

**Via email: [ossecomments.proposedregulations@dc.gov](mailto:ossecomments.proposedregulations@dc.gov)**

July 10, 2012

Jamai Deuberry  
Legal Administrative Specialist  
Office of the State Superintendent of Education  
810 First Street, NE, 9<sup>th</sup> Floor  
Washington, DC 20002

Re: Comments on Proposed Chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities) to Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR)

Dear Ms. Deuberry:

Thank you for the opportunity to comment on the proposed rulemaking regarding early intervention services that was published in the DC Register on June 8, 2012. I am submitting these comments on behalf of Children's Law Center (CLC),<sup>i</sup> which represents more than 2,000 low-income children and families in the District of Columbia every year. Many of the children we work with are eligible for early intervention services. Our comments are based on our experience representing these children and their families.

#### Eligibility

The proposed regulations significantly broaden the eligibility criteria for early intervention (Part C). We strongly support this change. DC's current eligibility criteria require children to have a 50% delay in one or more areas of development in order to be eligible for early intervention.<sup>ii</sup> The proposed regulations will extend eligibility to include children with a 25% delay in two or more areas of development.<sup>iii</sup> We understand from conversations with OSSE that this expansion is expected to double the number of children found eligible for early intervention, an important step forward for a system that has historically served a disproportionately small percentage of the city's infants and toddlers.<sup>iv</sup>

However, the proposed eligibility criteria are still narrower than the criteria of most other states. At least 32 other states extend eligibility to children with a delay of less than 50% in one area of development.<sup>v</sup> Of those states, 17 – including Maryland and Virginia – extend Part C eligibility to children with a 25% delay in one area of development. Additionally, six states extend eligibility to children who are “at risk” of developmental delay, as permitted by the Individuals with Disabilities Education Act (IDEA).<sup>vi</sup> These children may be at risk of developmental delay because of biological and environmental factors including low birth weight, nutritional deprivation, or a history of abuse or neglect.<sup>vii</sup>

Given DC's high incidence of risk factors for disability, including a nearly 30% child poverty rate<sup>viii</sup> and a disproportionate number of babies with low birth weights<sup>ix</sup> and preterm births,<sup>x</sup> DC should make early intervention services available at least as widely as the majority of states do, if not even more widely. We therefore encourage OSSE to extend DC's eligibility criteria to include children at risk of developmental delay and children with a developmental delay of 25% in just one area of development. Doing so will ultimately reduce the burden on the city's special education system, as many interventions are most effective when provided before children enter grade school.<sup>xi</sup>

#### Individualized Family Service Plan (IFSP) extension

We also support OSSE's decision to give families the option of extending early intervention services until children start pre-kindergarten, as allowed by the IDEA.<sup>xii</sup> Currently, children in DC can no longer receive early intervention services after they turn three. Under the proposed regulations, parents whose children are found eligible for Part B special education at three may choose to have their children continue instead in early intervention until the year that they are eligible to start pre-kindergarten.<sup>xiii</sup> We expect that many parents will prefer this option because it allows children to continue receiving services in their natural environment and continues the care coordination and parent training that are benefits of the early intervention program.

We suggest that OSSE further extend the availability of early intervention services to the year that children are eligible to start kindergarten, rather than pre-kindergarten. This further extension is allowed by federal law.<sup>xiv</sup> The same logic that supports allowing parents to choose to continue early intervention services for three-year-olds applies to four-year-olds: for many children, it is more appropriate to receive services at home or daycare rather than in a formal school setting and many children and families continue to benefit from Part C's higher level of care coordination and family training.

#### Native language

The proposed regulations state that evaluations and assessments of a child shall be conducted in the child's native language "to the extent possible."<sup>xv</sup> In our reading, this does not fully encompass the force of the IDEA requirement that child evaluations and assessments – as well as family assessments – be conducted in the child's native language "unless clearly not feasible to do so."<sup>xvi</sup> DC's current Part C Procedural Rights Manual states that if English is not the parent's primary language, he or she has the right to receive information in his or her primary language "unless it is clearly impossible" for the Early Intervention Program to provide the parent with information in that language.<sup>xvii</sup> In our experience, parents often struggle to have information translated into their primary language even when it is a common language such as Spanish. Accordingly, we recommend that § 3104 be revised to read:

All evaluations and assessments of a child shall, ~~to the extent possible,~~ be conducted in the child's native language **unless it is clearly not feasible to do so. All family assessments must be conducted in the native language of the family member being assessed unless it is clearly not feasible to do so.**<sup>xviii</sup>

#### Wards

The proposed regulations discuss the entitlement of wards of the District of Columbia to early intervention services at §§ 3100.1 and 3108.2 and incorporate the definition of the term "ward"

from the IDEA at § 3199.1. These three sections are somewhat inconsistent. In order to maintain consistency and clarify that early intervention services are available to all foster children in the custody of DC's Child and Family Services Agency (CFSA), regardless of where their foster home is or whether their foster parent meets the IDEA definition of "parent," we recommend that DC provide a definition of "ward of the District of Columbia" at § 3199.1 as follows:

