

Chapter 31, EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended as follows:

Section 3108, CHILD ELIGIBILITY FOR SERVICES, is amended by adding the bolded and underlined language in § 3108.3 and adding a new § 3108.4 to read as follows:

3108 CHILD ELIGIBILITY FOR SERVICES

...

3108.3 **Until § 3108.4 takes effect**, pursuant to Part C IDEA regulations at 34 C.F.R. §§ 303.21 and 303.111, a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and his/her third (3rd) birthday and any of the following apply:

- (a) The child demonstrates a delay of fifty (50%) percent, using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:
 - (1) Physical development, including vision or hearing;
 - (2) Cognitive development;
 - (3) Communication development;
 - (4) Social or emotional development; or
 - (5) Adaptive development.
- (b) The child is diagnosed as having a physical or mental condition that has a high probability of resulting in developmental delay, including conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.
- (c) In addition to the above criteria, effective July 1, 2013, the child demonstrates a delay of twenty-five (25%) percent, using appropriate diagnostic instruments and procedures, in two (2) or more of the following developmental areas:

- (1) Physical development, including vision or hearing;
- (2) Cognitive development;
- (3) Communication development;
- (4) Social or emotional development;
- (5) Adaptive development

3108.4

~~Upon the inclusion of the fiscal effect of the subsection in an approved budget and financial plan as certified by the District of Columbia Chief Financial Officer and published in the *District of Columbia Register*, Beginning July 1, 2018,~~ a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and his/her third (3rd) birthday and any of the following apply:

- (a) The child demonstrates a delay of twenty-five (25%) percent, using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:
 - (1) Physical development, including vision or hearing;
 - (2) Cognitive development;
 - (3) Communication development;
 - (4) Social or emotional development; or
 - (5) Adaptive development; or
- (b) The child is diagnosed as having a physical or mental condition that has a high probability of resulting in developmental delay, including conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

Chapter 30, SPECIAL EDUCATION, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:

Section 3001, DEFINITIONS, is amended by adding the following definitions to Subsection 3001.1:

3001 DEFINITIONS

3001.1 ...

Child find – A set of policies, procedures, and public awareness activities designed to locate, identify, and evaluate children who may require special education and related services, and ensures a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

...

Enrollment –A process through which a student obtains admission to a public or public charter school. .

...

Section 3002, LEA RESPONSIBILITY, is amended as follows:

Subsection 3002.1 is amended to read as follows:

3002.1 Provision of FAPE

(a) The LEA shall make a free appropriate public education (FAPE) available to each child with a disability, ages three to twenty-two, even if they are advancing from grade to grade, who ~~resides in~~ is a resident of, or is a ward of, the District including:

(1) wards of the District

(2) -children who are suspended or expelled, or

(3) ~~and~~ highly mobile children, such as migrant or homeless children or children in the custody of the DC Child and Family Services Agency (CFSA), Department of Youth Rehabilitation Services (DYRS), or Court Social Services (CSS), even if they are advancing from grade to grade.

(b) For DCPS, the responsibility to make FAPE available extends to all children with disabilities between the ages of three (3) and twenty-two (22) years old, who are residents of the District of Columbia but are not enrolled (as described in 3002.1(c) for the current school year in a District public charter school LEA, ~~and.~~ DCPS's responsibility also extends to children with disabilities attending private and religious schools in the District of Columbia, pursuant to the requirements of IDEA.

(c) For students enrolling for the current school year or ~~U~~unless otherwise provided in § 3002.9, a public charter school LEA's obligation to determine eligibility for special education services, offer or make FAPE available, or to provide special education services on an existing IEP is triggered upon

completion of the registration of the student in the Student Information System (SIS) by the school upon receipt of required enrollment forms and letter of enrollment agreement, in accordance with subparagraph (4) in the definition of enrollment in 5A DCMR § 2199.

- (d) A child with a disability found by the LEA to be eligible for special education and related services shall remain eligible through the end of the semester ~~he or she~~ they turns twenty-two.
- (e) If a child with a disability turns twenty-two during the summer, ~~he or she~~ they shall be ineligible for further special education and related services under this chapter.
- (f) The services provided to the child must address all of the child's identified special education and related services needs and must be based on the child's unique needs and not on the child's disability.
- (g) When a child with a disability can receive FAPE in ~~his or her~~ their local school without transportation, the LEA is not required to provide transportation to an alternative placement unilaterally selected by the child, parent or guardian.
- (h) For children transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B, the LEA shall ensure a smooth and effective transition pursuant to §3002.9.

