

Memorandum of Understanding



TEXAS

Health and Human Services

Early Childhood Intervention

**Health and Human Services Commission
and
Texas Education Agency**



I. PURPOSES

The purposes of this Memorandum of Understanding (“MOU”), as required by the 2020-21 General Appropriations Act Rider 33, Article II, HHSC, and Rider 82, Article III, TEA, are to:

- A. Define the roles and responsibilities of the Health and Human Services Commission (HHSC) and the Texas Education Agency (TEA), collectively sometimes referred to herein as the “Parties,” each as “Party,” to ensure a smooth transition for children and their families receiving early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA) to early childhood special education services under Part B of IDEA; and
- B. Establish a statewide system of services to identify and serve children, birth to 36 months, with auditory impairments (AI) and visual impairments (VI) who are eligible to receive services under Part C of the IDEA and Texas Education Code (TEC) Chapters 29 and 30.

II. AUTHORIZED REPRESENTATIVES

The following will act as the designated Representatives authorized to administer activities, including but not limited to, non-legal notices, consents, approvals, requests, or other general communications, provided for or permitted to be given under this MOU. The designated Representative on behalf of their respective Party are as follows:

HHSC

Sheila Rivera, CTCM
1100 West 49th Street; Mail Code 3029
Austin, Texas 78756
(512) 776-4309
sheila.rivera@hhsc.state.tx.us

TEA

Mike Morath
1701 N. Congress Avenue
Austin, Texas 78701
(512) 463-9734
mike.morath@tea.texas.gov

Either Party may change its designated Representative by providing written notice to the other Party.

III. PROGRAM OVERVIEWS

Early Childhood Intervention (ECI):

HHSC is the designated lead agency for implementation and maintenance of Part C of IDEA, known in Texas as the Early Childhood Intervention (ECI) program. The ECI program requires a statewide, coordinated system that provides early intervention services to children less than three years of age with developmental delays or disabilities and their families. HHSC contracts with local agencies and organizations, such as community centers, school districts, regional Education Service Centers (ESCs), and nonprofit organizations to provide services to children and families.

In Texas, children with an AI or a VI are entitled to a free appropriate public education from birth. Therefore, services for a child with an AI or a VI from birth to 36 months must be coordinated between the local ECI program and the LEA for the area where the child resides.

Early Childhood Special Education (ECSE) Services:

TEA is the designated lead agency for implementation and maintenance of Part B of IDEA, which requires that a free appropriate public education be available to all children with disabilities between the ages of three and 21. In Texas, the public school program for children with disabilities who are ages three through five is known as Early Childhood Special Education (ECSE) services. Local Educational Agencies (LEAs) provide ECSE services to eligible children with disabilities.

IV. CHILD FIND

A. HHSC ensures that it has policies and procedures in effect to establish requirements that:

- 1. ECI programs identify, locate, and evaluate all infants and toddlers, birth through 36 months of age, who have or are suspected of having developmental delays, an AI, or a VI;**
- 2. An effective method is developed and implemented to identify children who are in need of early intervention services;**
- 3. The child find system is coordinated with all other major efforts to locate and identify children by other State agencies responsible for administering the various education, health, and social service programs;**
- 4. ECI programs take steps to ensure that there will not be unnecessary duplication of effort by the various agencies involved in the State's child find system;**
- 5. With parental consent, ECI programs provide children from birth to 36 months of age with:**
 - a. An evaluation by a licensed ophthalmologist or optometrist for children suspected of having a VI.**
 - b. An audiological evaluation by a licensed audiologist for children suspected of having an AI. If the audiological assessment indicates the child has an AI the contractor must refer the child to an otologist, as noted in c below; and**
 - c. An otological examination performed by an otologist or by a licensed medical doctor with documentation that an otologist is not reasonably available;**
- 6. With parental consent, ECI programs refer all children who have or are suspected of having an AI to the LEA for an evaluation by a teacher certified to teach children with AI. With parental consent, ECI programs refer all children who have or are suspected of having a VI to the LEA for evaluation by a teacher certified to teach children with VI, and a certified orientation and mobility specialist.**
- 7. For children who are referred to the LEA for a suspected AI or VI, ECI programs are required to invite a teacher certified to teach children who are auditory impaired or visually impaired, as appropriate, to the initial Individualized Family Service Plan (IFSP) meeting. Participation by the appropriate AI and/or VI teacher is required at the initial and annual IFSP meeting, and to other IFSP meetings when issues related to or affected by the AI or VI will be addressed; and**
- 8. ECI programs coordinate service delivery with LEAs and other service agencies for services listed in the IFSP.**