**A ward of the District of Columbia is any child in the legal custody of a DC child-serving agency, including but not limited to children in the legal custody of a DC child-serving agency who reside outside of DC. For purposes of DC's responsibility to provide appropriate early intervention services as described in § 3100.1, the term "ward of the District of Columbia" also includes children in the custody of a DC child-serving agency who have a foster parent who is authorized to act as their IDEA parent pursuant to DC regulations.**

It is essential for there to be one agency with clear responsibility for providing early intervention services for any child in DC's foster care system. In our experience, young foster children often are moved many times between homes in DC and different Maryland counties as CFSA works to place them with kin, reunite them with birth parents, or find the most appropriate pre-adoptive home. If it is not clear that DC maintains responsibility for ensuring that the foster child receives appropriate early intervention services, then there is a serious risk that a child who moves jurisdictions will fail to make progress as each new county she is moved to needs to reconsider her eligibility, reassess her needs, and reconnect her with services, a process that might well not be finished before she moves to a new jurisdiction – leaving her without the supports she needs at the time when they are most developmentally critical.

Similarly, it is essential that DC retain responsibility for providing early intervention services to DC foster children who may be placed in a Maryland foster home with a foster parent who meets the requirements to be considered a "parent" under DC regulations. In our experience, even foster placements that appear stable often disrupt unexpectedly. It risks harm to a child to remove DC's responsibility for providing services before the foster parent has made a permanent commitment to the child through guardianship or adoption.

#### Technical suggestions

Eligibility for early intervention may be established through informed clinical opinion.<sup>xix</sup> The proposed regulations recognize the role of informed clinical opinion at § 3105. However, the proposed regulations do not include mention of informed clinical opinion in the section regarding eligibility. We therefore recommend that a reference to establishing eligibility through informed clinical opinion be added at § 3108.3(c) stating:

**The child is determined eligible based on informed clinical opinion.**

The wording of § 3110.2 describing the option to extend early intervention services until children enter pre-kindergarten is somewhat unclear. Assuming that OSSE chooses to maintain eligibility for the IFSP extension only through the beginning of pre-kindergarten, we suggest making this section clearer by changing it to read:

The option to continue early intervention services under Part C of IDEA applies to children with disabilities from age three (3) until the **beginning of** the first school year for which the child is eligible to attend a pre-**kindergarten** program. As used in this subsection, "pre-**kindergarten**" refers to the year immediately preceding kindergarten. ~~In no case may~~

~~services under this section be provided beyond the age at which the child actually enters, or is eligible to enter, kindergarten or elementary school in the District of Columbia.”~~

For many substantive areas, the proposed regulations require that “the District of Columbia early intervention program shall have...components” implementing the requirements of the federal Part C regulations, but the proposed regulations do not actually describe those components.<sup>xx</sup> It is not clear whether this indicates that OSSE plans to issue further guidance regarding the implementation of those components. We recommend that OSSE provide additional information about the requirements for these components in the body of these proposed regulations so that the regulations can be a comprehensive source of information about the requirements of the early intervention program. For example, the current regulations do not include specific information regarding the services available under early intervention, the necessary members of the IFSP team, the procedural safeguards for parents, the information that must be given to parents when requesting permission to bill their insurance, or the requirement to provide services in the natural environment whenever possible. The proposed regulations do reference the corresponding federal regulations, but it may be difficult for readers without legal training to interpret the cross-referencing.

The following sections should be changed as follows to improve clarity:

- § 3102.1 should read: The Lead Agency **shall** ensure that, subject to obtaining parental consent in accordance with 34 C.F.R. 303.420(a)(2), each child under the age of three (3) who is referred for evaluation of early intervention services under Part C of IDEA and suspected of having a disability; receives a timely, comprehensive, multidisciplinary evaluation of the child in accordance with 34 C.F.R. 303.321.
- In § 3102.2, the reference to 34 C.F.R. § 303.321 in the fourth line should be changed to 34 C.F.R. § 303.21.
- § 3102.6 should read: **If the** Agency determines that the child is not eligible under Part C of IDEA, the Lead Agency must provide the parent with prior written notice required in 34 C.F.R. § 303.421 and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms under 34 C.F.R. § 303.430 and § 3111, such as requesting a due process hearing or mediation **or** ~~of~~ filing a state complaint.
- § 3103.2 should read: If an infant or toddler is determined eligible for early intervention services in accordance with 34 C.F.R. § 303.21, a multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services **appropriate to meet those needs** must be conducted by qualified personnel ~~appropriate to meet those needs~~.

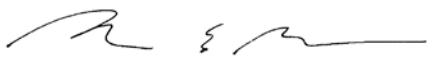
In order to make the regulations easier to understand, we suggest moving the definitions section to the beginning. We also suggest providing the full citation when citing internally to other parts of the proposed regulations, as in some places it is confusing whether the citation is to another part of the proposed regulations or to the federal regulations.