...

Subsection 3002.3 is repealed:

3002.3 ...

(a) [REPEALED]

~~_____ – _____ (b) The LEA shall ensure that an IEP team is available **throughout the year** to fulfill IEP team responsibilities as required by this chapter. ...~~

~~_____ (d) The LEA shall ensure that special education and related services are provided to an eligible child with a disability in accordance with the child's IEP, **as soon as possible following the development of the IEP, unless the child is transitioning from Part C to Part B services, in which case the timeline is in Section 3002.9(a)(3). At the beginning of each school year, each LEA must have in effect an IEP for each child with a disability.**---~~

~~_____ (f) The LEA shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.~~

New Subsections 3002.6 through 3002.10 are added to read as follows:

3002.6 Each LEA and public agency shall implement child find policies and procedures to ensure that:

- (a) All children with disabilities between the ages of three (3) and twenty-two (22) years of age enrolled in the LEA, including children with disabilities who are homeless, children who are in the custody of the District of Columbia Child and Family Services Agency or ~~committed to~~ the District of Columbia Youth Rehabilitation Services Agency or placed by Court Social Services or Department of Corrections, children who are making progress from grade to grade, and highly mobile children, who ~~are may be~~ in need of special education and related services, are identified, located, and evaluated, regardless of the nature or severity of their disabilities; and
- (b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

3002.7 The District of Columbia Public Schools shall also implement child find policies and procedures to ensure that:

- (a) All children with disabilities between three (3) and twenty-two (22) years who are residents of the District of Columbia but are not enrolled in a District LEA, including children with disabilities who are homeless, children in the custody of the District of Columbia Child and Family Services Agency or Youth Rehabilitation Services Agency, and highly mobile children such as those placed by Court Social Services and who are in need of special education and related services, are identified, located, and evaluated; and
- (b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.
- (c) ~~For children under the age of six (6) years old,~~ DCPS shall:
 - (1) Maintain, and update at least annually, a list of primary referral sources, including physicians, hospitals, and other health providers; day care centers, child care centers, and early childhood programs; District departments and agencies; community and civic organizations; and advocacy organizations. In addition:

- (A) Contact primary referral sources at least once a month until a referral relationship is established and then every three (3) months thereafter;
 - (B) Develop a system to track frequency and type (in person, email, phone, etc.) of contacts with the primary referral sources described in Subsection (c)(1) to ensure that outreach occurs on a regular basis; and
 - (C) Develop, publish, and distribute printed materials for primary referral sources to inform them of the preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to make a referral;
- (2) Develop and publish printed materials for parents to provide information regarding preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to obtain the services. These materials shall be:
- (A) Written at an appropriate reading level and translated into multiple languages as required by local law; and
 - (B) Distributed to all primary referral sources described in Subsection (c)(1), all DCPS and public charter schools, District of Columbia Public Libraries, Economic Security Administration (ESA) Service Centers, District of Columbia Parks and Recreation facilities, and other locations designed to reach as many parents or guardians of preschool children who may be eligible for special education and related services as possible; and
- (3) Ensure that appropriate DCPS outreach staff (e.g., the Child Find Field Coordinators) contact primary referral sources or a staff member in the primary referral source's office who are instrumental in making referrals at least once a month until a referral relationship is established and then every three (3) months thereafter. The initial meeting shall be face-to-face whenever possible when pursuing referrals from new referral sources and then less frequently thereafter, using the method of contact preferred by the referral sources (e.g., e-mail, texting, or telephone calls).

3002.8

DCPS shall conduct public awareness activities sufficient to inform parents and the community regarding the availability of special education and related services and the methods available to request those services and programs. District public

charter school LEAs shall conduct similar awareness activities to inform parents and community members that interact with the public charter school LEA of the availability of special education and related services.

