

Memorandum of Understanding



**The Department of Assistive and
Rehabilitative Services
and the Texas Education Agency**



I. PURPOSES

The purposes of this Memorandum of Understanding (MOU) are to:

- A. Define the roles and responsibilities of the Texas Department of Assistive and Rehabilitative Services (DARS) and the Texas Education Agency (TEA) to ensure a smooth transition for children and their families receiving early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA) to preschool special education services under Part B of IDEA; and
- B. Establish a statewide system of services to identify and serve children, birth to 36 months, with auditory impairments (AI) and visual impairments (VI) who are eligible to receive services under Part C of the IDEA and Texas Education Code (TEC), Chapters 29 and 30.

II. PROGRAM OVERVIEWS

Early Childhood Intervention (ECI):

DARS is the designated lead agency for implementation and maintenance of Part C of IDEA, known in Texas as the Early Childhood Intervention (ECI) program. The ECI program requires a statewide, coordinated system that provides early intervention services to children less than three years of age with developmental delays or disabilities and their families. DARS contracts with local agencies and organizations, such as community centers, school districts, regional Education Service Centers (ESCs), and nonprofit organizations to provide services to children and families.

Preschool Programs for Children with Disabilities (PPCD):

TEA is the designated lead agency for implementation and maintenance of Part B of IDEA, which requires that a free appropriate public education be available to all children with disabilities between the ages of three and 21. In Texas, the public school program for children with disabilities who are ages three through five is known as Preschool Programs for Children with Disabilities (PPCD). Local Educational Agencies (LEAs) provide PPCD services to eligible children with disabilities.

In Texas, children with an AI or a VI are entitled to a free appropriate public education from birth. Therefore, services for a child with an AI or a VI from birth to 36 months must be coordinated between the local ECI program and the LEA for the area where the child resides.

Under 19 Texas Administrative Code (TAC) §89.1050, each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom an initial evaluation for special education services is conducted. The rule further provides that the ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations. Accordingly, IEP team meetings, including initial meetings, are referred to as ARD committee meetings in Texas.

III. CHILD FIND

- A. DARS ensures that it has policies and procedures in effect to establish requirements that:
1. ECI programs identify, locate, and evaluate all infants and toddlers, birth through 36 months of age, who have or are suspected of having developmental delays, an AI, or a VI;
 2. An effective method is developed and implemented to identify children who are in need of early intervention services;
 3. The child find system is 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;
 4. ECI programs take steps to ensure that there will not be unnecessary duplication of effort by the various agencies involved in the State's child find system;
 5. With parental consent, ECI programs provide children from birth to 36 months of with:
 - a. For children suspected of having a VI, an evaluation by a licensed ophthalmologist or optometrist; and
 - b. For children suspected of having an AI, an audiological evaluation by a licensed audiologist. If the audiological assessment indicates the child has an AI the contractor must refer the child within five working days to
 - i. An otologist, or a licensed medical doctor with documentation that an otologist is not reasonably available, for an otological examination; and
 - ii. The LEA for a communication assessment.
 6. Upon completion of assessments listed in III.A.5.a above, and with parental consent, children with results that indicate vision loss are referred to an LEA for a Functional Vision Evaluation (FVE), a Learning Media Assessment (LMA), and an Orientation and Mobility Evaluation (OME);
 7. For children who are determined eligible for services by subsequent evaluations described in Sections III.A.5.b and III.A.6 above, ECI programs invite a teacher certified to teach children who are visually impaired or a teacher certified to teach children who are auditorily impaired, as appropriate, to the initial and annual Individualized Family Service Plan (IFSP) meetings, and to other IFSP meetings when issues related to or affected by the AI or VI will be addressed; and
 8. ECI programs coordinate service delivery with LEAs and other service agencies for services listed in the IFSP.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. All children with disabilities residing in the State, including children with disabilities who are homeless children or wards of the State, and children with disabilities attending private schools, regardless of the severity of the disability, and who are in need of special education and related services, are identified, located, and evaluated;
2. LEAs locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the district served by the LEA;
3. LEAs, as soon as possible, but in no case more than seven days, provide referrals to the local ECI program for all children under three years of age discovered through the child find process;
4. LEAs provide a FVE, a LMA, and an OME for all children birth through 36 months of age who are referred by an ECI program related to Section III.A.6 above; and
5. LEAs provide a communication assessment for all children birth through 36 months of age who are referred by an ECI program related to Section III.A.5.b.ii above.

