

INTERAGENCY AGREEMENT AMENDMENT 1
BETWEEN
THE DEPARTMENT OF EARLY LEARNING AND
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION

THIS INTERAGENCY AGREEMENT Amendment (Agreement) is made and entered into by and is between the DEPARTMENT OF EARLY LEARNING, hereinafter referred to as "DEL," and OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION, hereinafter referred to as "OSPI". This amended agreement replaces the Interagency Agreement dated April 16, 2012.

IT IS THE PURPOSE OF THIS AGREEMENT TO:

- 1) Serve as a source document for DEL and OSPI to develop and disseminate materials, and to provide individual and joint training and/or technical assistance to LLAs and LEAs on transition.
- 2) Outline the procedures for the transition of toddlers with developmental delays and disabilities from Part C to Part B, ensuring that Part B eligible toddlers shall experience a smooth and effective transition to preschool services, as authorized in *34 CFR §303.209 (a)(3)(i)(A)*.
- 3) Ensure families' rights to services for which they are eligible; to outline responsibilities of and coordination and communication among DEL ESIT, OSPI, LEAs, and LLAs in implementing transition requirements; and to establish uniformity statewide that shall provide a coordinated, unduplicated, and seamless system for transitioning toddlers with developmental delays or disabilities, according to the Parts B and C. *20 USC §1412 et seq., 34 CFR §300 et seq. and 20, USC §1431 et seq., 34 CFR §303 et seq.*
- 4) Encourage cooperation and communication between DEL ESIT, OSPI, LEAs, LLAs, early intervention providers, and families to ensure the provision of a Free Appropriate Public Education (FAPE) by a toddler's third birthday, as authorized in *20 USC §1412(a)(9), 34 CFR, §300.124, and WAC 392-172A-02080*.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. PARTIES

- 1.1. This Agreement is entered into pursuant to requirements of *IDEA 34 CFR §303.209(a)(3)(i)* between the Department of Early Learning (DEL), Early Support for Infants and Toddlers (ESIT) program, the State Lead Agency (SLA) for Part C, and Office of the Superintendent of Public Instruction (OSPI), Special Education, the State Educational Agency (SEA) for Part B.
- 1.2. Oversight Responsibility
 - (a) DEL is responsible for oversight of all ESIT LLA's compliance with Part C and DEL policies and procedures. This includes, but is not limited to, conducting compliance monitoring regarding transition requirements in Part C.
 - (b) OSPI is responsible for oversight of all LEA's compliance with Part B and OSPI policies and procedures. This includes, but is not limited to, conducting compliance monitoring regarding transition requirements under Part B.

2. AGREEMENT MANAGEMENT

2.1. The Agreement Manager for each of the Parties shall be the contact person for all communications regarding the performance of this Agreement. Agency and Agreement Manager information for this Agreement is as follows:

2.1. OSPI BUSINESS ADDRESS

Office of Superintendent of Public Instruction
Old Capitol Building
PO Box 47200
Olympia, WA 98504-7200
TIN: 91-6001112
UBI: 342-008-830

OSPI AGREEMENT MANAGER

Pam McPartland
Program Supervisor
Pamela.McPartland@k12.wa.us
Phone: (360) 725-6075

DEL BUSINESS ADDRESS

Department of Early Learning
PO Box 40970
Olympia, WA 98504-0970
TIN: 75-3214740
UBI: 602-605-520

DEL AGREEMENT MANAGER

Sheila Ammons
ESIT Program Consultant
Sheila.Ammons@del.wa.gov
Phone: (360) 725-4439

2.2. Each party shall notify the other party in writing within ten business days of any changes to the name and contact information regarding either Party's designated Agreement Manager.

3. EXHIBITS AND ATTACHMENTS

Attached hereto and incorporated herein as though set forth in full are the following exhibit and attachment:

- Exhibit A STATEMENT OF WORK
- Attachment 1 Washington's Definition of "Potentially Eligible" for Part B Services

4. AUTHORITY

DEL and OSPI are authorized to enter into this Agreement by Chapter 39.34 RCW. DEL ESIT is further complying with the IDEA 34 CFR §303.209(a)(3)(i)(A), which requires an interagency agreement on transition when the State Educational Agency is not the State Lead Agency for the early intervention program.

