

IDEA Part C and Part B Memorandum of Understanding (MOU) on Early Childhood Transition

Effective Date: October 1, 2021

Overview

Transitions are times of change or modification in services or personnel for toddlers and families. A significant transition occurs when a toddler reaches age three and the toddler and family are no longer eligible for early intervention services under the Birth to Three Early Intervention Program. Upon reaching age three, a toddler may be eligible for services through their local school district. Planning for transition is an ongoing interagency process that explores options and provides information, support, and linkages to new situations and services. Joint planning between agencies is necessary to ensure a smooth and effective transition for toddlers and their families.

Effective Date, Review, Revision, and Termination of the MOU

This MOU between the Department of Health and Social Services (DHSS) and the Department of Education (DOE) shall be effective October 1, 2021 upon signature of the Secretary of Health and Social Services, or designee, and the Secretary of Education, or designee. Once in effect, this MOU replaces all previous transition agreements and MOUs between the two agencies, with the exception of the 2020 MOU delineating the roles and responsibilities of the DOE Early Childhood Transition Coordinators, which shall remain in effect.

The two departments shall review this MOU once every two years to determine if any changes are needed to ensure the smooth transition of toddlers with disabilities from:

1. Early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA) and Title 16 of Delaware Code; to
2. Special education and related services under Part B of the IDEA and Title 14 of the Delaware Administrative Code.

This MOU will terminate on September 30, 2026. In addition, either Department may terminate this MOU upon 60 days written notice to the other Department. Such termination of this MOU shall not in any manner diminish:

1. The responsibilities of DHSS under the IDEA Part C regulations related to:
 - a. Transition under 34 CFR §303.209 and transition content of the Individualized Family Service Plan (IFSP) under 34 CFR §303.344(h); and
 - b. Any other requirements under Part C.
2. The responsibilities of DOE and school districts under the IDEA Part B regulations related to:
 - a. Transition under 34 CFR §300.124;
 - b. Timely evaluation and determination of eligibility for special education and related services;
 - c. The timely development of an individualized education program (IEP);
 - d. The provision of a free appropriate public education to eligible children with disabilities; and

- e. Any other relevant requirements under Part B of the IDEA or Title 14 of the Delaware Administrative Code.

Responsibilities of the Birth to Three Early Intervention Program, DHSS, Division of Public Health

Discussions about transition from the early intervention program will begin when the child enters the program and continues throughout the duration of their participation with the Birth to Three Early Intervention Program. Conversations about transition will occur at the initial intake and continue at each IFSP meeting, IFSP reviews, and annual IFSP meetings.

The Birth to Three Early Intervention Program family service coordinators (FSCs) will:

1. Orient the family to the concept of transition, the transition process, and possible community resources for when the child turns three;
2. Assist the family to review the child's program options that will be available at age three and share information about a variety of community partners, including Head Start, childcare centers, private preschool, community groups, or school district preschool, etc.; with options varying depending upon child's age, geographic location, unique priorities, resources, and concerns of the child and family.;
3. Together with the parents and other IFSP team members, develop a transition plan as part of the IFSP that includes the steps and services to ensure a smooth transition to school district preschool special education or other community services as appropriate. The transition plan must, for all toddlers receiving Part C services, be developed as part of the IFSP at least 90 days prior to the third birthday and, at the discretion of the parent and Birth to Three Program, up to nine months prior to the third birthday (34 CFR §§303.209(d) and 303.344(h));
4. If a toddler may be eligible to receive preschool special education services¹, notify the DOE and the school district in which the child resides that the toddler will reach the age of eligibility for preschool special education services. This notification must be provided at least 90 days prior to the third birthday (34 CFR §303.209(b);
5. For a toddler who is potentially eligible to receive preschool special education services (see footnote 1), with parent approval, schedule and facilitate a transition conference that meets the participant requirements of 34 CFR §303.343(a) and includes a representative of the school district (34 CFR §303.209(c)(1)); and
6. For a toddler who is not potentially eligible to receive preschool special education services as defined by the state (see Footnote 1), with parent approval, make reasonable efforts to convene a conference that includes the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive ((34 CFR §303.209(c)(2)).

