related federal and state laws and regulations;
  - b. Under these circumstances, early intervention records, as defined in *Section 1: Definitions* of these policies and procedures, must be maintained as distinct or removable from non-early intervention records; and
  - c. These records (paper, electronic, etc.) may not be shared or otherwise made available to the other programs without following all of the confidentiality requirements under IDEA Part C, including the Family Educational Rights and Privacy Act (FERPA) (34 CFR 99.22).

B. Notice to parents:

1. Notice about the confidentiality of early intervention records and the protection of personally identifiable information, *Section 1: Definitions* of these policies and procedures, shall be provided to a parent of any child referred to the Birth to Three Early Intervention Program and shall include information about their safeguards under IDEA, including:
  - a. A description of the children for whom personally identifiable information is maintained, types of information sought, methods used to collect information (including sources from whom information is gathered), and uses of information by the Birth to Three Early Intervention Program;
  - b. A summary of policies and procedures participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
  - c. A description of all rights of infants, toddlers, and parents regarding this information including rights under Part C of IDEA and FERPA, including the title and address of the person to whom requests to review records should be made; and

- d. A description of the extent the notice is given in the native language of various population groups in the state.

### C. Access Rights:

1. The right to inspect and review the early intervention record includes the following:
  - a. Each participating agency shall permit a parent to inspect and review any early intervention records related to their infant or toddler that are collected, maintained, or used as part of their early intervention services.
  - b. A parent has the right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records.
  - c. A parent has the right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.
  - d. Each participating agency shall comply with the parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing as defined in *Section 21: Dispute Resolution* of these policies and procedures, and in no case more than 10 days after the request has been made.
  - e. A parent has the right to have a representative of the parent inspect and review the early intervention records.
2. For any record that includes information about more than one child, a parent has the right to inspect and review only the information related to their infant or toddler or to be informed of that specific information.
3. The participating agency shall presume the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.
4. The participating agency may refuse parental access to the following records:
  - a. Records of service, supervisory, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
  - b. Records of a law enforcement unit of a public agency or private early intervention service provider; and
  - c. Records relating to an individual who is employed by an agency or early intervention service provider that are made and maintained in the

normal course of business, that relate exclusively to the individual in that individual's capacity as an employee, and that are not available for use for any other purpose, excluding records related to a parent who is employed as a result of the parent's status as a recipient of services or as a result of the infant or toddler receiving services.

5. Each agency shall maintain a record of all parties obtaining access to records collected, maintained, or used, except access by parents or their authorized representative and employees of the agency, including:
  - a. The name of the party requesting access;
  - b. Date access was given; and
  - c. Purpose for which the party is authorized to use the early intervention records.

D. Fees for records:

1. A copy of the following documents shall be provided at no cost to the parent:
  - a. Each evaluation and assessment of the infant or toddler;
  - b. Family assessment; and
  - c. The IFSP as soon as possible after each IFSP meeting.
2. An agency or early intervention service provider may charge a fee for copies of items in the record, other than those noted above in *D(1)(a)-(c)*, that are made for a parent upon request if the fee does not effectively prevent the parent from exercising his or her right to inspect and review the records under *C(1)(c)* of this policy.
3. An agency or early intervention service provider may not charge a fee to search for or retrieve a record.

E. Amendment of records:

1. A parent may request that information in a record be amended or deleted, if the parent believes that information:
  - a. Is inaccurate or misleading, or
  - b. Violates the privacy of other rights of the parent's infant or toddler, or their family.
2. When a parent requests in writing to the Birth to Three Early Intervention Regional Program or early intervention service provider that a record be amended, the agency or early intervention service provider must act on that request within 10 days from the time the request is received.
3. If the agency or early intervention service provider refuses to amend the records as requested, it or she or he must:
  - a. Inform the parent of the refusal in writing, and

- b. Advise the parent in writing that they have the right to a hearing as described in *F(1)* below.