5. PERIOD OF PERFORMANCE

This Agreement shall become effective on April 1, 2013 and shall remain in force and effect until June 30, 2017 unless terminated or further amended.

6. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

7. DISPUTES

Parties are encouraged to resolve disputes at the lowest possible level. Any dispute that cannot be resolved at the lowest possible level should first be directed, in writing, to the OSPI Superintendent of

Public Instruction and the Director of DEL. If resolution is not achieved at the agency level, it shall be determined by a Dispute Board in the following manner:

- 7.1. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both Parties.
- 7.2. The cost of resolution shall be borne as allocated by the Dispute Board.
- 7.3. As an alternative to this process, either of the Parties may request intervention by the Governor, as provided by *RCW 43.17.330*, in which event the Governor's process shall control.

8. TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered in accordance with the terms of this Agreement prior to the effective date of termination.

9. COMPLIANCE WITH LAWS

The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable current federal, state, and local laws, rules, and regulations, including but not limited to, 20 USC Section 1400 et seq, Chapter 39.34 RCW (the Interlocal Cooperation Act), all applicable non-discrimination laws, and, if applicable, Chapter 42.56 RCW (the Public Records Act), 5 U.S.C. 522 (the Freedom of Information Act), and Chapter 40.14 RCW (Records Retention Act).

10. CONFORMANCE

If any provision of this Agreement violates any applicable federal or Washington statute, regulation, or rule of law, that provision is considered modified to conform to that statute, regulation, or rule of law.

11. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by the authorized representatives of the Parties and attached to the original Agreement.

12. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

13. ALL WRITINGS CONTAINED HEREIN

This Agreement, including the referenced exhibit and attachment, contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

State of Washington
Office of Superintendent of Public Instruction

Randolph Dorn
Signature

Randolph I DORN
Printed Name

State Superintendent 3/27/13
Title Date Signed

State of Washington
Department of Early Learning

Deborah Carr
Signature

Deborah Carr
Printed Name

DEL Contracts Administrator 4-4-13
Title Date Signed

EXHIBIT A – AMENDMENT 1
STATEMENT OF WORK

1. DEFINITIONS

- 1.1. Department of Early Learning (DEL) means the State Lead Agency (SLA) and its employees and authorized agents. *34 CFR §303.22*
- 1.2. Early Intervention Services means developmental services that are provided under public supervision, are selected in collaboration with the parents, are provided according to ESIT's System of Payments Policy, are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, are provided in natural environments in conformity with an IFSP. *34 CFR 303.13*
- 1.3. Early Support for Infants and Toddlers (ESIT) means the program of DEL, with the general supervisory authority over the implementation of IDEA, Part C, early intervention services to eligible infants and toddlers aged birth to 3 and their families.
- 1.4. Evaluation for Part B of IDEA means the procedures used that include a review of data and additional assessments, if needed to determine whether a student is eligible for special education and related services under Part B of the IDEA. The district selects the members of the evaluation group needed to conduct the evaluation. To meet eligibility, a student has a disability that is defined in the state special education regulations, the disability has an adverse educational impact, and the student needs specially designed instruction. *34 CFR §300.15; WAC 392-172A-01070 and 01035*
- 1.5. Evaluation for Part C of the IDEA means a timely, comprehensive, multidisciplinary process to determine eligibility for early intervention services under Part C. This includes administering an evaluation instrument, taking the child's history including interviewing the parent, identifying the child's level of functioning in all developmental areas, gathering information from other sources to understand the child's unique strengths and needs, and reviewing medical, educational, and other records. *34 CFR §303.321*
- 1.6. Family Resources Coordinator (FRC) means the person responsible for coordination and case management of early intervention services for infants and toddlers and their families. *34 CFR §303.34*
- 1.7. Free Appropriate Public Education (FAPE) means special education and related services provided to students aged 3 to 21 that meet state standards and are provided through the development of an individualized education program. These services are provided at public expense under public supervision and direction, without charge to the parents. *34 CFR §300.101; WAC 392-172A-02000*
- 1.8. Individualized Education Program (IEP) means a written statement of an educational program that is developed, reviewed, or revised in accordance with applicable federal and state laws for providing special education services to students who are eligible for special education. The IEP includes the special education and related services, and modifications and supports needed for the student to participate or appropriate activities for preschool. *34 CFR §300.320; WAC 392-172A-03090*
- 1.9. Individualized Education Program Team or IEP Team means a group of individuals consistent with *WAC 392-172A-03095* that includes parents, district staff, others invited by the district or parent, and, at the request of the parent, the Part C Family Resources Coordinator (FRC).
- 1.10. Individualized Family Service Plan (IFSP) means the written plan required for providing early intervention services to an eligible infant or toddler and the child's family. *34 CFR §303.344*
- 1.11. Individualized Family Service Plan Team or IFSP Team means the infant or toddler's family; Family Resources Coordinator; service providers, and others, as identified on the plan. *34 CFR §303.343*

