

## **STATE OF COLORADO**

### **State Transition Memorandum of Understanding**

#### **Infants and Toddlers with Developmental Disabilities and Their Families Transitioning from Early Intervention Services to Part B Special Education Services in Accordance with the Individuals with Disabilities Education Act (IDEA) of 2004**

#### **Colorado Department of Early Childhood**

#### **Colorado Department of Education**

This Memorandum of Understanding (MOU) between the Colorado Department of Early Childhood (CDEC) and the Colorado Department of Education (CDE) (collectively, “the parties”) is made to assure attainment of mutual goals between the agencies and their programs for the provision of transition services for toddlers who have developmental delays or disabilities, from Part C early intervention (EI) services to Part B special education services on or before age three.

#### **I. AUTHORITY FOR AGREEMENT**

As a condition of receiving Federal funds under Part C of the Individuals with Disabilities Education Act of 2004 (IDEA), 34 C.F.R. § 303.209(a)(3)(i)-(iii) requires the lead agency that administers Part C of IDEA and the State Education Agency (SEA) that administers Part B of the Act develop and implement an interagency agreement to ensure a seamless transition between services under Part C and Part B of IDEA for eligible children at age three and their families.

Under §§ 22-20-118.5 and 27-10.5-703, 704, C.R.S., the CDEC and the CDE are authorized to enter into agreements and make commitments that shall be binding on the operation of the programs of the agencies.

The CDEC is the designated lead agency for administering Part C under IDEA. The CDEC ensures access to Part C EI services to infants and toddlers with disabilities, age birth through two years, and their families. The CDEC contracts with Certified Early Intervention Brokers (Part C Entities) to administer local EI programs.

The CDE is the designated lead agency and State Education Agency (SEA) for administering Part B under IDEA and ensures that a Free Appropriate Public Education (FAPE) is available to all eligible children with disabilities ages three through twenty-one. At the local level, this is the responsibility of the Special Education Administrative Units (AUs).

The CDEC and the CDE shall abide by respective regulations and establish policies and procedures in alignment with IDEA. The parties shall ensure coordinated, effective, and smooth transitions for children and families participating in Part C to the Part B special education services, as appropriate, and within the required timelines established by IDEA and further defined as required in §§ 22-20-118.5 and 27-10.5-704, C.R.S.

The Federal Office of Special Education Programs (OSEP) requires a State Performance Plan (SPP) and an Annual Performance Report (APR) for both Parts C and B of IDEA. The Part C Plan has eleven Indicators, and the Part B Plan has twenty Indicators. Both agencies report annually to the OSEP regarding state performance on these Indicators, including both compliance and results. The state activities to ensure compliance with the federal and state requirements for transition are reported in the APR to the OSEP.

NOW THEREFORE, the CDEC and the CDE in consideration of the mutual covenants and agreements of this MOU, agree to the purpose, terms and conditions.

## **II. PURPOSE OF AGREEMENT**

The purpose of this MOU is to facilitate an ongoing effective and cooperative relationship enhancing coordination of transitions for children and families as they move from Part C services into Part B special education services. This agreement is based upon state and federal regulations implementing Part C and Part B of the IDEA.

The parties are committed to ensuring state and local Part C and Part B systems adhere to the policies and procedures set forth in this state level IA related to systems coordination of transition activities, data collection, and transition practices with families.

## **III. GENERAL TERMS OF THE AGREEMENT**

The parties agree to the meet the following terms:

- A. Confidentiality and consent requirements in 34 C.F.R. §§ 303.401(d) and (e), 303.402, 303.414, and the requirements in 34 C.F.R. § 300.123; and,
- B. Transition requirements of 34 C.F.R. §§ 303.209 and 303.344; and,
- C. Individualized Family Service Plan (IFSP) requirements of paragraph (h) of 34 C.F.R. § 303.344; and Individual Education Program (IEP) requirements under 34 C.F.R. § 300.323(b) for children determined eligible for Part B; and Transition requirements in 34 C.F.R. § 300.124; and,
- D. Representation of the CDE on the Colorado Interagency Coordinating Council (CICC) as specified in 34 C.F.R. § 303.604; and,
- E. Coordination of transition activities at the State level through this IA in alignment with 34 C.F.R. §§ 303.209(a)(3) and 303.511(b)(2); and,
- F. Coordination at the local level by fostering and encouraging collaborative implementation of IDEA Part C and Part B, through local implementation of the expectations in this state level IA. Local implementation of these expectations is meant to produce systems alignment and coordination of transition activities, data collection, and transition practices with families.
  1. Collaboration required at the local levels includes updating each system of pertinent contacts for those in responsible roles, ensuring ongoing communications, and meeting routinely to share and plan together.

