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ABSTRACT

This memorandum provides guidance on issues raised regarding the Head Start Performance Standards for Children with Disabilities, federal regulations to ensure that young children with disabilities receive appropriate Head Start educational and related services. Extensive answers are provided to questions concerning: (1) financial responsibility for paying for needed special education and related services for children with disabilities; (2) the requirement that Head Start programs enroll eligible children without regard to the severity of the disability; (3) eligibility in cases where the formal evaluation concludes that the child does not meet the state's disability criteria but does meet Head Start disability criteria; (4) requirements concerning the training and qualifications of Head Start program staff; (5) the local education agency's responsibility to develop the Individualized Education Program; (6) the lack of relationship between the 10 percent over-income limitation and the 10 percent minimum enrollment of children with disabilities; (7) non-applicability of standards for services for infants and toddlers; (8) timelines for screening and evaluations; and (9) school-system established age cutoff dates for eligibility. (DB)

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INFORMATION MEMORANDUM

TO: Head Start Grantees and Delegate Agencies

SUBJECT: Responses to Common Questions on Head Start Services for Children With Disabilities, 45 CFR Parts 1304, 1305, and 1308

INFORMATION: The purpose of this information memorandum is to provide guidance on several issues which have been raised about the Head Start Performance Standards for Children With Disabilities (45 CFR Part 1308) which were published in the Federal Register on January 21, 1993 and which became effective February 21, 1993.

One objective of the Head Start Performance Standards on Disabilities Services is to promote cooperation, coordination, and collaboration between Head Start programs and the local education agencies (LEAs) responsible under the Individuals With Disabilities Education Act (IDEA) for assuring a free and appropriate public education for children with disabilities in their community. As Head Start grantees and LEAs have developed and/or updated their interagency agreements on serving young children with disabilities, several questions have arisen repeatedly. Brief responses to these questions are provided in the attached document. To promote communication between Head Start and educational agencies, a copy of this information memorandum will also be sent to the Chief State School Officers for dissemination to personnel in their state supporting the implementation of IDEA.

Further questions about the Head Start Performance Standards for Children with Disabilities should be directed to your Regional Office or to the American Indian or Migrant Program Branches. Grantees are also

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reminded of the availability of information from their Resource Access Projects (RAPs) on providing Head Start disabilities services, including information on the interagency agreement between Head Start and your State Education Agency.

Olivia A. Golden

Olivia A. Golden
Commissioner
Administration on Children, Youth
and Families

ATTACHMENT: **Answers to Common Questions on Head Start Performance Standards on Disabilities Services**

ANSWERS TO COMMON QUESTIONS ON HEAD START PERFORMANCE STANDARDS ON DISABILITIES SERVICES

- Q. - Who is responsible for paying for the special education and related services needed by Head Start children identified as having a disability?
- A. - The Head Start Performance Standards explain that the costs of special education or related services needed by a Head Start child with a disability may be met in several ways. The Head Start program's responsibility is to make available directly, or in cooperation with other agencies, services in accordance with an individualized education program (IEP) for enrolled children who meet the disabilities eligibility criteria. Head Start programs must assure that the services needed by children with disabilities will be provided in full by paying for these services directly or through a combination of Head Start funds and other resources. The Disabilities Services Performance Standards [1308.4(o)] describe allowable expenditures to serve children with disabilities, but do not require that Head Start programs pay for all of these services for children with disabilities.

Under the Individuals with Disabilities Education Act (IDEA), the Local Education Agencies (LEAs) are responsible for assuring the identification, evaluation and provision of a free appropriate public education for all children, including those enrolled in Head Start, found to be in need of special education and related services which are mandated in the State. An LEA must assure that special education and related services are provided, but is not responsible for providing them all directly. The IDEA stresses the role of multiple agencies and assumes that the efforts of other agencies will be maintained.

The Head Start program is one of several sources for funding special education and related services for young children with disabilities. The Head Start program's disability service plan and its interagency agreement with LEAs and other community resources should contain plans for resource and cost sharing and specify responsibilities wherever possible. It is very important that Head Start programs report the number of children receiving services under IEPs to the LEA for the LEA Child Count Report by December 1 annually [1308.4(1)(6)] so that the LEA may apply for Federal and State funds to help serve identified children.

Grantees should request from their Resource Access Projects (RAPs) sample interagency agreements with LEAs, and a copy of the statewide interagency agreement between Head Start and the State Education Agency. When a program is unable to reach an interagency agreement with an LEA it must notify the ACF Regional Office [1308.4(1)].