EXHIBIT A – AMENDMENT 1
STATEMENT OF WORK

- 1.12. Individuals with Disabilities Education Act (IDEA) means the federal law that addresses the requirements for identifying, evaluating, and serving eligible students. *20 USC §1400 et seq.*
 - (a) Part C of the act addresses early intervention services for eligible infants and toddlers, ages birth to 3.
 - (b) Part B of the act addresses special education and related services for eligible students, ages 3 to 21.
- 1.13. Local Education Agency (LEA) means the school district responsible for IDEA services to resident children or students under Part C or Part B. *34 CFR §303.23*
- 1.14. Local Lead Agency (LLA) means the entity in each specific geographic area of Washington State who is under Contract with ESIT to implement, coordinate, and provide Early Intervention Services, as defined by Part C.
- 1.15. Office of the Superintendent of Public Instruction (OSPI) means the State Education Agency (SEA) and its employees and authorized agents who have general supervisory authority over the implementation of special education and related services under Part B. The special education section of OSPI is responsible for state implementation of Part B. *34 CFR §303.36*
- 1.16. Potentially Eligible means toddlers eligible for Part C services that may be eligible for special education and related services under Part B (and further defined in Attachment 1, incorporated by reference).
- 1.17. Transition means the process to transfer services and supports for toddlers with disabilities from Part C to Part B.
- 1.18. Transition Plan means a document that is part of the IFSP for all infants and toddlers, including those who are potentially eligible for Part B services. The plan must include Part C program options, steps, and potential services that may assist in transition.

2. SCOPE OF WORK

The Parties agree to coordinate at the state level to ensure that implementation of the following transition steps occur at the local level, so that toddlers who are potentially eligible receive timely transitions:

2.1. Transition Timeline and Procedures

Throughout an infant or toddler's enrollment in early intervention, the family and the child's IFSP Team discuss the transition steps to be taken to ensure a smooth transition for the toddler when early intervention services end, by the toddler's third birthday. The provision of a FAPE through an IEP is required no later than the eligible toddler's third birthday. The toddler is no longer enrolled in and eligible for early intervention services after the toddler's third birthday. For those toddlers who are not potentially eligible for Part B special education, the LLA shall make reasonable efforts to identify other possible and appropriate resources in the community to assist the toddler and family in transitioning out of early intervention services.

2.2. Transition Notification

- (a) At least 90 days prior to the toddler's third birthday, ESIT shall send an electronic notification to the SEA and to the LEA where the toddler receiving Part C services resides for all toddlers who are potentially eligible (see Attachment 1 for definition) for services under Part B and who shall shortly turn 3 years old and exit the Part C program. After the electronic notification is transmitted, confirmation is automatically recorded on the next IFSP. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR 34 §303.209(b)*
- (b) The electronic notification data report is transmitted by ESIT to the SEA and LEA on a monthly basis. The report covering the prior month is for toddlers potentially eligible for Part

EXHIBIT A – AMENDMENT 1
STATEMENT OF WORK

B, who turned 2 years and 3 months, according to Section 2.2(a). The report lists the toddler's name, date of birth, and parent contact information. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR §303.401(d)*

