



Coordinator – Policy, Planning and Partnerships
Tel. (518) 473-7213
Fax (518) 486-1027
E-mail: dbailey3@mail.nysed.gov

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TO: District Superintendents
Directors of Approved Preschool Programs
Directors of Pupil Personnel Services
Directors of Special Education
Early Intervention Officials
Chairpersons of Committees on Preschool Special Education
Municipality Representatives
Superintendents of Schools
Commissioner's Advisory Panel on Special Education
SETRC Project Directors and Training Specialists
Early Childhood Direction Centers

FROM: Douglass Bailey

SUBJECT: Amendments to Public Health Law Relating to the Transition of Children From Early Intervention (EI) to Preschool Special Education

This memorandum provides information regarding two amendments to Title II-A of Article 25 of New York State (NYS) Public Health Law which affect the age-eligibility of children to receive early intervention (EI) services and the timely transition of children to preschool special education programs and services pursuant to section 4410 of NYS Education Law. The first of these amendments went into effect on May 15, 2003. A later technical amendment, Chapter 686 of the Laws of 2003, enacted on October 21, 2003, further modifies Public Health Law.

These amendments have implications for school districts and parents as they plan for a child's transition from EI to preschool special education and ensure alignment between NYS law and federal requirements under Parts B and C of the Individuals with Disabilities Education Act (IDEA). Federal law requires that eligible children with disabilities receive a free appropriate public education (FAPE) consistent with an Individualized Education Program (IEP) on their third birthday.



"Eligible Child" for Early Intervention Services

The definition of "eligible child" has been amended in section 2541(8)(a) of Public Health Law. Language has been added to allow only those infants or toddlers with a disability who have been determined to be eligible for programs and services under section 4410 of the Education Law, to continue to receive early intervention (EI) services past their third birthday or to transition to preschool special education programs and services at the request of their parent(s).

A child's eligibility for continued receipt of EI services ends on the child's third birthday, unless the child has been referred to the Committee on Preschool Special Education (CPSE) and determined to be eligible for preschool special education programs and services. Public Health Law establishes time periods when only 4410 eligible children can continue to receive early intervention services if requested by the parent(s), as follows:

- Children, who turn three years of age between January 1st and August 31st, are eligible to continue to receive early intervention services until September 1st of that calendar year.
- Children who turn three years of age between September 1st and December 31st are eligible to continue to receive early intervention services until January 2nd of the following calendar year.

Timelines

Section 2548 of the Public Health Law has been amended with regard to the time frame and procedures for the initiation of transition planning only for those children thought to be eligible for services pursuant to section 4410 of Education Law. Early Intervention Program (EIP) regulations (10 NYCRR §69-4.20 (b)) require that Early Intervention Officials (EIOs), with parental consent, provide notification of the child's potential transition to preschool special education and services to school districts at least 120 days prior to the child's first date of eligibility for services under Education Law. In addition, with parental consent the EIO is required under section 2548 of Public Health Law to arrange for a transition conference among the EIO, the service coordinator, the child's parent(s) and the chairperson of the CPSE, or his/her designee. The purpose of the transition conference is to review the child's program options, determine whether or not a referral should be made to the CPSE and establish a transition plan. This conference must be convened at least 90 days prior to the child's potential eligibility for preschool special education. If the parent(s) chooses not to participate and does not give consent to a transition conference, the transition conference does not take place. However, the EIO must provide the parent(s) with written notice that if the child is not referred and evaluated by the CPSE by his/her third birthday, the child's eligibility for the EIP ends at age three.

Please note that if the parent(s) chooses not to participate in a transition conference, nothing precludes the parent(s) from directly referring or requesting the EIO, the EI provider

or other referral source to refer the child to the CPSE. If the EIO, following discussions with the EI service coordinator, service providers and the parent(s) and a review of the child's records, believes a child is not eligible for services under section 4410 of Education Law, or no longer requires special services or programs, the child may be discharged from the EIP at age three. In this case, the EIO must inform the parent(s) of their right to refer their child to the appropriate CPSE for evaluation and of the procedures to follow.