Q. - Are programs required to enroll any eligible Head Start child without regard to the severity of their disability?

A. - The Head Start Performance Standards [1308.5(c)] state that: "A grantee must not deny placement on the basis of a disability or its severity to any child when: (1) the parents wish to enroll the child, (2) the child meets the Head Start age and income eligibility criteria, (3) Head Start is an appropriate placement according to the child's IEP, and (4) the program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to children with disabilities."

The appropriateness of the Head Start program as a placement for a child with a disability is determined individually, based upon a child's needs as indicated in the IEP. Head Start programs cannot establish any program policy which would exclude children with a certain type or level of disability from participating in Head Start. For children with more significant disabilities, an appropriate placement in Head Start will often require collaboration with other service providers.

If the Head Start program does not believe that the provisions of a proposed IEP, including resources to be provided by the LEA and other community resources, will enable their program to serve as an appropriate placement for the child, the IEP team cannot compel the program to accept the placement. In such an event the Head Start representative(s) in the IEP meeting should clearly state the reasons for Head Start's decision, and what resources/personnel/training would be needed to enable Head Start to provide the placement. Care must be taken that such a decision is not contrary to the Performance Standards as established in Section 1308.5(c).

To establish and maintain their capacity to enroll children with more significant disabilities, Head Start programs must demonstrate efforts to remove possible barriers to enrollment, including the following listed in Section 1308.5(d):

- (1) Staff attitudes and/or apprehensions;
- (2) Inaccessibility of facilities;
- (3) Need to access additional resources to serve a specific child;
- (4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and
- (5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

- Q. - If the formal evaluation of a child suspected of having a disability indicates that the child does not meet the State's disability criteria, but the multidisciplinary team finds that the child needs special education and related services because of a disability as described in the Head Start eligibility criteria, may that child be served by Head Start as a child with a disability and would Head Start be responsible for implementing an IEP to provide special education and related services?
- A. - Yes, Head Start would consider the child as having a disability, and an IEP would need to be implemented by Head Start.

The Head Start eligibility criteria were developed to be compatible with the eligibility criteria in IDEA. Because of this basic compatibility, it is expected that the vast majority of children with disabilities served by Head Start will also be considered as having a disability when the State Education Agency's (SEA) eligibility criteria are employed. However, if the multidisciplinary assessment team determines that a child does not meet the guidelines required by the State, but meets one or more of the eligibility criteria in the Head Start Disabilities Services Performance Standards, and determines that the child needs special education or related services, then a Head Start managed IEP should be developed for this child.

In such a case, the child would not be regarded by the LEA as entitled to a free and appropriate public education (FAPE) as required by the IDEA. Head Start would assume principal responsibility for securing all needed services. In such cases Head Start will assure that an IEP, meeting the requirements in Section 1308.19, is in place. Since the Head Start program will be implementing the IEP, the program must assure that these services are, by the 1994-95 program year, provided by or under the supervision of personnel meeting State qualifications". [1308.4(k)].

If the Head Start program believes that a child was denied services because of inappropriate eligibility decision by the multidisciplinary team, then the program should assist the parents to understand and exercise their rights to request further evaluations of their child's needs.

In effect, any child meeting a State's guidelines for disability under IDEA should also be eligible under the Head Start eligibility criteria (Sections 1308.7 - 1308.17). No further evaluation to establish "Head Start" disability service eligibility is necessary. In such cases the multidisciplinary team should indicate which of the Head Start eligibility criteria apply. This will assist the grantee in its completion of the Program Information Report (PIR).

- Q. - Do the Disabilities Services Performance Standards require that, by the 1994-1995 program year, Head Start programs must employ staff who meet State standards for serving children with disabilities?**
- A. - Section 1308.4(k) states that the "grantees must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994-1995 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994-95 program year."**

For children who are being served under an IEP developed by an LEA, the LEA has the responsibility under IDEA to assure that the IEP is delivered by personnel who meet the standards required by the State. The LEA should work with the Head Start program to provide arrangements whereby such service and supervision can be provided for children receiving their special education and related services in a Head Start placement.

However, as noted in the response to the previous question, when Head Start develops and manages an IEP for a child who has not been recognized by the LEA as having a disability, then Head Start has the responsibility for assuring these special education and related services are provided by or under the supervision of personnel meeting State qualifications.