- (c) If a toddler is determined eligible for Part C less than 90 days but more than 45 days before the third birthday, ESIT shall provide the notification to the SEA and LEA as soon as possible after determining the toddler's eligibility for Part C and potential eligibility for the Part B. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR §303.209(b)(ii)*
- (d) Notice for toddlers in Section 2.2(c) shall be sent via a secure email to the SEA by ESIT no later than the next business day after potential eligibility for Part B services is established and recorded. ESIT assures the LLA shall notify the LEA for toddlers identified in Section 2.2(c) by secure email or phone no later than the next business day after potential eligibility for Part B services is established and recorded.
- (e) If a toddler is referred to Part C less than 45 days before the toddler's third birthday and the child may be eligible for Part B services, the LLA, with parental consent, shall refer the family to the SEA and appropriate LEA. The LLA is not required to conduct an evaluation, assessment, or initial IFSP meeting. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(I) and 34 CFR §303.209(b)(iii)*

2.3. Transition Conference

- (a) If the parent has provided approval, the LLA shall convene a transition conference for a toddler who may be eligible for Part B to discuss any services the toddler may receive under Part B. If a toddler is not potentially eligible for Part B, then reasonable efforts shall be made to hold a conference to discuss other appropriate services. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(II) – (III) and 34 CFR §303.209(c)*
- (b) If the toddler may be eligible for Part B and the parent approves, the conference shall be held no later than 90 days before the toddler's third birthday, but at the discretion of all Parties, the transition conference may occur up to 9 months before the toddler's third birthday. The transition conference may be combined with the IFSP meeting to develop the transition plan. The transition conference shall be held at a time and location convenient for the family and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements shall be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they shall be able to attend. *IDEA 20 USC 1437 §637(a)(9)(A)(ii)(II) – (III) and 34 CFR §§303.209(c) and 303.342(d) – (e)*
- (c) The Part C FRC is responsible for inviting meeting participants to the transition conference.
 - (i) For the toddler who may be eligible for preschool services under Part B, the transition conference must include the family of the toddler, the LLA representative(s), the LEA representative(s), and other individuals required to be included in an initial or annual IFSP meeting in accordance with *34 CFR §303.343(a)*. The LEA representative will participate in the transition planning conference. *34 CFR §300.124(c) and WAC 392-172A-02080(2)*
 - (ii) If the transition conference is for a toddler who is not potentially eligible for preschool services under Part B, meeting participants include the family, the LLA representative(s), and representatives of the other early childhood program option(s) of interest to the family. *34 CFR §303.209(c) and (e) and §303.343(a)*

EXHIBIT A – AMENDMENT 1
STATEMENT OF WORK

- (d) Any transition conference must meet the requirements in *34 CFR §§303.432(d) and (e); §303.343(a) and §303.209(e)*.

2.4. The Individualized Family Service Plan (IFSP) Transition Plan

- (a) At an IFSP meeting not fewer than 90 days, but at the discretion of all Parties up to 9 months, before the toddler's third birthday, the IFSP team, including the family, shall develop and document a transition plan on the IFSP for each infant and toddler with a disability exiting the Part C program. The transition plan is part of the IFSP and describes any appropriate steps for the toddler to exit the Part C program and any transition services needed by the toddler and the family for transition to preschool or other appropriate services at age 3. *IDEA 20 USC 1437 §637(a)(9)(A)(i) and 637(a)(9)(C) and 34 CFR §§303.209(d) and 303.344(h)*
- (b) Transition steps shall include:
- (i) Discussion with and training of parents, as appropriate, regarding future placements and other matters related to the toddler's transition;
 - (ii) Procedures to prepare the toddler for changes in service delivery, including steps to help the toddler adjust to, and function in, a new setting;
 - (iii) Confirmation that child find (referral) information has been transmitted to the SEA and LEA or other relevant agency and, with parental consent, information such as the most recent evaluation, assessment, and IFSP has also been transmitted.
 - (iv) Identification of transition services and other activities that the IFSP Team determines are necessary to support the transition of the toddler. *IDEA 20 USC 1437 §637(a)(9)(A)(i) and 34 CFR §303.344(h)*
- (c) The transition conference and the IFSP meeting to develop the transition plan may be combined in one meeting. *34 CFR §303.209(e)*
- (d) The FRC and other IFSP team members shall review the program options for the toddler with a disability who is potentially eligible for Part B, for the period from that toddler's third birthday through the remainder of the school year. The team also discusses with the family all early childhood options available in their community. Options may include preschool special education services, Head Start, private preschools, and child care settings. *IDEA 20 USC 1437 §637(a)(9)(B) and 34 CFR §303.209(d)(1)(i)*

