



Maine Department of Education

Response to Questions from SAU's and Parents
Regarding the Maine Unified Special Education
Regulations for Child Development Services

April 2008

MUSER IV.1.C states on pages 15 and 16,

“C. Identification by Evaluation and Assessment. If any components of an evaluation or assessment have been performed within the prior six months, the results and findings are to be utilized with no unnecessary repetition. The case manager is responsible for collecting and integrating that information. Within 45 days after it receives a referral the regional site Board shall complete the evaluation and assessment activities in 34 CFR 303.322 and hold an IFSP meeting. [34 CFR 303.321(e)(2)]”

Does this mean an evaluation other than the Bayley or the Battelle-2 is acceptable for eligibility purposes if done within the past six months?

The CDS regional sites have been required to implement the Bayley or the Battelle since March 2007. If a Bayley or Battelle has not been given, one needs to be administered. The Bayley or Battelle could be used as part of the assessment information reviewed at the time of transition to Part B if it was administered in the prior six months.

MUSER IV.1.C(2) states on page 17,

“(2) Notification of Child's Primary Care Physician. The case manager is responsible for ensuring that a summary of the results of the evaluation and assessment is provided, if written parental consent is given, to the child's primary care physician.”

Is this referring to the IFSP or a separately written document?

What happens if parent does not provide written consent?

The summary of the evaluative results are to be provided to the primary care physician with consent from the parents. If the site has consent to provide the whole IFSP it could be sent. If there is not consent, documents are not sent.

MUSER IV.1.C(3) states on page 17 and 18,

“(3) Timelines.

(i) Except as provided in paragraph (ii) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in Sec. 303.321(e).

(ii) In the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days, the regional site will document those circumstances; and develop and implement an interim IFSP, to the extent appropriate and consistent with 34 CFR 303.345. [34 CFR 303.322(e)]”

What are some circumstances under which an interim IFSP can be written?

What pieces of the IFSP constitute an interim plan?

The Team would need to document the exceptional circumstances, such as a situation in which the child has been hospitalized. The interim IFSP should have as many of the elements of an IFSP as is possible under the circumstances.

MUSER IV.1.D states on page 18,

“D. Records of Child Find Activities B-2. For any child who is referred to the IFSP Team as the result of child find activities, documentation in that child's cumulative record file shall specify:

- (1) The date, the regional site, and the person who coordinated the child find activities;**
- (2) A description or example of the child find activities, procedures, forms, or instruments used; and;**
- (3) The results of the child find activities including any recommendations and/or referrals to the IFSP Team.**

When the results of an individual's child find activities do not indicate a possible need for special instruction, a notation shall be entered in the child's cumulative record file to the effect that the child was evaluated for early intervention child find activities purposes, the date, and the administrative unit where the child find activities were conducted.”

Is there a requirement that Part C standardized evaluations need to be completed in the natural environment (i.e. the home or daycare setting)?

No, there is not a requirement that the evaluations be completed in the natural environment. However a number of B-2 assessment teams have found it to be a best practice to do so because the child may be more comfortable and the assessment is a truer reflection of the child's functioning level

MUSER IV.2.A states on page 18,

**“2. Child Find For Children Three To Twenty
A. Child Find Policy, Procedure, and Responsibility**

Each SAU shall maintain and implement policies and procedures to ensure that all children residing in the jurisdiction between the ages of 3 and 20 years, including children with disabilities who are homeless children, are wards of the State or state agency clients, children with disabilities attending private schools and receiving home instruction , highly mobile children (including migrant or homeless), children who have the equivalent of 10 full days of unexcused absences or 7 consecutive school days of unexcused absences during a school year, and children incarcerated in county jails, and who are in need of special education and related services, even though they are advancing from grade to grade, are identified, located and evaluated at public expense. [34 CFR 300.111(a)(i,ii) and (c)(1,2)] As noted on pages 7 and 12 of this rule, all references to school administrative units (SAUs) include intermediate educational units (IEUs).”

Are there state policies and procedures for CDS sites to follow concerning child find activities and, if so, where can they be located?

Are sites required to do mass screenings?

Each regional site has had and continues to have a childfind policy as part of their yearly local entitlement application. The regional site needs to ensure that the policy addresses the necessary populations. With regard to mass screenings, they are not required.