Head Start's employment of staff (full-time, part-time, or consultants) who meet the State requirements for providing and supervising special education and related services is an allowable expense, and must be considered in developing the disabilities service plan and project budget. A Head Start program will need to consider the resources available in its community, program commitments in interagency agreements with the LEAs, and its experiences in serving children with disabilities, to propose staffing which will enable the program to have the core capacity needed to serve children with disabilities in accordance with the Performance Standards.

Programs can contact their RAP to acquire information on their state's requirements for personnel serving preschool children with disabilities. They should also discuss their needs for staff in-service training with the RAPS, and become aware of low-cost or free training provided by SEAs, LEAs, community colleges and other agencies to prepare personnel to better serve young children with disabilities and their families.

- Q. - Section 1308.19 "Developing Individualized Education Programs," describes requirements for Head Start when it develops the IEP. Are there guidelines for determining when Head Start is responsible for developing the IEP?**
- A. - For the majority of children with disabilities served in Head Start, it is anticipated that the LEA will be responsible for developing the IEP. The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, and the LEA becomes responsible for initiating the eligibility determination process upon receiving this referral. For children identified through this process, the LEA would be responsible for assuring a free and appropriate public education (FAPE) and should be expected to develop the IEP, although Head Start should play a prominent role in the IEP process and in delivering services for these children.**

Every child receiving services in Head Start who has been evaluated, found to have a disability, and is in need of special education must have an IEP before special education and related services are provided, to ensure that comprehensive information is used to develop the child's program [1308.19(b)]. Head Start must develop an IEP when the LEA does not, as in the two situations described below:

- 1) When the multidisciplinary assessment team determines that a Head Start eligible child does not meet the disability criteria required by the State, but meets one or more of the eligibility criteria in the Head Start Disabilities Services Performance Standards, and needs special education or related services, then a Head Start managed IEP team may propose a special education program for this child.
- 2) If the LEA does not meet timelines, or if it indicates it does not have the time or resources to secure needed services for Head Start eligible children with disabilities, the Head Start program should intervene to secure needed assessments/services for Head Start children in a timely manner. The program should inform the LEA that it is taking these steps and develop an IEP and implement it as soon as possible.

The LEA should not unilaterally decide that a child with a disability is best served by Head Start alone, and then decline to participate in implementing the IEP or supporting its implementation.

When persistent problems occur in obtaining timely and appropriate services for children with disabilities from an LEA, and the situation cannot be resolved locally, then the ACF Regional Office should be informed; a report of concerns to the SEA may also be appropriate.

Q. - Is there any inter-relationship between the 10% over-income limitation and the mandate to have at least 10% of enrollment opportunities available for children with disabilities.

A. - No. These are two separate requirements which do not affect each other. The Head Start Rule on Recruitment, Selection and Enrollment (Section 1305) requires a program to have a formal process for selection which must include adherence to the requirement that 10 percent of the enrollment opportunities be made available to children with disabilities. At least 90 percent of children in Head Start program must meet Head Start income eligibility guidelines. Children with disabilities whose families are over-income are counted against the 10 percent limitation on over-income children.

If a program has 10 percent of its enrollment slots already occupied by children from over-income families, then an over-income child with disabilities could not be enrolled in the program, since to do so the grantee would exceed the 10 percent limitation on services to over-income children.

However, it should be noted that the above circumstance should be unusual if grantees have a recruitment plan in place which actively recruits income-eligible children with previously diagnosed disabilities. This recruitment plan should include deliberate efforts to recruit children from income-eligible families transitioning from Part H programs serving infants and toddlers (ages birth to 2) with disabilities.

Grantees can get an exemption from the requirement to set aside 10 percent of their enrollment opportunities for children with disabilities only if their ACF Regional Office project officer "determines, based on such supporting evidence as he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Programs (IEP)".

Q. - Do the Head Start Performance Standards on Disabilities Services apply to services for infants and toddlers, ages 0-2 years?

A. - No. "This rule sets forth the requirements for providing special services for 3 through 5-year old children with disabilities enrolled in Head Start programs" (Section 1308.1). It is expected that separate Head Start Performance Standards on services to infant and toddler will be published in 1994.

However, all Head Start programs, including Parent and Child Centers (PCCs), must comply with Section 1305.6(c) which requires that "At least ten percent of the total number of enrollment opportunities in each grantee and delegate agency during an enrollment year must be made available to children with disabilities". Head Start programs serving infants and toddlers should coordinate activities with the State lead agency, and its local agencies, responsible for implementing Part H of IDEA, which addresses early intervention services for infants and toddlers. For more information on Part H programs in their State programs should contact their RAP.

