

1. If a parent does not want to participate in the transition process does Part C still need to make a referral?

Answer: Yes, a referral to an LEA is required for every child, receiving Part C services (90 days before the child's third birthday), who is potentially eligible for Part B services.

2. Sometimes it is difficult for LEA staff to arrange all the meetings required to determine eligibility, develop an IEP, and implement services by a child's third birthday, even when the child is referred from a Part C *tiny-k* program within the 90 day timeline. Can children be referred to an LEA before 90 days?

Answer: At the discretion of all parties, the local Part C *tiny-k* program may hold a transition conference up to nine months, but no later than 90 days before a child's third birthday. It is recommended that LEAs and local *tiny-k* programs develop Memorandums of Understanding (MOU) around transition to address the transition process, including referral timelines.

3. Can a Part C *tiny-k* program make a referral to an LEA prior to 9 months?

Answer: No, all compliance requirements related to transition must occur not fewer than 90 days, but at the discretion of all parties up to 9 months prior to the toddlers 3rd birthday. (Sec. 637(a) (9) (C) and 34 CFR 303.209 (d) (2)).

4. When a child is referred to Part C 120 days before the child's third birthday, but 90 days prior to the child's birthday the child's eligibility for Part C has not yet been determined, is the Part C *tiny-k* program required to make a referral to an LEA at 90 days? What if the child is then determined not to be eligible for Part C services?

Answer: Section 303.209(b)(1)(ii) of IDEA clarifies that if the local *tiny-k* program determines a child to be eligible for Part C services between 45 and 90 days prior to the toddlers' third birthday, the *tiny-k* program must provide the LEA/SEA referral as soon as possible *after* the toddler's eligibility for Part C has been determined.

5. Some children are not referred from a Part C *tiny-k* program to an LEA at least 90 days before the child's third birthday. Will an LEA still be held accountable for meeting the third birthday transition timelines for this child under Indicator 12?

Answer: It depends on when the child was referred to Part C, not Part B.

- a. If the child was referred to Part C less than 90 days before the child's third birthday, the child is not considered when determining LEA compliance on Indicator B12.
- b. If the child was referred to Part C at least 90 days prior to the child's third birthday (even if Part C referred the child to Part B LEA less than 90 days prior) and the LEA did not determine eligibility and develop the IEP, if appropriate, by the child's third birthday, the LEA would be considered noncompliant on Indicator 12.

Note: If an LEA is receiving referrals from a Part C *tiny-k* program less than 90 days

before the child's third birthday, then it is recommended that the LEA address this issue locally with the Part C *tiny-k* program and may consider addressing the issue in a local MOU.

6. What documentation is required when families do not respond to contact attempts during the 9 month to 90 day transition period from Part C to Part B?

Answer: The Part C local *tiny-k* program would still make a referral to Part B letting them know that the family is not responding to contact attempts and provide the last available information the *tiny-k* program had about the family. The *tiny-k* program would document the situation as "exceptional family circumstances" in the child's file and ITS database.

LEAs would document their attempts to locate the family at the last known address and attempts made to locate a forwarding address. After a good faith effort to locate the parents, the school should send the request for consent to the address it believes is most likely to reach the parents. If the parents do not respond, the school could consider it a failure to respond to the request for consent. Failure to respond also relieves a district of its child find and evaluation responsibilities.

7. A child served in a Part C *tiny-k* program was referred to an LEA, but then moved out of district before the child was evaluated to determine eligibility for Part B. How will that impact the LEA's compliance on indicator 12?

Answer: When a child moves from an LEA, after a referral is made but before eligibility is determined, there is a federal exception to the evaluation timeline (CFR300.301 (d) (2) that exempts this child from being considered in indicator 12 data. An LEA would report the child had moved between referral and evaluation for Part B eligibility when reporting to KSDE for indicator 12, and the child would not be considered when determining compliance on indicator 12.

8. An LEA received a referral from a Part C *tiny-k* program and obtained consent for an evaluation. Then the family did not respond to contact attempts to set up dates for evaluating the child before the toddler's third birthday. Will the LEA be noncompliant on indicator 12 in these circumstances?

Answer: No, an LEA would not be considered noncompliant. The parent's repeated refusal to make the student available for an evaluation (K.A.R. 91-40-8(g)(1) and 34 CFR 300.301(d)(1)) is a federal exception to the evaluation timeline.

9. How soon after a referral from Part C does Part B need to provide parents with their parent rights/procedural safeguards? Can the LEA wait until the transition conference to provide the notice of procedural safeguards?