2. Local partners may be required to develop and implement local Memorandums of Understandings, using this state level IA as a template, in the event of a need for local dispute resolution, corrective actions, or sanctions of local programs.
  3. Any local MOU developed must, at a minimum, align with the requirements of this state level IA.
- G. Demonstrate collaboration through the review and alignment of regulations, policies and procedures related to the indicators in the Part C and Part B SPP and through the results reported in the APR; and,
- H. Ensure that entities responsible for administering Part C and Part B special education services are held accountable to adhere to the policies and procedures set forth in this state level IA related to systems coordination of transition activities, data collection and transition practices with families of infants, toddlers and preschoolers.

#### **IV. TRANSITION PROCESS AGREEMENT TERMS**

##### **Definitions:**

**AU Notification:** A formal written referral made to Part B special education services by the Part C system of each child who meets the potentially eligible criteria for Part B special education services. The notification is required to occur on the AU Notification form for each child individually. The timelines for the required notification are defined in IV. A. 3. a – b below.

**Extended Part C Option in Colorado:** The federal policy option that allows a subsection of children to continue Part C Services past their third birthday until the first day of the school year following the child's third birthday.

**Potentially Eligible:** Means, for the purposes of transition planning, a child who is enrolled in EI services approaching the age of three and:

- Has not met all outcomes on his or her IFSP; and/or
- Is demonstrating a delay in any developmental domain as documented by a member of the IFSP team.

**Opt-Out Policy:** For the purposes of transition planning, the procedural safeguard provided to families to prohibit the transmission of personally identifiable contact information about their child and family to the CDE and AU.

##### **Agreement Terms:**

To ensure that the policies and procedures used for a smooth transition for children receiving early intervention services under Part C to Part B special education services of IDEA, § 637(a)(9)(A), the parties agree to the following:

- A. Processes for required notification concerning a child who is potentially eligible for Part B special education services.
  1. The CDEC shall ensure:
    - a. Prior to notifying the AU of a child who may be eligible for special education services,

- following the timeline outlined below in Section A. 1. e. i. and ii., the designated service coordinator shall inform the parent of the opt-out policy. If a parent chooses to opt out of having their child's information sent to the CDE and AU for notification of a child who is potentially eligible for special education services, the following must occur:
- i. A service coordinator shall complete the state notification form; and,
  - ii. The parent shall sign the form and submit it to the Part C Entity within ten (10) calendar days; and,
  - iii. The AU Notification form must become part of the child's Part C record.
- b. A parent may revoke his or her choice to opt out at any time by providing written notification to the Part C Entity.
- c. The jointly developed standard communications will be provided to the parent along with the presentation of the opportunity to opt out of AU Notification to ensure the parent has been given appropriate information about the potential impact, such as, but not limited to, delays that may occur as a result of opting out, should the parent later revoke their decision to opt out.
- d. For any child whose parent has not opted out of AU notification within the prescribed timeline and process, the AU Notification form must be completed by the designated service coordinator.
- e. The designated service coordinator shall notify the AU in which the child resides of the first, middle and last name, date of birth and parent contact information for each potentially eligible child on the designated state form. This notice constitutes the referral to the Part B system:
- i. Beginning July 1, 2022, at a minimum, timely AU Notification must occur not later than when a child is two years and six months of age; except that timely notification must occur not later than when a child is two years and three months of age if a child has a low incidence diagnosis including, but not limited to, visual impairment, including blindness; hearing impairment, including deafness; or deaf-blind.
  - ii. If a child is determined to be eligible for Part C when the child is older than the ages described in subsection A. 1. e. i. of this section, AU notification, including evaluation information, with parental consent must occur as soon as possible and not later than ten business days after the eligibility determination. In this case:
    - 1). The transition plan must be developed; and,
    - 2). AU Notification shall be transmitted to the AU; and,
    - 3). A transition conference must occur before a child is two years and nine months, or as soon as possible after AU notification is transmitted to the AU if the child is found eligible for Part C after the child is two years and nine months.
- f. If a child is referred to Part C less than forty-five (45) days before the child is three years of age:
- i. The child will be referred to the AU for Part B eligibility determination if there is parental consent; and,