MUSER IV.2.E(5) states on page 21,

“(5) At risk children –The SAU’s policy shall establish a process whereby children "at risk" are identified, evaluated, and referred as appropriate to the IEP Team. Such children may include those who are listed in the Section at IV.2 (A) of this rule and children who have the equivalent of 10 full days of unexcused absences or 7 consecutive school days of unexcused absences during the school year. [20-A MRSA §5051-A(1)(B)].”

What is the definition and what is the policy for CDS concerning children “at risk”?

Maine has not served children at risk B-5 since the early 1990s when it was removed from our statutory responsibilities.

MUSER IV.2.E. states on page 20,

“E. Local Policy on Referral to IEP Team

Each IEU or SAU shall develop a written policy, consistent with this rule (specifically section V), regarding referral to the IEP Team. All referrals to the IEP Team must be acted upon in a timely manner. The IEP Team shall review existing evaluation data and determine the need for additional evaluations. The IEP Team may conduct its review without a meeting (V.3.B). If additional evaluations is needed the SAU must send a consent to evaluate form within 15 school days of the receipt of referral.”

Does a referral from Part C to Part B come under this section?

Yes, see section VI.2.C(1) of Chapter 101.

MUSER IV.4.A states on page 22/23,

“4. Responsibility for Special Education Services for Children Age 3-20

A. General Principles: Responsibility for Special Education Services and Finances.

Each school administrative unit is responsible for providing special education services to all resident children (as defined in this rule except for (G) below) within its geographical jurisdiction, who are identified as children with disabilities according to the procedures established in this rule). The SAU of residence is responsible for provision of special education and related services in situations where it does not operate public schools. When an SAU has the responsibility for providing special education services to children with disabilities, it may also bear financial responsibility for the cost of such services, receiving subsidy according to 20-A MRSA C. 606-B, Essential Programs and Services. In some situations, a part or all of the cost may be borne directly by one or more state agencies, although the provision of special education services remains the responsibility of the SAU.”

Are the 4-year old children with disabilities who attend 4-year old public school programs included in the 15% of their special education enrollment numbers from the EPS model?

No, the prevalence rate of 15% is for the public school age population.

MUSER IV.4.C(2) states on page 24,

“C. Homeless Students - Children may stay in their school of origin (to the extent feasible) for the entire time they are homeless, even if they move to a different school district. If children move into permanent housing during the school year, they can still finish the year in the same school. Students have the right to stay at their school of origin (to the extent feasible) whether or not they live with their parents.”

Is CDS considered a school of origin?

Yes

Definitions

MUSER II.5 states on page 4,

“8. Early Intervention Services. "Early intervention services" means developmental services that are provided under public supervision; 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; are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team in one or more of the following areas, physical development, cognitive development, communication development, social or emotional development or adaptive development; meet the standards of the state in which the services are provided, including the requirements of Part C; including family training, counseling, and home visits; special instruction; speech-language pathology and audiology services, and sign language and cued speech services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from other early intervention services; social work services; vision services; assistive technology devices and assistive technology services; and transportation and related costs that are necessary to enable an infant or toddler and the infant’s or toddler’s family to receive another service described in this paragraph; are provided by qualified personnel, including special educators, speech-language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, registered dietitians, family therapists, vision specialists, including ophthalmologists and optometrists, orientation and mobility specialists, and pediatricians and other physicians. so the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and are provided in conformity with an individualized family service plan. [20 USC 1432(4)].”

Does Maine law provide for a sliding fee scale? Where can this be located?

The State Sliding Fee Policy was first provided to regional CDS sites June 1, 1994. If copies are needed, the State IEU can provide them.

Definitions

MUSER II.26 states on pages 8 and 9,

“26. Scientifically-based Interventions. Scientifically-based interventions means interventions that include teaching practices that have been tested in experimentally sound research studies and have been shown to significantly improve the academic or behavioral achievement of the children who present characteristics similar to the child involved in the pre-referral process. Scientifically based research has the same meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act (ESEA). [34 CFR 300.35] ‘The term scientifically based research’ —

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and;

(B) includes research that —

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.””

Where can sites obtain a list of suggested scientifically-based intervention strategies/programs?

The DOE will provide web addresses to the field.

Definitions

MUSER II.10 states on page 5,

“10. Evaluation. Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of “infants and toddlers with disabilities” in Sec. 303.16, including determining the status of the child in each of the developmental areas. [34 CFR 303.322(b)(1)] Evaluation means procedures used in accordance with these rules to determine whether a child has a disability and the nature and extent of the special education and supportive services that the child needs. [34 CFR 300.15] The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. [34 CFR 300.302]”

May we test a 2.5+ year old child with Part B acceptable evaluation tools?