IV. TRANSITION NOTIFICATION

A. DARS ensures that it has policies and procedures in effect to establish requirements that:

1. ECI programs determine if two year olds receiving services under Part C of IDEA are potentially eligible for preschool special education services under Part B of IDEA;
2. Before notifying the appropriate LEA that a child is potentially eligible for Part B services, the ECI program provides written notification to the child's parent advising the parent of:
 - a. The information that will be disclosed, including the limited personally identifiable information (child's name, child's date of birth, parent's name, address, and telephone number), the service coordinator's name, and the child's home language; and
 - b. The right to opt out of the disclosure by submitting a written request to Opt Out of the Notification to the ECI program according to 34 Code of Federal Regulations (CFR) §303.209 (1)(b) and (2) and the timelines specified in the 40 TAC, Chapter 108 before the notification is scheduled to be sent;
3. For a child whose parent has not opted out of the disclosure within the prescribed timeline, the ECI program notifies the LEA at least 90 days before the child's third birthday that the child is potentially eligible for Part B services;

4. When an ECI program provides notification of a potentially eligible child less than 90 days before the child's third birthday, the ECI program provides, at the same time as the notification, a written explanation to the LEA stating the reason for the delay;
5. If an ECI program determines that a child is eligible for Part C services fewer than 90 days and more than 45 days before the child's third birthday, the ECI program determines as soon as possible whether the child is potentially eligible for Part B services. If the child is determined to be potentially eligible for Part B services, the ECI program provides notification to the LEA as soon as possible, unless the parent opts out of the disclosure in writing;
6. If a child is referred to an ECI program fewer than 45 days before the child's third birthday and the child may be potentially eligible for Part B services, the ECI program, with parental consent, refers the child to the LEA for a Part B eligibility determination. The ECI program is not required to determine the child's eligibility for Part C services in this situation; and
7. TEA is notified of children potentially eligible for Part B services at least 90 days before each child's third birthday, or as soon as possible for children determined eligible for Part C services between 90 and 45 days before the child's third birthday. With parental consent, referral to TEA is provided for all children referred to an ECI program fewer than 45 days before each child's third birthday. Local ECI contractors will provide these same notifications to the appropriate LEAs.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. LEAs understand that receiving notification of a child who is potentially eligibility for Part B services constitutes a referral to the Part B system and that steps must be taken to initiate the evaluation process to determine whether the child is eligible for Part B services;
2. LEAs coordinate efforts with ECI programs to support parent involvement in the transition planning process; and
3. Personally identifiable data, information, and records collected or maintained are protected and remain confidential pursuant to all state and federal regulations.

V. TRANSITION CONFERENCE

A. DARS ensures that it has policies and procedures in effect to establish requirements that:

1. If a child may be eligible for Part B preschool services under IDEA, with family approval, a transition conference is convened not fewer than 90 days and, at the discretion of all parties, not more than nine months before the child's third birthday to discuss any services the child may receive under Part B;

2. ECI programs document inviting the LEA to the transition conference according to the timeline specified in the 40 TAC, Chapter 108, the date of the transition conference, the discussion during the conference, and the contents of the transition plan in the child's record; and
3. Any conference or meeting to develop the transition plan may be combined into one meeting and must meet the requirements for IFSP meeting accessibility and convenience, IFSP parental notice, and initial and annual IFSP team participants.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. LEAs participate in transition planning conferences arranged by local ECI programs;
2. LEA staff documents the date of transition conferences, the participants, and the steps to determine a child's Part B eligibility; and
3. At the request of the parent, LEAs invite the ECI service coordinator or other representatives of the Part C system to the initial ARD committee meeting.

