

OSEP MONTHLY TA CALL

REVIEW OF RECENTLY ISSUED LETTERS

APRIL 27, 2023



Letters Addressed in Today's Meeting

Early Childhood

- DCL on IDEA Services in Head Start (Oct 2022)
- Guidance on Creating an Effective MOU to Support High-Quality Inclusive EC Systems (Oct 2022)
- Policy Letter to Nix (Mar 2023)

Statewide Issues Regarding Serving Children with Disabilities

- Policy Letter to Sharpless (Nov 2022)
- Policy Letter to Flanigan (Nov 2022)
- OSEP Policy Support 22-02 – Letter to State Directors of SPED on Ensuring a High-Quality Education for Highly Mobile Children (Nov 2022)

IDEA Implementation Issues at the LA/SEA level

- OSEP Policy Support 22-03 – Guidance for Common Prior Approval Requests under IDEA Part B and C (Dec 2022)
- OSEP Memo 22-01 – Personnel Qualifications under Part B of the IDEA (Oct 2022)
- Policy Letter to Oettinger (Mar 2023)

▶ All letters are available at: <https://sites.ed.gov/idea/policy-guidance/>

Early Childhood Letters

- DCL on IDEA Services in Head Start (Oct 2022)
- Guidance on Creating an Effective MOU to Support High-Quality Inclusive EC Systems (Oct 2022)
- Policy Letter to Nix (Mar 2023)

DCL on IDEA Services in Head Start - Key Issues Addressed

- ▶ IDEA Requirements ensuring FAPE in LRE
 - SEAs responsible for establishing and enforcing policies and procedures
 - LEAs responsible for timely identification, evaluation, and development & implementation of IEP
 - Head Start responsible for referring for IDEA evaluations and supporting implementation of IEPs

- ▶ Collaboration

- ▶ Resources

DCL on IDEA Services in Head Start - Implementation Considerations

- ▶ Understanding roles and responsibilities under IDEA and Head Start Program Performance Standards is critical for effective collaboration.
- ▶ Did you know: OSEP has previously issued & re-released [OSEP Memorandum 16-07](#) making clear that MTSS/RTI strategies cannot be used to delay or deny a timely evaluation for a preschool child suspected of having a disability.
- ▶ The companion document, *Guidance on Creating an Effective Memorandum of Understanding to Support High Quality Inclusive Early Childhood Systems (2022)*, provides strategies and considerations to effectively formalize working partnerships.
- ▶ OSEP/OHS affiliated TA Centers offer multiple resources to support implementation of high quality inclusive programming.

- ▶ Vision: A seamless system of early care and education with a coordinated approach to service delivery for infants, toddlers, and preschool children (young children) with disabilities and their families.
- ▶ Four potential purposes for MOU:
 1. As a method under IDEA sections 612 and 640, and under 34 CFR 303.511 (must include appropriate service provision and dispute resolution provisions);
 2. As a mechanism to codify IDEA child find mandates;
 3. Meet IDEA requirements for intra-/interagency agreements for transition; and
 4. Permit data sharing.
- ▶ Who, Why, What, Where, When

Guidance on Creating an Effective MOU to Support High-Quality Inclusive EC Systems - Implementation Considerations

- ▶ IDEA & Head Start example – concepts applicable to any early childhood partnership
- ▶ Concepts applicable to State and local levels
- ▶ Table A: Service delivery component consideration
- ▶ How do State and/or local policies and procedures support or impede implementation of best/recommended practices (e.g. placement decisions)?
- ▶ Consider how maintaining a current MOU could help address the challenges compounded by personnel shortages/turn-over.

Policy Letter to Nix – Key Issues Addressed

- ▶ Preschool Transition: requirements to ensure a smooth and effective transition of toddlers receiving early intervention services under Part C who may be potentially eligible for special education services under Part B
- ▶ Requirements and Responsibilities of SEAs, LAs, LEAs and EIS providers
- ▶ Development of Transition plan
 - Applies to all toddlers exiting Part C, not just those potentially eligible for Part B
- ▶ Transition notification by lead agency to SEA and LEA
 - Must be treated as a referral under Part B

Policy Letter to Nix – Key Issues Addressed, cont.