Answer: The notice of Procedural Safeguards (Parent's Rights) must be given to parents upon initial referral or parent request for evaluation. When an LEA receives a Part C referral, it has a reasonable time in which to provide parents with the notice of procedural safeguards, as well as a prior written notice and if appropriate request consent to conduct an initial evaluation. Each LEA adopts its own policies and procedures regarding how these documents are delivered to parents. If the transition

conference is scheduled within a reasonable time from the date of the Part C referral, an LEA may wait for the transition conference to deliver these documents to the parents. KSDE interprets a reasonable time to be within 15 school days, unless there is a reasonable justification for further delay. Consequently, if Part C sends the referral 6 months prior to a child's third birthday and a transition conference is not scheduled for another 60 days, the LEA should mail the notice of procedural safeguards to the parents and not wait for the transition conference.

10. Transition-aged children's needs and progress change rapidly. If a Part B LEA receives a referral from Part C well in advance of the child's third birthday (6 – 9 mos prior), is it advisable for the LEA to wait to initiate the initial evaluation of the child?

Answer: Understanding that a child's development changes rapidly at this age, the LEA may have concerns about the appropriate timing of the initial evaluation and IEP development. However, the LEA must carefully weigh the benefits and risks of initiating the evaluation at a later date to ensure that in no case such practice would result in not meeting the timeline for completion of the initial evaluation, and if eligible, implementing the IEP by the child's third birthday.

In deciding whether delaying the initial evaluation to a later date would be appropriate, the LEA should consider the referral date, the estimated 60 school day timeline in relation to the child's third birthday, and the individual child's development. If initiating the evaluation upon referral would result in a significant amount of time between the completion of the evaluation/IEP and the third birthday, then there are a few options for the LEA to respond to the referral with prior written notice to the parent within a reasonable time (15 school days), but time the evaluation in a way that addresses the LEA's concerns about the evaluation and IEP accurately reflecting the needs of the transitioning child (the evaluation timeline starts upon the LEA obtaining parent consent for the evaluation):

- The LEA could respond with prior written notice agreeing with the need for an evaluation, but proposing to conduct that evaluation at a later date certain. The LEA would present a prior written notice and request for consent to the parent accordingly for the proposed date.
- The LEA could respond with prior written notice proposing to conduct the initial evaluation and requesting parent consent, but ask the parent to provide a consent effective later, on a certain specific date.
- The LEA could respond with prior written notice proposing to conduct the initial evaluation and requesting parent consent, but also ask the parent to agree to extend the timeline for the evaluation. (K.A.R. 91-40-8(f))

Remember, none of these three methods can be used to extend the completion of the evaluation and IEP beyond the child's third birthday.

11. If a child with a suspected disability becomes known to Part B before their 3rd birthday and has not been receiving Part C services, does Part B have a responsibility to proceed with screening and/or evaluation? Can they have a policy that they do not screen or evaluate before a child turns three?

Answer: Part B has a Child Find duty to proceed with screening or evaluation. Kansas regulations, at 91-40-7(b)(3), require LEAs to implement procedures ensuring the early identification and assessment of children with disabilities. Moreover, comments to the federal regulations state that the Part B Child Find requirements begin at birth and overlap with Part C Child Find requirements (Federal Register, Aug. 14, 2006, p. 46584). LEAs should work with their local Part C *tiny-k* programs to develop Child Find activities for children from birth through 2 years to ensure that all children have access to screening in a timely manner. Each *tiny-k* program must have a local interagency coordinating council (ICC), which is one avenue for LEAs and *tiny-k* program to develop collaborative efforts for Child Find in their community.

12. Are there exceptions to Part C’s timeline for the Transition Conference?

Answer: There is one exception. If the program can mark “Exceptional Family Circumstances”, as identified in the ITS database and ITS Procedural Manual, a late transition conference will not be found to be out of compliance with Indicator 8.

13. What does it mean to provide information to parents at the transition conference about Part B preschool services?

Answer: Families should be provided a description of the Part B eligibility process (i.e. timelines, informed consent, and eligibility definitions), as well as a description of the special education and related services that are available within the district. LEAs and *tiny-k* programs are encouraged to work collaboratively to determine who will share this information and specifically what information will be shared. Written descriptions are a useful method to ensure that all families receive the same information.

14. When an LEA is not invited to attend a transition conference and a parent indicates they are not interested in an initial Part B evaluation, what happens if the parent changes their mind at the last minute?

Answer: If a child is referred from Part C to Part B, and the LEA requests consent for an initial Part B evaluation, and the parent refuses to consent to a Part B evaluation, or the parent fails to respond to the school’s request for consent for evaluation within a reasonable time (15 school days from the date the request for consent was sent to the parent and documentation that procedural safeguards have been provided); the LEA may conclude that the parent has rejected the school district’s proposal to conduct an initial Part B evaluation.

