

Dated May 2, 2001

Dr. Garry Gardner
Dupage Pediatrics, LTD
1306 Plainfield Road
Darien, Illinois 60561

Dear Dr. Gardner:

This is in response to your letter dated January 11, 2001 to Kenneth Warlick, former Director of the Office of Special Education Programs (OSEP). In your letter, you expressed concern about changes to the early intervention system in Illinois proposed by the Illinois Department of Human Services (IDHS). You specifically object to the IDHS proposal to change the State's eligibility criteria for children diagnosed with developmental delay.

We recently received a copy of a public notice in which IDHS begins the public participation process with regard to several other proposed changes to the early intervention program. The notice also states that "the State has indefinitely postponed implementation of Early Start as proposed in the Notice of Proposed Rule...." It is our understanding that the postponement includes the State's proposed change to its definition of "developmental delay."

Part C of the Individuals with Disabilities Education Act (IDEA) requires that each State applying for funds establish a definition of "developmental delay" for that State for purposes of determining a child's eligibility for Part C services.¹ 21 USC §§1432(5)(A), 1435(a)(1). Therefore, this Department cannot reject a State's guidelines for determining developmental delay, provided the State has followed the required procedures for including those guidelines in its Part C grant application, as required by the statute. 20 USC §§1435(a)(1), 1437(a)(3)(A).

The definition of developmental delay currently used by the IDHS is part of its approved Part C grant application. In order to change that definition, the State must follow the IDEA public participation requirements. 20 USC §1437(a)(7), 34 CFR §§303.110-113. Those requirements include, in general terms: 1) publishing the policy throughout the State for at least a 60-day period, with opportunity for the public to comment for at least 30 of those days; 2) holding public hearings, with 30-day notice; and 3) reviewing and considering public comments, and making modifications that the State deems necessary, before adopting the policy. Thus, if IDHS decides to go forward with a change to its definition of developmental delay, it would need to follow these procedures. OSEP does check to see that States comply fully with these requirements, in order to ensure that the public, including individuals with disabilities and parents of infants and toddlers with disabilities, have input into the State policy-making process as required by IDEA.

¹ In addition to children eligible for services due to developmental delay, the statute also provides that children with a diagnosed physical or mental condition that has a high probability of resulting in developmental delay are also eligible (20 USC § 1432(5)); we understand that IDHS is not proposing to change its interpretation of this category.

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We appreciate your concern for the infants and toddlers with disabilities in Illinois.

Sincerely,

/signed Patricia J. Guard/

Patricia J. Guard
Acting Director
Office of Special
Education Programs