VI. TRANSITION PLAN

A. DARS ensures that it has policies and procedures in effect to establish requirements that:

1. ECI programs develop transition plans as part of a child's IFSP not fewer than 90 days, but at the discretion of all parties up to nine months, before the child's third birthday;
2. Meetings held to develop the transition plan include the required members:
 - a. Parent(s) of the child;
 - b. Other family members, as requested by the parents;
 - c. An advocate or individual outside the family, if requested by the parent;
 - d. Designated service provider;
 - e. Individuals involved in evaluations and assessments; and
 - f. Individuals who will be providing early intervening service to the child and family, as appropriate;
3. ECI programs review the program options for the child for the period from the child's third birthday through the remainder of the school year;
4. ECI programs include a child's family in the development of the transition plan included in the IFSP; and
5. Transition plans in IFSPs include, as appropriate:

- a. Steps for the child and his or her family to exit from the Part C program including:
 - i. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
 - ii. Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child;
 - iii. Procedures to prepare the child for changes in the service delivery, including steps to help the child adjust to, and function in, a new setting;
 - iv. Confirmation that referral information about the child has been transmitted to the LEA in accordance with the required notification provisions. With parental consent, if required under confidentiality of information provisions, the ECI program may transmit additional information needed by the LEA to ensure continuity of services from the ECI program to the Part B special education preschool program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed; and
- b. Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

B. TEA ensures that it has policies and procedures in effect to ensure that:

- 1. LEAs coordinate with ECI programs to fully inform families of the possible services available under Part B and support family involvement in the transition planning process; and
- 2. LEAs understand the requirement that they participate in the transition planning process.

VII. IDEA PART B EARLY CHILDHOOD TRANSITION REQUIREMENTS

A. TEA ensures that it has policies and procedures in effect to ensure that:

- 1. An IEP is developed and implemented for Part B eligible children by their third birthday;
- 2. The ARD committee determines the start date of the IEP if the child's birthday occurs during the summer. Services will begin by the first day of school, or earlier as determined and stated on the IEP; and
- 3. For children transitioning from Part C services to Part B services, the ARD committee considers an IFSP that contains the IFSP content including the natural environments statement, described in 34 CFR §303.344, and that is developed in accordance with the IEP procedures under 34 CFR §300.323(b) when developing the initial IEP.

VIII. FINANCIAL RESPONSIBILITIES

- A. DARS ensures that it has policies and procedures in effect to establish requirements that:
1. All Part C services are provided by ECI programs;
 2. An ECI program is the payor of last resort; therefore, maximum use will be made of all third party funding sources, including family cost share, Medicaid, CHIP, and private insurance for Part C services;
 3. ECI programs pay transportation costs for children from birth to 36 months of age who require hearing and vision services in excess of the amount to which the LEA is entitled for transportation costs under TEC, §42.155 in the delivery of transportation services;
 4. ECI programs pay for or access a low-vision evaluation when it is necessary to identify assistive technology needs for a child;
 5. ECI programs are responsible for providing ophthalmological, optometric, audiological, and otological evaluations when required to determine eligibility for ECI services and for hearing and vision services from an LEA;
 6. As a function of service coordination, ECI programs are responsible for helping families access the evaluations when they are not necessary to determine eligibility;
 7. ECI programs provide any interpreter services needed by the child or family for evaluations to determine ECI eligibility and services listed in the IFSP;
 8. ECI programs provide or access assistive technology devices when they are needed to support the child to reach the outcomes listed in the IFSP;
 9. If an item is available through Federal Quota Funds and the Texas Instructional Materials Center for Students with Visual Impairments (TIMCVI), the LEA is responsible for ordering and maintaining the device; and
 10. Resources may be available to help with the cost of hearing aids and eyeglasses. Resources that may be accessed to cover the cost for hearing aids and ear molds include the Health and Human Services Commission (HHSC) for Texas Medicaid benefits and DSHS-Children with Special Health Care Needs Services Program for the Hearing Services for Children for program benefits. The ECI program may coordinate payment for eyeglasses by accessing the DARS Division of Blind Services, or other organizations such as Kiwanis or Lions Clubs.
- B. TEA ensures that it has policies and procedures in effect to ensure that:
1. LEAs provide Part B evaluations and eligibility determinations;
 2. LEAs provide Part B preschool special education and related services for children eligible under Part B;

3. LEAs provide year-round hearing and vision services to children from birth to 36 months of age who have AI or VI;
4. LEAs provide transportation to children from birth through age two to enable them to receive hearing and vision services and will use, to the maximum extent allowable, all funds to which the LEAs are entitled under TEC, §42.155 in the delivery of transportation services;
5. LEAs provide interpreter services for children being evaluated for special education services and for ARD committee meetings; and
6. If an item is available through Federal Quota Funds and the Texas Instructional Materials Center for Students with Visual Impairments (TIMCVI), the LEA is responsible for ordering and maintaining the device. If it is not available through the TIMCVI, the ECI program is responsible for the purchase and maintenance of the device.