Transition Plans for Children Receiving Early Intervention Services

The EIP establishes requirements regarding transition planning for children who complete the EI program: (1) but do not require further services, or (2) who will transition to section 4410 special education programs and services and/or (3) who will transition to other early childhood programs or to other support services provided by other State agencies such as Office of Child and Family Services (OCFS), Office of Mental Retardation (OMR) and Developmental Disabilities (OMRDD), or Office of Mental Health (OMH).

Over the course of every child's EI experience, informal planning occurs for the eventual movement of the child to later experiences. As the child approaches the third birthday, a written transition plan must be developed for every child transitioning from the EIP to programs under section 4410 of Education Law, and/or other early childhood services (10 NYCRR §69-4.20). With parental consent, the EIO convenes a transition planning conference for children thought to be eligible for programs and services pursuant to section 4410 of Education Law, with the parent(s), the EI service coordinator and the chairperson of the CPSE or designee. This conference may be conducted by telephone with the agreement of all participants. Pursuant to section 4410(3)(f) of Education Law, the CPSE Chairperson or his/her designee must participate in the conference to support the child's potential transition and to ensure that the parent(s) is fully informed of the special education or other early childhood program options, including but not limited to nursery school, day care or Head Start program. The EI service coordinator designated by the municipality is required to incorporate the transition plan into the Individual Family Service Plan (IFSP) with parental consent.

The transition plan from Early Intervention must include procedures to prepare the child and family for changes in service delivery, including:

- steps to help the child to adjust to and function in a new setting; and
- procedures to prepare program staff or individual qualified personnel who will be providing services to the child to facilitate a smooth transition.

Transition Conference Discussion

As part of the transition conference discussion, parent(s) should be informed of the differences between the Early Intervention and the preschool special education programs and services. During this discussion, the EIO should address the requirements in the EIP

for review and continuation of the IFSP. The CPSE Chairperson or designee should address the requirements in federal and State law for development of the IEP, which establishes the manner in which a preschool student with a disability will be provided with a free appropriate public education. The CPSE Chairperson or designee in the transition conference should also provide the following information:

- In NYS, only a fully constituted Committee which meets requirements in Education Law and regulation, including the child's parent(s), can make the eligibility determination for special education programs and services.
- A child's participation in the preschool special education program is voluntary on the part of parent(s). At the request of the parent(s), the child may continue to receive services through the EIP after the child's third birthday until the child ages out of the EIP, as long as the child's eligibility for services under section 4410 of Education Law has been established by the child's third birthday. The child's current IFSP serves as the IEP when the child continues to receive services through the EIP after the child's third birthday.
- Parental consent must be obtained by the CPSE in order for the CPSE to determine the child's eligibility for services under section 4410 of Education Law.
- If the parent(s) does not complete and return the consent to the CPSE for the child's evaluation, the CPSE must implement the school district's practices and procedures for ensuring that parent(s) have received and understand the request for consent. The parent(s) should be advised by the service coordinator that if parental consent is not given for an evaluation by the CPSE, the child and family's participation in the EIP will end on the child's third birthday, and a transition plan will be developed, which may include referral to other services (e.g. school district prekindergarten programs, Head Start, or other early childhood programs).
- With the consent of the parent(s), the EIP must provide approved evaluators and the CPSE with the most recent evaluation reports for such children. Nothing should prohibit an approved evaluator or the CPSE from reviewing other assessments or evaluations to determine if those assessments fulfill the requirements of State law and regulation. It is not necessary or required that children be reevaluated by the EIP before transitioning to preschool special education. This provision is meant to reduce unnecessary or duplicative evaluation of children.
- If the CPSE finds that the child is not eligible for services under section 4410 of Education Law, the child's eligibility for the EIP will end at age three and a transition plan to other appropriate early childhood and supportive services will be developed in a meeting convened by the EIO, with the parent(s) and service coordinator.

- If the CPSE finds the child eligible, the parent(s) can elect to have the child continue in the EIP or transition to programs and services under section 4410 of Education Law.

CPSE Process

Following the transition conference and receipt of the referral from the EIO, the CPSE must immediately provide written notice to the parent(s) to provide information about the evaluation process and must request consent for evaluation of the preschool student by an approved program with a multi-disciplinary component selected by the parent(s).