Responsibilities of the School District

Once the school district is notified that a toddler is potentially eligible (a toddler with an open IFSP) for the Part B program, the school district representative will:

¹ Delaware's definition of a toddler with a disability who is potentially eligible for Part B preschool special education services (or may be eligible to receive Part B preschool special education services) is any child whose eligibility for Part C early intervention services has been determined, is over 26 months old and has an active IFSP. A toddler is considered not to be potentially eligible for preschool special education services only if the school district has, before the third birthday and based on evaluation, determined that the toddler is not eligible to receive preschool special education services.

1. Participate in the transition conference and provide parents at the conference with information about the school district eligibility process and potential early childhood special education and related services (34 CFR §300.124(c);
2. Provide Procedural Safeguards to the family about Part B when notification is received;
3. Review existing early intervention information to identify if additional data are needed to determine whether the toddler is eligible for the Part B program;
4. Provide prior written notice regarding the school district's proposal or refusal to conduct an initial evaluation to determine Part B eligibility;
5. If the school district proposes to conduct an initial evaluation, obtain informed written consent from the parent to conduct the initial Part B evaluation;
6. With written parental consent, conduct the initial evaluation and determine eligibility within state timelines, which require that the initial evaluation be completed, and eligibility determined within 45 school days or 90 calendar days (whichever is sooner) from the date on which the parent provided informed written consent to the initial Part B evaluation;
7. Provide prior written notice to the parents of the school district's proposal or refusal to identify the child as a toddler with a disability who is eligible to receive special education and related service;
8. If the toddler has been determined to be eligible to receive special education and related services, invite the Birth to Three Early Intervention Program FSC to the IEP meeting, if the parent requests, to assist with the smooth transition of services;
9. Conduct the IEP meeting and develop the IEP;
10. Provide prior written notice of the school district's proposal to provide early childhood special education and related services, as set forth in the IEP; and
11. Obtain written parental consent to the proposed early childhood special education and related services and have the IEP in effect by the toddler's third birthday. For children who turn three after the conclusion of the regular school year, the IEP will be implemented at the beginning of the next school year unless the toddler is determined eligible for Extended School Year (ESY).

Careful and thoughtful joint planning by the local early intervention program and the local school district will promote smooth and coordinated transfer between programs and services.

Notification to DOE and School District for Toddlers Found Eligible for Early Intervention Services at least 90 Days before the Toddler's Third Birthday

If the Birth to Three Early Intervention Program determines that a toddler is eligible for early intervention services at least 90 days before the toddler's third birthday, and that the toddler is potentially eligible for preschool special education services (see Footnote 1), DHSS must, at least 90 days before the toddler's third birthday, notify DOE and the school district where the toddler resides that the toddler will shortly turn three years old and exit the Part C program. (34 CFR §303.209(b)(1)(i)).

This notification shall include all of the following information:

1. The toddler's name and date of birth;
2. Parent contact information (parent's name, address, and telephone number);
3. FSC name;

4. Date of referral to the Birth to Three Early Intervention program; and
5. Date of Part C eligibility determination.

Notification to DOE and School District for Toddlers more than 45 Days but fewer than 90 Days before the Toddler's Third Birthday

If the Birth to Three Early Intervention Program determines that a toddler is eligible for early intervention services more than 45 days but less than 90 days before the toddler's third birthday, and that the toddler is potentially eligible for preschool special education services (see Footnote 1), the Birth to Three Early Intervention Program must, as soon as possible, notify DOE and the school district where the toddler resides that the toddler will shortly turn three years old and exit the Part C program.

This notification shall include all of the following information:

1. The toddler's name and date of birth;
2. Parent contact information (parent's name, address, and telephone number);
3. FSC name;
4. Date of referral to the Birth to Three Early Intervention program; and
5. Date of Part C eligibility determination.

Process for Notification

It shall be the responsibility of DHSS to:

1. Create a mutually agreed upon monthly **Transition Notification Report (TNR)**, and
2. Send the TNR via encrypted email message to the DOE Transition Coordinators.