If the team is preparing for a transition team meeting for the child to move into the Part B system, it is appropriate to use an age-appropriate instrument that would be helpful in determining Part B eligibility. The team meeting should occur no sooner than nine months or 90 days before the child will turn three.

Definitions

MUSER II.11 states on page 5,

“11. Free Appropriate Public Education. Free appropriate public education means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the Department and the requirements of this rule; include an appropriate preschool, elementary school or secondary school education in the state; and are provided in conformity with the individualized family service plan or individualized education program that meets the requirements of 300.320 through 300.324[20 USC 1401(9) and 34 CFR 300.17]”

What about children who are not in educational settings?

What about the reference to home and the service provider locations as program settings for services on page 108?

IEP Teams are obligated to place children age 3-20 in the least restrictive setting that is appropriate for that child. §300.114(a)(2)(i) states “ to the maximum extent appropriate children with disabilities... are educated with children who are not disabled.” The settings on page 108 are the child count setting that are recorded for each child to reflect where the child is served per the IEP. There is a continuum from the least restrictive, such as a mainstream preschool , to the most restrictive, such as a provider’s clinic setting or hospital.

Definitions

MUSER II.12 states on page 6,

“12. Functional Behavioral Assessment. Functional behavioral assessment means a school-based process used by the Individualized Education Program (IEP) Team, which includes the parent and, as appropriate, the child, to determine why a child engages in challenging behaviors and how the behavior relates to the child’s environment. The term includes direct assessments, indirect assessments and data analysis designed to assist the IEP Team to identify and define the problem behavior in concrete terms, identify the contextual factors (including affective and cognitive factors) that contribute to the behavior, and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior. Formal documentation of the assessment by appropriately qualified individuals becomes part of the child’s educational record and is provided to the IEP Team.”

Does this include special educators, Ed Tech III, ST, OT, and PT? Who is qualified?

Does this apply to B-5?

Functional behavioral assessments are the product of a team discussion and examination of multiple sources of data and are documented by the Team. Functional behavioral assessments are for children 3-20 per §300.530(d)(ii) and (f)(1)(i).

MUSER II.14 states,

“14. Independent Educational Evaluation. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the SAU responsible for the education of the child in question. An independent educational evaluation at public expense means that the school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent. See Section XVI.6.of this rule.”

Does this also apply to CDS contracted providers?

If the family disagrees with the evaluation ordered by the regional CDS site the parents can request an IEE, which could be provided by a contracted provider who has not previously evaluated the child for CDS.

Definitions

MUSER II.15 states,

“15. Individualized Educational Program (IEP) Case Manager. The IEP case manager may oversee a child’s (age 3 to 20) needs to assure that due process requirements under the federal Individuals with Disabilities Education Act are met. The case manager communicates with SAU staff, parents, the child, and teachers to provide coordination and follow up for the IEP process.”

What other IEP team members should be included in this communication loop?

Evaluators and related services personnel, as team members reflected on the IEP could be part of the communication loop.

MUSER II.17 states on pages 6 and 7,

“17. Intermediate Educational Unit (IEU). Intermediate educational unit means an entity that meets the definition of intermediate educational unit in the federal Individuals with Disabilities Education Act (I.D.E.A.), 20 U.S.C., §1402, (23) as in effect prior to June 4, 1997, and that is a public authority, other than a local educational agency, under the general supervision of a State educational agency, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to children with disabilities within the State.[34 CFR 300.12(c)] Intermediate educational units and school administrative units are both considered local educational agencies (LEAs) under IDEA. The Child Development Services (CDS) regional sites are organized as IEUs. For purposes of this chapter all references to SAUs in this rule include IEUs.” An IEU is something other than an LEA in the federal language.

Why are IEU’s and SAU’s both considered LEA’s in the state language?

An IEU is a type of LEA under federal law. IEU and school administrative unit are both considered LEAs under IDEA, which is stated in section I of the MUSER.

Definitions

MUSER II.27 states on page 9,

“27. School Year/Program Year. School year/program year means the total number of school days in a year as established by the school administrative unit or program year established by an IEU.”

Does the CDS program year supersede the standard academic year schedule of 185 days?

CDS as an IEU establishes a program year after consideration of the academic years of the SAUs in the area that the IEU serves.