B. TEA ensures that it has policies and procedures in effect to ensure that:

- 1. All children with disabilities residing in the State, including children with disabilities who are homeless children or wards of the State, and children with disabilities attending private schools, regardless of the severity of the disability, and who are in need of special education and related services, are identified, located, and evaluated;**

2. LEAs locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the district served by the LEA;
3. LEAs, as soon as possible, but in no case more than seven days, provide referrals to the local ECI program for all children under three years of age discovered through the child find process;
4. LEAs provide a functional vision evaluation, a learning media assessment, and an orientation and mobility evaluation for all children birth through 36 months of age who are referred by an ECI program based on an identified or suspected VI; and
5. LEAs provide assessments required to determine the need for services or adaptive equipment related to an AI for all children birth through 36 months of age who are referred by an ECI program based on an identified or suspected AI.

V. TRANSITION NOTIFICATION

A. HHSC ensures that it has policies and procedures in effect to establish requirements that:

1. ECI programs, through an IFSP, determine if two year olds receiving services under Part C of IDEA are potentially eligible for early childhood special education services under Part B of IDEA;
2. At least 10 days before notifying the appropriate LEA that a child is potentially eligible for Part B services, the ECI program provides written notification to the child's parent advising the parent of:
 - a. The information that will be disclosed, including the limited personally identifiable information (child's name, child's date of birth, parent's name, address, and telephone number), the service coordinator's name, and the home language of the child;
 - b. The scheduled LEA notification date; and
 - c. The right to opt out of the disclosure in writing at any time up until the time of the scheduled LEA notification date;
3. For a child whose parent has not opted out of the disclosure within the established timeline, the ECI program notifies the LEA at least 90 days before the child's third birthday that the child is potentially eligible for Part B services;
4. When an ECI program provides notification of a potentially eligible child fewer than 90 days before the child's third birthday, the ECI program must provide a written explanation to the LEA stating the reason for the delay. This explanation must be provided at the same time as the notification;
5. If an ECI program determines that a child is eligible for Part C services fewer than 90 days and more than 45 days before the child's third birthday, the ECI program must determine as soon as possible whether the child is potentially eligible for Part B services. If the child is determined to be potentially eligible for Part B services, the ECI program must provide notification to the LEA as soon as possible, unless the parent opts out of the disclosure in writing;
6. If a child is referred to an ECI program fewer than 45 days before the child's third

birthday and the child may be potentially eligible for Part B services, the ECI program, with parental consent, shall refer the child to the LEA for a Part B eligibility determination. The ECI program is not required to determine the child's eligibility for Part C services in this situation;

7. With parental consent, ECI programs refer all children who have, or are suspected of having, an AI to the LEA for an evaluation by a teacher certified to teach children with AI.
8. With parental consent, ECI programs refer all children who have, or are suspected of having, a VI to the LEA for evaluation by a teacher certified to teach children with VI, and a certified orientation and mobility specialist; and
9. Pursuant to section 303.209 of title 34 of the Code of Federal Regulations (CFR), HHSC will ensure that notification to TEA of children potentially eligible for Part B occurs at least 90 days before each child's third birthday, or as soon as possible for children determined eligible for Part C services between 90 and 45 days before the child's third birthday. With parental consent, referral to TEA will be provided for all children referred to an ECI program fewer than 45 days before each child's third birthday. Local ECI contractors will provide these same notifications to the appropriate LEAs.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. LEAs understand that receiving notification of a child who is potentially eligibility for Part B services constitutes a referral to the Part B system and that steps must be taken to initiate the evaluation process to determine whether the child is eligible for Part B services;
2. LEAs coordinate efforts with ECI programs to support parent involvement in the transition planning process; and
3. Personally identifiable data, information, and records collected or maintained are protected and remain confidential pursuant to all state and federal regulations.