2.5. Late Referrals to Part C

(a) Initial Referral to Part C Between 2 Years 9 Months and 2 Years 10 ½ Months of Age

Upon receipt of an initial referral of a toddler between the ages of 2 years 9 months and 2 years 10 ½ months (89 to 46 days prior to the toddler's third birthday) the LLA shall complete the eligibility determination process, hold the initial IFSP meeting, and conduct the transition planning within 45 calendar days of the referral. LLAs and LEAs may jointly and concurrently conduct the evaluation, eligibility, initial IFSP meeting, and initial IEP meeting to meet Part C and Part B timelines. Transition conferences are not required. The IEP should be in place by the student's third birthday, when possible.

(b) Initial Referral to Part C Between 2 Years 10 ½ Months and 3 Years of Age

Upon receipt of an initial referral of a toddler between the ages of 2 years 10 1/2 months and 3 years of age (less than 45 days prior to the toddler's third birthday), the LLA is not required to complete the evaluation of the toddler. With parental consent, the LLA shall refer toddlers to the SEA and the LEA of residence or assist the family in making the referral. The LEA responds by accepting this as an initial referral for special education and not as a toddler served by Part C.

EXHIBIT A – AMENDMENT 1
STATEMENT OF WORK

2.6. Eligibility for Preschool Special Education Services

- (a) For toddlers who are transitioning from Part C to Part B, LEAs shall ensure that an IEP has been developed and is implemented by the toddler's third birthday, when a toddler is eligible for special education services and the parent consents to initial services. The LEA is responsible for reviewing existing data on the student, including information provided by parents and the LLA, to determine whether the toddler shall be evaluated for special education. If the LEA decides that it will not conduct an evaluation, the LEA shall provide the parent with prior written notice addressing the decision.
- (b) If the toddler is to be evaluated, the LEA provides prior written notice that addresses the areas of assessments and requests the parents' informed written consent to conduct an initial evaluation. For an eligible toddler to have an IEP in place by his/her third birthday, the evaluation shall be completed and an eligibility decision shall be reached within 35 school days from consent or sooner, depending on the date of the toddler's third birthday. If the parent does not provide consent for the evaluation, the LEA may, but is not required to, ask the parent to participate in mediation in order to obtain their consent, or request a due process hearing to override the parent's refusal to consent.
- (c) The LEA convenes the evaluation group and invites the parent(s) to explain the results of the evaluation; and to determine eligibility for Part B special education and related services. The LEA must also provide the parent with prior written notice addressing the eligibility decision.

2.7. Individualized Education Program (IEP) Team Meeting

- (a) If a toddler is determined to be eligible for special education services, the LEA must hold an IEP team meeting within 30 days of the eligibility determination or sooner depending upon the date of the toddler's third birthday. The IEP team meeting may be held at the same time as the evaluation and eligibility meeting.
- (b) The LEA is responsible for arranging an IEP meeting with the required IEP team members, by the toddler's third birthday. If requested by the parent, the LEA shall also invite the ESIT Family Resources Coordinator (FRC) to the IEP meeting to assist with the smooth transition of services. *34 CFR §300.321(f) and WAC 392-172A-03095(6)*.
- (c) If parents do not consent to the provision of initial services the district may not provide services to the toddler. If the parents refuse consent of initial services prior to the IEP meeting, the district is not required to convene an IEP meeting.
- (d) When developing the initial IEP for all toddlers who transition from Part C services to Part B, the IEP team must consider the IFSP that contains the IFSP content (including the natural environments statement) described in *IDEA 20 USC 1437 §636(d)* and its implementing regulations *34 CFR §300.323(b)(1)*.

