

Dated November 4, 2005

Janice Kane, Bureau Chief for Early Interventions
Children's Medical Services
Early Steps
State Department of Health
4052 Bald Cypress Way SE, BIN A06
Tallahassee, Florida 32399-1707

Dear Ms. Kane:

Thank you for your recent e-mail and telephone conversation regarding Florida's Part C Early Intervention Program (known as the Early Steps Program) challenges in the wake of Hurricane Katrina. We at the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department) support the work of you and your staff during these difficult and challenging times as you work to ensure the provision of early intervention services to infants and toddlers with disabilities and their families under Part C of the Individuals with Disabilities Education Act (IDEA).

We have reviewed the specific questions outlined in the September 2, 2005 e-mail and the questions raised by Florida's Early Steps staff during the telephone conference, held on September 14, 2005 with Troy R. Justesen, Acting Director for the Office of Special Education Programs. Our responses to your questions are delineated below.

1. The parent (s) coming from Louisiana do not have a copy of their Individualized Family Service Plan (IFSP) but reported that it was updated in August, and the office in Louisiana that developed the IFSP is inaccessible with the records potentially destroyed by water. I don't know whether the child is eligible for Part C services based on Florida's eligibility criteria that specifies a physical or medical condition associated with developmental delay or developmental delay. How should we proceed?

Response: The Department encourages all States to consider making early intervention services available to all displaced infants and toddlers with disabilities and their families in their State as soon as possible. The first step is to obtain parent consent for contacting the program where the child was receiving Part C services under 34 CFR §303.402, as well as consent for any needed evaluation and assessment under 34 CFR §303.404. If appropriate (i.e., if the Louisiana program offices are not operating), a State may use an interim IFSP, consistent with 34 CFR §303.345, until such time the records establishing eligibility are available or such time an evaluation and assessment can be conducted to determine eligibility.

2. The child and family are not residents of our State. Our State has a residency requirement.

Response: Under Part C, the lead agency in a State must make early intervention services available to **all** infants and toddlers with disabilities in the State regardless of residence. 20 U.S.C. §1434(1). The 2004 Amendments to the IDEA added explicit references to “homeless” children with disabilities, who by their status do not have clearly identified State residency. Thus, the State must make Part C services available to all eligible children living within the State even if the child or family have not yet established residency under State law.

3. Early intervention service providers across the State are having difficulty in providing services in the natural environments due to the gas shortage and families living in alternative living arrangements or shelters. Can the natural environment provision be waived?

Response: Under the natural environment requirements at 34 CFR §§303.12, 303.18, and 303.167, States must ensure the provision of early intervention services in the natural environment, to the maximum extent appropriate and, under 34 CFR §303.344(d)(1)(ii), a child’s IFSP must include an appropriate justification for any early intervention service that is not provided in the natural environment. I know that Florida’s Early Steps program is working to address the logistical and practical concerns to provide early intervention services in the natural environment. Due to Hurricane Katrina’s extensive impact, some communities may need to make early intervention services available as soon as possible, which, temporarily, may need to be provided in settings other than the natural environment. In such instances, the IFSP team shall, under 34 CFR §303.344(d)(1)(ii), document on the IFSP the steps needed to ensure provision of early intervention services in the natural environment as soon as possible. Finally, transportation is an early intervention service under 34 CFR §303.12(d)(15) that must be considered by the IFSP team when a family is required to travel for the sole purpose of obtaining access to an early intervention service that is clearly being provided in an environment that is not natural for that service or child.

4. What provisions are in place to allow the State to hire displaced early intervention service providers and teachers that do not meet Florida’s personnel certification requirements?

Response: Part C provides States the flexibility to determine the appropriate personnel standards under Section 635(a)(8) and (a)(9). Thus, States retain the authority to grant temporary, emergency or other appropriate certification and may use paraprofessionals as specified under State law and Part C.

5. How do the new IDEA requirements regarding serving homeless children in accordance with the McKinney -Vento Homeless Assistance Act apply to children

under Part C of the IDEA? Is funding available to provide Part C services to homeless children under the IDEA?

The IDEA 2004 amendments in Section 602(11) added a definition of "homeless children" to clarify that the definition under the IDEA is the same as the term "homeless children and youths" in section 725 of the McKinney-Vento Homeless Assistance Act (codified at 42 U.S.C. 11434a). This cross-reference did not add any additional requirements for children with disabilities under the age of three who are served under Part C because the McKinney-Vento Homeless Assistance Act requires that homeless children have the same access to a free, appropriate public education, including a public preschool education, as provided to other children and youths. 42 U.S.C. Section 11431(1). Although the McKinney-Vento Homeless Assistance Act does not impose any additional requirements for homeless children under Part C, Part C at Section 634(1) requires that States make early intervention services available to all children with disabilities under the age of three in the State, including homeless children. In addition, Part C funds are available to provide Part C services, whereas funds under the McKinney-Vento Homeless Assistance Act are available through State educational agencies to local educational agencies competitively based on need. State lead agencies designated under Part C are generally not local educational agencies and not eligible to receive funds under this Act.

We appreciate the work you are doing to support families disrupted by Hurricane Katrina. Please let us know if there is additional assistance you need. If you have any questions, please contact Alma McPherson at (202) 245-7443.

Sincerely,

/s/ Patricia J. Guard for

Troy R. Justesen
Acting Director
Office of Special Education Programs