MUSER II.3 states:

“3. Case Manager - Case manager means the person that assists and enables a child eligible under Part C and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State’s early intervention program. Each child eligible under this part and the child's family must be provided with one (service coordinator) case manager who is responsible for coordinating all services across agency lines; and serving as the single point of contact in helping parents to obtain the services and assistance they need. (Service coordination) Case management is an active, ongoing process that involves: assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan; coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided; facilitating the timely delivery of available services; and continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility. [34 CFR 303.23(a)(1)(2)(3)]

The case manager is equivalent to the service coordinator under Part C of IDEA et seq., as amended.”

Federal regulations designate “service coordination” in Part C.

Can the sites choose to continue to use the term service coordinator?

The definition in the state regulations reflects that the term “case manager” is equivalent to service coordination. The State IEU has chosen to utilize the term case manager for B-5.

Definitions

MUSER II.5 states on page 4,

“5. Composite Score - Composite score means a standardized score which summarizes performance on 2 or more tests of cognitive ability. All scores used to compute a composite score must have been validated in scientific research to be measures of the general cognitive skills which the composite score purports to measure.”

May we use 2 or more subtests in any of the 5 domains (not just cognitive ability) to obtain the composite scores that are required?

This is a definition. The actual implementation of a composite score is articulated in MUSER VII.2.D(2)(c) for developmental delay, in which language specifically reflected that the composite score is of the overall domain, not sub-domains.

Early Intervention and Related Services

Question: MUSER XI states on page 124,

Transportation and related costs includes the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

Does this definition require CDS to pay provider travel mileage to and from a child's natural environment?

Transportation - Special Education

Transportation includes:

Travel to and from school and between schools;

Travel in and around school buildings; and

Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Special education transportation shall be specified by the IEP Team in the child's Individualized Education Program when the Team determines that the transportation is necessary in order for the child with a disability to benefit from an education program.

Does this definition require CDS to pay provider travel mileage to and from a child's education [learning] environment if it is the home?

The IEP Team shall determine any modifications and/or adaptations, including the employment of a "transportation aide," that need to be made to the unit's regular transportation services in order to ensure appropriate and accessible transportation services.

Pursuant to 20-A MRSA §5401(4) special education students shall be provided transportation as provided by Chapter 301 or to and from classes. 20-A MRSA §7001 (4-B) defines "related services" as special education transportation and such developmental, corrective and other related services, as defined by the Commissioner, as are required to assist children with disabilities to benefit from their special education programs.

Early Intervention and Related Services

Therefore, special education transportation in Maine is that which is above and beyond regular transportation described in 20-A MRSA §5401-5402.

Transportation for special education for state wards and state agency clients is treated as a related service and included on the child's IEP. Transportation costs for state wards and state agency clients are claimed for subsidy on the EF-S-04B State Agency Client Billing Form.

Transportation cost associated with out-of-district special education programs is considered a predicted per pupil transportation cost as defined in 20-A §15672 (22A) and includes an adjustment for out of district special education transportation as reported on the EF-M-43, subsidy for which is governed by 20-A §5205.

See CDS Administrative Letter #4

MUSER VIII states:

“VIII. ELIGIBILITY FOR FAPE FOR FIVE YEAR OLDS BY PARENT CHOICE

Notwithstanding Section II.35 of this rule, parents of children whose fifth birthday falls between September 1st and October 15th and who are already receiving free appropriate public education (FAPE) services through Child Development Services (CDS) have the right to choose not to enroll their children in kindergarten until the start of the following school year and to have their child continue to receive FAPE services from CDS in the interim. A child is considered to have been already receiving FAPE services through CDS if they were counted in the prior year’s December 1st Child Count. [20-A MRSA §7001 (2-A)]”

September should now be July?

When the MUSER was adopted, the statutory provision reflecting July 1st was not in effect. It has been changed in the proposed revisions to Chapter 101 filed on October 30, 2007.

Eligibility Criteria

MUSER VII.1 states on page 61,

“VII. ELIGIBILITY CRITERIA AND PROCEDURES FOR DETERMINATION

1. Eligibility Criteria For Children B-2

A. Developmental Delay

(1) Definition. An infant or toddler with a disability means an individual under three years of age who needs early intervention services because the individual is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. [20 USC 1432(5)(A)]

For children B-2 with diagnosed physical or mental conditions each child’s diagnostic evaluation must include demonstration that the child has a high probability to have a developmental delay resulting from that condition. The diagnostic evaluation will demonstrate the severity and chronicity of the condition which can then be discussed by the team to determine its impact on eligibility.