F. Opportunity for a hearing related to a record:

1. A request for a hearing is made to the Part C Coordinator who shall contact the parent to explain they have a choice of a hearing by an individual, including an official of the Birth to Three Early Intervention Program who does not have a direct interest in the outcome of the hearing, in accordance with FERPA (34 CFR 99.22); or
2. May request a due process hearing following the procedures defined in *Section 21: Dispute Resolution (D)* of these policies and procedures; and
3. Whichever of the two options for a hearing that the parent chooses, the hearing must comply with the requirements of 34 CFR §303.413, which incorporates by reference the FERPA requirements for hearings at 34 CFR §99.22.

G. Result of the hearing:

1. After the hearing, the Part C Coordinator shall provide to all parties, a written decision in accordance with the steps defined in *Section 21: Dispute Resolution (D)(9)* of these policies and procedures.
2. If the decision is that the information is inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the agency or early intervention service provider shall amend the record and inform the parent in writing.
3. If, as a result of the hearing, the decision is not to change the record, a parent shall be notified of their rights to prepare a statement of disagreement and the reasons for disagreeing that shall be maintained in the child's early intervention record and:
  - a. This information shall be maintained as part of the child's early intervention record as long as the record or contested portion is maintained by the agency, and
  - b. If the record or contested part is disclosed by the agency or early intervention service provider to any party, the explanation must also be disclosed to the party.

H. Informed written parental consent prior to disclosure or use of information in the record:

1. Informed written parental consent must be obtained using the DHSS-mandated form before any disclosure of all personally identifiable information concerning a child, the child's parents, or another family member except in the following circumstances:
  - a. A public agency or early intervention service provider may disclose confidential information to its employees who have a legitimate need



for access to the information in order to provide early intervention supports and services.

- b. Confidential information may be shared among employees within a division of state government on a need to know basis, but only between divisions in compliance with individual departmental guidelines on interagency sharing of information; or
  - c. Under FERPA (34 CFR §99.31), disclosure of confidential information without informed written parental consent may be made to:
    - i. Authorized representatives of the Controller General of the United States, the U.S. Secretary of Education, or the Department that is responsible for the administration of the Infants and Toddler Early Intervention Program when the disclosure is in connection with an audit or evaluation of the Part C program or for ensuring the program's compliance with legal mandates, and the representatives to whom the disclosure is made protect against further disclosures and destroy the information when no longer needed;
    - ii. The State Education Agency (SEA) and local school district (LEA) in accordance with *Section 19: Transition* of these policies and procedures for the required transition notification.
    - iii. Organizations conducting studies to develop, validate, or administer predictive tests; to administer financial aid programs; or to improve Part C services; and
      - 1. The study is conducted in a manner that does not permit personal identification of parents, children, or family members;
      - 2. The information is destroyed when no longer needed for the purposes of the study;
      - 3. Accrediting organizations need the information to carry out their functions; and
      - 4. The information complies with a judicial order or lawfully issued subpoena and a reasonable effort has been made by the disclosure to notify the parents in advance of compliance.
    - iv. The eligible infant's or toddler's parent.
2. Each time a disclosure is made in circumstances noted above in (H)(1) of this policy:
- a. The parent must be informed of that disclosure as soon as possible;

- b. The disclosure must be recorded in the child’s early intervention record and include the name of the party to whom the information was disclosed, the date of disclosure, and the purpose of disclosure; and
    - c. Upon parental request, provide the parent with a copy of the record that was disclosed.
  - 3. The Birth to Three Early Intervention Program shall ensure that the parent shall receive information through a meeting or written correspondence to explain to the parent how their failure to consent for disclosure of information affects the ability of their child to receive services under Part C of IDEA, provided that those procedures do not override a parent’s right to refuse consent under 34 CFR 303.420 and (J)(3)(a)-(b) of this policy.
- I. Destruction of information as defined in *Section 1: Definitions* of these policies and procedures:
  - 1. The participating agency that maintains the child’s record shall inform a parent when personally identifiable information that is collected, maintained, or used is no longer needed to provide services to the child.
  - 2. The personally identifiable information defined in (I)(1) of this Section shall be destroyed at the request of the parents. However, a permanent record of the following may be maintained without time limitation:
    - a. A child’s name;
    - b. Child’s date of birth;
    - c. Parent contact information, including address and phone number;
    - d. Names of family service coordinator(s) and early intervention service provider(s); and
    - e. Exit data, including year and age upon exit and any programs entered into upon exiting.