- ▶ Transition conference
 - Invitation by lead agency can be combined with transition notification
 - Information about Part B services; starts process for consent for evaluation and eligibility determinations under Part B
 - Must meet accessibility, convenience and participant requirements for IFSP meetings
- ▶ Late referrals to Part C – responsibilities depend on when child was referred to Part C relative to their 3rd birthday
- ▶ Lead agency and SEA must report to OSEP on compliance with early childhood/preschool transition requirements in APR Indicators

Policy Letter to Nix – Implementation Considerations

- ▶ Part C and Part B agencies must work closely together at the State and local levels; critical relationship to Part B responsibilities
- ▶ Timing element
- ▶ Notification to SEA and LEA as referral under Part B
- ▶ Failure by lead agency to invite LEA and parent to transition conference would be inconsistent with IDEA
- ▶ LEA must attend transition conference. LEA failure to participate in conference inconsistent with IDEA
- ▶ Impact on APR Reporting

Statewide Issues Regarding Serving Children with Disabilities

- Policy Letter to Sharpless (Nov 2022)
- Policy Letter to Flanigan (Nov 2022)
- OSEP Policy Support 22-02 – Letter to State Directors of SPED on Ensuring a High-Quality Education for Highly Mobile Children (Nov 2022)

Policy Letter to Sharpless – Key Issues Addressed

- ▶ Child Find; Procedures to request an initial evaluation under IDEA
- ▶ There are no specific requirements under IDEA that govern how a parent must make a request for an initial evaluation for a child suspected as having a disability
- ▶ States may develop own procedures or requirements, such as written request.
- ▶ Cannot be inconsistent with, or substantially limit, a parent's right to request an initial evaluation under IDEA

Policy Letter to Sharpless – Implementation Considerations

- ▶ School personnel should offer additional assistance and explanation to parent to make a request for an initial evaluation
- ▶ States and LEAs are encouraged to examine rules and procedures to determine whether they create barriers for parent to request an IDEA evaluation
- ▶ Child find procedures must offer fair and opportunities for all parents to an initial evaluation under IDEA to address their child's academic or behavioral needs

Policy Letter to Flanigan – Key Issues Addressed

- ▶ All children found evaluated and found eligible for special education must be included in the calculation for proportionate share
- ▶ Reinforces that timely and meaningful consultation is the means for obtaining input on the provision of equitable services for PPPSCWD
- ▶ LEAs are responsible for providing equitable services. IDEA does not prohibit the use of an MOU to facilitate in the provision of services, but an LEA can't deny services to PPPSCWD if the private school refuses to sign the MOU
- ▶ MOU's must be consistent with IDEA

Policy Letter to Flanigan – Implementation Considerations

- ▶ Are LEAs aware that [OSEP issued revised guidance on PPPSCWD?](#)
- ▶ NCSI has created an [SEA Self-Assessment: Children with Disabilities Enrolled by Their Parents in Private Schools](#) that is designed to gauge SEA capacity to implement IDEA's equitable service requirements
- ▶ Did you know: IDEA provides for Secretarial review of State complaint decisions regarding a lack of meaningful consultation or consideration of private school officials

OSEP Policy Support 22-02 – Letter to State Directors of SPED on Ensuring a High-Quality Education for Highly Mobile Children (Nov 2022) – Key Issues Addressed

- ▶ Highly Mobile Children = military-connected children, migratory children, children who are homeless, and children in the foster care system
- ▶ Updates guidance and resources to States and school districts originally set forth in the Department's [July 19, 2013 Dear Colleague letter on Education for Highly Mobile Children](#)
 - ED's commitment to the [Military Interstate Children's Compact Commission \(MIC3\) Compact](#)
 - Follow up to Secretary Cardona's [February 9, 2022, letter to chief State school officers regarding military-connected students](#) and their families
- ▶ SEA obligation: free appropriate public education (FAPE) under IDEA available to highly mobile children with disabilities

- ▶ Timely and expedited evaluation and eligibility determination requirements
- ▶ Obligation to provide comparable services to highly mobile children with IEPs who transfer into new school districts, including ESY services if identified on IEP
- ▶ Department of ED, Department of HHS, affiliated TA Centers offer multiple military and family resources
- ▶ Did you know:
 - [The MIC3 Compact](#) addresses the key educational transition issues encountered by military families: eligibility, enrollment, placement, and graduation.
 - [The Center for Parent Information & Resources](#) has resources especially for military families.