3002.9

(a) If a child is enrolling in an LEA for the current school year, the LEA's obligation to make FAPE available to a child with a disability commences upon completion of the child's registration, in accordance with subparagraph (4) in the definition of enrollment in 5A DCMR § 2199, except ~~that DCPS, which is responsible for Child Find, making FAPE available, and provision of FAPE for children who are not enrolled in accordance with 3002.1(a) and (b), 3002.6, and 3002.7;~~

(b) For children transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B, the LEA shall ensure a smooth and effective transition pursuant to 34 CFR § 300.124, including ensuring that:

(1) The transition begins no less than 90 days prior to the child's third birthday;

~~(1) —~~ The LEA participates in transition planning conferences, ~~as~~

(2) ~~appropriate;~~

(3) The LEA has developed an IEP by the child's third birthday, including:

(A) For public charter school LEAs, the LEA has developed an IEP by the third birthday of any child who is ~~currently~~ enrolled for the current school year in the public charter school LEA or participated in the IEP development and made plans to provide FAPE on the first day of the school year for a child who has completed the registration process for the upcoming school year; or

(B) For DCPS, the LEA has developed an IEP by the third birthday of any child who is a resident of the District of Columbia who is not enrolled in a public charter school LEA for the current school year; and

~~(4)~~ The LEA is implementing the IEP by the child's third birthday including ensuring the provision of all special education and related services in the child's IEP by the child's third birthday, unless the parent has chosen an extended Individualized Family Services Plan in the Early Intervention Program, -or, if the third birthday occurs

on a non-school day by the subsequent school day. ~~or during the summer, within a timeframe established by the state education agency (SEA), including ensuring the provision of all special education and related services in the child's IEP. The "subsequent school day," in the case of a child whose birthday falls during the summer is either the first day of the next academic year or, if the child qualifies for Extended School Year services, it will be the subsequent day of Extended School Year services. Any necessary transportation services, which are related services, shall be provided in accordance with this timeline.~~

(c) For all other children not covered by Subsection (a) or (b) transferring between LEAs between school years:

~~(1) The new LEA's obligation to make FAPE available begins on August 1 or the first day of the school year, whichever is earlier; and~~

(1) The new LEA's obligation to plan for the student's FAPE begins on July 1 and the responsibility to make FAPE available and provide FAPE begins on the first day of the LEA's school year for the school. The responsibility to plan for the child's FAPE includes, but is not limited to, requesting records, taking all steps to have access to SEDS, planning to provide needed services, and arranging transportation at least 14 business days in advance;

(2) The previous LEA's obligation to make FAPE available ends on July 31 or the last day of summer extended school year services, whichever is later; and

(d) If a child is registered in the Student Information System (SIS) for more than one (1) LEA, the most recent date of documented parental consent for enrollment shall determine the LEA that is responsible for making FAPE available to the child.

3002.10 DCPS is responsible for conducting child find activities for children who are homeschooled and resident and nonresident parentally-placed private school child over three (3) years of age attending religious and other private elementary and secondary schools located in the District and may not require enrollment in the LEA prior to evaluation or development of an IEP.

Section 3004, IDENTIFICATION & REFERRAL FOR INITIAL EVALUATION, is amended to read as follows:

3004 IDENTIFICATION & REFERRAL FOR INITIAL EVALUATION

3004.1 The LEA shall treat a referral from the following individuals as a request for initial evaluation in accordance with 34 C.F.R. §300.301(b):

- (a) The child's parent;
- (b) The child, ~~provided that educational rights have transferred to the child~~; and
- ~~(c)~~ (c) An employee of the LEA the child is enrolled in, who has knowledge of the child; ~~and~~
- ~~(e)~~(d) A public agency.

3004.2 ~~For children under the age of six (6), t~~The LEA shall also treat a referral from the following individuals, as a request for initial evaluation in accordance with 34 C.F.R. § 300.301(b):

- (a) Pediatrician or other medical professional, including physicians, hospitals, and other health providers;
- (b) Child development facilities, including day care centers, child development homes, prekindergarten programs in community-based organizations, child care centers, and early childhood programs;
- (c) District agencies and programs, including IDEA Part C programs;
- (d) Community and civic organizations; ~~and~~
- ~~(e)~~ (e) Advocacy organizations
- ~~(f)~~ (f) Private and parochial schools; and
- ~~(g)~~ (g) other individuals.