J. Parental Consent:

- 1. Informed written parental consent shall be obtained before:
  - a. All evaluations and assessments of a child;
  - b. Early intervention services are provided to a child or family;
  - c. Public benefits or insurance, or private insurance, is used if such informed written parental consent is required as defined in *Section 6: System of Payments* of these policies and procedures; or
  - d. The disclosure of personally identifiable information consistent with *Section 20(A)* of this policy.
- 2. The Department of Health and Social Services may not use the due process hearing procedures in *Section 21: Dispute Resolution (D)* of these policies

and procedures to challenge a parent's refusal to provide any written parental consent that is required under (J)(1) of this policy.

3. The parents of an infant or toddler with a disability:
  - a. Determine whether he/she, their infant or toddler with a disability, or other family members will accept or decline any early intervention service at any time, in accordance with state law, and
  - b. May decline a service after first accepting it, without jeopardizing other early intervention services.
4. If a parent refuses to provide written parental consent under any circumstance that requires informed written parental consent, the Birth to Three Early Intervention Program shall ensure that the parent shall receive information through a meeting or written correspondence to explain to the parent how their failure to consent affects the ability of their child to receive services under Part C of IDEA, provided that those procedures do not override a parent's right to refuse consent under 34 CFR 303.420 and (J)(3)(a)-(b) of this policy.

K. Prior Written Notice:

1. Prior written notice shall be provided to a parent a reasonable time before the participating agency or early intervention service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler or their family, and:
  - a. Participating agencies shall maintain a copy of the notice and documentation of notification in the child's early intervention record.
  - b. The content of the prior written notice must be in sufficient detail to inform the parents about the:
    - i. Action that is being proposed or refused;
    - ii. Reasons for proposing or refusing the action; and
    - iii. All procedural safeguards available under the Part C statute and regulations, and these policies and procedures, including a description of mediation, how to file a complaint, and a request for a due process hearing and any timelines under those procedures.
  - c. The notice shall be:
    - i. Written in language understandable to the general public, and
    - ii. Provided in the parent's native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.

- d. If the native language or other mode of communication of the parent is not a written language, the public agency or designated early intervention service provider shall take steps to ensure that:
  - i. The notice is translated orally, or by other means, to the parent in the parent's native language or other mode of communication;
  - ii. The parent understands the notice;
  - iii. There is written evidence that the requirements of this policy have been met; and
  - iv. If the parent is deaf, blind, unable to read, or has no written language, the information about the prior written notice must be provided in mode of communication normally used by the parent, such as sign language, Braille, or oral communication.

#### L. Educational Surrogate Parent

1. An educational surrogate parent shall be appointed by the Division of Public Health, Birth to Three Early Intervention Program, when:
  - a. No parent, as defined in *Section 1: Definitions* of these policies and procedures, can be identified;
  - b. The whereabouts of a parent cannot be discovered after reasonable efforts;
  - c. Custody has been awarded to the Department of Services for Children, Youth, and their Families or other state agency by the Family Court; or
  - d. The rights of the natural parents have been terminated by Family Court, no guardian has been appointed, and the infant/toddler has not been adopted and is considered a ward of the state, as defined in *Section 1: Definitions* of these policies and procedures.
2. The Birth to Three Early Intervention Program has the responsibility to maintain a list of approved educational surrogate parents and shall make the selection of an individual to act as an educational surrogate for the parent through the following process:
  - a. Determine whether a child needs an educational surrogate parent;
  - b. Review the referral form and select an educational surrogate based on the following criteria of a person who:
    - i. Is not an employee of the Department of Health and Social Services (DHSS) or any other public agency or early intervention service provider that provides early intervention services, education, care, or other services to the child or any family member of the child;