IDEA Implementation Issues at the LA/SEA Level

- OSEP Policy Support 22-03 – Guidance for Common Prior Approval Requests under IDEA (Dec 2022)
- OSEP Memo 22-10 – Personnel Qualifications under Part B of the IDEA Parts B and C (Oct 2022)
- Policy Letter to Oettinger (Mar 2023)

OSEP Policy Support 22-03 – Guidance for Common Prior Approval Requests under IDEA Parts B and C – Key Issues Addressed

- ▶ Certain items of cost are unallowable as direct charges to the IDEA grant except with advanced prior written approval from OSEP. [2 C.F.R. § 200.407](#)
- ▶ OSEP's Guidance is Intended to assist SEA's and State LA's in preparing comprehensive, approvable requests when using funds under IDEA Part B and Part C.
- ▶ Current guidance merges three (3) common categories of direct costs into one document for which SEA's and State LA's are required to obtain prior written approval.
 - **Equipment expenditures** (with a per unit cost of \$5,000 or more);
 - **Participant Support Costs** (such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (not State employees); and
 - **Revision of cost items within budget and program plans** (including transfers among direct cost categories in which the cumulative amount exceeds or is expected to exceed ten percent of the current total approved budget).

▶ Is Prior Approval Required?

Remember when... OSERS Granted prior approval for certain participant support costs (PSCs) and certain general purpose equipment expenditures?

OSERS 2019 FAQ Memo on Prior Approval

- ▶ Grantees no longer need to submit separate individual requests for prior approval for the costs described in the FAQ Memo.
 - For costs that require prior approval and fall outside the scope of OSERS 2019 memo - a detailed request must be sent to OSEP for approval.
- ▶ **Consider: Factors affecting the allowability of costs**
 - Costs must be: **Necessary, Reasonable and Allocable**

Governed by Subpart E -Cost Principles of the Uniform Guidance [2 C.F.R. § § 200.403 – 200.405](#)
- ▶ **Subrecipient Requests for Equipment – Responsibility of SEA or State LA**

OSEP Memo 22-10

- Addresses personnel qualifications under Section 612(a)(14) of IDEA and 34 C.F.R. § 300.156. (State policies and procedures that may be inconsistent with IDEA).
- The potential of COVID-19 to exacerbate shortages of special education teachers and related services providers across the country.
- Secretary Cardona's [call to action](#) for States, school districts, and institutions of higher education (IHEs).

OSEP Memo 22-01 – Personnel Qualifications under Part B of the IDEA (Oct 2022) - Available Resources

- ✓ The Secretary released a [fact sheet](#) on the Department's efforts to support the teacher development pipeline to recruit, prepare, and retain teachers;
- ✓ A second [fact sheet](#) on Federal programs that may be used to sustain ARP investments in key strategies.
- ✓ [Joint Dear Colleague Letter](#) that was released in August of 2022 that focuses on the use of Registered Apprenticeship programs for teachers.
- ✓ Higher Education Emergency Relief Fund (HEERF) under ARP.
 - These grant funds can be used to provide stipends, scholarships, and other financial aid to educators-in-training to help underwrite the cost of preparation.
- ✓ Additional Resources can be found within the Memo: [Memorandum: OSEP 22-01 -- Personnel Qualifications under Part B of the Individuals with Disabilities Education Act \(IDEA\). Oct. 4, 2022](#)



Policy Letter to Oettinger – Key Issues Addressed

(1) Must a State educational agency (SEA) resolve a complaint that meets the requirements of 34 C.F.R. § 300.153 if the child who is the subject of the complaint has graduated?

Answer: YES

(2) Must an SEA resolve a complaint that meets the requirements of 34 C.F.R. § 300.153 if the complainant is alleging systemic noncompliance based on facts related to a child who has graduated?

Answer: YES

Policy Letter to Oettinger – Implementation Considerations

- ▶ The State complaint procedures can be used to resolve any complaint that meets the requirements of 34 C.F.R. § 300.153, including complaints that raise systemic issues, and matters concerning the identification, evaluation, or educational placement of a child, or the provision of FAPE to a child (Emphasis added). (Even if the Student who is the subject of the complaint has graduated)
- ▶ It would be inconsistent with IDEA's provisions and the Department's previous guidance for an SEA to remove or limit a party's right to file a complaint that a public agency has violated a requirement of Part B of the Act. 71 Fed. Reg. 46605. (Even if Student who is the subject of the systemic complaint has graduated)



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