The DOE Transition Coordinators will distribute the TNR to their respective school districts along with the State 619 Coordinator and the DOE Early Childhood Data Specialist, and the Birth to Three Early Intervention Program data manager. Child Find transition notification information will include: the toddler's name, toddler's date of birth, parent contact information (parent's name, address, and telephone number), FSC name, and date of referral to the Birth to Three Early Intervention program. (34 CFR §303.401(d)).

The FSC has the responsibility of informing each family of this notification requirement. Each Department of Education (DOE) Transition Coordinator monitors monthly notification to support reporting as required by 34 CFR §303.209(b)(1)(i) and §303.401(d)), and to provide data for Part C Annual Performance Report Indicator 8B.

Toddler Referred to Birth to Three Early Intervention Program fewer than 45 Days before the Toddler's Third Birthday

If a toddler is referred to the Birth to Three Early Intervention Program fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool special education services, the Birth to Three Early Intervention Program must, with written parental consent, immediately refer the toddler to DOE and the school district for the area in which the toddler resides immediately to Part B using whatever information is available on the toddler (e.g., basic demographic information).

With the informed written approval of the parent, the referral to DOE and the school district may include:

1. The toddler's name and date of birth;

2. Parent contact information (parent's name, address, and telephone number)
3. FSC name; and
4. Date of referral to the Birth to Three Early Intervention program.

Development of IFSP Transition Plan

Delaware must ensure that each toddler exiting the Part C program has a transition plan in the IFSP. The Birth to Three Early Intervention Program FSC and IFSP team must establish a transition plan in the IFSP not fewer than 90 days, and up to nine months before the toddler's third birthday at the discretion of all parties, prior to the toddler's third birthday.

The IFSP must include the steps and services to be taken to support the smooth transition of the toddler, which must include:

1. Discussions with, and training of, parents as appropriate regarding future placements and other matters related to the toddler's transition;
2. Procedures to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to and function in a new setting;
3. Confirmation that child find information about the toddler has been transmitted to the school district or other relevant agency in accordance with 34 CFR §303.209(b);
4. Steps for the toddler and family to exit from Part C services; and
5. Any transition services that the IFSP team identifies as needed by the toddler and family.

Transition Conference

Transition planning must occur for all toddlers exiting the Birth to Three Early Intervention Program.

Toddlers Who Meet Delaware's Definition of Potentially Eligible for Preschool Special Education Services

If a toddler is a child with a disability who is potentially eligible for preschool special education services, with the family's approval, the FSC will convene a transition conference with the appropriate parties to discuss any services the toddler may receive under Part B. The transition conference must be held no later than 90 days before the toddler's third birthday, but, at the discretion of all parties, may occur up to nine months before the toddler's third birthday. Unless the parent requests otherwise, the Birth to Three Early Intervention Program is required to invite a School District representative to the transition conference for those toddlers that are potentially eligible for preschool special education services.

Toddlers Determined Not to Be Eligible for Preschool Special Education Services²

If a toddler is **not** potentially eligible for Part B preschool services (because the school district has already made a determination, prior to the toddler's third birthday, that the

² As noted in Footnote 1, above, Delaware's definition of a toddler with a disability who is potentially eligible for Part B preschool special education services (or may be eligible to receive Part B preschool special education services) is any child whose eligibility for Part C early intervention services has been determined, is over 26 months old and has an active IFSP. Because the state's definition of children who are potentially eligible for Part B preschool special education services includes all children 26 months or older who have an active IFSP unless the school district has already determined that the child is not eligible for preschool special education services, all other toddlers are potentially eligible for preschool special education services.

toddler is not eligible for preschool special education services), with the family's approval, the lead agency must make reasonable efforts to convene a conference with the FSC, the family, and providers of other appropriate services for the toddler to discuss other appropriate services that the toddler may receive.

The transition conference takes place as part of an IFSP meeting and must be held at least 90 days before the toddler turns 3 (and at the discretion of all parties, up to 9 months before their third birthday).