As part of an initial evaluation, if appropriate, and as part of any reevaluation, a group that includes the CPSE and other qualified professionals must review existing evaluation data on the student including evaluations and information provided by the student's parent(s), current classroom-based assessments and observations by teachers and related service providers. The group may conduct its review without a meeting. On the basis of that review and input from the student's parent(s), the CPSE and other qualified professionals, must identify what additional assessment data are needed. Discussion about existing EI evaluations should be included as part of the transition conference when the determination is being made as to whether or not the child will be referred to the CPSE.

If the CPSE finds that the child is not eligible for services under section 4410 of Education Law, the child's eligibility for the EIP will end at three years of age and a transition plan to other appropriate early childhood and supportive services will be developed by the EIO. Parent(s) may pursue their due process rights to mediation and/or an impartial hearing to challenge the recommendation of the CPSE or the failure of the CPSE to make a recommendation. In this case, the parent(s) should be informed that pendency for the child is an approved preschool special education program and/or services agreed to by the CPSE and the parent(s) that is appropriate to the needs of the student until all proceedings have been completed (section 200.16(g)(3)(iv) of the Regulations of the Commissioner of Education). However, in the event that the CPSE and the parent(s) cannot agree, the impartial hearing officer will determine the child's pendency placement until all proceedings have been completed.

If the CPSE finds the child eligible for services under section 4410 of Education Law, the parent(s) can request to have the child continue to receive his/her services under the EIP until the child ages out of the program or elect to have the child transition to services under section 4410 of Education Law. At the time that the committee determines that the preschool child has a disability, the committee must recommend appropriate special education services and/or programs and develop an IEP for the child in accordance with State and federal laws and regulations. The CPSE must indicate on the IEP the date for initiation of special education based on the agreement reached by the CPSE and the child's first date of eligibility for preschool special education. The IFSP should be modified to

include the last date of EI services, which should be based on the date when preschool special education services will begin.

Please note that in order for children to receive preschool special education programs and services by their third birthday or on the first day of their eligibility for preschool special education (whichever comes first) the referral must be accepted by the CPSE in time to allow the CPSE to provide a recommendation to the Board of Education within thirty school days of receipt of written consent by the parent(s) for the individual evaluation of the child (section 200.16(d) Regulations of the Commissioner of Education).

Upon receipt of the recommendation of the CPSE, the Board of Education must arrange for the preschool student with a disability to receive the recommended special education programs and services beginning with the July, September or January starting date for the approved program. However, if the recommendation of the CPSE is made less than 30 school days prior to, or after, the July, September or January starting date, the services must be provided no later than thirty school days from the recommendation. To avoid a gap in services for those children who will continue in the EIP past the third birthday, the Board of Education must arrange for the preschool student to receive the programs and services on the date recommended by the CPSE.

Children First Referred to the EIP when Age-Eligible for Preschool Special Education

Some children may be first referred for EI services between 2 ½ and 3-years of age. Since these children are also potentially eligible for preschool special education, it is recommended that the EIO inform the parent(s) that the child may be directly referred to the CPSE without proceeding through the EIP process.

If the parent(s) chooses to first refer the child to the EIP, the EIO must designate an initial service coordinator and the service coordinator must assist the parent(s) in obtaining a multi-disciplinary evaluation consistent with the EI program requirements. This EI evaluation must be completed and if the child is determined eligible for EI services, the IFSP must be developed within 45 days of the child's referral for EI services.

At the same time for those children 2 ½ to 3-years of age, the initial service coordinator, must explain to the parent(s) that the EIO is required to begin planning for the child's transition from EI by obtaining parental consent to arrange a conference among the parent(s), EI Service Coordinator and the CPSE Chairperson. If the parent(s) agree to the conference, all of the procedures previously described for children receiving EI services at the time they reach 2 ½ years of age apply. If the child is found eligible for both EI and preschool special education services, the parent(s) must be informed of the option to participate in either program. If a child is found eligible for preschool special education services, the parent(s) must be informed of the option to either continue in the EI program until the child ages out or begin receiving preschool special education services on their first day of eligibility for services under section 4410. If the parent(s) chooses to participate in the EIP, the parent(s) should discuss service dates with the EI Service Coordinator and CPSE Chairperson to determine the dates when the child is expected to complete the EIP

and begin receiving preschool special education. This last date of the EIP should be documented on the IFSP and will be considered by the CPSE in their recommendation to the Board of Education for the preschool student's initial date of special education services and/or programs as indicated on the IEP.