C. DARS and TEA jointly agree that:

1. Training is provided to the ESCs, LEAs, and local ECI personnel on this agreement; and
2. Monitoring efforts of TEA and DARS are coordinated in compliance with Part C and with state law related to children with AI and VI and this agreement.

IX. DISPUTES CONCERNING IMPLEMENTATION OF AGREEMENT

A. Local Agency Disputes:

Disputes concerning implementation of this MOU between LEAs and ECI programs shall first be resolved at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to the local officials authorized to make the decisions necessary to resolve the dispute either through cooperative decision making or through mediation, in accordance with the established policies and procedures of the agencies involved. If local resolution is not possible after a reasonable time period (not to exceed 45 days unless the involved parties agree otherwise), the affected LEA or ECI program shall refer the interagency dispute to the preschool specialist at the regional ESC and/or the ECI performance manager for further negotiations towards a mutually agreeable resolution. Technical assistance may be obtained from the ECI performance manager and/or the ESC preschool specialists to assist in developing strategies, clarifying local program roles and responsibilities, and interpreting state and federal rules as well as local policies. LEAs and ECI programs referring a dispute shall identify the:

1. Nature of the dispute;
2. Resolutions agreed upon at the local level;
3. Issues that remain unresolved at the local level; and

4. Local contact persons.

B. State Agency Disputes:

Disputes concerning implementation of this MOU between DARS and TEA must first be resolved at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), DARS and TEA staff will refer the dispute to their respective executive officers, or their designees, for further negotiation. The appropriate officials shall meet to seek resolution of the dispute.

1. Mediation

If the chief executive officers of DARS and TEA determine that a dispute cannot be resolved at their level, DARS and TEA shall pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. The mediator shall make such arrangements and decisions respecting the conduct of the proceedings as needed in the sole discretion of the mediator. The costs of mediation shall be borne equally by DARS and TEA.

2. Binding Arbitration

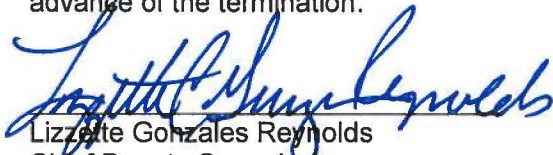
If DARS and TEA fail to reach agreement through mediation pursuant to the Governmental Dispute Resolution Act, the following procedure shall be followed:

- a. DARS and TEA shall each select one impartial third party pursuant to Texas Government Code, §2009.053. The impartial third parties selected by DARS and TEA shall jointly select another impartial third party, who must be a person eligible to serve as impartial third party pursuant to Texas Government Code, §2009.053. The person selected shall be the arbitrator of the dispute.
- c. The arbitrator shall arbitrate the dispute pursuant to Texas Civil Practice and Remedies Code, §154.027. The arbitrator shall make such arrangements and decisions respecting the conduct of the proceedings as needed in the sole discretion of the arbitrator. The costs of arbitration shall be borne equally by DARS and TEA. DARS and TEA hereby stipulate in advance that the decision of the arbitrator shall be binding and enforceable against the both parties pursuant to Texas Civil Practice and Remedies Code, §154.027(b).

X. TERM OF AGREEMENT

This MOU will be reviewed annually by the parties. The MOU may be expanded, modified, or amended at any time upon the mutual agreement of the parties.

This MOU is effective upon signature by all parties and shall continue in effect until terminated by one of the parties upon providing written notice to the other party at least 30 calendar days in advance of the termination.



Lizzette Gonzales Reynolds
Chief Deputy Commissioner
Texas Education Agency



Veronda L. Durden
Commissioner
Department of Assistive and
Rehabilitative Services

4-24-14

Date

5-6-2014

Date