

Dated November 6, 2003

Linda Goodman, Director
Connecticut Birth to Three System
460 Capitol Avenue
Hartford, Connecticut 06106

Dear Ms. Goodman:

This letter is in response to your letter to the Office of Special Education Programs (OSEP) seeking clarification on behalf of the State of Connecticut on the responsibility of a lead agency under Part C of the Individuals with Disabilities Education Act (IDEA) to provide audiological evaluations to an infant or toddler referred to Part C. Specifically, you ask if an audiology evaluation is a required Part C service and whether the Part C lead agency is a payor of last resort for such services.

Your question focuses on infants and toddlers referred to Part C with delays in speech and language whose parents have not had their children's hearing tested, sometimes because the family and/or physician feel that such testing is not warranted. Further, you state your agency's belief that "the very fact that they have a speech delay means that further audiological testing is warranted to rule out any late-onset hearing loss."

Under Part C, appropriate early intervention services must be available to all eligible infants and toddlers with disabilities and their families. *See*, 20 U.S.C. §§1434 and 1435(a)(2); 34 CFR §303.140(b). Under 20 U.S.C. §1432(4), early intervention services are defined as developmental services that—

- (A) are provided under public supervision;
- (B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
- (C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—
 - (i) physical development;
 - (ii) cognitive development;
 - (iii) communication development;
 - (iv) social or emotional development; or
 - (v) adaptive development;
- (D) meet the standards of the State in which they are provided, including the requirements of this part. ...
20 U.S.C. §1432(4).

The Part C regulations at 34 CFR §303.12(d)(2) identify audiology as an example of "early intervention services" and specifically define audiology services to include the following:

- “(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;
- (ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;
- (iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;
- (iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;
- (v) Provision of services for prevention of hearing loss; and
- (vi) Determination of the child’s need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.”

The Part C regulations at 34 CFR §303.322(c) require that the evaluation and assessment of an infant or toddler be based on informed clinical opinion, and include the following:

- (i) A review of pertinent records related to the child’s current health status and medical history.
 - (ii) An evaluation of the child’s level of functioning in each of the following developmental areas:
 - (A) Cognitive development.
 - (B) Physical development, including vision and hearing.
 - (C) Communication development.
 - (D) Social or emotional development.
 - (E) Adaptive development.
 - (iii) An assessment of the unique needs of the child in terms of each of the developmental areas, including the identification of services appropriate to meet those needs.
- 34 CFR §303.322(c) (emphasis added).

In addition, for a child who has been evaluated for the first time and determined eligible under Part C, an individualized family service plan (IFSP) meeting must be convened within 45 days from the initial referral to Part C to develop an IFSP for the child. 34 CFR §303.342(a). The IFSP must include “a statement of the child’s present level of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development. ... This statement must be based on professionally acceptable objective criteria.” 34 CFR §303.344(a).

Thus, you ask if an infant or toddler is referred to Part C with delays in speech and language and the parents have not had their child’s hearing tested whether audiology services are available and required under Part C. You note, “the very fact that they have a speech delay means that further audiological testing is warranted to rule out any late-onset hearing loss.” Under such circumstances, under Part C, an infant or toddler suspected of a communication delay, whose hearing has not been tested and for whom an audiology evaluation is determined needed, must receive an audiology evaluation as part of the evaluation required to be conducted under 34 CFR §303.322(c)(ii)(B). This evaluation is needed in order to reflect the child’s present level of

functioning on the IFSP as required under 34 CFR §303.344(a)(1) and also to enable the lead agency under 34 CFR §303.344(d)(1) to identify on the IFSP the “specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes.” The infant or toddler may also receive additional audiology services if the IFSP identifies audiology as a needed early intervention service. 34 CFR §303.344(d)(1).

If an audiology evaluation is required under 34 CFR §303.322(c)(ii)(B) in order to reflect the child’s present level of functioning on the IFSP as required under 34 CFR §303.344(a)(1), then the evaluation must be provided at no cost to the child and family under 34 CFR §303.521(b)(2). If audiology services are identified as an early intervention service on the IFSP, the services must be provided at no cost, except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees. The State law must be on file with the Secretary under 34 CFR §303.520. Consistent with the “payor of last resort” requirements outlined in the IDEA at 20 U.S.C. §1440 and the Part C regulations at 34 CFR §303.527, Part C funds may be used to provide early intervention services including audiology but may not be used “to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, but for the enactment of Part C. ... Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.” 34 CFR §303.527.

You indicated that Connecticut (like many States) has a statute mandating early hearing screening. Specifically, Conn. Gen. Stat. §19a-59 requires certain health care institutions to include a universal newborn hearing screening as part of its standard of care. The newborn hearing screening, however, is not conducted on all infants and may not be sufficient to determine the infant or toddler’s present level of functioning as required under Part C. To the extent that the evaluation required is a newborn hearing screening already covered under State law, Part C funds may not be used to conduct the State-required newborn screening.

I hope this information provides the clarification needed. If you need further assistance, please contact Dr. Wendy Tada at 202-205-9094 or Jackie Twining-Martin, OSEP State Contact for Connecticut, at 202-205-8258.

Sincerely,

/s/ Patricia J. Guard for

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: George P. Dowaliby
Chief, Bureau of Special Education and Pupil Services