- ii. The child will not be reflected in the Part C Indicator 8 data.
  - g. Process for transferring a child's assessment, IFSP, and other necessary information to an AU for consideration of a Part B special education services evaluation and eligibility determination.
    - i. After obtaining written parental consent, the Part C entity shall provide the AU with current information for a child who is potentially eligible for Part B special education services regarding the child's EI services, including a copy of the most current assessment information, and a copy of the most current IFSP; and,
    - ii. This information will be shared with the AU, as soon as practical and not later than 2 weeks prior to the transition conference.
2. The CDE shall ensure:
- a. AUs treat the notification form as a referral to the Part B system and understand that steps must be taken to initiate the evaluation to determine Part B eligibility within the IDEA Indicator 12 timelines; and,
  - b. When an AU receives a referral for a child who was referred to Part C less than 45 days before the child is three years of age:
    - i. The AU shall follow Part B requirements to determine whether to conduct an initial evaluation under Part B; and,
    - ii. Children who were not enrolled in Part C services will not be reflected in the Part B Indicator 12 data.
- B. Transition plan and conference.
1. The CDEC shall ensure:
- a. A transition plan, as defined in 2 CCR 503-1, section 16.970.G, is developed as part of the IFSP not fewer than 90 days, and at the discretion of all parties, not more than nine months, before the child is three years of age; and,
  - b. The Part C entity will schedule a transition conference collaboratively with a representative from the AU and the family before the child is 2 years and 9 months of age, but after the child is 2 years and 3 months of age, or as soon as possible for a child referred to Part C less than 90 days before the child is three years of age, after obtaining verbal or written parental consent.
2. The CDE shall ensure:
- a. AU representative(s) will participate in the transition conference arranged mutually with the designated Part C entity; and,
  - b. During the transition conference, the AU of residence shall share with the family: Part B eligibility definitions; state timeline and process for Part B evaluation and eligibility determination; information on the IEP; and program options for special education and related services; and,

- c. If an AU representative is not able to attend the mutually scheduled transition conference, the family will be contacted, and the information outlined in B. 2. b. will be shared with the family no later than ten (10) business days from the date of the transition conference.

C. Requirements for including an EI services provider in the development of an IEP.

- 1. The CDE shall ensure:
  - a. AUs will invite EI representatives to attend the IEP meeting, if requested by the parent; and,
  - b. When requested by the parent, the AU coordinate with the Part C entity to schedule the initial IEP meeting for a smooth transition.
- 2. The CDEC shall ensure:
  - a. When requested by the parent, the appropriate EI services provider makes every effort to participate in the IEP meeting conducted by the AU.

D. Processes for coordination for the implementation of the Extended Part C Option in Colorado.

- 1. CDEC shall ensure:
  - a. Compliance with the Colorado policy on Extended Part C approved by OSEP; and,
  - b. EI entities work with AUs to develop a system to communicate regarding parental decisions and timelines related to Extended Part C implementation, in alignment with the OSEP approved policy, jointly developed guidance documents and parent materials; and,
  - c. Close collaboration with CDE in development and implementation of the Extended Part C policy and procedural guidance for aligned and consistent understanding and practices across Part C and Part B at the state and local levels.
- 2. CDE shall ensure:
  - a. AUs work with EI entities to develop a system to communicate regarding parental decisions and timelines related to Extended Part C implementation, in alignment with the OSEP approved policy, jointly developed procedural guidance and parent materials.
  - b. Close collaboration with EI Colorado in development and implementation of the Extended Part C policy and procedural guidance for aligned and consistent understanding and practices across Part C and Part B at the state and local levels.