Any transition conference and any IFSP meeting to develop a transition plan (whether it is for a toddler who is potentially to receive preschool special education services or for a toddler who is not potentially to receive preschool special education services) must meet the requirements of:

1. 34 CFR §303.342(d) that:
 - a. IFSP meetings must be conducted in settings and at times that are convenient for the family, and 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.
 - b. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.
2. 34 CFR §303.343(a) that the meeting includes the following participants:
 - 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.

A transition conference and an IFSP meeting to develop the transition plan as part of a toddler's IFSP may be combined into one meeting, so long as all of the relevant requirements for each kind of meeting are met.

The Birth to Three Early Intervention Program must, with the parent's approval, invite the school district to the transition conference, and the school district is required by the Part B regulations at 34 CFR §300.124(c) to participate.

Part B Early Childhood Transition Requirements

If the child will be/is referred to the school district to determine eligibility for Part B services, the Birth to Three Early Intervention Program will compile the following documents and send to the school district:

1. Written parental consent to release information;

2. Existing Birth to Three Early Intervention Program evaluations/assessments, including specific results and test scores when available; and
3. A copy of the current IFSP.

The School District will:

1. Provide the parent a copy of the Part B Procedural Safeguards and discuss and explain their importance;
2. Afford the parent an opportunity to provide input regarding the need for, and scope of, the initial evaluation;
3. Review all available information and records, including family and health history, and previous assessments and evaluations conducted if parental consent for release of information has been obtained by the Birth to Three Early Intervention Program;
4. Decide what additional information, if any, is needed as part of the evaluation. If additional evaluations are needed to determine eligibility, the school district will provide prior written notice proposing to conduct additional evaluation, and then obtain informed written parental consent to the proposed additional evaluation. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the parent desires that a meeting be held;
5. If the toddler is determined eligible for Part B services, the IEP must be developed and implemented by the toddler's third birthday; and
6. If the team determines that the student is not eligible for Part B services, the team should seek other avenues for supports or services to meet any identified needs. The school district must provide the parent with prior written notice of the decision that the toddler is not eligible, that includes an explanation of why the school district has determined that the toddler is not eligible and a description of each evaluation procedure, assessment, record, or report that the district used as a basis for the determination that the toddler is not eligible for special education and related services.

School District Participation in Transition Conference

If a toddler is potentially eligible for preschool special education services, the Birth to Three Early Intervention Program must, with the parent's approval invite the school district to the toddler's transition conference, and the school district must participate in the transition conference arranged by the Birth to Three Early Intervention Program. (34 CFR §§303.209(c)(1) and 300.124(c)).

Evaluation and Determination of Eligibility for Part B Preschool Special Education

Evaluation refers to the procedure used to determine whether a toddler has a disability and the nature and extent of the special education and related services that the toddler needs.

The School District is responsible for making decisions regarding evaluation, assessments, and eligibility for Part B, not Birth to Three Early Intervention Program staff. However, Part C and Part B staff should make use of and align available assessment/test information (i.e., test or cut off scores) needed for meeting eligibility criteria and to avoid duplication of efforts and additional time for assessment. The Part B regulations require that, as part of toddler's initial evaluation, the school district must review existing evaluation data, including evaluations and information provided by the toddler's parents and evaluations and other information provided by the Birth to Three Early Intervention Program.

Assessment is integral to the evaluation process and includes the formal or informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. Assessments and data may include standardized or non-standardized, criterion-referenced (e.g., curriculum-based measures), observations, interviews, medical reports, etc. The School District is responsible for ensuring the following:

1. The evaluation team includes the same membership as the IEP team, although not necessarily the same individuals. Membership must include the parent, special education teacher, general education teacher, individual who can interpret implications of evaluation results and other individuals who have knowledge or special expertise regarding the toddler;
2. Written notice is provided, and informed written parental consent is obtained for an initial evaluation to determine eligibility for Part B services (even if no new evaluation is being conducted);
3. The initial evaluation is comprehensive and consists of procedures to determine whether: (a) the toddler has a disability according to the established Delaware special education eligibility criteria; (b) the toddler's condition adversely affects academic performance; and (c) the student needs special education and related services;
4. Eligibility for Part B services can be determined at a transition meeting or at an eligibility/IEP meeting, if sufficient evaluation information to determine Part B eligibility is available and if required team members participate, so long as all procedural safeguard requirements related to prior written notice and informed written parental consent, and requirements for IEPs are met;
5. Evaluation and assessment data are reviewed with the parent, eligibility is determined, and parents are given a copy of the Eligibility Report and prior written notice of the school district's proposal or refusal to identify the toddler as a child with a disability who is eligible to receive special education and related services; and
6. According to Delaware Code, within forty-five (45) school days or ninety (90) calendar days, whichever is less, of receiving written parental consent, the initial evaluation shall be conducted; and the child's eligibility for special education and related services must be determined at a meeting convened for that purpose.