~~3004.3~~ ~~To determine if a child is suspected of being a child with a disability, the LEA may:~~

- ~~(a)~~ ~~Conduct screenings;~~
- ~~(b)~~ ~~Consider existing child data and information; and~~
- ~~(c)~~ ~~Consult with the parent.~~

~~3004.4~~3004.3 The LEA shall not ~~unreasonably~~ delay or deny a timely initial evaluation to conduct screenings or implement pre-referral interventions.

~~3004.5~~3004.4 The LEA shall notify the parent of receipt of any referral received under § 3004.1 and .2. This notification shall occur within three (3) business days and shall include information regarding:

(a) The initial evaluation process;

~~(b)~~ Parental consent requirements

~~(b)~~(c) A model parent consent form; and

~~(c)~~(d) Resources the parent may contact for assistance.

~~3004.6~~3004.5 A referral for an initial evaluation may be oral or written.

~~3004.7~~3004.6 Upon receiving an oral referral for an initial evaluation, the LEA shall:

(a) Assist any outside referral source, including but not limited to the parent and other public agencies, to document an oral referral in writing; and

~~(b)~~ Document the date of any oral referral within three (3) business days of receipt. The date that the oral referral was made shall be clearly documented and remains the start date of the initial evaluation timeline.

3004.8 The LEA shall upon obtaining consent of the parent or guardian, provide feedback to the referral source regarding the outcome of the referral in a timely manner.

Section 3005, EVALUATION AND REEVALUATION, is amended as follows:

By adding subparagraphs (b)-(d) to Subsection 3005.2 and adding subparagraphs (b)-(c) to Subsection 3005.4 to read as follows:

3005 EVALUATION AND REEVALUATION

...

3005.2 . . . ~~(a) Beginning July 1, 20178, or upon the inclusion of the fiscal effect of the subsection in an approved budget and financial plan as certified by the District of Columbia Chief Financial Officer and published in the *District of Columbia Register*, whichever occurs later,~~ an LEA shall assess or evaluate a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation or assessment. The LEA shall make reasonable efforts to obtain parental consent within thirty (30) days from the date the student is referred for an assessment or evaluation.

(b) The LEA shall document reasonable efforts to obtain parental consent. Reasonable efforts include at least three (3) documented attempts using at least two (2) of the following modalities on at least three (3) different dates. Reasonable efforts include common sense regarding phone numbers, email addresses, or street addresses that are inoperable, disconnected, result in returned correspondence, or otherwise do not work, meaning that ineffective attempts to the same failed modality are not reasonable to document as attempts. Reasonable efforts include checking with other personnel, such as teachers, registrars, attendance counselors, or front desk staff for updated contacts, as necessary:

- (1) Telephone calls made or attempted and the results of those calls;
- (2) Correspondence sent to the parents and any responses received; or
- (3) Visits made to the parents' home or place of employment and the results of those visits.

(c) Reasonable efforts for the purposes of obtaining parental consent for initial evaluation shall begin no later than ~~ten (10)~~five (5) business days from the referral date or of the suspicion that the child may have a disability and be completed no later than twenty-five (25) days after the child is referred for assessment or evaluation or the child is otherwise suspected of having a disability and needing evaluation. ~~five (5) days prior to the deadline for the initial evaluation.~~

(d) The initial evaluation timeline in this Section does not apply to the LEA if:

(1) The LEA has made and documented reasonable efforts under this Section and the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) The child enrolls in a new LEA after the initial evaluation process timeline has begun, but before an eligibility determination has been made by the child's previous LEA, ~~provided that~~only if the new LEA is making sufficient progress to ensure prompt completion of the evaluation, and the parent and new LEA agree to a specific time when the evaluation will be completed, not to exceed an additional thirty (30) days.

- (b) Review, ~~for children under the age of six (6):~~
 - (1) Relevant information provided by any agency, medical professional, service provider, child care provider, early childhood program, or relative who may have relevant information regarding the child; and
 - (2) For children under the age of six (6), IDEA Part C assessments and other related data.
- (c) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - (1) Whether the child has a particular category of disability under this chapter or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
 - (2) The present levels of performance and educational needs of the child;
 - (3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

..

Section 3017, EXTENDED SCHOOL YEAR SERVICES, is amended as follows:

Subsections 3017.1 and 3017.2 are to read as follows:

3017.1 The IEP Team shall determine whether the provision of extended school year services is necessary for the provision of FAPE to a child with a disability on an individual basis, as part of the initial IEP development and the annual IEP review.