In that event, pursuant to federal regulations, at 34 C.F.R. 300.300(a)(3)(ii), if the school takes no further action, it is not in violation of its child find and evaluation responsibilities under the law. If, subsequently, the parent requests an initial evaluation, less than 90 days before the child’s 3rd birthday that request should *not* be considered a Part C to B *referral*. Instead, it should be considered a parent referral. Districts may choose to add a statement to their requests for consent for an initial Part B evaluation that clarifies this expectation. An example of such a statement might be:

“If you choose not to consent to an initial evaluation or if you fail to respond to this request for consent within a reasonable amount of time (15 school days), the school

district will conclude that you have rejected its proposal to conduct an initial Part B, Special Education evaluation for your child. If, at a later date, you change your mind and request that an initial Part B evaluation be conducted, your request will be considered to be a parent request for evaluation rather than a Part C to B referral, and the Kansas 60 school day evaluation timeline will apply to any resulting evaluation."

15. What about children who are receiving Part C services who are functioning at or close to age level, but have not yet been dismissed from Part C services 90 days prior to their third birthday? If a referral was provided to Part B prior to the 90 days, is the LEA still obligated to have the parents sign they do not give consent for an initial evaluation; or, can the LEA send procedural safeguards and a letter describing the services available and who to contact should they change their mind?

Answer: The LEA cannot reply to this referral with procedural safeguards and a letter. Part C *tiny-k* programs are required to make a referral to Part B for all children who meet the definition of "potentially eligible". When a referral has been made, an LEA is obligated to respond to that referral. The LEA must provide the parents with their parent rights/procedural safeguards, and provide prior written notice to the parents with its response (proposal of an initial evaluation or refusal to conduct an initial evaluation) within 15 school days. If the LEA's response is a proposal to conduct an initial evaluation, a request for consent to conduct an evaluation must be sent along with the prior written notice.

16. Can a school district decide not to send staff to a home for a transition meeting? Can they refuse to send staff to meetings scheduled after their contracted school day?

Answer: Federal regulations, at 34 C.F.R. 300.124(c), state: "Each affected LEA will participate in transition planning conferences arranged by the designated lead agency..." This regulation does not require school staff members to attend these conferences in person. Staff members may participate in conferences through alternative methods, such as telephone conference calls. OSEP guidance regarding IEP meetings also indicates that staff members are not required to attend meetings outside the contracted school day. It is important that LEAs and *tiny-k* program personnel work together to schedule transition conferences at times and places that will enable parents and all other parties an opportunity to participate in the conference. Accordingly, it is recommended that LEAs and local *tiny-k* programs develop a Memorandum of Understanding (MOU) on transition to address the transition process including school hours, dates, and times of availability for conferences.

17. What information should be released from Part C to Part B during the transition process?

Answer: At referral the only information required is the child's name, date of birth and parent contact information. At the time the parents agree to the transition conference and have signed consent to release records, any information generated by the *tiny-k* program or its contractors that may be helpful in determining eligibility for Part B and/or in designing appropriate interventions should be released (e.g. a copy of the IFSP, initial Part C eligibility information, home visit notes).

18. Clarify 90 calendar days versus 60 school days

Answer: Part C has a 90 calendar day requirement, as specified in the Part C regulations, at 34 C.F.R. 303.209, regarding the referral process that occurs between 9 months and 90 calendar days before a toddler turns three. This same 9 months to 90 calendar days is also the period in which a Transition Planning Conference must be convened. There is no mention of 60 school days in Part C of IDEA. However, in Kansas, Part B has 60 school days to complete an evaluation after a parent has given consent. This 60 school day timeline is in addition to the requirement that the child be evaluated and, if eligible, have an IEP developed and implemented by the child's third birthday. So, for children referred from Part C to Part B, the LEA must meet both requirements by: (1) completing the evaluation within 60 school days; and (2) by completing the evaluation, and if the child is eligible, developing and implementing an IEP by the child's third birthday.

19. In Kansas, there is a State exception that allows LEAs to extend the state's evaluation timeline beyond 60 school days if the LEA has received written parental consent to extend the timeline (K.A.R. 91-40-8(f)). Can the LEA use this exception to extend the timeline for IEP development beyond a child's third birthday and still be compliant?

Answer: No, an LEA cannot use this state exception to extend the timeline beyond a child's third birthday when there is a Part C to B transition. There are only two federal exceptions allowed for indicator 12: (1) The parent's repeated refusal to make the child available for an evaluation; or (2) the child moved out of the district before completion of the child's evaluation to determine initial eligibility for Part B.

20. Where should Part C infant/toddler *tiny-k* programs document that the parents of a child, who was referred to Part C fewer than 45 days before the child's third birthday, chose to skip Part C and go directly to Part B services?

Answer: Since the referral was less than 45 days Part C would still need to refer to Part B with parent consent, if this is a child who might be potentially eligible for Part B. Part C *tiny-k* programs are not required to serve the child since it is less than 45 days and they will not have time to meet their assessment/evaluation/IFSP timelines. *Tiny-k* programs will need to keep written documentation regarding the parent's decision in the child's file and mark the appropriate reason for not conducting an evaluation in the ITS Database.