VI. TRANSITION CONFERENCE

A. HHSC ensures that it has policies and procedures in effect to establish requirements that:

1. If a child may be eligible for Part B early childhood special education services under IDEA, with family approval, a transition conference be convened not fewer than 90 days and not more than nine months before the child's third birthday to discuss any services the child may receive under Part B;
2. ECI programs document inviting the LEA to the transition conference 14 days in advance of the conference, the date of the transition conference, the discussion during the conference, and the contents of the transition plan in the child's record; and
3. Any conference or meeting to develop the transition plan may be combined into one meeting and must meet the requirements for IFSP meeting accessibility and convenience, IFSP parental notice, and initial and annual IFSP team participants.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. LEAs participate in transition planning conferences arranged by local ECI programs;
2. LEA staff documents the date of transition conferences, the participants, and the steps to determine a child's Part B eligibility; and
3. LEAs invite the ECI service coordinator to the initial admission, review, and dismissal (ARD) committee meeting at the request of the parent.

VII. TRANSITION PLAN

A. HHSC ensures that it has policies and procedures in effect to establish requirements that:

1. ECI programs develop transition plans as part of a child's IFSP not fewer than 90 days, but at the discretion of all parties up to nine months, before the child's third birthday;
2. Meetings held to develop the transition plan include the required members:
 - a. Parent(s) of the child;
 - b. Other family members, as requested by the parents;
 - c. An advocate or individual outside the family, if requested by the parent;
 - d. Designated service coordinator;
 - e. Individuals involved in evaluations and assessments;
 - f. Individual providing early intervention services to the child and family, as appropriate;
4. ECI programs review the community resources and service options available for the child after the child's third birthday;
5. ECI programs include a child's family in the development of the transition plan included in the IFSP; and
6. Transition plans in IFSPs include, as appropriate:
 - a. Steps for the child and his or her family to exit from the Part C program including:
 - i. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
 - ii. Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child;
 - iii. Procedures to prepare the child for changes in the service delivery, including steps to help the child adjust to, and function in, a new setting;
 - iv. Confirmation that referral information about the child has been transmitted to the LEA in accordance with the required notification provisions. With parental consent, if required under confidentiality of information provisions, the ECI program may transmit additional information needed by the LEA to ensure

continuity of services from the ECI program to Part B early childhood special education services, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed; and

- b. Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. LEAs coordinate with ECI programs to fully inform families of the possible services available under Part B and support family involvement in the transition planning process; and
2. LEAs understand the requirement that they participate in the transition planning process.

C. TEA will be receiving personally identifiable information (“Confidential Information”) as defined in 34 CFR § 303.29 that must be safeguarded from any disclosure other than as required to perform TEA’s services identified in this MOU (“Authorized Purpose”). TEA will:

1. Only disclose Confidential Information to authorized users to the extent necessary to accomplish the Authorized Purpose and as permitted by law.
2. Establish, implement, and maintain administrative, physical, and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information.
3. Maintain updated privacy, security, and breach response policies and procedures as required by law or internal policies.
4. Establish, implement, and maintain corrective actions against any member of its workforce or subcontractor who fails to comply with the privacy and security requirements in this MOU.
5. Maintain an accounting of all disclosures of Confidential Information.
6. If TEA transmits or stores Confidential Information via electronic means, utilize secure file transfer protocol or encryption in motion and at rest and other applicable security controls in accordance with the most current version of the National Institute of Standards in Technology, Special Publication 800-53, or other equally protective security controls.
7. Designate a privacy official and a security official, who may be the same individual, authorized to act on behalf of the receiving agency with respect to implementing the privacy and security requirements in this MOU. Receiving agency will provide contact information for these officials to disclosing agency.