- ii. Has no interest that conflicts with the interests of the child he/she represents; and
  - iii. Has knowledge and skills that ensure adequate representation of the child.
- c. Assign an educational surrogate parent within 30 days after the determination that a child needs an educational surrogate parent; and
- d. If the child is a ward of the state, a judge who is overseeing the infant or toddler's case may appoint an educational surrogate parent provided they meet the requirements in (L)(2)(b)(i)-(iii) of this policy.
- e. In implementing the provisions under this section for children who are wards of the State or who are placed in foster care, the Birth to Three Early Intervention Program must consult with the public agency that has been assigned care of the child.
- f. The educational surrogate parent has all the rights of a natural or adoptive parent as they pertain to Part C and shall represent a child in all matters relating to:
  - i. Multidisciplinary evaluation and assessment of the child;
  - ii. The development, implementation, annual evaluation, and review of the IFSP;
  - iii. The informed written parental consent for and initial and ongoing provision of early intervention services; and
  - iv. Any other rights under Part C.
- g. A person, who otherwise qualifies as an educational surrogate parent, shall not be considered an employee of a public agency solely because he/she is paid by a public agency to serve as an educational surrogate parent.
- h. An educational surrogate parent shall be reimbursed by the Birth to Three Early Intervention Program for all reasonable and necessary expenditures incurred in pursuit of their educational surrogate parent duties, including, but not limited to:
  - i. Mileage for attendance at meetings concerning the infant or toddler;
  - ii. Long-distance telephone calls concerning the child's services; and
  - iii. Photocopying of the child's records.

## Procedures

PR-A. All agencies and/or early intervention service providers providing early intervention services, regardless of funding source, are required to abide by these safeguard policies and procedures.

- PR-B. The family service coordinator is responsible for ensuring that parents are informed of their rights that are defined in this policy.
- PR-C. The family service coordinator maintains the infant's or toddler's entire record and ensures that all required documentation/information is included in the record.
- PR-D. The state-approved *Prior Written Notice* form shall be used in accordance with (K) of this policy and the parent should also be informed of those actions to ensure that they are fully informed of their rights.
- PR-E. Efforts to accomplish the requirement to provide prior written notice in native language shall include, but shall not be limited to:
1. Use of a comprehensive translator search that may range beyond the geographic area served by the agency or early intervention service provider, and
  2. Inquiries to the Birth to Three Early Intervention Program that shall maintain a resource list of translators.
- PR-F. Consistent with *Section 20(A)* of this policy, informed written parental consent prior to disclosure or use of information in the record is not required by the employees within the participating agency that is providing the early intervention services on a need-to-know basis in order to provide early intervention supports and services.
- PR-G. When gaining informed written parental consent, family service coordinators shall inform parents of their rights and their right to refuse to provide such authority, and notification of that right appears on the written release form.
- PR-H. Family service coordinators are required to use the state-approved *Consent for Release of Information* form that:
1. Lists those from whom the information may be sought and specifies what types of information may be sought from each party;
  2. Limits the confidential information that shall be shared to any personally identifiable data, information, and records collected or maintained for the purposes of participation in the Birth to Three Early Intervention Program;
  3. Allows the parent the opportunity to limit the information that might be released and the parties from whom information may be released;
  4. Includes a statement that the release may be revoked at any time by the parent; and
  5. The release is limited to one year or until the development or review of the IFSP, whichever comes first.
- PR-I. Only one parent with legal rights needs to provide informed written parental consent. In situations where both parents have legal rights and disagree, you will be asked to work together to try to reach an agreement. If that is not possible, the Birth to Three Early Intervention Program and/or the Birth to Three Early

Intervention Regional Program may not proceed until a Court or other legal entity decides which parent has the authority to make decisions.