ATTACHMENT 1

Washington's Definition of "Potentially Eligible" for Part B Services

I. Introduction

IDEA §637(a)(9)(A)(ii)(II) Part C regulations *34 CFR §303.209(b)* requires the Part C State Lead Agency (SLA) to notify the State Education Agency (SEA) and the Local Education Agency (LEA) where the toddler with a disability resides that the toddler, who may be eligible for Part B, shall shortly reach the age of eligibility for Part B services (i.e., 3 years old). Under SPP/APR Indicator C-8B, the Part C SLA shall report this LEA Notification responsibility **only** for those toddlers with disabilities who are potentially eligible for services under Part B (i.e., those toddlers referred to Part B). Office of Special Education Programs (OSEP) Early Childhood Transition FAQs: SPP/APR Indicators C-8 and B-12 issued December 1, 2009 (question #5), clarifies that "potentially eligible for Part B has the same meaning as toddlers who may be eligible for Part B under *IDEA §637(a)(9)(A)(ii)(II)*."

Part C and Part B program staff worked collaboratively to define "Potentially Eligible for Part B" services in Washington State. Providing notification to the SEA and appropriate LEA, of toddlers who are potentially eligible for Part B, serves as an initial referral to the LEA for Part B eligibility determination, which requires the LEA to provide notice of procedural safeguards and information on Part B to the toddler's parents. Washington State's definition of "Potentially Eligible" is based on a broad framework and includes Part C toddlers who shall be referred to Part B for initial evaluation. In defining potentially eligible, the LEA's ability to make an informed decision about whether or not to evaluate a toddler for whom an LEA Notification (referral) was received was also considered.

II. Definition of Potentially Eligible for Part B

The definition of potentially eligible is based on each individual toddler's current eligibility status based upon a developmental delay and/or diagnosed physical or mental condition (including the use of informed clinical opinion).

The following summarizes the State's definition of "Potentially Eligible" for Part B services.

A toddler is potentially eligible and should be referred to the LEA for special education evaluation if they meet the following conditions (see Table 2):

- Toddler is over age 2 years and 3 months and is eligible for Part C services under the category of:, and
 - "Developmental Delay" (DD) and one or more of the following are present:
 - Toddler demonstrates 2 standard deviations below the mean in one or more areas of development or 1.5 standard deviations in two or more areas of development; *WAC 392-172A-01035 (2)(d)(i)* (NOTE: This does not require the completion of an evaluation.) or
 - Toddler continues to display moderate or significant delay in any developmental areas; or
 - Parent or team wants the toddler to be referred to Part B.
 - The toddler is eligible for Part C services under the category of " Diagnosed Physical or Mental Condition" and if any of the following are present:
 - The toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
 - The toddler exhibits at least mild delays in any developmental area; or
 - Parent or team wants the toddler to be referred to Part B.

A toddler is NOT potentially eligible and should NOT be referred to the LEA for special education evaluation (through LEA Notification), unless the parent or team believe a referral to Part B is needed as a result of an IFSP team review, if they meet the following conditions (see Table 2):

- Toddler is over age 2 years and 3 months and is eligible for Part C services, and

ATTACHMENT 1

Washington's Definition of "Potentially Eligible" for Part B Services

- The toddler is eligible for Part C services under the category of "Developmental Delay" (DD), if any of the following are present unless the team or the parent(s) feels a referral is needed:
 - Toddler demonstrates 1.5 standard deviations in one area of development
 - Toddler has only mild delays in any developmental area
 - Toddler is currently eligible as a result of Informed Clinical Opinion only
- The toddler is eligible for Part C services under the category of "Diagnosed Physical or Mental Condition", if any of the following are present unless the team or the parent(s) feels a referral is needed:
 - Toddler is exhibiting skills that are age appropriate
 - Toddler is currently eligible as a result of Informed Clinical Opinion only.

To determine if the toddler is potentially eligible for Part B preschool special education services, the IFSP team is responsible for reviewing each toddler's most recent assessment and progress monitoring data, as well as relevant medical information, at an IFSP meeting around the toddler's second birthday.¹ The state is responsible for providing Notification to the SEA and appropriate LEA where the toddler resides not fewer than 90 days before a toddler's third birthday. For toddlers referred to Part C more than 45 days but less than 90 days, Notification to the SEA and appropriate LEA of potentially eligible toddlers should be provided as soon as eligibility for Part C is determined. If a toddler is referred to Part C fewer than 45 days before the toddler's third birthday, Part C, with written parental consent, refers the toddler to the SEA and LEA where the toddler resides. According to the Part C regulations *34 CFR §303.209(b)(1)(iii)*, Part C is not required to conduct an evaluation, assessment, or an initial IFSP meeting when a toddler is referred to Part C fewer than 45 days before the toddler's third birthday.

