

DRAFT Interagency Agreement with
Vermont Agency of Human Services and
Vermont Department of Education

Pursuant to Part C of the
Individuals with Disabilities Education Act 2004

April 17, 2006

DRAFT

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PURPOSE

This agreement promotes and supports collaboration between the Agency of Human Services (AHS) and the Department of Education (DOE), so that the statewide early intervention program is coordinated and provided in the manner required by Part C of the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), other applicable federal and state laws, such as the McKinney-Vento Homeless Assistance Act, Child Abuse Prevention and Treatment Act, (Maternal and Child Health Title V Children with Special Health Needs), 33 V.S.A. chapters (43) and 47, and by the Vermont State Board of Education (VSBE) and AHS special education regulations for children, birth to three years of age who are at risk for and/or who experience measurable developmental delays and/or disabilities, and their families.¹

As required by IDEIA, this agreement articulates the roles and responsibilities of the DOE and AHS, primarily through the activities of its member departments and offices including the Department for Children and Families (DCF), Department of Health (VDH), Department of Disabilities, Aging and Independent Living (DAIL) and the Office of Vermont Health Access (OVHA) relative to the provision of early intervention services and the funding of these services. In Vermont, the Early Intervention Program under Part C is known as the Family Infant Toddler Program (FITP). It is intended that the agreement will guide staff from regional host agencies and their partners and local education agencies (LEA) in the coordination and provision of the statewide early intervention program.

¹ An eligible child is a child from birth to three years of age who is at risk for and/or who experiences measurable developmental delays and/or has a diagnosed physical or mental condition that is highly likely to result in a developmental delay.

GUIDING PRINCIPLES

Improving outcomes for infants and toddlers with developmental delays has been the shared responsibility of the DOE, AHS, regional host agencies, LEAs and other local service providers since 1991. The following principles guide the provision of early intervention services to infants, toddlers and their families.

- 1) The best way to meet the needs of individual children is by addressing the needs of the family.
- 2) Family-centered services are both a goal and a process by which families are supported in being active partners in planning outcomes and services that they and/or their children need and want.
- 3) Family-centered intervention is most beneficial when provided as early as possible and at the appropriate level of intensity based on need.
- 4) A process and services that are family-centered improve outcomes for children.
- 5) Individualized, well-thought out intervention services address the child's needs and strengths in the context of the family's concerns and priorities.
- 6) Smooth and seamless transitions from FITP to Essential Early Education (EEE) and other early childhood and family support services are essential for improving developmental outcomes.
- 7) Collaboration between agencies to ensure that families are informed of their rights and that families and children receive available services for which they are eligible in a timely and coordinated manner improves program effectiveness.
- 8) Collaboration between agencies strengthens statewide implementation of FITP.

CO-LEAD AGENCY RESPONSIBILITIES

- A. The Governor designated the AHS and the DOE as co-lead agencies responsible for the general oversight of Vermont's Part C/FITP. To meet the needs of eligible children and their families in an effective and coordinated manner, this agreement delineates to co-lead agencies shared and separate functions.
- B. As co-lead agencies, the AHS and the DOE will work together, as practicable, to:
- 1) develop and /or revise, adopt and execute rules regarding the statewide early intervention program;
 - 2) collaborate on, implement and deliver to the LEAs and the regional early intervention host agencies technical assistance regarding the implementation of the rules and best practices required to carry out Part C requirements;
 - 3) collaborate on policy and funding decisions;
 - 4) otherwise comply with all statutory requirements of IDEIA ;
 - 5) ensure timely and accurate data collection and reporting as required by federal and state rule, including reporting on the expenditure of federal, state, and local funds spent by the DOE and the LEAs;
 - 6) jointly identify and follow-up on systemic issues;
 - 7) work together to identify resources in support of children who require intensive and extensive services related to low incidence disabilities ;
 - 8) work together to follow children who are at risk for developmental delays;
 - 9) communicate in a timely manner the results of delegated responsibilities of monitoring, corrective actions, complaints, and other activities to each other;
 - 10) meet at least quarterly to review existing data and evaluate the implementation of this agreement and Vermont's obligations under Part C and Part B of the IDEIA.