The level of developmental delay required for eligibility will be defined as any of the following (unless the measures used, such as hearing and vision tests, have different criteria for establishing abnormal development):

A delay of at least 2.0 or more standard deviations below the mean in at least one of the five areas of development listed above; or

Why is “established condition” not mentioned as a separate option for eligibility here since it is an option on the new IFSP and in federal law?

Is there a stand alone definition for services?

Maine has not included established conditions in statute since the early 1990s. The definition of early intervention services is at II.8, X and IX.

Eligibility Criteria

MUSER VII.1.A(2)(c) states on page 63,

“(c) Informed Clinical Opinion

(iv) Indicate agreement of the use of informed clinical opinion. If one or more team members disagree with the decision, the dissenting team members will develop a written statement of the areas of disagreement, signed by those members and will be kept in the child’s education record”

Doesn’t this conflict with the definition of [team] consensus in VII., 1-A, (2)(c)-line 4?

Every effort is undertaken to have the team come to consensus, if they are unable to, the dissenters will develop a written statement.

MUSER VII.2.D(2)(c) states on page 66,

“(2) Procedure for Determination. All steps below are required.

(c) The composite standard score of the overall domain will be used to determine a standard deviation below the mean in a developmental area.”

Why are discrepancies in sub-test scores not being addressed through informed clinical opinion in this section?

The intent is to examine the overall domain.

MUSER VII.2.D(a)(e) states on page 71 for speech language,

“(e) Evaluation data shall be entered into a rating scale which measures a moderate to severe level of speech or language impairment in all levels of assessment”

What rating scale should be used here?

Where can the scale be found?

rating scale has been prepared by the Department and is posted on the DOE website.

Eligibility Criteria

**MUSER VII.2.L(1) states on page 71,
“L. Specific Learning Disability**

(1) Definition. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disabilities does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or environmental, cultural or economical disadvantage. [34 CFR 300.8(c)(10)]”

Is CDS now using SLD for 3-5 year olds as an eligibility determination?

It is a Part B eligibility criteria and has been used for 3-5 year olds in a limited number of cases.

MUSER VII.2.N states on page 77,

“N. Visual Impairment including Blindness

(1) Definition. Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects the child’s educational performance. The term includes both partial sight and blindness. [34 CFR 300.8(c)(13)]

(2) Procedure for Determination. The step below is required.

(a) A child displays a visual impairment when a visual impairment or a progressive vision loss has been diagnosed by a licensed, qualified optometrist or ophthalmologist, and the referral indicates that the child displays a visual impairment.”

Why are some evaluations for children 3-20 requiring multi-disciplinary approaches and others are not in this section?

The procedure is requiring a specific type of qualified personnel to determine visual impairment.

Eligibility Criteria

MUSER VII.3 and 4 states

“3. Determination of Adverse Effect for Children Three to Twenty

4. Criteria for Change in Eligibility.

A child’s change in eligibility shall be made by the IFSP/IEP Team and shall be based on the recommendation of the members of the IFSP/IEP Team utilizing the following criteria: Does this section refer to B-20 or just 3-20?

Criteria for change in eligibility apply to children B-20 which is why IFSP and IEP teams are reflected.

Evaluation

MUSER V.1 on page 36 states,

“V. EVALUATION AND REEVALUATIONS

1. Evaluations, Parental Consent, and Reevaluations [20 USC 1414(a-c) and 34 CFR 300.300- 306]”

Does this section refer to B-20 or 3-20 year olds?

34 CFR 300.300-306 are Part B regulations which apply to children 3-20.

Evaluation

MUSER V.1.B(1) states on page 39,

“B. Reevaluations

- (1) In general --An SAU must ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (1) and (2):
- (a) If the SAU determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (b) If the child's parent or teacher requests a reevaluation.
- (2) Limitation.--A reevaluation conducted under subparagraph (1) shall occur:
- (a) Not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and
 - (b) At least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary. [34 CFR 300.303]

What is the definition of re-evaluation for B-5 population? Part 3 of this section (V) indicates that an initial evaluation, as appropriate, and any reevaluation includes a review of existing evaluation data (evaluations and observations). On the basis of that review, the IEP team determines what additional data, if any, are needed... “If additional data are not needed...” (3.E) the child’s parents are notified and made aware that they can request an assessment, but otherwise the SAU is not required to conduct further assessment (3.E.(2)). This suggests that “reevaluation” may be defined as “review of existing evaluation data and further testing/assessment if necessary.” Is this a correct interpretation?