Technical Assistance Resources

Questions and Answers Related to the Amended Public Health Law are attached to provide additional information. Additional questions regarding children's eligibility for early intervention services and transition planning should be directed to the State Department of Health at (518) 473-7016. Questions regarding children's eligibility for preschool special education may be directed to the State Education Department, Special Education Policy Unit at (518) 473-2878.

Individual child specific questions for preschool special education may be directed to the appropriate Special Education Quality Assurance Regional Office below:

Central New York Regional Office	(315) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(914) 245-0010
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002

**Questions and Answers
Related to the Amended Public Health Law**

Is the CPSE Chairperson or the Chairperson's designee required to participate in the transition conference to review the child's program options?

Yes. Pursuant to section 4410(3)(f) of Education Law, the CPSE Chairperson of the local school district in which the child resides or his or her designee must participate in the conference in person or by telephone/video conference.

What is the role of the CPSE Chairperson or the designee at the transition conference?

The CPSE Chairperson or the Chairperson's designee must attend the conference with the parent(s), the Early Intervention Official (EIO) and the Early Intervention (EI) Service Coordinator to support the child's potential transition to preschool special education and to ensure that the parent(s) is fully informed of the special education or other early childhood program options, including but not limited to nursery school, day care or Head Start programs. The CPSE Chairperson can provide information and respond to the parent(s) questions or concerns regarding the CPSE process including children's eligibility for services, timelines from referral to placement in an appropriate program and/or the provision of transportation services for the child.

Who can serve as the designee of the CPSE Chairperson at the transition conference? Can it be the EIO?

Qualifications for the designee of the CPSE Chairperson at a transition conference are not established by State law or regulation. It is appropriate for a member of the CPSE (section 200.3(a)(2) Regulations of the Commissioner) who is knowledgeable of the transition process and is experienced in reviewing the needs of children transitioning from early intervention to represent the child's school district as the appointed designee of the CPSE Chairperson. Since the EIO represents the county at the transition conference and at meetings of the CPSE, the EIO cannot be designated to serve in this role as a representative of the school district at the transition conference meeting.

Is it each county's responsibility to establish a policy regarding the specific age for children to be referred to the CPSE?

No. Each county and New York City must adhere to the requirements in Public Health and Education Law regarding age-eligibility requirements and the timeframes for notice to the school district, convening of a transition conference and eligibility determinations. However, counties may develop procedures consistent with these requirements.

If a child currently receiving EI services is in the process of receiving an evaluation under section 4410 and turns three, may the child continue to receive EI services past the child's third birthday?

No. A child who has not been determined eligible for section 4410 programs and/or services may not continue to receive EI services after their third birthday.

What is done when a child currently receiving EI is determined to be eligible for preschool special education services and/or programs, but continues in EI and makes significant progress so that the EIO believes the child may no longer require preschool programs and services?

The EIO should discuss the child's progress with the service coordinator and parent and notify the CPSE Chairperson of the child's progress. If there is any question as to whether or not the child continues to require special education, the CPSE should reevaluate the child. The EIO may assist in this process by forwarding, with parental consent, any recent evaluation and assessments completed under the Early Intervention Program.

If the CPSE determines that a child currently in EI is eligible for section 4410 programs and/or services, what date does the CPSE recommend to the Board of Education for the initiation of services?

At the time that the CPSE meets to find the child eligible for preschool special education, the CPSE and parent(s) should discuss and agree upon the timeframe for transition. The specific date of initiating the child's preschool special education services and/or programs must be documented on the IEP and will depend upon whether the parent(s) elects to have the child continue in the EIP for a period of time past the child's third birthday or to terminate the EIP and transition the child to services under section 4410 of Education Law. To avoid any gap in services, the CPSE recommended date for implementing the IEP should be the next school day following the child's last date of receiving early intervention programs and services.