## Conclusion

Thank you for the opportunity to comment on these proposed regulations. We are in strong support of the expansion of eligibility for Part C services to children with delays of 25% in two areas and children over the age of three whose parents prefer for them to remain in Part C rather than move to Part B. We look forward to DC's infants and toddlers with disabilities benefiting greatly in the coming years from increased access to early intervention services, and we appreciate OSSE's work to achieve this goal.

If you have any questions, please do not hesitate to contact me at (202) 467-4900, ext. 565 or [sgreer@childrenslawncenter.org](mailto:sgreer@childrenslawncenter.org).

Respectfully,



Sharra E. Greer  
Policy Director

Cc: Amy Maisterra, Assistant Superintendent of Special Education

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<sup>i</sup> Children's Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children. Our 80-person staff partners with local pro bono attorneys to serve more than 2,000 at-risk children each year. We use this expertise to advocate for changes in the District's laws, policies and programs. Learn more at [www.childrenslawcenter.org](http://www.childrenslawcenter.org).

<sup>ii</sup> OSSE "Comprehensive Child Find System" Policy, March 22, 2010, p. 4. Under this current policy, children may also be eligible for early intervention services based on having a diagnosed medical condition with a high probability of developmental delay or demonstrating a need for early intervention services through informed clinical opinion.

<sup>iii</sup> Proposed 5 DCMR § A-3108.3(b).

<sup>iv</sup> OSSE's Part C State Annual Performance Report for FFY 2010 indicates that as of Dec. 1, 2010, DC's Early Intervention Program served 1.94% of the District's population of infants and toddlers, well below the national average of 2.82%. The incidence of disability in the District is likely higher than 2.82% because of the District's characteristics as an urban jurisdiction. In FFY 2009, DC had served only 1.42% of infants and toddlers.

<sup>v</sup> National Early Childhood Technical Assistance Center, "Summary Table of States' and Territories' Definitions of/Criteria for IDEA Part C Eligibility," June 1, 2012, available at [http://www.nectac.org/~pdfs/topics/earlyid/partc\\_elig\\_table.pdf](http://www.nectac.org/~pdfs/topics/earlyid/partc_elig_table.pdf). 1 state extends eligibility to children with a 20% delay in one area of development; 17 states, including Maryland and Virginia, extend Part C eligibility to children with a 25% delay in one area of development; 4 states extend eligibility to children with a 30% delay in one area of development; 5 states extend eligibility to children with a 33% delay in one area of development; 3 states extend eligibility to children with a 40% delay in one area of development; and 2 states do not use a percentage-based or standard deviation-based cut-off for eligibility.

<sup>vi</sup> 34 C.F.R. § 303.21(b).

<sup>vii</sup> 34 C.F.R. § 303.5 defines "at-risk infant or toddler."

<sup>viii</sup> As of 2009, 29.4% of DC children lived below the federal poverty line, the highest of any state except Mississippi. First Focus, "Children in Poverty: State-by-state in 2009," available at <http://www.firstfocus.net/sites/default/files/Children%20in%20Poverty%202009.pdf>.

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<sup>ix</sup> In 2009, 10.3% of babies born in DC had a low birth weight (defined as under 5.5 lbs), compared to the national average of 8.2%. *Compare* Kids Count Data Center, “Low birth weight babies (percent) – 2009,” available at <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=5425> *with* Kids Count Data Center, “District of Columbia (City),” available at <http://datacenter.kidscount.org/data/bystate/stateprofile.aspx?state=DC&loc=10>.

<sup>x</sup>In 2009, 14.2% of babies born in DC were born preterm, as compared to 12.2% nationally. Kaiser Family Foundation State Health Facts, “Preterm Births as a Percent of All Births, 2009” available at <http://www.statehealthfacts.org/comparemaptable.jsp?ind=39&cat=2>.

<sup>xi</sup> *See, e.g.*, Zero to Three Policy Center, “Improving Part C Early Intervention: Using What We Know about Infants and Toddlers with Disabilities to Reauthorize Part C of IDEA,” Jack Shonkoff et al, Feb. 2003; Robert Wood Johnson Foundation, “Early Childhood Experiences: Laying the Foundation for Health Across a Lifetime,” March 2011.

<sup>xii</sup> 34 C.F.R. § 303.321(c).

<sup>xiii</sup> Proposed 5 D.C.M.R. § 3110.

<sup>xiv</sup> 34 C.F.R. § 303.211(a)(2)(iii).

<sup>xv</sup> Proposed 5 D.C.M.R. § 3104.1.

<sup>xvi</sup> 34 C.F.R. 303.321(a)(5) and (6).

<sup>xvii</sup> “Families Have Rights: District of Columbia Part C Procedural Safeguards for Families,” Office of the State Superintendent of Education, Oct. 2010, p. 4, available at <http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/Families%20Have%20Rights%20IDEA%20Part%20C%20Procedural%20Safeguards.pdf>.

<sup>xviii</sup> **Bold** indicates proposed additions and ~~strike through~~ indicates proposed deletions.

<sup>xix</sup> 34 C.F.R. § 303.321(a)(3)(ii).

<sup>xx</sup> 34 C.F.R. § 3101.1.