Table 1 outlines the Part C and Part B eligibility definition and Table 2, summarizes Washington's definition of potentially eligible and the required actions related to the provision of the Notification to the SEA and appropriate LEA (referral to Part B).

¹ Reviewing each child's most recent assessment and progress monitoring data and relevant medical information to determine if the child is potentially eligible for Part B preschool special education services does not mean that a standardized test should be used to re-determine the child's eligibility for Part C.

ATTACHMENT 1
Washington's Definition of "Potentially Eligible" for Part B Services

Table 1: Washington Part C and Part B Eligibility Definitions

Part C Eligibility Definition

The State Lead Agency (SLA) ensures that infants and toddlers, birth to three, shall be eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA), if the multidisciplinary team finds any one of the following criteria exists:

- 1) **Developmental Delay:** A toddler shall be eligible if he or she demonstrates a delay of 1.5 standard deviations or 25% of chronological age delay in one or more of the following developmental areas, as measured by appropriate diagnostic instruments and procedures, including the use of informed clinical opinion, and administered by qualified personnel.
 - a. Cognitive development
 - b. Physical (vision, hearing, fine or gross motor) development
 - c. Communication (receptive and expressive language) development
 - d. Social or Emotional development
 - e. Adaptive development
 - f. Informed Clinical Opinion
 - (i) The SLA must ensure that informed clinical opinion given by qualified personnel may be used as an independent basis to establish a child's eligibility even when instruments do not establish eligibility.
 - (ii) In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.
- 2) **Diagnosed Physical or Mental Condition:** A toddler shall be eligible if he or she has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. Procedures used to determine eligibility under diagnosed physical or mental condition must include the use of informed clinical opinion. Such conditions include, but are not limited to:
 - a. Chromosomal abnormalities;
 - b. Genetic or congenital disorders;
 - c. Sensory Impairments;
 - d. Inborn errors of metabolism;
 - e. Disorders reflecting disturbance of the development of the nervous system;
 - f. Congenital infections;
 - g. Severe attachment disorders; and
 - h. Disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.
 - i. Deafness/hearing loss – a hearing loss that adversely affects a child's development is:
 - (i) Unilateral sensorineural hearing loss and/or permanent conductive hearing loss of 45 dB or greater.
 - (ii) Bilateral sensorineural hearing loss and or permanent conductive hearing loss, which includes:
 - A. Hearing loss of 20 dB or greater, better ear average of the frequencies 500, 1,000, and 2,000 Hz.;
 - B. High frequency loss greater than 25 dB at two or more consecutive frequencies or average of three frequencies between 2,000 and 6,000 Hz, in the better ear;

ATTACHMENT 1

Washington's Definition of "Potentially Eligible" for Part B Services

- C. Low frequency hearing loss greater than 30 dB at 250 and 500 Hz, in the better ear; or
- D. Thresholds greater than 25 dB on Auditory Brainstem Response threshold testing in the better ear; or
- (iii) A six-month history of fluctuating conductive hearing loss or chronic middle ear effusion/infection of three months, unresolved past initial evaluation; or
- j. Vision Impairment – infants and toddlers with visual impairment/blindness are:
 - (i) Those children who have a visual impairment that adversely affects the child's development, even with correction. Eligibility shall be dependent on documentation of a visual impairment, including one or more of the following conditions:
 - (ii) Legal blindness or visual handicap, as they are customarily defined, either in terms of qualifying reduction in visual acuity and/or a qualified reduction in visual fields.
 - (iii) A visual impairment that is progressive in nature and can be expected to lead to blindness within a reasonable period of time.
 - (iv) If a visual acuity or field cannot be determined:
 - A. The qualified personnel must identify a diagnosis or medical history that indicates a high probability of visual loss that may adversely affect the child's development.
 - B. A functional vision evaluation by a qualified professional is necessary to determine eligibility.

This definition does not include infants and toddlers from birth to age three who do not meet the above criteria and who are at risk of having substantial developmental delays if early intervention services are not provided.