PR-J. Each disclosure of confidential information pursuant to a release shall be recorded in a child's record.

PR-K. Parents may be asked to give informed written parental consent to the Department of Public Health for the specific release for any disclosure of sensitive information that includes, but is not limited to, information pertaining to sexual or physical abuse, mental health treatment, HIV status, or a child's parentage.

PR-L. In accordance with (I) in this policy, when the parent requests that information be destroyed, the family service coordinator serving the family, or in the case of a complaint, the Part C Coordinator, should remind the parent that the records may be needed by the child or parent for social security, health, or other purposes.

PR-M. Assignment of an Educational Surrogate Parent

1. It is unlikely that very many infants or toddlers will have a parent who cannot be located because of the broad definition of parent in *Section 1: Definitions* of these policies and procedures. Before assigning an educational surrogate parent, the service coordination shall take reasonable efforts to try to contact a parent through telephone calls, letters, certified letter with return receipt requested, or visits to the parents' last known address.
2. An educational surrogate parent may be appointed by voluntary informed written parental consent to the appointment by the parent which is revocable at any time by the parent with written notice to the Birth to Three Part C Coordinator.

PR-N. An educational surrogate may be replaced only when:

1. He/she wishes to relinquish educational surrogate responsibilities or
2. The Birth to Three Early Intervention Program determines that the appointment will be terminated based on the material failure of the educational surrogate parent to discharge his/her duties or maintain confidentiality.

PR-O. Training and technical assistance for educational surrogate parents includes the following:

1. An educational surrogate parent for early intervention shall complete the state-approved training for educational surrogate parents and
2. The Birth to Three Early Intervention Program provides or arranges for follow-up training and assistance in order to support educational surrogate parents to perform their duties when necessary or upon request.

## **Guidance and Related Documents**

*Guide to Parent Rights*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/2021parentrights.pdf>



## Section 21: DISPUTE RESOLUTION

### **Policy Name:**

21. Dispute Resolution

### **Authority:**

Federal: 20 U.S.C §1435(a) (13), and §1439; 34 CFR §§303.430-438

State: Delaware Code Title 16, Chapter 2, Subchapter II, §213(7)(d)

### **Office:**

Department of Health and Social Services, Birth to Three Early Intervention Program

### **Last Review Date:**

Revised 2020

### **OSEP Approval Date:**

August 17, 2021

### **Effective Date:**

January 3, 2022

### **Purpose**

To define the written policy and procedures for the state complaint procedures, use of mediation, and the process for the timely resolution of complaints and due process hearings.

### **Policies**

- A. Each family service coordinator is responsible for informing parents of the dispute resolution options and assuring parent rights related to each option.
- B. State complaint process:
  1. The Birth to Three Early Intervention Program and other participating agencies and early intervention service providers shall ensure that state procedures for filing a complaint are widely disseminated to parents and other interested individuals, including parent training centers, protection and advocacy agencies, and other appropriate entities.
  2. A signed, written state complaint filed by an organization or an individual to the Part C Coordinator shall be resolved no later than 60 days from the date the complaint was received.
  3. The procedures include:
    - a. If a parent or other individual or organization calls the Part C Coordinator to register a complaint, the Part C Coordinator will, if necessary, assist the individual or organization in creating a written

complaint, but the complaint must be finalized in a signed written complaint to the Part C Coordinator at the Birth to Three Early Intervention Program, 410 Federal St, Suite #7, Dover, DE 19901.

