UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 24 2003

Linda Goodman, Director
Connecticut Birth to Three System
Central Office
460 Capitol Avenue
Hartford, Connecticut 06106

Dear Ms. Goodman:

This is in response to your electronic letter to the Office of Special Education Programs (OSEP) asking several questions regarding Part C of the Individuals with Disabilities Education Act (IDEA). I am providing responses to each of your questions.

1. Initial evaluation for eligibility

Question: Some referrals that we receive appear to be children who are not delayed. Sometimes parents are overanxious, especially about speech development, and sometimes physicians recommend that parents "get a baseline" evaluation for example, for a child adopted from another country. If, over the telephone, and using a series of screening questions, it appears that the child does not really require an eligibility evaluation, do we have the right to deny that evaluation if the parent insists? Is there a proper role for "screening"?

Response: If parents call to refer their infant or toddler to the Part C program, the Part C staff can describe the purpose of the program, the eligibility criteria for Part C, the evaluation process and the type of early intervention services provided under the program. The discussion of the Part C eligibility criteria includes the State's definitions of (1) developmental delay, (2) the diagnosed physical or mental conditions covered, and (3) at-risk infants and toddlers with disabilities if the State has chosen to serve that population. *See*, 20 USC 1432(5); 34 CFR §303.16. The Part C staff may also wish to ask questions about the parent's specific concerns regarding the infant or toddler's development. If, based on this information, the parent determines that a referral is not appropriate, then the State is not required to conduct an evaluation or provide further information. However, if parents continue to refer their infant or toddler who is suspected of having a disability to Part C, the State must conduct an evaluation and assessment that meets the requirements of 34 CFR §§303.322 and 303.323. If the State refuses to conduct an evaluation of the child despite the referral, then the State must provide the parent with the information required under prior written notice requirements at 34 CFR §303.403(b). The notice must include the fact that an evaluation is being refused, the reasons for refusing to provide an evaluation and the procedural safeguards available under Part C including the due process

and mediation procedures adopted by the State under 34 CFR §§303.401 through 303.460 and the State complaint procedures adopted under 34 CFR §§303.510 through 303.512.

Under Part C regulations at 34 CFR §303.322(a)(1), the State "system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation...." The Part C regulations require that the evaluation and assessment be conducted by personnel trained to utilize appropriate methods and procedures. 34 CFR §§303.323(c) and 303.323(d). The regulations also specify that no single procedure is used as the sole criterion for determining eligibility. 34 CFR §303.322. The evaluation and assessment of each infant or toddler must be based on informed clinical opinion, and include the following:

(i) a review of pertinent records related to the child's current health status and medical history;
(ii) an evaluation of the child's level of functioning in each of the following developmental areas: (A) cognitive development; (B) physical development, including vision and hearing; (C) communication development; (D) social or emotional development; and (E) adaptive development;
(iii) an assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs for determining a child's eligibility.

34 CFR §303.322(c)

2. Initial assessment

Question: If the child has been evaluated by a doctor or by another clinician such as an OT or speech pathologist (although not across all five domains), is it allowable to have one additional evaluator from another discipline assess the child in all of the other areas of development or is it necessary that both evaluators assess in all five developmental domains?

Response: In response to the first part of this question, if an infant or toddler has been evaluated by a qualified professional in one of the developmental areas under 34 CFR 303.322(c)(3)(ii), it is not inconsistent with the IDEA to have one additional evaluator from another discipline or profession evaluate and assess the infant or toddler in all of the other areas of development, if the evaluator is qualified under the State's standards to conduct the evaluation. Part C does not require that, in conducting a "comprehensive, multidisciplinary evaluation of each child", each child be evaluated by more than one evaluator in any particular development area.

In response to the second part of this question, Part C also does not require that more than one evaluator conduct an evaluation and assessment of each infant or toddler if the evaluation is multidisciplinary and comprehensive as set forth in 34 CFR §§303.322 and 303.323. Specifically, "*multidisciplinary* means the involvement of two or more

disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in §303.322...." 34 CFR §303.17. Thus, if a particular evaluator (including a service coordinator) is qualified under the State's standards in more than one discipline or profession, that evaluator may conduct a comprehensive, multidisciplinary evaluation of each infant or toddler.

3. Denial of service for refusal to pay on sliding fee scale

Question: A July 22, 1996 letter from OSEP to Lamona H. Lucas, Commissioner of the Alabama Dept. of Rehabilitation Services, was in answer to the question about use of private insurance. In the letter, OSEP says: *Where federal or state law authorizes a system of payment for Part H services, and the parents are able to pay for the services and refuse to, Part H services can be withheld.* The letter cautions that Part H services must not be withheld from eligible children whose parents cannot pay for services. Is this still a correct interpretation? If we have an established fee scale that says, for example, a family with a gross income of $45,000 would be charged $25/month and the family refuses to pay, can services other than service coordination be denied?