Note: Informed clinical opinion must be used to determine an infant or toddler's eligibility under Part C. Informed clinical opinion may be used on an independent basis to establish a toddler's eligibility, but must not be used to negate the results of evaluation instruments used to establish eligibility. *IDEA Part C Regulations, 34 CFR §303.321(a)(3)(ii)*. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area.

Part B Eligibility Definition of Developmental Delay WAC 392-172A-01035(2)(d)(i)

Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

- 1) Two standard deviations below the mean in one or more of the five developmental areas; or
- 2) One and one-half standard deviations below the mean in two or more of the five developmental areas

A student is eligible for special education in another category if he or she:

- 1) Meets eligibility criteria;
- 2) Has an adverse educational impact as a result of the disability; and
- 3) Needs specially designed instruction

ATTACHMENT 1

Washington’s Definition of “Potentially Eligible” for Part B Services

Table 2: LEA Notification of Potentially Eligible (Referral) Required Actions

If toddler is age two and is eligible for Part C services in accordance with:			
Developmental Delay (DD)		Diagnosed Physical or Mental Condition	
<p>If any of the following are present:</p> <p>1. Toddler demonstrates 2.0 standard deviations in one area of development or 1.5 standard deviations in two or more areas of development (NOTE: This does not require the completion of an evaluation)</p> <p>OR</p> <p>2. Toddler continues to display moderate or significant delay in the following developmental areas: Cognitive</p> <ul style="list-style-type: none"> • Physical (vision, hearing, fine or gross motor) • Communication • Social or Emotional • Adaptive <p>OR</p> <p>3. Meets neither of the above items, but parent or team believe a referral to Part B is needed.</p>	<p>If any of the following are present:</p> <p>1. Toddler demonstrates 1.5 standard deviations in one area of development</p> <p>OR</p> <p>2. Toddler has only mild delays in any developmental area</p> <p>OR</p> <p>3. Toddler is currently eligible as a result of Informed Clinical Opinion only</p>	<p>If the following are present:</p> <p>1. The toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay in any of the following areas:</p> <ul style="list-style-type: none"> • Chromosomal abnormalities associated with intellectual disabilities, such as Down syndrome • Congenital central nervous system birth defects or syndromes, such as Myelomeningocele, Fetal Alcohol Syndrome; or Cornelia de Lange syndrome • Deaf, blind, or deaf-blind • Established central nervous system deficits resulting from hypoxia, trauma, or infection • Cerebral Palsy • Health impairments, such as autism, epilepsy, neurological impairment, or other chronic, acute, or degenerative health problems • Orthopedically impaired, which means impairments of the normal function of muscles, joints, or bones due to congenital anomaly, disease, or permanent injury • Microcephaly • Vision Impairment • Hearing Impairment <p>AND</p> <p>2. The toddler is exhibiting at least a mild delay in any developmental area</p> <p>OR</p> <p>3. The parent(s) or team believes a referral to Part B is needed</p>	<p>If the following are present:</p> <p>1. The toddler has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay in any of the following areas:</p> <ul style="list-style-type: none"> • Chromosomal abnormalities associated with intellectual disabilities, such as Down syndrome • Congenital central nervous system birth defects or syndromes, such as Myelomeningocele, Fetal Alcohol Syndrome; or Cornelia de Lange syndrome • Deaf, blind, or deaf-blind • Established central nervous system deficits resulting from hypoxia, trauma, or infection • Cerebral Palsy • Health impairments, such as autism, epilepsy, neurological impairment, or other chronic, acute, or degenerative health problems • Orthopedically impaired, which means impairments of the normal function of muscles, joints, or bones due to congenital anomaly, disease, or permanent injury • Microcephaly • Vision Impairment • Hearing Impairment <p>AND</p> <p>2. The toddler is exhibiting that skills are age appropriate</p> <p>OR</p> <p>3. Toddler is currently eligible as a result of Informed Clinical Opinion only</p>
<p>Refer to Part B</p>	<p>Do Not Refer Unless The Parent(s) or Team Believe Referral is Needed</p>	<p>Refer to Part B</p>	<p>Do Not Refer Unless The Parent(s) or Team Believe Referral is Needed</p>