Does the term “teacher” include providers for CDS purposes?

Should the expected timeframe for Part C be once every six months instead of once a year?

The reevaluation language at B(1) above is for children under Part B, aged 3-20. The interpretation articulated above is correct.

The term teacher would include providers for CDS purposes.

With regard to the question about the timeframe in B(2)(a), this provision is for children 3-20 under Part B.

Evaluation

MUSER V.1.B(3) states on page 40,

“(3) Parent consent for reevaluation

(a) Subject to paragraph (3)(b) of this section, each SAU:

(i) Must obtain informed parental consent, in accordance with 34 CFR 300.(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the SAU may, but is not required to, pursue the reevaluation by using the consent override procedures described in (1)(A)(4)(a). “

Shouldn't this be a (b) not an (a)?

Yes, it should be (b).

Evaluation

MUSER V.4.C states on pages 46/47,

“C. Each report shall include:

- Evaluation date(s)
- Report date
- Birth date and age at date of evaluation
- Referral question and by whom
- Relevant background information
- Observation in the learning environment
- Clinical observation , if appropriate
- Results of informal assessment procedures
- Summary of the evaluation procedures employed
- Specification of the results of each evaluation with testing interpretation (including standard deviation scores). The DSM multi-axial must be included when DSM diagnostic impression is required
- Summary of the evaluation results and diagnostic impressions; and
- Specification of the educational recommendations necessary to meet the child’s educational needs.

If intervention is recommended, the needs that could be addressed in regular education or in special education, if the child is identified by the IEP Team as a child with a disability.”

Shouldn’t this list match our provider contract language?

What is the reporting format the for B-2 population? None exists.

The list of items for a standard evaluation report should comport with the provider contracts. If the sites are using a state template which applies to providers of services to children B-5, then there is a standard format.

Individualized Plans

MUSER IX.1.C states on page 81,

“IX. INDIVIDUALIZED PLANS

1. Individualized Family Service Plans (IFSPs) for Children B-2 [20 USC 1436(a)(3),(b-e)]

C. Promptness After Assessment. The individualized family service plan shall be developed within a reasonable time after the assessment required is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.”

Is this the interim IFSP?

Yes

Individualized Team Membership

MUSER VI.1.A states on page 50,

**“1. Individual Family Service Plan (IFSP) Team for Children with Disabilities B-2
A. Advance Written Notice, Accessibility and convenience of meetings.**

IFSP Meetings must be conducted in settings and at times that are convenient to families; 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 must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. [34 CFR 303.342(d)]

A copy of the notice of the IFSP Team meeting shall be placed in the child's education record.

A copy of the evaluation report must be provided to the parents at least 3 days prior to the IFSP Team meeting at which the evaluation will be discussed.”

Does advance notice mean at least 7 days?

Does this 3 day requirement for evaluation reports to parents eliminate the option of holding a meeting the same day as the assessment?

Does a waiver work here?

Advance notice does mean at least 7 days. Sites could ask the parents to sign a waiver, so that the team could meet on the same day as the evaluation.

Individualized Team Membership

MUSER VI.2. F. states on pages 56/57,

“F. Excusal [20 USC 1414(d)(1)(C)(ii) and 34 CFR 300. 321(e)(2)]

A member of the IEP Team may be excused from attending an IEP Team Meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of curriculum or related services, if—

- (1) The parent, in writing, and the SAU consent to the excusal; and**
- (2) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.**

The SAU must ensure that the child’s IEP Team is informed of changes (made to the IEP). [34 CFR 300.324(a)(4)(ii)]

Initial IEP Team Meeting for the child under Part C. In the case of a child who was previously served under Part C of IDEA, an invitation to the initial IEP Team Meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. [34 CFR 300.321(f)]”

Why are Part C service coordinators not automatically part of the transition team for Part B eligibility?

Federal regulatory language reflects “at the request of the parent”.

Individualized Team Membership

MUSER VI.2.C(2) states on page 54,

“(2) Transition from Regional CDS site to Public School

(a) The regional CDS system is responsible to convene a joint IEP Team Meeting in the spring of the year prior to a child’s right to enroll in a public school. The receiving SAU will be responsible for the facilitation, plan development, and prior written notice for this joint meeting.”

What does convene a meeting mean-sending the invitations?