Response: Under Connecticut's hypothetical, Connecticut's system of payments must comply with 34 CFR §§303.520 and 303.521. Thus, Connecticut must provide to all infants and toddlers and families all services that must be provided at no cost under Part C, which under 34 CFR §303.521(b) are child find, evaluations and assessments, service coordination, IFSP meetings and development, and procedural safeguards.

Additionally, the Part C regulations provide that the "inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family." 34 CFR §303.520(b)(3). Thus, if a parent meets the State's definition of "inability to pay" as set forth in the State's system of payments, the State must provide all early intervention services at no cost to the infant or toddler with a disability and the family. The State's definition of "inability to pay" must be on file with the Secretary as part of its system of payments under 34 CFR §§303.520(a) and (b). Finally, in a State that provides for a free appropriate public education (FAPE) to be provided from birth (i.e., birth mandate state) that all FAPE services are available at no cost to the child. If, under Connecticut's hypothetical a parent is able to pay (as determined by the definition of inability to pay on file with the Secretary) and refuses to pay, the State does not need to provide services unless the services are covered under 34 CFR §303.521(b), or, in the case of a FAPE birth-mandate state, the FAPE services are available at no cost to the child.

4. Denial of service to families that repeatedly fail to keep appointments

Question: A letter from OSEP to Bob Frymoyer and Pat Berger from the Pennsylvania Legislative Budget and Finance Committee on November 22, 1996 responded to their question "Can services be denied to families that repeatedly fail to keep appointments?" OSEP's answer at that time was that "Part H does not allow a state to deny early intervention services to an eligible child whose family cannot keep appointments, even if this occurs on a repeated basis. States can give parents a choice as to whether they will

accept or refuse the services the child is eligible for." We would like to adopt a procedure that after the third time an early interventionist comes to a home for a scheduled visit and finds no one home (with reminders left after the first two times) that the family receive prior written notice, along with a copy of their rights, that their child will be exited from the System unless they are able to call or write to schedule and be present for, another visit. They would also be given the option of notifying us that they wish to withdraw their child from services. Under OSEP's current interpretation, would that be permissible?

Response: It would be inconsistent with Part C of the IDEA for a State to adopt a procedure that "after the third time the early interventionist comes to a home for a scheduled visit and finds no one home...that the family receive prior written notice, along with a copy of their rights, that their child will be exited from the system unless they are able to call or write to schedule and be present for, another visit." The State cannot assume the parent has revoked consent for services listed on the existing IFSP or that the consent provided for those services is time-limited.

Part C requires that the IFSP be reviewed every six months or "or more frequently if conditions warrant, or if the family requests such a review." 34 CFR §303.342(b)(1). Because under 34 CFR §303.342(b)(1), the "purpose of the periodic review is to determine-- (i) The degree to which progress toward achieving the outcomes is being made; and (ii) Whether modification or revision of the outcomes or services is necessary," the State may determine that repeated absences from appointments and home visits are "conditions" that warrant a review of the IFSP. The Part C regulations note that the "review may be carried out by a meeting or by another means that is acceptable to the parents and other participants." 34 CFR §303.342(b)(2). The State must notify the parent of the IFSP review meeting. Meetings must be accessible and scheduled as conveniently as possible. *See* 34 CFR §303.342(d). If the new IFSP developed at the IFSP review meeting includes services that were listed on the previous IFSP (to which the parent provided consent) and the parent is absent at the IFSP review meeting, then those services listed on the previous IFSP must be provided unless the parental consent on the previous IFSP clearly stated that it was being provided for all services until a new IFSP was in place. Additionally, the State may wish to document the different attempts it made to notify the parents of the IFSP review meeting in order to comply with the parent notice requirements.

As a separate practical approach to addressing a child and parents' repeated failure to attend appointments, the State may wish to use the periodic IFSP review meeting to explore the reasons for the repeated absences. If the parent is concerned about the service delivery location, the IFSP review meeting can be used to explore the options that best meet the needs of, and address the outcomes for, the infant or toddler with a disability and that child's family. As for the cost incurred by States for repeated parental absence, Part C does not preclude the State from adding a provision in its system of payments (which must be on file with the Secretary prior to being implemented) that a parent shall pay the actual cost incurred by a State for a service appointment if the parent repeatedly fails to attend or make the child available for that appointment. As noted above in response to question four, such a provision could not apply to early intervention services for those families that

meet the State's definition of inability to pay or for those services required to be provided at no cost under 34 CFR §303.521(b) or, in a FAPE-mandate State, services that constitute FAPE.

We hope this response provides the necessary clarifications. Please feel free to contact Jackie Twining-Martin, OSEP Connecticut Part C Contact, at 202-205-8258 or JoLeta Reynolds at 202-205-5507 (press 3 and ask to be transferred to Dr. Reynolds) if you need further assistance.

Sincerely,

Stephanie Smith Lee

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: George P. Dowaliby
Chief, Bureau of Special Education and Pupil Services