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ABSTRACT

Directed to the state lead agency directors, the memorandum from the Office of Special Education Programs answers questions concerning implementation of Part H of the EHA, Education of the Handicapped Act, the Early Intervention Program for Infants and Toddlers with Handicaps. The following questions are addressed: (1) Can a child who is counted under the Chapter 1--Handicapped Program (commonly known as P.L. 89-313) also benefit from Part H funds? (2) If a state agency uses 89-313 funds to provide early intervention services to infants and toddlers, may the agency charge parents for the services if state law establishes a sliding fee schedule? (3) Since Part H and Part B both include "child find" and evaluation provisions, can a state charge for these activities? (4) Can funds under the new Preschool Grants program (Section 619 of the EHA, as amended by P.L. 99-457) be used for services to infants and toddlers? (5) Can carryover funds under the old Preschool Incentive Grant program (Section 619 of the EHA, as amended by P.L. 98-199) continue to be used for services to children aged birth through 2? (6) Can Part H funds be used to pay for specific services that were previously provided under the old Preschool Incentive Grant program? (7) Can a state use its Part B funds to pay for services to handicapped children aged birth through 2? (8) By what data must states spend their first year funds under Part H? (9) Can Part H funds be used after the grant period ends--for either services or equipment? (10) What state agency is responsible for providing data required under Part H and Part B (Section 618) of the EHA concerning infants and toddlers? (11) How many members can be on the State Interagency Coordinating Council? (DB)

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OSEP-88-4

OSEP MEMORANDUM

TO : State Lead Agency Directors of Part H of the Education of the
Handicapped Act (EHA)

FROM : G. Thomas Bellamy, Ph.D. *G. Thomas Bellamy*
Director, Office of Special Education Programs (OSEP)

SUBJECT: Questions About the Part H Program

Over the past few months, we have received a number of questions concerning the implementation of Part H of the EHA -- Early Intervention Program for Infants and Toddlers with Handicaps. These questions have come from a variety of sources, including written comments from the "Partners in Progress" conference that many of you attended, and a document prepared by the National Association of State Directors of Special Education.

Because Part H is a new and complex program, development of responses to questions about the program will be an evolving process that requires a variety of methods of dissemination. Some questions will be answered through publication of the Part H regulations. */

Certain other questions will be addressed through a series of OSEP memoranda that will be periodically disseminated. This memorandum (OSEP 88-4) is the first in that series. It includes brief responses to eleven implementation and policy questions that we are able to address at this time. Some future OSEP memoranda may continue to include brief responses to questions under a variety of topics, while others may focus on a single major issue(s).

In addition to publishing the Part H regulations and disseminating a series of OSEP memoranda, we also will continue to try to respond directly (by phone, letter, or electronic mail) to any State-specific questions that are raised.

We hope that you will find the responses in this memorandum to be helpful in implementing the Part H program in your State.

*/ The Notice of Proposed Rulemaking (NPRM) for Part H was published in the FEDERAL REGISTER on November 18. Final regulations will be published following the 60 day public comment period.

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A. COORDINATION WITH OTHER STATE-FEDERAL PROGRAMS

1. Can a child who is counted under the Chapter 1--Handicapped Program (commonly known as P.L. 89-313)* also benefit from Part H funds?

Yes. Infants and toddlers who are counted under 89-313 may receive early intervention services that are authorized and funded under Part H, but not required or otherwise being provided under 89-313. (Note: Part H funds are awarded to a State based on the general population of children aged birth through two in the State and not on a count of handicapped children served.)

2. If a State agency uses 89-313 funds to provide early intervention services to infants and toddlers, may the agency charge parents for the services if State law establishes a sliding fee schedule?

Section 672(2)(B) of the Act provides that early intervention services are services which "... are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees." Thus, Part H permits the charging of fees under certain circumstances. However, the 89-313 regulations at 34 CFR §302.50 and §302.62 require that a State provide, at no cost to parents, special education and related services to children who (1) were included in the 89-313 child count, and (2) were not included in the count, but are being served in an 89-313 program.

Therefore, if a child receives services under both 89-313 and Part H, the parents cannot be charged for those services that the State is required to provide to the child under 89-313. However, fees can be charged for services that are provided under Part H, but not required under 89-313.

3. Since Part H and Part B both include "child find" and evaluation provisions, can a State charge for these activities?

No. Under Part B, States are required to identify, locate, and evaluate all handicapped children, aged birth through 21. Therefore, States are required to ensure that (1) the child find efforts under Part B extend to infants and toddlers (aged birth through two), and (2) a comprehensive evaluation is conducted at no cost to parents.

Section 676(b)(5) of Part H provides that a State must have a comprehensive child find system that is consistent with the child find system under Part B. While Section 672(2)(B) allows the charging of fees for early intervention services under certain circumstances, it would not be permissible under Part B for a State to charge for any activity or service that is necessary to carry out child find or evaluation efforts conducted to determine eligibility for services.