21. An LEA scheduled a child's IEP meeting with the parent before the child's third birthday at a mutually agreed upon time. The parent cancelled that meeting or did not come due to a family circumstances (i.e. illness, death in the family, work schedule changed, family moved within district) and the LEA did not develop an IEP because it could not find another mutually agreed upon time to reschedule the IEP meeting before the child's third birthday. Would the LEA be noncompliant on indicator 12 even though the IEP meeting was originally scheduled before the child's third birthday?

Answer: Yes, an LEA would be considered noncompliant in not meeting the third

birthday timeline for indicator 12. This example would not fall under one of the two federal exceptions (**see question 19**). Strategies that may support an LEA in meeting the 3rd birthday timeline include:

- Scheduling the meeting earlier so there is time to reschedule if an unexpected event occurs,
- Offering to allow the parents to participate in the IEP meeting through alternate methods, such as through conference calls, video conferencing, etc. in accordance with K.A.R. 91-40-17(c)
- Developing the IEP without parent participation in accordance with K.A.R. 91-40-17(e) and presenting the parents with the proposed IEP and prior written notice and consent for services. *This strategy should only be used infrequently, and only when the strategies listed above are not available.*

22. LEAs often do not have staff available to complete evaluations and IEPs in the summer. Will an LEA be noncompliant on indicator 12 if an LEA waits until school is back in session after a child's third birthday to determine eligibility or develop and implement an IEP?

Answer: Yes, an LEA would be considered noncompliant on indicator 12. When children's third birthdays are in the summer or early fall, LEAs must plan ahead so that eligibility for Part B is determined and, if the child is eligible, an IEP is developed before the child's third birthday. For children with summer birthdays, the IEP team must determine that the date for the initiation of services will be no later than the beginning of the school year. The LEA and local tiny-k program may consider using the 90 calendar day timeline to be at least 90 calendar days *before the end of the school year*, to help ensure the IEP will be in place by the third birthday. The IEP team must also determine whether extended school year (ESY) services prior to the beginning of the school year are necessary for the provision of FAPE.

23. The process handbook states: Services on the IEP are to be implemented no later than 10 school days after written parent consent for the provision of special education services is granted, unless reasonable justification for a delay can be shown (K.A.R. 91-40-16(b)(2)); How does this apply for children transitioning from Part C?

Answer: This state regulation has been incorrectly interpreted to mean that if an LEA developed an IEP and obtained parent consent well before a child's third birthday, the LEA would be obligated to begin providing services within 10 school days, even if the child had not yet reached age three. This interpretation of our state regulation is incorrect because an LEA always has reasonable justification for delaying services to a child who has not reached their third birthday, as the child is not formally eligible for services until their third birthday. Meeting with parents, developing IEPs and obtaining parent consent well before a child reaches their third birthday is encouraged by KSDE as a reasonable approach for LEAs to use to meet their responsibility and complete their work, but also allowing additional time to complete the work in case unexpected circumstances and delays occur. Kansas's regulation 91-40-16(b)(2) should not be interpreted to make this responsibility more difficult.

24. If a child's third birthday is on a Friday, Saturday, Sunday or Monday but the child's IEP specifies that the child will receive services on Tuesday and Thursday,

may the LEA wait until the first Tuesday after the child's third birthday to begin services? Similarly, if a child's third birthday occurs during a weekend or a school break period, may the LEA wait until school is back in session to begin providing special education services?

Answer: Yes. An IEP is considered in effect when the special education and related services are available as specified in a child's IEP. Therefore, if a child's third birthday occurs on a Sunday and the special education and related services are specified in the IEP to be provided on Tuesday and Thursday and those services are available to the child on those days, the IEP is in effect on the child's third birthday (Sunday) to the same extent any child's (regardless of age) IEP is in effect on a day when services are not scheduled. For the same reason, when a child's third birthday occurs during a weekend or during a school break, an LEA may wait until school is back in session before providing that student with the special education services specified in their IEP. In these cases, the IEP will document that an IEP was developed on or before the child's third birthday.

25. Can an LEA provide services prior to a child's 3rd birthday?

Answer: Yes. Federal regulations (34 C.F.R. 300.323(b)) provide discretion for schools to provide Part B services to a two year-old child with a disability who will turn age three at any time during that school year.

26. Who do I contact when I have questions?

Answer:

For Part C guidance, please contact:

Heather Staab at hstaab@kdheks.gov or 785-296-2245

For Part B guidance, please contact:

Barbara Dayal at bdalay@ksde.org or 785-296-5081

For questions regarding Training or Technical Assistance contact:

Birth to three years old: KITS at www.kskits.org or 620-421-6550
ext. 1618

Three to five years old: Kansas Technical Assistance System Network
(TASN) www.ksdetasn.org