- C. The AHS was specifically assigned lead responsibility for the general administrative, operational, and financial functions of Part C of the IDEIA. As such, the AHS shall:
- 1) carry out the day-to-day responsibilities for oversight, management and supervision and continuous improvement of Part C/FITP;
 - 2) monitor all Part C partners, including the LEAs and regional host agencies, to ensure compliance with Part C;
 - 3) report findings to the DOE for follow-up regarding corrective actions in the areas of child find and transition;
 - 4) write and submit reports, applications and plans as required by federal and or state governments;
 - 5) conduct financial planning and management of FITP;
 - 6) solicit input from DOE on the development, creation, and execution of policy decisions and technical assistance that impact LEAs and regional host agencies, such deciding whether to exercise options or pilots allowed under IDEIA and as planning for and providing professional development;
 - 7) develop procedures to ensure compliance with Part C requirements;
 - 8) identify and coordinate the use of federal, state, and local resources;
 - 9) provide technical assistance to LEAs and regional host agencies for the development of regional Part C plans.

D. As a co-lead agency for Part C of IDEIA, the DOE shall:

- 1) in accordance with an MOU or other agreement with AHS, provide staff resources for DOE's Part C duties described in this agreement;
- 2) as feasible, provide input to support AHS responsibilities;
- 3) contribute data to reports, as requested by AHS;
- 4) assist AHS in the development, and provision, and dissemination of technical assistance to LEAs;

- 5) direct LEAs to fulfill child find and transition responsibilities, as identified in this Agreement, consistent with federal and state rule;
- 6) assure that corrective actions are completed following the monitoring of LEAs activities or dispute resolution activities; administer mediation, administrative complaint and due process systems for families to pursue their complaints.

PUBLIC AWARENESS AND CHILD FIND

Pursuant to 34 CFR 303.321(b)(1), Vermont has a comprehensive child find system including policies and procedures that ensure all infants and toddlers who may be eligible for services under Part C are identified and evaluated. Pursuant to VSBE Rule 2360.5, the child find responsibility for children birth to age three lies with LEAs. While DOE has ultimate responsibility for ensuring that a comprehensive child find system exists in VT, AHS has an important supporting role as described below.

- 1) AHS will take the lead in developing and implementing public awareness activities to include outreach to primary referral sources in order to connect families to child find activities. DOE will provide technical assistance to LEAs about their responsibilities for implementing public awareness activities that supplement those provided by AHS.
- 2) DOE will ensure that LEAs implement their child find responsibilities in accordance with their regional plans as developed consistent with Part C state rules.
- 3) DOE will seek out AHS resources and expertise to ensure that DOE child find trainings are consistent with Part C's comprehensive system of professional development.
- 4) DOE will ensure that LEAs respond to referrals resulting from public awareness or any other child find activities in a manner consistent with Part C federal and state rules.

- 5) DOE will ensure that LEAs, in conjunction with the core teams, complete initial evaluations of Part C referred children within relevant timelines and following all evaluation requirements in accordance with Part C federal and state rules.
- 6) DOE will ensure that LEAs, in conjunction with the core team, determine eligibility pursuant to federal and state Part C rules.
- 7) DOE will ensure LEAs comply with data collection and reporting requirements of the Part C federal and state rules.
- 8) DOE will provide AHS with data on child find activities and will meet periodically with AHS to discuss child find activities and outcomes.
- 9) AHS will ensure that the regional host agency will follow-through on any referrals for children who are found ineligible for Part C.

COORDINATION OF SERVICES

Service Coordination

AHS and DOE have joint and separate responsibilities related to oversight of the Part C early intervention program. In accordance with state regulations and this Interagency Agreement, LEAs have responsibility for Child Find activities while Regional Host Agencies have responsibility for the coordination and provision of direct services to infants, toddlers, and families found eligible for Part C services. However, LEAs or Regional Host Agencies may elect to take on increased responsibilities beyond those that are required if these are clearly articulated and incorporated into the Regional Plans. AHS and DOE will review, through monitoring efforts, the compliance and performance of Regional Host Agencies and LEAs in maintaining and implementing regional plans.

The Regional Plan defines the roles of the Regional Host Agency, the LEAs, and other key partners. The Regional Plan is developed by a Regional Team. The Regional Team, whose composition shall be set out in state rules in more detail, shall include

representatives from the Regional Host Agency and the LEAs located within the currently established Part C regions.²

The responsibilities of the Regional Team are: (1) to develop and periodically review the Regional Plan; (2) to accept and attempt to resolve complaints from core teams and Individualized Family Service Plan (IFSP) teams, whose composition will be set out in state rule in more detail; and (3) to meet quarterly, or as otherwise described in the Regional Plan, in order to review and advise on issues related to Part C activities in the region. Each Part C regional team shall develop, maintain and implement a Regional Plan that is consistent with state rules and this Interagency Agreement.