3017.2 In determining whether extended school year services are necessary for the provision of FAPE, the IEP team may consider the following factors:~~the IEP team shall utilize at least three (3) months of progress monitoring data from the current school year, or any relevant current data or information if three (3) months of progress monitoring data from the current school year is not available, to consider and document each of the following:~~

- (a) The impact of break in service on previously attained or emerging critical skills;
- (b) The likelihood and degree of regression related to previously attained or emerging critical skills; and
- (c) The time required for recoupment of previously attained or emerging critical skills
- (d) The child's degree of progress toward mastery of IEP goals related to critical life skills;
- (e) The presence of emerging skills or breakthrough opportunities;
- (f) Interfering behaviors;
- (g) The nature or severity of the child's disability, including that children with Autism, Developmental Delay, Multiple Disabilities, and Intellectual Disability should be presumed to have a disability that requires consistent services unless demonstrated otherwise for the unique child;
- (h) Vocational factors, for children with vocational or employment goals and objectives, whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break, or
- (i) Special circumstances.

3017.3 The LEA shall not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of these services, including that LEAs may not limit provision of extended school year services to only the summer.

3017.4 A child's status as a child with a disability, or a child with a disability who receives extended school year services, shall not limit the child's access to summer school in order to earn credits needed to advance between grades or graduate from high school. Least restrictive environment requirements apply to extended school year programming, such that special education and related services must be available in general education settings during extended school year.

3017.x A critical skill may be an academic skill, such as reading, or a non-academic skill that has educational impact, such as a fine motor skill. Non-academic skills also include social, functional, and behavioral skills that have educational impact. ESY eligibility decisions based on the identification of a critical skill that is related to

behavior must reference and build upon the student's behavioral intervention plan (BIP) and functional behavior assessment (FBA) if such documents have been prepared.

3017.x The LEA shall ensure that consideration of the child's eligibility for, and the content, duration and location of the child's extended school year services is determined so as to allow the parent sufficient time to challenge the determination of eligibility, the program or the placement before the beginning of the extended school year services, unless there is a reasonable need to make the determination later.

...

Section 3024, PROCEDURAL SAFEGUARDS – PRIOR WRITTEN NOTICE, is amended as follows:

3024 PROCEDURAL SAFEGUARDS--PRIOR WRITTEN NOTICE.

3024.1 Consistent with 20 U.S.C. § 1415(b)(3), the LEA shall provide written notice to the parent of a child with a disability a reasonable time before the LEA:

- (a) Proposes to initiate or change the identification, evaluation, Individualized Education Program, educational placement, including the service location of the educational placement, or the provision of FAPE to the child; or
- (b) Refuses to initiate or change the identification, evaluation, Individualized Education Program, educational placement, including the service location of the educational placement, or the provision of FAPE to the child.

3024.2 Prior written notice shall be:

- (a) Written in language understandable to the general public;
- (b) Documented in the system of record each time it is provided to the parent, including the mode of delivery;
- (c) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and
- (d) If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure all of the following:
 - (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

- (2) The parent understands the content of the notice; and
- (3) There is written evidence that the requirements of this paragraph have been met.

Section 3025, PRIOR WRITTEN NOTICE CONTENT, is amended to read as follows:

3025 PRIOR WRITTEN NOTICE CONTENT

3025.1 Prior written notice shall include the following:

- (a) A description of the action the LEA is proposing or refusing to take;
- (b) An explanation of why the LEA proposes or refuses to take the action;
- (c) A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
- (d) A statement that the parent of a child with a disability has protection under the procedural safeguards of the IDEA and this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (e) Sources for the parent to contact to obtain assistance in understanding the provisions of the IDEA and this Chapter, including:
 - (1) Parent Training and Information Center established pursuant to Section 671 of IDEA (20 U.S.C. § 1471);
 - (2) Office of the Ombudsman for Public Education (D.C. Official Code § 38-351 *et seq.*); and
 - (3) Office of the Student Advocate (D.C. Official Code § 38-371 *et seq.*);
- (f) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- (g) If applicable, a description of other factors relevant to the LEA's proposal or refusal.