The regional CDS sites will contact the local SAUs and schedule transition meetings between April 1 and June 15 for children entering Kindergarten in the fall. The CDS staff will send out the notices of the meetings to the parents and the required members of the IEP team including contracted providers

The CDS staff, with input from providers and parents, will prepare information to share with the SAU such as:

- Current IEP with goals*
- Progress reports and or any current evaluations*
- Present levels of performance*
- Anticipated Extended School year Services Information*

MUSER VI.2.H(4) states on page 58,

“(4) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—“

Does CDS need a parent signature to develop an IEP when parents are not in attendance?

Is the CDS site supposed to provide services to an eligible child in their educational setting without explicit written permission from the parent?

Signature is for initial placement only.

Individualized Team Membership

Who pays for providers to attend? Is this a shared cost?

The CDS regional site schedules, invites and pays for the providers participation. The CDS site and the SAU will determine jointly which providers should attend , who can address the needs of the child. There is no requirement that a provider from the same discipline be present to represent both CDS and the school. A school provider can attend in place of a CDs provider. The assumption is the specialists would have communicated via progress reports or evaluations.

Monitoring

Question: MUSER XIII. 1 states on page 135,

“XIII. MONITORING

1. Department Approval. Children with disabilities from birth to age 20 may be served only in schools and/or programs that have been approved by the Department for the provision of early intervention, special education and related services. To determine if schools or programs meet all applicable provisions outlined in Title 20-A MRSA § 7001 and § 7204(4), monitoring of each school administrative unit, regional early intervention or special education program, State-operated special education program, and special purpose private school shall be conducted by the Maine Department of Education.”

How is this monitoring being done?

Erica Thompson is undertaking the monitoring of all regional CDS sites.

MUSER I.3 states on page 2:

3. Approval of Early Intervention and Special Education Programs

"Early intervention, special education services and related services may be provided to children with disabilities only in schools and programs which have been approved by the Commissioner. For children B-5 early intervention (except special instruction) special education and related services are to be provided by certified or licensed personnel in natural settings or least restrictive environments determined by the IFSP or IEP Team.

The Commissioner of the Maine Department of Education reviews and approves all early intervention and special education services or proposed services provided by intermediate education units, public or private schools. The approval of the early intervention or special education programs provided by a school administrative unit or approved private school shall include the Department's review and approval of the special education reports required under 20-A MRSA §7204(4) and submitted in the form and manner required by the Commissioner and the program review and technical assistance process specified in Section XII of this rule."

May children 0 through 2 still receive services in their homes or day care settings that are not either schools or programs and are not approved by the commissioner?

Under what conditions may children 0-5 receive speech-language services in their home or the SLP's office (listed as settings on p. 108)?

What is the process to achieve approval?

As the regulation states, "For children B-5 early intervention (except special instruction) special education and related services are to be provided by certified or licensed personnel in natural settings or least restrictive environments determined by the IFSP or IEP Team." In addition it is the IFSP/IEP Team that determines the natural or LRE setting in which services are provided. For example, the speech pathologist must be licensed with is/her CCC-SLP.

For children B-2 the children must be served in the natural environment. Children 3-5 are to be served in the least restrictive environment. These decisions are to be made by the child's tea,.

[Policy](#)

The process for approval of programs is articulated in Section XII, Program Approval.

Program Approval

Is the DOE going to distribute approved program listings to the CDS sites at least annually?

A listing will be available on the web commencing July 1, 2008

MUSER XII.1.A states on page 127,

“XII. PROGRAM APPROVAL

1. For Programs for Children with Disabilities B-2 and 3-5

A. State Approval of Programs. Each program that serves children B-2 and 3-5 with disabilities must submit an annual application for approval to the CDS State Intermediate Educational Unit (IEU). The application must, pursuant to 20-A MRSA §7204(4), include:”

What are the B-5 Program Approval certification requirements compared to the 5-20 requirements at (c) and (h) on pages 128-129)?

Program approval standards for B-5 have been revised to comport with the requirements of Chapter 101. They will be available on the web soon and in the meantime may be obtained by contacting Sue Kendall at the state IEU.

When are program approval applications due?

New Program applications are received on an ongoing basis throughout the year.

When will DOE inform existing programs that they need to go through the program approval process? When will DOE notify programs that they are due for program approval renewal?

This is being addressed by the state IEU and will commence in phases beginning March 2008.

Special Education Finance

Are transportation service personnel still exempt?