E. Process for timely transferring required data between the parties.

The CDEC and the CDE shall ensure timely, valid, and reliable data are used in guiding decisions about the effectiveness, efficiency, and efficacy of program service delivery models. Consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Family Educational Rights and Privacy Act (FERPA), and 34 C.F.R. §§ 300.610 through 300.623, the parties shall continue to improve methods of data collection and reporting.

The CDEC and the CDE agree to:

1. Use the data to respond to requirements from the US Department of Education, the OSEP; and,
2. Refine data reporting reconciliation procedures to inform decision-making and accurately identify system issues and local/regional concerns for program improvement such as:
  - a. Conducting targeted monitoring collaboratively, including but not limited to matching records across systems, when needed; and,
  - b. Responding to data requests in a timely way, as soon as possible and no later than 30 calendar days; and,
  - c. Jointly developing and delivering training and technical assistance to support accurate and timely data submission, as needed; and,
  - d. Ensuring local Part C and Part B entities collaborate and are responsive in all required data reporting and reconciliation procedures.

## **V. INTERAGENCY COLLABORATION AGREEMENT TERMS**

The CDEC and the CDE agree to:

- A. Jointly administer this MOU; and,
- B. Provide CDE representation for preschool aged students enrolled in special education to the Colorado Interagency Coordinating Council; and,
- C. Oversee the implementation of the requirements in this MOU to demonstrate accountability related to the indicators in the Part C and Part B SPP and APR that address early childhood transition; and,
- D. Coordinate to develop and distribute standard documents and procedures for sharing information with parents of children who may be eligible for Part B concerning eligibility, referral, evaluation, and service delivery.
  1. These materials will be reviewed and revised, as needed, annually and distributed jointly by the CDEC and the CDE; and,
  2. The CDEC and the CDE will ensure local systems review these materials with families during mutually agreed upon timelines.
- E. Collaborate to develop and deliver training for Part C service coordinators and providers, and Part B Child Find personnel, which is available in a web-based format, and updated as needed. The training will include:
  1. Common terminology used for Part C and Part B; and,
  2. The opt-out policy, and AU notification process; and,
  3. Process for determining Part B eligibility, including timelines; and,
  4. Difference between eligibility criteria for Part C and Part B; and,
  5. Use of standard communication materials with parents; and,

6. The transition conference requirements, including collaborative scheduling, required participants, ensuring appropriate information is shared with families when the Part B special education representative is unable to attend; and,
7. Extended Part C Policy; and,
8. This training will be available in a web-based format and updated as needed.

## **VI. EFFECTIVE DATE, AMENDMENT AND TERMINATION OF THE MEMORANDUM OF UNDERSTANDING**

This MOU shall be effective when signed by the respective agency heads as parties. The parties shall review this MOU annually each year before May 30 and update it as needed. Agreed upon changes must be executed in writing by the parties. This MOU will be ongoing and will not be terminated unless a party gives forty-five (45) days advance written notice to the other party of its intent to terminate its participation in the MOU.

## **VII. DISPUTE RESOLUTION**

- A. The CDEC and the CDE shall follow the dispute resolution procedures defined in the Part C Memorandum of Understanding between the State agencies involved in the delivery of EI services.
- B. Process for resolving disputes between an AU and a Part C entity concerning the satisfaction of agreement requirements, including remedies and sanctions:
  1. Part C Entity and AU will arrange to discuss issues and work to resolve the dispute at the local level.
  2. If local parties are unable to resolve issues at the local level, their respective state agency lead must be contacted within ten (10) business days.
  3. State agency leads will work together to investigate and assist the local parties in resolving disputes, as appropriate.
  4. CDEC and CDE state agency staff may implement remedies and sanctions, as needed, including requirements of local agreements, training and technical assistance from state staff, or other appropriate remedies required to effectively resolve the issues presented to the state agency.
  5. CDEC and CDE may apply sanctions or remedies, as required, under IDEA. Any decision issued by either CDEC or CDE is binding and must be implemented by the Part C entity and/or AU.

IN WITNESS WHEREOF, the CDEC and the CDE have caused this Interagency Agreement to be executed.



Signature:     *Lisa R Roy*     Date:     7/7/22      
Lisa Roy, Ed.D. Executive Director  
Colorado Department of Early Childhood

Signature:     *Katy Anthes*     Date:     07/05/22      
Katy Anthes, Commissioner  
Colorado Department of Education