September 17, 2015

Director of Policy and Planning
Office of Head Start

These comments are being submitted on behalf of the Council for Exceptional Children. CEC is the largest international professional organization dedicated to improving the educational success of individuals with disabilities and/or gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

CEC supports the recommendations of its Division for Early Childhood (DEC) which are offered for your consideration below.

CEC appreciates the opportunity to provide comments on this package of proposed performance standards. Quality early childhood plays an important role in the future success of young children. Early Head Start and Head Start play a significant role in partnership with all early learning programs working collaboratively to ensure young children and their families have access to and fully participate in quality early learning opportunities. Adequate federal investment and commitment are necessary if states and communities are to meet the needs of all young children starting at birth to help them prepare for success in kindergarten and beyond. Full implementation of these performance standards will require a significant increase in federal investment to Early Head Start and Head Start.

CEC notes the majority of these performance standards relate to the administrative and programmatic operation of local Early Head Start and Head Start programs and their relationship to the federal Office of Head Start. However, we will only be providing comments on the provisions that relate to young children with disabilities and their families and the resulting relationship to IDEA requirements. Throughout our review of the proposed standards, we were careful to avoid any comments that may inadvertently interfere with local grantees’ program operation and flexibility as these programs work to implement the priorities and requirements of Early Head Start and Head Start. Program requirements should be flexible enough to allow communities to individualize programs to meet the identified needs for children and families, to provide evidence-based practices and to encourage local innovation.

Overall, CEC notes and appreciates the focus that is clearly evident in the proposal that Early Head Start and Head Start play a significant role with their local IDEA partners in assisting young children with disabilities and their families in meeting their outcomes. Over the last several
decades, these community Early Head Start and Head Start programs have been great partners with state and local Part C and preschool special education programs funded under the Individuals with Disabilities Education Act (IDEA). The proposed provisions in this package related to children with disabilities will support and enhance these efforts to the benefit of all children and families.

CEC offers the following comments and recommendations on the proposed performance standards:

In general:

- CEC supports the use of the terms “the agency responsible for implementing IDEA” and “local IDEA agency” to accurately reflect both the entity that provides IDEA Part C services to children with disabilities age birth to three and the entity that provides IDEA Part B services to children with disabilities age three through five are LEAs.
- CEC recommends clarification on the identification of children who are not eligible under IDEA but who are determined to have “significant delays” as well as clarification of the responsibility for and what constitutes “additional supports and services for children with disabilities.”
- CEC also requests clarification on the appropriate roles of Early Head Start and Head Start related to children with disabilities and their families. Language related to “ensuring Part C or Part B requirements” is the responsibility of local IDEA agencies. The role of Early Head Start and Head Start should be described using terminology such as “partnering with local IDEA agencies” or “working collaboratively with local IDEA agencies” and should reference “with parental consent or agreement.”

Selection Process 1302.14

- CEC recommends the language at (a)(1) related to children eligible for IDEA be clarified to include that eligibility is determined by the local agency responsible for implementing IDEA.
- CEC recommends the language at (a)(4) be clarified to reference the term “its severity” as applicable to both disability and chronic health condition. In addition, the term “chronic health condition” should be defined in the definitions section of the package.

Suspension/Expulsion 1302.17

CEC appreciates and supports the policies and procedures related to discipline designed to reduce significantly the use of temporary suspension and to prohibit expulsion. We offer the following suggestions to strengthen this language:

- CEC recommends that language be added requiring all staff to have access to professional development to ensure knowledge and skills related to social emotional development, working effectively with families and responding to challenging behaviors. These proactive measures will assist in achieving the ultimate goals of 1302.17.
• CEC recommends that language at (a)(3) related to a temporary suspension be revised to require activities that occur “prior to the suspension” being “deemed necessary” as follows:
  o Prior to the decision to suspend, consultation with mental health services and collaboration with the child’s parents, and utilization with community resources.
  o Consideration of whether a referral is appropriate to the local agency that implements IDEA.
  o Consideration of results of a screening tool designed to identify social emotional concerns.
• CEC fully supports the language in (b)(1) that indicates that a child may not be expelled or unenrolled due to behavior. However, we suggest the language in (b)(3) be clarified to reflect this policy. We are concerned that (b)(3) as written could be misinterpreted to permit expulsion under certain circumstances. Perhaps language permitting Head Start services to be provided in the child’s home under specific circumstances may be helpful.
• CEC suggests language at (b)(2)(i) be revised to:
  o Require the parent’s consent for such consultation; and
  o Reflect the appropriate roles of the local IDEA agency to “ensure” development and implementation of the IEP or IFSP and the Early Head Start and Head Start program to “partner” in this process with parental consent.
• CEC also recommends that (b)(2)(ii) be revised to clarify that parental consent is not required for referral to IDEA. Parental consent would be required for the Early Head Start or Head Start program to provide information about the child to the local IDEA agency and parental agreement would be necessary for their involvement in evaluation or eligibility activities conducted by the local IDEA agency.

Fees 1302.18
• CEC recommends that (a)(3) either be clarified or deleted. It is not clear the need for this provision. If it is clarified, the citation for Part C should be revised as 34 CFR Part 303. The provision of early intervention services is the responsibility of the local agency responsible for the provisions of Part C, not the responsibility of the Early Head Start program. If the state’s system of payment provides for family fees, these are for Part C services, not Early Head Start services. Early intervention services on a child’s IFSP can be provided onsite in Early Head Start. Although, any fees collected would be collected by the Part C system, not by the Early Head Start program.

Teaching and Learning Environment 1302.31
• CEC recommends that the following language be added after (b)(1)(iv) -
  “(v) Incorporate universal design for learning (UDL) for all children in all curriculum objectives, materials, teaching methods and classroom assessments.”
• CEC supports the language in (d) related to equipment, materials and supplies including accommodations and space being accessible. We recommend additional language be
added to clarify that children with disabilities be defined as children eligible under IDEA, Section 504 or ADA.

- CEC also recommends that after “accessible to children with disabilities”, the following language be inserted - “in accordance with the principles for universal design and universal design for learning (UDL)”.

**Screening and Assessment 1302.33**

- CEC recommends the language at (a)(2)(ii) be revised to delete “ensure the formal evaluation is completed promptly” and be replaced with “ensure any necessary information from Head Start, as requested by the parents, is provided to the local IDEA agency promptly.” The local IDEA agency is the entity responsible for ensuring a timely IDEA evaluation. CEC also recommends the requirement under IDEA that information about the child’s evaluation or eligibility is only provided to the Early Head Start and Head Start program with the parent’s written consent.
- CEC recommends the language at (a)(4) be revised to clarify that while IDEA services may be provided at the Head Start location, the local IDEA agency is responsible for providing the services on the child’s IFSP or IEP. CEC recommends language that states the “program must partner...” and recommends the phrase “and as agreed to by the parents...” be added. In addition, the language referring to the delivery of services as per Subpart F should be clarified as to whether it refers to services included on the IEP or IFSP or also to “additional services for children with disabilities.”
- Related to the program’s responsibility for children who are determined not to be eligible under IDEA in (a)(5), CEC recommends clarification on the language regarding what constitutes “significant delay,” how this relates to eligibility for ADA and Section 504 and which entity is responsible for determining ADA or 504 eligibility?
- CEC recommends clarification on the language in (a)(5)(i) and (ii) related to children not eligible for IDEA and the responsibility for “accessing needed services and supports.” What are these “services and supports”? We suggest these be defined in the definitions section. Clarification is also needed on which entity is responsible for the provision of these “services and supports”.
- CEC also requests clarification on how the children identified in (a)(5) relate to the provisions of Subpart F.
- CEC also recommends language be included about the role of the family in (a)(5).