The Regional Plan must include the following:

- a) delineation of responsibilities, including responsibilities for payment and provision of activities for public awareness, child find, initial evaluation for eligibility and program planning, early intervention services and transition to EEE or other early childhood services, as appropriate;
- b) procedures for handling referrals and convening the Core Teams as appropriate to the community in which the family resides;
- c) the effective and sunset dates of the Regional Plan.

At a minimum, the Regional Plan must be agreed upon and signed by the Regional Host Agency and the LEAs within the region.

Core teams, as defined in greater detail in state rules, will be comprised at a minimum of the following: family, regional early interventionist, LEA representative, community resource parent, medical social worker for children with medical concerns, and other qualified personnel to carry out multidisciplinary evaluation and eligibility

² Part C regions are defined mainly along county lines; however, some of these regions cross counties.

determinations. Upon receipt of referral, core teams shall determine the person responsible for making the initial family visit, determine who will provide interim service coordination, develop an all domain evaluation plan, and determine eligibility. The core team is responsible for making recommendations for the development of the IFSP.

Upon determination of eligibility IFSP teams, as defined in greater detail in state rules, plan and assess outcomes; early intervention strategies; intensity, approach, and location of services; and select service providers. Each IFSP may include services beyond the early intervention services described in 34 CFR§303.12. Services included in an IFSP that are not described in 34 CFR §303.12 are services for which fees may be charged.

TRANSITION

The DOE and AHS agencies ensure that Part C early intervention (FITP) and LEA representatives participate in transition planning conferences arranged by Part C, as managed by the family's service coordinator, for those children who may require preschool special education services under Part B, i.e., EEE. A transition plan will be developed that includes both the steps and the services needed to assure a smooth and effective transition for the child and their family.

Part C/FITP will assure that the LEA is notified, with parental permission, of the probable transition of a child receiving Part C services and likely to be eligible for Part B services, at least 6 months prior to the child's third birthday.

The DOE will assure that each child entering Part B from Part C will have an IEP developed and implemented by the child's third birthday or by the beginning of the coming school year if the child's birthday falls between June and the beginning of the coming school year.

AHS and DOE will provide technical assistance and training to LEAs and Part C/FITP regional early intervention programs to assist them in carrying out the IAA and the federal and state regulations related to transition. AHS and DOE will monitor, collect and report data and jointly plan improvements so that compliance with federal requirements is 100%.

FINANCIAL RESPONSIBILITIES

A. General Statement

Pursuant to 20 U.S.C. §1435 and other pertinent federal and state regulations and rules, children and their families eligible under Part C are entitled to child fin; a timely, comprehensive, multidisciplinary evaluation, and an individualized family service plan including service coordination. Pursuant to 20 U.S.C. §1436, eligible children and their families shall receive required early intervention services described in their IFSPs, developed consistent with this interagency agreement and federal and state regulations and rules. Vermont does not have a state law requiring the provision of a free appropriate public education for children with disabilities from birth to age three.

B. AHS Financial Responsibilities

AHS is responsible for the administration of funds, as described below. To the extent that other federal and state funds do not cover the costs associated with the administration of the Part C/Early Intervention Program and the implementation of the AHS responsibilities under this agreement, the AHS will use Part C funds under the payor of last resort provision set out below.

1. General Administration of Federal Part C Funds and Assurances

a.) Non-supplantation

Acceptance of Part C funds requires that federal funds are used to supplement state and local funds expended to eligible children and their families; federal funds are not to be used to supplant state and local funds. See 34 CFR § 303.124.

b.) Maintenance of Effort

Annually, the AHS and DOE will provide assurance that Part C funds will be used to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds. (20 USC 1437(b)(5)(B).) As the agency specifically assigned lead responsibility for the general administrative, operational, and financial functions of Part C of the IDEIA, AHS has responsibility for ensuring that maintenance of effort requirements are met.