VIII. IDEA PART B EARLY CHILDHOOD TRANSITION REQUIREMENTS

A. TEA ensures that it has policies and procedures in effect to ensure that:

1. An individualized education program (IEP) be developed and implemented for Part

B eligible children by their third birthday;

2. **The IEP team determines the start date of the IEP if the child's birthday occurs during the summer. Services will begin by the first day of school, or earlier as determined and stated on the IEP; and**
3. **For children transitioning from Part C services to Part B services, the IEP team considers an IFSP that contains the IFSP content including the natural environments statement, described in 34 CFR § 303.344, and that is developed in accordance with the IEP procedures under 34 CFR § 300.323(b) when developing the initial IEP.**

IX. FINANCIAL RESPONSIBILITIES

A. HHSC ensures that it has policies and procedures in effect to establish requirements that:

1. **All Part C services be provided by or arranged for by ECI programs;**
2. **An ECI program is the payor of last resort. Therefore, maximum use will be made of all third party funding sources, including family cost share, Medicaid, Children's Health Insurance Program ("CHIP"), and private insurance for Part C services;**
3. **ECI programs pay transportation costs for children from birth to 36 months of age who require hearing and vision services in excess of the amount to which the LEA is entitled for transportation costs under TEC, § 42.155 in the delivery of transportation services;**
4. **ECI programs pay for or access a low-vision evaluation when it is necessary to identify assistive technology needs for a child;**
5. **ECI programs be responsible for providing ophthalmological, optometric, audiological, and otological evaluations when required to determine eligibility for ECI services and for hearing and vision services from an LEA;**
6. **As a function of service coordination, ECI programs be responsible for helping families access the evaluations when they are not necessary to determine eligibility for ECI services;**
7. **ECI programs provide any interpreter services needed by the child or family for evaluations to determine ECI eligibility and services listed in the IFSP;**
8. **ECI programs provide or access assistive technology devices when they are needed to support the child to reach the outcomes listed in the IFSP;**
9. **If an item is available through Federal Quota Funds and the Texas Instructional Materials Center for Students with Visual Impairments (TIMCVI), then the LEA is responsible for ordering and maintaining the device; and**
10. **ECI programs determine whether other resources are available to help with the cost of hearing aids and eyeglasses. Resources that may be accessed to cover the cost for hearing aids and ear molds include HHSC's Medicaid and CHIP benefits and the Department of State Health Services for Children with Special Health Care Needs Services Program for the Hearing Services for Children for program benefits. The ECI program may coordinate payment for eyeglasses by accessing the HHSC Division of Blind Services, or other organizations such as Kiwanis, Sertoma Clubs, or Lions**

Clubs.

B. TEA ensures that it has policies and procedures in effect to ensure that:

1. LEAs provide Part B evaluations and eligibility determinations;
2. LEAs provide Part B early childhood special education and related services for children eligible under Part B;
3. LEAs provide hearing and vision services to children from birth to 36 months of age who have AI or VI;
4. LEAs provide transportation to children from birth through age two to enable them to receive hearing and vision services and will use, to the maximum extent allowable, all funds to which the LEAs are entitled under TEC, § 42.155 in the delivery of transportation services;
5. LEAs provide interpreter services for children being evaluated for special education services and for ARD committee meetings; and
6. If an item is available through Federal Quota Funds and TIMCVI, then the LEA is responsible for ordering and maintaining the device. If it is not available through TIMCVI, then the ECI program is responsible for the purchase and maintenance of the device.

C. HHSC and TEA jointly agree that:

1. Training is provided to the ESCs, LEAs, and local ECI personnel on this MOU; and
2. Monitoring efforts of TEA and HHSC are coordinated in compliance with Part C and with state law related to children with AI and VI and this MOU.