- b. The state complaint shall include:
    - i. The allegations to be investigated, including a statement that the lead agency, public agency, or early intervention service provider has violated a requirement of Part C policies or procedures;
    - ii. The facts on which the complaint is based;
    - iii. The signature and contact information for the complainant and, if alleging violations with respect to a specific child, the name and address of the residence of the infant or toddler;
    - iv. The name of the early intervention service provider serving the infant or toddler;
    - v. A description of the nature of the problem regarding the child, including facts relating to the problem; and
    - vi. A proposed resolution of the problem to the extent known.
  - c. An alleged violation shall have occurred not more than one year before the date that the complaint is received by the Part C Coordinator.
  - d. The party filing the complaint shall forward a copy of the complaint to the lead agency, public agency, or early intervention service provider serving the child at the same time the party files the complaint with the Part C Coordinator.
4. A state complaint shall be reviewed and resolved by the Part C Coordinator within 60 days after a complaint is filed under this process in order to:
- a. Carry out an independent on-site investigation if the Part C Coordinator determines that such an investigation is necessary;
  - b. Provide the complainant with the opportunity to submit additional information, either orally or in writing, about the allegation(s) included in the complaint;
  - c. Provide the lead agency, public agency, or early intervention service provider with an opportunity to respond to the complaint, including a proposal to resolve the complaint;
  - d. Provide an opportunity for the parent who has filed a complaint and for the lead agency, public agency, or early intervention service provider to voluntarily engage in mediation;
  - e. Review all relevant information and make an independent determination as to whether the agency is violating a requirement under these policies and procedures; and

- f. Issue a written decision to the complainant within 60 calendar days that addresses each allegation within the complaint and contains the following:
      - i. Findings of fact and conclusions, and
      - ii. Reasons for the final decision made by the Part C Coordinator.
    - g. An extension of the 60-day timeline may be granted only if:
      - i. Exceptional circumstances exist with respect to a particular complaint, or
      - ii. The parent, individual, or organization and the lead agency, public agency, or early intervention services provider involved agree to extend the time to engage in mediation, in accordance with (C) of this policy.
  - 5. In resolving a complaint in which there is a finding of a failure to provide appropriate early intervention services to an eligible infant or toddler, the Birth to Three Early Intervention Program shall address:
    - a. The failure to provide appropriate services, including corrective actions appropriate to address the needs of the of the infant or toddler who is the subject of the complaint and his or her family (such as compensatory services or monetary reimbursement), and
    - b. Appropriate future provision of early intervention services for all eligible infants and toddlers and families.
  - 6. If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the following shall apply:
    - a. Any part of the complaint that is being addressed in the due process hearing procedures as defined in *Section 21(D)* of this policy must be set aside until the conclusion of the hearing.
    - b. Any issue of the complaint that is not a part of the due process hearing procedures must be resolved within 60 days using the complaint procedures described in *Section 21(B)* of this policy.
    - c. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the Part C Coordinator must inform the complainant of such.
    - d. The complaint alleging that a public agency or private early intervention service provider failed to implement a due process decision must be resolved by the Part C Coordinator.

### C. Mediation:

1. Any party may request mediation to resolve a complaint or dispute about the early intervention system, including matters arising prior to the filing of a due process complaint.
2. The procedures include:
  - a. A process that is voluntary on the part of the parties;
  - b. Is not used to deny or delay a parent's right to a due process hearing or any other rights under Part C of IDEA;
  - c. Is conducted by a qualified and impartial mediator who is knowledgeable in laws and regulations relating to the provision of early intervention services and effective mediation techniques; and
  - d. Is appointed by the Part C Coordinator within 10 working days.
3. The Birth to Three Early Intervention Program maintains a list of individuals who are qualified mediators who are selected at random, on an impartial basis, and who:
  - a. May not be an employee of the Department of Health and Social Services (DHSS) or another other provider who is delivering early intervention or other services to the infant or toddler;
  - b. Must not have a personal or professional interest that conflicts with the person's objectivity; and
  - c. Is not considered an employee of DHSS solely because he or she is paid by the Birth to Three Early Intervention Program to serve as a mediator.
4. The Birth to Three Early Intervention Program bears the cost of the mediation process, including the costs of mediation meetings.
5. If the parent wants to meet with a disinterested party, such as a parent training and information center or community parent resource center in the state, to discuss the benefits of engaging in mediation, the Part C Coordinator may make arrangements for such a meeting to occur at a time and location convenient to the parent.
6. Each mediation session shall be scheduled in a timely manner and held in a location that is convenient to the parties involved in the dispute.
7. If the dispute is resolved through mediation, the parties must execute a legally binding agreement that sets forth that resolution and that:
  - a. All discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and
  - b. Is signed by both the parent and a representative of Birth to Three Early Intervention Program who has the appropriate authority.

8. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a United States district court.

D. Due Process Hearing:

1. Parents may initiate the due process hearing process on any matter that is related to the proposal or refusal relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family, by filing a written request for a due process hearing with the Part C Coordinator.
2. Parents shall be offered assistance by the Part C Coordinator in filing the request for a due process hearing.
3. The Part C Coordinator shall respond within seven days of receiving the request for a due process hearing by:
  - a. Notifying the parents of low-cost legal advocacy services;
  - b. Notifying parents of their rights related to the hearing process;
  - c. Notifying parents of the option of mediation, including a description of the mediation process and its voluntary nature; and
  - d. Appointing an impartial hearing officer.
4. An impartial due process hearing officer shall be appointed to implement the due process procedures described in *Section 21(D)* and who:
  - a. Is not an employee of the lead agency or a provider involved in the provision of early intervention services or care of the child;
  - b. Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process; and
  - c. Is not an employee of an agency solely because the person is paid by the agency to implement the due process proceeding.
5. The due process hearing officer shall:
  - a. Have knowledge about the provisions of Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families;
  - b. Listen to the presentation of relevant viewpoints about a complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the due process complaint; and
  - c. Provide a written or electronic record of the proceedings, including a written decision.
6. During the pendency of any proceeding involving a due process hearing, unless the Birth to Three Early Intervention Program and the parent of the child otherwise agree:

- a. An infant or toddler must continue to receive the appropriate early intervention services in the setting identified in the Individualized Family Service Plan that is consented to by the parents.
  - b. If the due process hearing involves an application for initial early intervention services, the infant or toddler must receive those services that are not in dispute.
7. During a due process hearing a parent has the right to:
- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services, at the parent's expense;
  - b. Present evidence and confront, cross-examine, and compel the attendance of witnesses that are either employed by or under contract with the early intervention agency or early intervention service provider;
  - c. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to a parent at least five days before the proceeding;
  - d. Obtain a written or electronic verbatim transcription of the proceeding; and
  - e. Receive a written copy of the findings of fact and decisions at no cost to the parent.
8. Any proceeding for implementing the due process hearing shall be carried out at a time and place that is reasonably convenient to the parent.
9. No later than 30 days after receipt of a parent's written request for a due process hearing, the proceeding shall be completed and a written decision mailed to each of the parties.
10. A hearing officer may grant specific extensions of time beyond the period set out in (D)(9) at the request of either party.
- E. Any party aggrieved by the findings and decision of the formal due process hearing may challenge the decision by bringing a civil action in state court within 30 days of the decision or in federal court where there is no time limit.

## **Procedures**

PR-A. Family service coordinators may use the Center for Appropriate Dispute Resolution in Special Education (CADRE) [Dispute Resolution Comparison Chart](#) to assist them in explaining the options that are available for parents.

PR-B. During a complaint investigation, the Part C Coordinator or designated staff shall:

- 1. Carry out an on-site or virtual investigation;
- 2. Provide the parties involved the opportunity to respond to the complaint; and

3. Develop a proposal to resolve the complaint.

### **Guidance and Related Documents**

*Guide to Parent Rights*

<https://dhss.delaware.gov/dhss/dph/birthtothree/files/2021parentrights.pdf>



**DELAWARE HEALTH AND SOCIAL SERVICES**  
**Division of Public Health**  
**Birth to Three Early Intervention Program**