Many sections of the Head Start Disabilities Services Performance Standards are relevant to services to infants and toddlers. In addition, PCC programs are encouraged to be familiar with these standards since their programs will support the transition of many infants and toddlers with disabilities, and their families, into Head Start programs.

Q. - What are the timelines for implementing screening, evaluations, and IEP processes?

A. - Head Start programs "must provide for the health and developmental screening of all Head Start children by 45 calendar days after the start of program services in the fall, or for children who enroll after program services have begun, by 45 calendar days after the child enters the program. This does not preclude starting screening in the spring before program services begin in the fall" (1308.6.b.1).

The disabilities coordinator must refer a child to the LEA for evaluation "as soon as the need is evident". State Education Agencies (SEA's) establish timelines for the steps from referral, to evaluations, to the IEP meeting, to placement/services. Head Start programs should strive to follow the guidelines for their State. This will support Head Start/LEA partnerships which can meet State requirements for serving children with disabilities.

Section 1308.19(i) requires that a "meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon as possible after the development of the IEP." Section 1308.19(l) requires that "If a child enters Head Start with an IEP completed within two months prior to entry, services must begin within the first two weeks of program attendance".

The interagency agreement between Head Start and an LEA should specify any timelines for steps in the assessment/IEP process. If the LEA does not meet timelines, or if it indicates it does not have the staff or other resources to secure needed services for Head Start eligible children with disabilities, the Head Start program should intervene to secure needed assessments/services for Head Start children in a timely manner. The Head Start program should inform the LEA that it is taking these steps, and then develop an IEP and implement it as soon as possible.

Such action taken by Head Start to provide timely services would not absolve the LEA of its responsibilities under IDEA to assure a free and appropriate public education for children with disabilities. Parents should be informed of their rights to register any complaint about delays or failure to receive due process. When delays or non-cooperation are a problem, and discussions with the LEA are not productive, the grantee should notify its ACF Regional Office; in cases which cannot be resolved, it may be appropriate to file a complaint with the SEA.

Q. - If a Head Start eligible child with disabilities is three years of age, and is therefore eligible for special education and related services under IDEA, may the Head Start program enroll that child if his/her third birthday does not occur by the cutoff date which the school system uses to determine eligibility for its regular public school program?

A. - For their regular educational programs, LEAs establish a cutoff date by which a child must reach the age of school attendance to be age-eligible for enrollment. However, the Individuals with Disabilities Education Act (IDEA) requires that for children with disabilities requiring special education or related services (as determined by a multidisciplinary team), the LEA must assure a free and appropriate public education beginning with that child's third birthday. Since the LEA is obligated to assure special education for children with disabilities upon their third birthday, their eligibility for public education begins on that date.

Therefore, these children should be considered age-eligible for Head Start as of their third birthday. This is consistent with Section 1305.4(a) which states: "to be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located". Therefore, children who are three years of age upon entry into the program, or will be three by the school cutoff date, may be enrolled in Head Start. To enroll children in this situation, the Head Start program should acquire the evaluation team's findings which indicate that this child has a disability for which special education/related services are needed.

The following is an example:

Marcus will be three years of age on August 5. His local school system has established July 1 as the date by which children must be 5 years of age to be eligible for kindergarten in the subsequent school year. The local Head Start has customarily accepted three year olds into its program only if they were three by July 1. Marcus does not meet this requirement. However, since the LEA has determined that Marcus does have a disability requiring special education, when he is three years of age, Marcus is eligible for public education under IDEA. Since the LEA must regard Marcus as eligible for public education, Marcus should be regarded as age-eligible for Head Start. His selection and enrollment in the Head Start program would of course be contingent upon determination of his family's income eligibility, the application of the program's selection process consistent with Section 1305.6, and the completion of an Individualized Education Program (IEP) which indicates that Head Start would be an appropriate placement for him.

For children who will turn three after the beginning of the program year, and after the cutoff date for the school system, the Head Start program may make enrollment available to that child when the child reaches three years of age and that placement is appropriate according to the child's IEP.

The disabilities services plan must address strategies for the transition of children from programs serving infants and toddlers into Head Start. Amendments to IDEA require that a transition conference to plan for transition to a preschool program occurs at least 90 days before the child's third birthday. Head Start program should attempt to participate in these meetings for Head Start eligible children, and take an active role in helping families and other programs consider Head Start placement for children with disabilities entering preschool.