**Community Partnerships - 1302.53**

- CEC supports the language at (b)(2)(ii) related to establishing necessary collaborative relations and partnerships with community organizations that may include individuals and agencies that provide services to children with disabilities and their families.
- CEC also supports the language at (b)(2)(vii) related to establishing necessary collaborative relationships and partnerships with community organizations that may include agencies that are funded by federal or state entities for the design,
development, or implementation of a statewide data system including early childhood programs.

Children with Disabilities - Subpart F 1302.60-63

- CEC appreciates the focus on the important role played by Early Head Start and Head Start in the full participation of children with disabilities in these inclusive settings. However, we suggest that the language in 1302.61(c) and 1302.62(b) related to appropriate responsibilities of Early Head Start and Head Start in the development and implementation of IFSPs and IEPs for children eligible for IDEA services be clarified. Language related to “ensuring” should be used to describe local IDEA agency responsibilities. Language related to Early Head Start and Head Start responsibilities should suggest “collaboration” “support” and “partnering” and “at the request of the parent” in the implementation of the IFSPs and IEPs and other IDEA related activities.

- Finally, in paragraph 1302.63(d), CEC supports the new requirement for programs to retain copies of children's IEPs or IFSPs for the time the child is in the program but suggests the addition of language stating “obtained with parental consent.”

Disability Coordinator – CEC notes that the requirement to have a Disability Coordinator in each Early Head Start and Head Start program has been eliminated in the proposal. We hesitate to weigh-in on local program staffing decisions. However, we have concerns related to how the significant responsibilities related to children with disabilities can be met without someone on staff with the knowledge and skills and the time necessary to carry-out these activities. The proposed standards refer to numerous activities including:

- Working with parents and with local IDEA agencies on activities related to individual children and referral, evaluation, sharing or child specific information, development of IEPs and IFSPs, and coordination on the provision of services in those plans in Early Head Start and Head Start programs;
- Determining which children who are not IDEA eligible have “significant delay” and supporting parents in obtaining necessary supports and services for those children;
- Ensuring the individualized needs of all children with disabilities under IDEA, 504 and ADA are met and all children have access to and can full participate in the full range of activities and services;
- Protecting against discrimination and providing all services and program modifications required under 504 and ADA;
- Providing modifications to the environment and multiple and varied formats for instruction; and
- Coordinating with local IDEA agencies for the development of interagency agreements and other community related activities;

Protections for the Privacy of Child Records – 1303.20 – 1303.24

CEC notes that the Secretary was required under Section 641A(b)(4) of the Act to promulgate regulations that provide policies, protections, and rights “equivalent” to those in section 444 of
the General Education Provisions Act, also known as the Family Educational Rights and Privacy Act or FERPA, in order to, ensure the confidentiality of any personally identifiable data, information and records collected or maintained by any program.

Given this statutory language, we wonder why the decision was made to not require all grantees to follow FERPA and IDEA with specified exceptions when certain provisions are not applicable. Establishing different standards for grantees depending on whether they receive federal educational funds is bound to cause confusion.

CEC has reviewed the language in this section of the proposal and is concerned that the language as written will cause confusion. We recommend clarification. For example, the NPRM states that “if a Head Start program is governed by FERPA and/or IDEA, programs must comply with those provisions in addition to the Head Start proposed regulations and those provisions take precedence over the Head Start provisions when they differ.” It would be helpful for the final standards to be clear and identify those instances in which the requirements “differ.” It is unlikely that all grantees will reach the same conclusions and consistence in implementation is more likely if the standards clearly identify these differences.

CEC appreciates the ongoing collaborative efforts across multiple Federal Departments through the Early Childhood Interagency Policy Board. These efforts, including the release of policy guidance on Suspension/Expulsion and Inclusion, have been instrumental in assisting states and communities to enhance high-quality opportunities for young children and their families.

Thank you for the opportunity to submit comments on these proposed performance standards. CEC is available and willing to provide any additional information that may be needed. Feel free to contact me by email at debz@cec.sped.org if we may be of further assistance.

Sincerely,

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