* /State Operated Program for Handicapped Children, Sections 146 and 147 of Title 1 of the Elementary and Secondary Education Act (20 U.S.C. 2771 and 2772), as consolidated by Section 554(a)(2)(B) of Chapter 1 of the Education Consolidation and Improvement Act (20 U.S.C. 3803(a)(2)(B)).

USE OF FUNDS UNDER PART B, PART H AND OTHER SOURCES
FOR EARLY INTERVENTION SERVICES

4. Can funds under the new Preschool Grants program (Sec. 619 of the EHA, as amended by P.L. 99-457) be used for services to infants and toddlers?

No. Under the EHA Amendments of 1983 (P.L. 98-199), States were allowed to use funds under the Preschool Incentive Grant program to provide services to children aged birth through five. However, that program -- including the extension of services to children birth through two -- was repealed by P.L. 99-457 and replaced by a new Preschool Grants program for handicapped children aged three through five. These new requirements apply to funds available in FY 1987 and subsequent fiscal years.

Although services to children below age three are not allowed under the new Preschool Grants program, States are authorized to use funds under the new program for planning and developing a Statewide delivery system for providing special education to handicapped children aged birth through five.

5. Can carryover funds under the old Preschool Incentive Grant program (Sec. 619 of the EHA, as amended by P.L. 98-199) continue to be used for services to children aged birth through two?

No. The Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.706 provide that obligations made during a carryover period are subject to current statutes and regulations. Thus, the carryover funds under the old Preschool Incentive Grants program (Sec. 619 of the EHA, as amended by P.L. 98-199) must be used to provide direct services only to handicapped children aged three through five.

Note: Technical amendments to the EHA currently pending before the Congress contain language that would allow States to use their FY 1986 carryover funds under the P.L. 98-199 amendment to Section 619 for direct services to handicapped children aged birth through two.

6. Can Part H funds be used to pay for specific services that were previously provided under the old Preschool Incentive Grant program?

Yes. A State may use its Part H funds to pay for any services to children, aged birth through two, that were funded under the P.L. 98-199 amendments to Section 619, so long as those services meet the requirements of Part H.

7. Can a State use its Part B funds to pay for services to handicapped children aged birth through two?

Yes. Since the enactment of the P.L. 94-142 amendments to Part B, some States -- especially those with mandates from birth -- have used their Part B funds to provide special education and related services to infants and toddlers with handicaps. However, while these children may be served under Part B, they may not be counted for purposes of generating additional Part B funds.

8. By what date must States spend their first year funds under Part H?

Under current law, first year grant funds under Part H (appropriated by Congress for fiscal year 1987 and awarded in the summer and fall of 1987) must be obligated by September 30, 1988, which is the end of the one-year carryover period.

Note: The Senate bill for the 1988 appropriations contains a provision that would extend the carryover period for first year funds to September 30, 1989.

9. Can Part H funds be used after the grant period ends -- for either services or equipment?

No. As indicated in the previous answer, funds must be obligated on or before the date specified on the grant award document (e.g. September 30, 1988 for first year funds). While all obligations must occur during the grant period, it is permissible, under certain circumstances, for equipment to be delivered, or certain contracted services or work performance to be carried out, after the grant period ends. For example, a State may make a binding written commitment by September 30, 1988 to purchase an item of equipment with its first year funds that would not be delivered until some time after the carryover period has ended.

On the other hand, an obligation for personal services by an employee of the State, or for travel, occurs when the services are performed or when the travel is taken. Therefore, these activities must be conducted within the grant period. (34 CFR §76.707 includes a table that shows when a State makes obligations for various kinds of property or services.)

STATE ADMINISTRATION OF PART H

10. What State agency is responsible for providing data required under Part H and Part B (Sec 618) of the EHA concerning infants and toddlers?

The lead agency that administers Part H in each State will be the agency responsible for collecting and reporting data on infants and toddlers, including both (a) the Part H data required in Section 676(b)(14) of the Act, and (b) the required data on early intervention services for infants and toddlers that were added to Section 618 of the Act by the EHA Amendments of 1986 (P.L. 99-457).

Prior to the enactment of P.L. 99-457, State educational agencies (SEAs) were responsible for reporting the data required by Section 618, as part of their responsibilities for administering the State grant program for the education of handicapped children under Part B of the Act. However, Section 618, as amended, now requires the Secretary to provide an annual report to the Congress containing data and information on both Part B and

Part H. Since principal responsibility for Part H in two-thirds of the States is not in SEAs, assigning data reporting responsibilities on Part H to the lead agency should help to avoid duplication of effort, and ensure that data reports are accurate and complete.

Note: In the near future, we will send a separate OSEP memorandum to you concerning the forms and procedures to be used in meeting the data reporting requirements under Part H.

11. How many members can be on the State Interagency Coordinating Council?

Section 682(a)(1) of the Act specifies that a State "shall establish a State Interagency Coordinating Council composed of 15 members." However, under paragraph (g) of that section, a State could meet the requirements of Section 682 through an existing advisory group (of more or less than 15 members) -- if that group (1) was established before September 1, 1986, and (2) is comparable to the Council described in Section 682.

Section 682(g) provides, however, that "[w]ithin 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with (section 682)."