Developing and Implementing IEP by Third Birthday for Children Eligible under Part B

Consistent with the Part B regulations, DOE and the school district must ensure that:

1. A free appropriate public education is available to each eligible child beginning no later than the child's third birthday (34 CFR §300.101(b)(1)(i));
2. An IEP (or an IFSP, that meets the requirements of 34 CFR §300.323(b)³, with agreement of the parent and school district) is in effect for the child by the child's third birthday;

³ The Part B regulations require, at 34 CFR §300.323(b), that in the case of a child with a disability aged three through five, the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement, an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under Part B.

3. If a child's third birthday occurs during the summer, the child's IEP Team, including the parent, determines the date when services under the IEP or IFSP will begin; and
4. If the toddler was previously served under Part C, at the request of the parent, the school district sends an invitation to the initial IEP meeting to the Part C FSC, or other representative of the Birth to Three Early Intervention Program. (34 CFR §300.321(f)).

The responsibility for toddlers who turn three years of age during the time between January 1 and August 31 (inclusive) will transfer from Part C to Part B on the child's third birthday;

At the parent's request, Part C-eligible children who turn three between September 1 and December 31 and are determined eligible for Part B services may receive services through Part B beginning on the first day of the school year in their appropriate school district or remain with Part C until their third birthday.


If the family declines Part B services, the school district is responsible for sending a copy of Procedural Safeguards and information related to school district services for the child. The Birth to Three Early Intervention Program FSC must meet with the family and others as appropriate to develop an alternative Transition Plan for the child.

If the child's third birthday occurs after the conclusion of the regular school year calendar, the IEP team must consider the date when the services under the IEP will begin. The IEP team determines if ESY services are required and if no ESY services are needed, the date of initiation of services may be at the beginning of the school year and the IEP is considered "implemented" by the child's third birthday.

In addition, according to Delaware Regulations, children turning three during this time are entitled to 12-month programming, if identified with one of the following disability categories: autism, traumatic brain injury, deaf/blind, orthopedic impairment, severe and moderate intellectual disability.

Resolution of Issues


The parties mutually agree to resolve disputes in a non-adversarial fashion by meeting to confer and discuss any issues that may arise, recognizing that the purpose of the MOU is to promote and ensure collaboration between the agencies for the benefit of children and families in the State of Delaware. Issues that may arise will be immediately brought to the attention of the agency personnel involved to resolve as expeditiously and informally as possible and at the lowest appropriate level. If these agency personnel cannot resolve the dispute, it will be referred to the Secretary of the Delaware Department of Health and Social Services and the Secretary of Education.

Karyl T. Rattay, MD, MS Director Division of Public Health Delaware Department of Health and Social Services	
Signature <small>DS</small> 	Date 11/8/2021 10:29 AM PST


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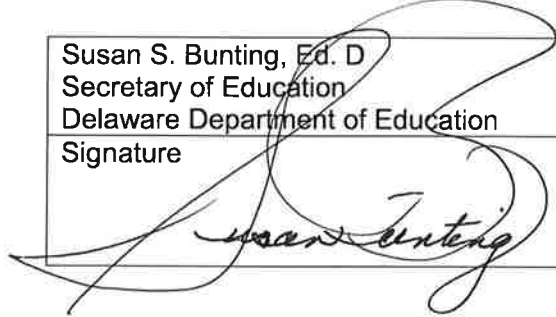
Molly K. Magarik Cabinet Secretary Delaware Department of Health and Social Services	
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