Transportation is not covered by certification. Some local sites have developed policies/procedures to obtain fingerprinting/background checks on contracted transportation providers.

Is a targeted need provision allowable in this part of the rule?

Targeted Need certificates are allowed in Chapter 115 and monitored by the Certification Office

Special Education Finance

MUSER XVIII.1.A states on page 183,

“XVIII. SPECIAL EDUCATION FINANCE

1. Special Education Finances: State Subsidy and Direct Payments

A. General Principles; Intermediate Educational Unit and School Administrative Unit Responsibility

CDS:

For the CDS regional sites that function as intermediate educational units, the Department of Education Regulation, Chapter 182 governs the distribution of annual grant awards from available funds to regional intermediate educational units in accordance with a funding formula to ensure the provision of child find, early intervention services for eligible children birth to under age 3, and special education and related services for eligible children three to under age 6 with disabilities and their families.

The purpose of the funding formula is to distribute available funds based on objective statistical methods of allocation that reflect site needs related to personnel and to children to be served. The formula distributes available funds from federal Part B, §619, federal Part C and State General Fund, including Medicaid Targeted Case Management (TCM) cost reimbursement to the regional sites, or to local educational agencies functioning as pilot sites. Medicaid cost reimbursement for direct services is also accounted for.

The funding formula includes consideration of the costs associated with the following functions: administration; child find; case management; and provision of mandated services to eligible children.”

Is general education considered a mandated service for eligible children under CDS?

Per conversation with the US Department of Education, a child should receive his/her FAPE services in the least restrictive environment that is appropriate to the child. 34 CFR §300.114 states “to the maximum appropriate children with disabilities ...are educated with children who are not disabled. .CDS sites are encouraged to work within their local communities to develop a range of options on the LRE continuum to assure that FAPE services are available to meet the needs of all eligible children

MUSER XVIII.1.C on page 185 states,

“C. Costs of Qualified Personnel

The salary and benefit costs for qualified educational personnel shall be funded in part by the Department to the extent that these personnel are assigned to special education functions.

(1) Certified Educational Personnel for B-5 special education teachers shall have a #282 certificate.”

Does the 282 requirement only pertain to CDS employees vs. contracted providers?

It pertains to employed and contracted who are special education teachers.

MUSER XVIII.1.C states on pages 187/188,

“C. Costs of Qualified Personnel

(3) Licensed Contractors

(b) Required Procedures for Contracted Special Education Services.

(iii) Credentials of independent contractors - When contracted special education or related services are provided to children, the provider shall be certified by the Department of Education as a special education teacher (B-5), special education consultant, special education director, assistant special education director, school psychological service provider, or vocational education evaluator; or hold a valid Maine license to practice in the areas of occupational therapy, physical therapy, audiology, speech-language pathology, psychology, counseling or social work.

Certification as a teacher of special education does not qualify the person to provide contracted special education services.

Contracted consultants who do not possess either certification or licensure, as described in paragraph (b)(iii) above, shall not provide special education services without prior written approval from the Department of Education.

Fingerprinting is required for all contracted providers.”

Does this mean a K-12 special education teacher cannot provide contracted services to children eligible under CDS?

The provision “Certification as a teacher of special education does not qualify the person to provide contracted special education services” has been deleted in the proposed regulations. It was in error.

MUSER X.2.C(1)(a-d) states on page 108,

“C. Program Settings

(1) For Children 3-5

(a) Early Childhood Program A program that includes at least 50% non-disabled children. Early childhood programs include, but are not limited to:

- Headstart;
- Kindergarten;

Should the settings listed below be included in Case-e?

Under what conditions would a preschool child’s program services be delivered in a kindergarten?

Program settings are reflected in CaseE. A child's services would be provided in a kindergarten setting if the child were kindergarten eligible. The settings in the regulations are the federal child count settings. The kindergarten setting is to be used when states have two year kindergartens that would serve children who are four.

Waivers

MUSER XIX.2 on page 194 states,

“2. Agreement Between Parent and School

A. Waiver of 7-day Notice for an IEP Meeting

The school must document in writing and with parent/guardian signature that the parent/guardian has waived their right to the 7-day notice of an IEP meeting as described in Section V.2 (A) of this rule. The SAU must still provide the parent with the notice of the IEP meeting as described in Section V.2 (A) of this rule, to ensure compliance, even if the 7-day requirement is waived.”

Should this be VI.2(A) instead of V.2(A)?

Yes