AHS has responsibility as follows:

- i.) AHS will monitor actual and budgeted levels of state, local, and other federal funds. Allowance may be made for decreases in the number of eligible children and unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.
- ii.) AHS will conduct an analysis of the total state actual expenditures and budget information for Part C.
- iii.) AHS will consult with DOE on any potential shortfalls in state, local, and other federal funds budgeted for child find and other Part C activities.
- iv) AHS will ensure that budgeted levels of state, local, and other federal funds for Vermont's Part C activities for the current year

are not less than the actual expenditures from these funds for the prior year.

DOE has responsibility as follows:

- i.) DOE will collect actual expenditures and budget information related to Part C child find and any other Part C activities executed by LEAs and report this information to AHS.
- ii.) Absent allowable decreases, DOE will instruct LEAs that have budgeted a lesser amount for Part C child find activities to resume required Part C child find activities.
- iii.) DOE will ensure its Part B maintenance of effort which shall encompass Part C child find.

c.) Payer of Last Resort

Part C funds are expended consistent with the requirements of 34 CFR §§ 303.126 and 303.527. These provisions require that Part C funds are spent only for Part C activities when no other federal, state, local or private source is available.

d.) General Administration transfer of funds

Annually, as necessary and in accordance with an MOU or other agreement between AHS and DOE, AHS and DOE may transfer funds to each other to pay for Part C duties described in this agreement.

2. Funding for Coordination and Early Intervention Services

Consistent with 34 CFR 303.3, AHS shall use federal Part C funds to maintain, implement and enhance capacity for a statewide system of early intervention for eligible children and their families, including, but not limited to, provision of early intervention services as described in 34 CFR §303.12 and service coordination as described in 34 CFR 303.23. .

The following are funding sources for services that may appear in an IFSP:

a.) Medicaid and Private Insurance

Parents who have Medicaid and are willing to use it will be asked to do so. Parents not currently enrolled in Medicaid will be encouraged to enroll; ultimately, the parents decide whether or not to enroll.

Medicaid, including Early Periodic Screening and Diagnostic Treatment or EPSDT, will be used to pay for early intervention services, as described in 42 U.S.C. § 1396d(a), § 1396d(a)(13) and § 1396d(r)(5). Medicaid is specifically available as a source of funding for services that appear in an IFSP plan. See 42 U.S.C. § 1396d(r)(1)(B) and 42 U.S.C. § 1396d(a)(6 and 7).

Parents who have private insurance and who are willing to use it will be asked to do so.

b.) Other federal and state related resources

AHS will utilize, as appropriate, other resources consistent with the payer of last resort provision in subsection 1. Resources may include:

- i.) Healthy Babies, Kids, and Families
- ii.) Maternal and Child Health/Title V
- iii.) Children with Special Health Needs/Title V
- iv.) Early childhood mental health services
- v.) Early Head Start

C. DOE Financial Responsibilities

DOE is responsible to ensure that LEAs are fulfilling and funding Part C child find activities required by 34 CFR §303.165. To the extent that LEAs voluntarily agree to provide early intervention services pursuant to their regional plans, DOE shall inform LEAs of possible funding sources for such elected activities. DOE is responsible to provide to the AHS financial information required for OSEP and state reporting purposes regarding Part C activities fulfilled by the DOE and LEAs.

1. DOE Ensuring Child Find Activities Conducted by LEAs

a.) Part B funds

The DOE receives federal Part B funds that may be used by LEAs to conduct Part C child find.

b.) Part C funds

If the AHS provides, LEAs may accept Part C funds for child find activities.

c.) Other Funding

To the extent that federal Part B funds, or any AHS provided Part C funds, do not cover the LEA costs associated with conducting child find activities described in this agreement, LEAs will pursue other federal funds and state funds necessary to meet its responsibilities.

i.) Medicaid

Parents who have Medicaid and are willing to use it will be asked to do so. Parents not currently enrolled in Medicaid may be encouraged to enroll; ultimately, the parents decide whether or not to enroll. Parents already enrolled in Medicaid may be asked for permission to bill Medicaid for

services that may be covered, but these families may refuse such permission.

I. Medicaid – OVHA – OVHA will pay for Medicaid-covered services to eligible individuals consistent with 42 U.S.C. §1396b9(c) of the Public Health and Welfare law.

ii.) Private Insurance

Parents who have private insurance and who are willing to use it will be asked to do so.

iii.) Early Head Start

DOE will continue to meet its financial responsibilities as described in the AHS and DOE “Early Head Start Agreement” of 2005 or any subsequent agreement replacing it.

iv.) EEE State Grant – If there are funds available, LEAs may utilize EEE State Grant funds for Part C child find activities.

