

Dated May 3, 2001

Honorable Kurt Knickrehm
Director, Arkansas Department of Human Services
P.O. Box 1437
Little Rock, Arkansas 72203-1437

Dear Mr. Knickrehm,

Thank you for your letter of December 15, 2000 providing clarification as to some, and requesting clarification of two, issues identified in the Office of Special Education Programs (OSEP) Monitoring Report for Arkansas. We write to provide clarification on the two issues requested under Part C of the Individuals with Disabilities Education Act (IDEA). You also requested copies of certain documents (monitoring checklists and interview data documentation) developed by OSEP during its monitoring to assist you in your improvement planning. These documents have been sent to you under separate cover.

1. You requested clarification regarding OSEP's concern about child find for the Hispanic population in Arkansas. OSEP noted this issue as a suggestion for improvement in its monitoring report because local staff in three areas of the State, Fayetteville, Hope, and Helena expressed concerns to OSEP about identification of this population. In one area, Fayetteville, local staff indicated it was a serious problem. Staff in all three areas told OSEP that not all children in the Hispanic population were being identified. In Helena, staff told OSEP they were unaware of materials or activities to reach the growing Hispanic population, and in both Fayetteville and Hope, staff stated that there were not sufficient materials or child find activities to reach families that speak another language or do not read.

OSEP appreciates the clarification you provided in your December 15, 2000 letter that Arkansas' data indicate that Arkansas serves 3% of the Hispanic population. However we are also aware that Arkansas' data indicate that there may be a higher percentage of children eligible for early intervention than the State is currently serving. We commended in the Monitoring Report the fact that Arkansas is one of the first States to analyze data to determine the number of children that may be eligible.

Thus, OSEP's suggestion for improvement was intended to encourage Arkansas to review its public awareness and child find activities to ensure that culturally appropriate materials and activities are provided to all populations in the State, including the Hispanic population in Hope.

2. Your second request is regarding Part's C's eligibility criteria and the process through which a child with a disability is determined to need specific services. At the risk of being redundant but with the hope of providing clarification, we repeat below first your inquiry and then the Part C statutory and regulatory requirements that are relevant to your inquiry.

Your letter stated that "25% [developmental] delay is not designed to be an 'eligibility criteria,' but to indicate a 'documented need' for a specific instructional service, such as physical, occupational or speech therapies."

Under Part C of the IDEA, States can establish initial eligibility criteria but do not set additional criteria for individual services for a child who has already been determined to be eligible under Part C. Indeed, under §§632(3) and 635(a)(1) of the Federal Part C statute, States have broad discretion in establishing eligibility definitions for developmentally delayed children under Part C. However, once a child is determined eligible under Part C, under §§632(4)(C) and (G), the State must provide all early intervention services necessary to meet the developmental needs of the child and in conformance with an individualized family service plan (IFSP).

It appears that Arkansas has exercised its discretion and established a specific percentage threshold for the developmentally delayed category of children eligible under Part C. Specifically, on page 12 of Arkansas' State Eligible Criteria and Procedures on file with the Department, Arkansas' definition of "developmental delay" indicates that it includes "children who have been diagnosed by a multidisciplinary team as having a significant delay of 25% in one or more [developmental areas]." Thus, our records reflect that Arkansas has submitted a definition of eligibility of developmental delay that requires that a child be at least 25% delayed in order to be eligible. The statement from your December 15, 2000 letter (repeated above), however, suggests perhaps that this may not have been intended as an eligibility criterion; if that is the case, kindly update your policies and procedures to reflect that Arkansas does not have a 25% developmental delay threshold. If Arkansas continues to apply this eligibility definition, then there is no need to update this paragraph in the policies and procedures on file with the Department, a copy of which is attached.

However, once a State has established the eligibility definition for developmentally delayed children, the State cannot establish additional criteria for specific individual services. Rather, under Part C, once a child is found to be eligible, the child must receive all services necessary to address the child's developmental needs as identified during the evaluation and assessment process and as listed in the IFSP. 20 U.S.C. §§1435(a)(3) and 1436(a); *see also*, 34 CFR §303.322 and 303.344. Under §636(a)(4) of the Federal statute, the IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and family. *See, also*, 34 CFR §303.344(d). If Arkansas is interpreting the above paragraph (see attached page 12.2 of Arkansas' policies and procedures on file with the Department) to require a child to meet a 25% delay in order to receive a specific instructional service, then this provision must be deleted from its policies and procedures. Rather, under the current eligibility criteria, a child who does not exhibit a 25% delay in one or more developmental areas would not be eligible for any Part C services.

Finally, we appreciate your clarification regarding Arkansas' Medicaid Waiver Programs and your commitment to changing IFSPs to ensure that family outcomes are identified and addressed. Regarding the Medicaid issue, OSEP's concern was based on comments from families who expressed concerns that they were not informed about all of the programs that were available to children and their families. Families may be confusing eligibility for a Medicaid program with Part C or other State programs that provide assistance to children and their families.

We trust that our letter answers your questions and look forward to working with you and your staff on your improvement plan to address the delivery of services to infants and toddlers under Part C of the IDEA in the State of Arkansas. If you have further questions in this area or would like additional information, please contact Terese Lilly, OSEP's Part C State contact, at 202-205-0151.

Sincerely,

/signed Patricia J. Guard/

Patricia J. Guard
Acting Director,
Office of Special Education Programs

Enclosure

STATE ELIGIBLE CRITERIA AND PROCEDURES

State Policy Concerning Definition of Developmental Delay (303.300) (303.161) (Attachment N)

Eligibility

Only infants and toddlers (birth to 36 months) who: a) experience developmental delays; b) have a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay are eligible for Early Intervention Services.

- A. Definition of children who are experiencing "Developmental Delays" includes: children who have been diagnosed by a multidisciplinary team as having a significant delay of 25% in one or more of the following areas of development: physical (including hearing, vision and health status), cognitive, communication development, social/emotional and adaptive development. Appropriate testing, observations, and informed clinical opinion shall be used by qualified personnel to identify that a developmental delay or disability exists which constitutes eligibility for the program and for services to address the documented area of delay
- B. Definition of children who have a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay:

Includes infants and young children who have identifiable conditions. These conditions are identified by diagnosis by a licensed physician who uses informed clinical opinion to determine the existence of a condition having a high probability of resulting in a developmental delay.

Examples of such conditions include, but are not limited to 1) Down's syndrome and other chromosomal abnormalities associated with mental retardation; 2) congenital syndromes such as Fetal Alcohol Syndrome, intra-uterine drug exposure, prenatal rubella, severe microcephaly and macrocephaly (3rd percentile or 97th percentile), metabolic disorders, Intracranial Hemorrhage (subdural, subarachnoid, intraparenchymal, and grade III or IV intraperiventricular hemorrhages), malignancy or congenital anomaly of brain or spinal cord, spina bifida, seizures disorder, asphyxia, respiratory distress syndrome, neurological disorder, including brain trauma or brain infection; 3) sensory impairments; and 4) maternal Acquired Immune Deficiency Syndrome (AIDS).

These diagnosed conditions are likely to result in significant developmental delays simply by virtue of their prognosis. Therefore, in accordance with federal regulations, children with diagnosed conditions such as these are by diagnosis eligible for the Part C Program.

To receive instructional services through the program there must be a specific instructional source area identified in which a 25% delay has been determined.

Children (birth to 36 months or age) are evaluated and assessed for Early Intervention Services by multidisciplinary teams. The composition of these teams is decided by the needs of the child being assessed and his family, through non-discriminatory screening measures and procedures, and re-assessed continually.