X. DISPUTES CONCERNING IMPLEMENTATION OF MOU

A. Local Agency Disputes:

Disputes concerning implementation of this MOU between LEAs and ECI programs shall first be resolved at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to the local officials authorized to make the decisions necessary to resolve the dispute either through cooperative decision making or through mediation, in accordance with the established policies and procedures of the agencies involved. If local resolution is not possible after a reasonable time period (not to exceed 45 days unless the involved parties agree otherwise), the affected LEA or ECI program shall refer the interagency dispute to the designated specialist at the regional ESC and/or the ECI performance manager for further negotiations towards a mutually agreeable resolution. Technical assistance may be obtained from the ECI performance manager and/or the ESC designated specialist(s) to assist in developing strategies, clarifying local program roles and responsibilities, and interpreting state and federal rules as well as local policies. LEAs and ECI programs referring a dispute shall identify the:

1. Nature of the dispute;
2. Resolutions agreed upon at the local level;
3. Issues that remain unresolved at the local level; and

4. Local contact persons.

B. State Agency Disputes:

Disputes concerning implementation of this MOU between the Parties must first be resolved at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), HHSC and TEA staff will refer the dispute to their respective executive officers, or their designees, for further negotiation. The appropriate officials shall meet to seek resolution of the dispute.

XI. ADDITIONAL TERMS AND CONDITIONS

1. This MOU may be amended as needed to address changes in statute, rules, agency policies, or mitigating circumstances by written amendment signed by the Parties. This MOU cannot be assigned to another party without the express written consent of the other Party, except assignment to a successor-in-interest state agency is automatic.
2. This MOU shall be construed in a manner consistent with all applicable existing and future laws and regulations. If any part of this MOU is determined to be invalid or contrary to existing and future laws and regulations, the remainder of the MOU will remain in full force and effect. Upon occurrence of such an event, the Parties shall meet and confer as soon as practical to renegotiate the conflicting provisions.
3. This MOU may be executed in separate and multiple counterparts, each of which shall be deemed an original but all which taken together shall be deemed to constitute one and the same instrument. Electronically transmitted signatures will be deemed originals for all purposes relating to this MOU.
4. This MOU supersedes any previous agreements or understandings between the Parties relating to the subject matter described herein.
5. The Parties will schedule a joint meeting to review this MOU annually, no later than August 31st.
6. HHSC shall provide a signed copy of this MOU annually to the Legislative Budget Board and the Office of the Governor, no later than October 1st, until such time the MOU is terminated or no longer required.
7. Legal Notices. Any legal notice required in connection with this MOU by HHSC shall be deemed delivered when deposited by the HHSC either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the address set forth below for TEA.

Legal notice given by TEA shall be deemed effective when received by HHSC contact listed in this Section. TEA must send, at the same time and in the same manner as set forth for legal notice, a copy of the legal notice to the HHSC's designated Representative.

HHSC

Health and Human Services Commission
Attn: Office of the Chief Counsel
4900 N. Lamar Boulevard; Mail Code 1100
Austin, Texas 78751

TEA

Texas Education Agency
Attn: Office of the General Counsel
1701 N. Congress Avenue
Austin, Texas 78701

Either Party may change its address for legal notices by providing written notice to the other Party.

XII. TERM OF AGREEMENT

The MOU is effective on the signature date of the last of the Parties to sign and terminates on September 30, 2021. Thereafter, this MOU shall automatically renew for successive two-year terms, unless either Party gives the other Party at least 60 days' advance written notice of its intent not to renew. Additionally, this MOU may be terminated early by either Party upon providing 30 days' advance written notice to the other Party.

XIII. SIGNATURES

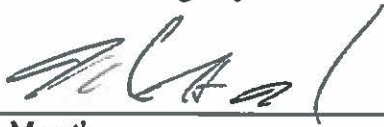
IN WITNESS WHEREOF, the Parties have executed this MOU by the signatures of the duly authorized representative of each, to be effective as of the last signature date below.

**Health and Human Services
Commission**

By: 
Dr. Courtney N. Phillips
Executive Commissioner

Date of Execution: 8/15/19

Texas Education Agency

By: 
Mike Morath
Commissioner

Date of Execution: 7/24/19