2. Funding Available for LEAs Electing to Provide Early Intervention Services.

a.) Part C funds

If the AHS provides, LEAs may accept Part C funds for early intervention services.

b.) Medicaid

Parents who have Medicaid and are willing to use it will be asked to do so. Parents not currently enrolled in Medicaid may be encouraged to enroll; ultimately, the parents decide whether or not to enroll. Parents already enrolled in Medicaid may be asked for permission to bill Medicaid for services that may be covered, but these families may refuse such permission.

- i.) Medicaid – OVHA** – OVHA will pay for Medicaid-covered services to eligible individuals consistent with 42 U.S.C. §1396b9(c) of the Public Health and Welfare law.

b.) Private Insurance

Parents who have private insurance and who are willing to use it will be asked to do so.

3. Payer of Last Resort

DOE will ensure that Part B and Part C funds expended by DOE and LEAs are expended consistent with the relevant IDEIA payer of last resort requirements:

Part B funds, allowable for child find expenses, shall be used pursuant to 34 CFR §300.142 so that each non-educational public agency, including state Medicaid, must precede the financial responsibility of the LEA.

Part C funds are expended consistent with the requirements of 34 CFR §§ 303.126 and 303.527. These provisions require that Part C funds are spent only for Part C activities when no other federal, state, local or private source is available.

Conditions and Terms of Reimbursement

Federal Part C funds may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source, except that these Part C funds may be used to prevent a delay in the timely receipt of appropriate early intervention services; such an expenditure will be reimbursed by the agency which has the ultimate responsibility for the payment. If a child is not able to obtain early intervention services, the host agency responsible for developing the child's IFSP shall provide or pay for these services for the child in a timely manner. Reimbursement can then be claimed pursuant to 34 CFR § 300.142(b).

DISPUTE RESOLUTION RELATIVE TO THE IMPLEMENTATION OF THE INTERAGENCY AGREEMENT

Pursuant to 34 CFR §303.523(c):

- (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.
- (2) The agreement with each agency must--
 - (i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner. 34 CFR §303.524:

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in [§ 303.523\(c\)\(2\)\(ii\)](#).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under [§ 303.143](#) ("financial designee") shall assign financial responsibility to--

(i) An agency, subject to the provisions in paragraph (b)(2) of this section;

or

(ii) The lead agency, in accordance with the "payer of last resort" provisions in [§ 303.527](#).

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made--

(i) The financial designee shall reassign the responsibility to the appropriate agency; and

(ii) The lead agency shall make arrangements for reimbursement of any expenditure incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall--

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with [§ 303.525](#).

QUARTERLY REVIEW

The commissioner of DOE and the secretary of AHS or their designees will meet at least quarterly to review existing data and evaluate the implementation of this agreement in order to improve results for eligible children with disabilities and their families.

NON DISCRIMINATION

The parties shall comply with all applicable state and federal non-discrimination laws and regulations including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 and Vermont's Public Accommodations Act.

AMENDMENTS OR MODIFICATIONS

Part B: Any provision in this agreement may be rendered null and void by changes in federal or state law that prevent either or both parties from fulfilling the terms of the agreement. If this circumstance should arise, each party agrees to notify the other as soon as reasonably possible.

During the term of the agreement, either party that is a signatory to this agreement may submit a written request to amend or modify this memorandum. When such a request is made, the parties shall meet without unnecessary delay to consider the proposed amendment.

TERM

This agreement in its present form or as modified shall be effective as of the date of signing and shall remain in effect for five years. The agreement shall be reviewed annually by the parties and may be extended by the mutual written agreement of the parties. Prior to the expiration of the agreement the parties shall meet to negotiate and execute a successor agreement. In the event a successor agreement is not in place when

this agreement is due to expire, this agreement will remain in effect until a successor agreement is concluded.

Cynthia LaWare, Secretary

Richard H. Cate, Commissioner

Agency of Human Services

Department of Education

Date _____

Date _____

Approved as to Form:

Assistant Attorney General

¹ All statutory and regulatory citations in this agreement are to those in effect at the date of execution of the agreement and as amended thereafter from time to time. The statutory and regulatory citations in this agreement will be updated to reflect the IDEIA of 2004 and its implementing regulations.