



January 19, 2024

Lindsey Hutchison
Office of Head Start
Division of Planning, Oversight, and Policy

Dear Ms. Hutchison,

The Consortium for Constituents with Disabilities (CCD) Education Task Force monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). We advocate for high expectations for children with disabilities under these and other laws. We appreciate the opportunity to provide comments on the U.S. Department of Health and Human Services (HHS) Notice of Proposed Rulemaking regarding the Head Start Program Performance Standards. Given our deep and longstanding interest in and commitment to children with disabilities, we offer the following recommendations.

Recommendations by Section:

1302 Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance
§ 1302.17: Suspension and Expulsion

Recommendation: Maintain requirements for Head Start programs to severely limit suspension and prohibit expulsion due to a child’s behavior including the clarifying language regarding the expectations of the steps that should be taken before a suspension can be determined to be necessary, and that a program needs to thoroughly document plans related to suspension.

Recommendation: Maintain the proposal that a suspension must be used only as a last resort where there is a serious safety threat that “has not been” reduced or eliminated and to assure that the program should take active steps to attempt to reduce or eliminate the concern and demonstrate that these have not worked.

Recommendation: Maintain the specific requirement that a written plan must be developed to document action and support and to ensure children are properly evaluated and supported through a

written plan, including a Individualized Family Service Plan (IFSP), Individualized Education Program (IEP) or 504 plan as appropriate.

Recommendation: As noted below [in Definitions], include a definition of expulsion to ensure Head Start programs do not misconstrue a dismissal or suspension that is in fact an expulsion.

Rationale: CCD has a longstanding record -based in solid evidence- that any use of exclusionary discipline, including suspension, expulsion and/or the use of aversive practices such as seclusion and restraint are extremely harmful to children. As noted by HHS, "...Suspension and expulsion practices have long-lasting negative impacts for young children and their families, including on children's later school attendance, academics, and family stress. Additionally, research has well documented that disproportionalities exist in suspending or expelling students who are young boys of color, children with disabilities, and children who are dual language learners." Data also show the disproportionate use of restraint and seclusion on Black students and students with disabilities has a direct, negative effect on their educational access and future outcomes.¹ Preventing and eliminating their use on all children is a shared goal.

§ 1302.17(b)(2) and § 1302.17(b)(3)

Recommendation: Suspension: Maintain new language clarifying the expectations of the steps that the multidisciplinary team responsible for mental health will take before a suspension can be determined to be necessary, and that a program needs to thoroughly document plans related to suspension.

Recommendations: Expulsion:

1. Maintain new language to require that the multidisciplinary team responsible for mental health join in discussions of how to prevent an expulsion from occurring.
2. Maintain new language to clarify -that in the case of a decision made by the multidisciplinary team to unenroll a child and move the child to a more appropriate setting- that the Head Start program must work to directly facilitate the transition of the child to a more appropriate placement "that can immediately enroll and provide services to the child."

Recommendation: Engagement of Parents: Maintain new language to require engagement of parents in § 1302.17.

Rationale: CCD fully supports the expansion of the requirements for Head Start programs to include a multidisciplinary team in any decision regarding the educational program and access to the educational program of a child, especially children whose behavior may require attention, support and/or early intervention, including children already identified with a disabilities (with and IFSP/IEP or 504 Plan). Additionally, it would be completely inappropriate for any decision regarding an eligible child's access to an educational program to be made without the direct involvement of a parent. For children with an IFSP, IEP or 504 Plan, the parent's involvement is mandated by law.

¹ [K-12 Education: Federal Data and Resources on Restraint and Seclusion | U.S. GAO](#) (2019).

1302.41 Collaboration and Communication with Parents.

Recommendation: Collaboration and Communication with Parents: CCD strongly supports the proposal to amend Section 1302.41, requiring Head Start programs to collaborate with parents as partners in the health and well-being of their children, and communicate in a timely manner with parents about their children's health needs and developmental concerns, to add "mental health" wherever health is mentioned to clarify that mental health is an integral part of health. Incorporating mental health into conversations about a child's development and health normalizes and destigmatizes talking about mental health. CCD agrees that this will likely lead to, or at least provide the opportunity for, increased conversations about mental health strengths and areas of concern early on with parents so that everyone has the information and tools to support their child's mental health across different settings, contributing to reducing barriers to accessing care and increasing the chance that future mental illness will be prevented.

Subpart I: Human Resources

§ 1302.90: Personnel Policies.

(c)(1)(ii)

Recommendation: Maintain proposal to remove paragraphs (A) through (I) and replace these with paragraphs (A) through (D).

Rationale: CCD agrees that the changes proposed in new (A) through (D), unless otherwise noted below, will [as noted in (ii)] "ensure staff, consultants, contractors, and volunteers do not engage in behaviors that would be reasonably suspected to negatively impact the health, mental health, or safety of children."

Recommendation: Maintain (A) which in addition to protecting children from the use of abusive corporal punishment practices, includes protecting children from the use of restraint.

Recommendation: Amend paragraph (C) as noted with ~~striketrough~~ and/or in **bold** below.

Emotionally harmful or abusive behavior, defined as behaviors that harm a child's self worth or emotional well-being or behaviors that are insensitive to a child's developmental needs.

Examples include, but are not limited to, using ~~isolation~~ **seclusion** as discipline, using or exposing a child to public or private humiliation, or name calling, shaming, intimidating, or threatening a child.

Rationale: We urge HHS to make this change consistent with the U.S. Department of Education policy and definitions used in the Civil Rights Data Collection (CRDC). In doing so, HHS will ensure all programs are made aware of the harms of seclusion and also strive to consistently provide a positive, fear-free environment for all children.

1304(b)(1)

Recommendation: Maintain the change that helps clarify for Head Start programs that the current 10 percent requirement [to serve children with disabilities] is "meant to be a floor rather than a ceiling for

serving children who would benefit from the program.” As long-term proponents in the benefits of early intervention for all children, including children with disabilities, CCD agrees with HHS that Head Start programs must do all they can “to maximize services to children with disabilities who will benefit from the program’s strong focus on inclusive early childhood settings.” We also support that students who enter a program not yet identified as eligible under the IDEA or Section 504 will have access to the screening, evaluation, intervention, accommodations, and other support they may need.

Rationale: CCD is aware of the many challenges families face in accessing high quality inclusive early education for children with disabilities. It is imperative that Head Start programs do not use the 10 percent as a guide to the actual number of children with disabilities they must serve. As CCD shared with HHS in 2023,

Children with disabilities are more likely to live in poverty (or conversely, poor children are more likely to have a disability²) and that children with disabilities and their families can struggle to both afford high quality childcare and to access it.³ We also know that families are often faced with too few or no options for childcare especially for children ages 0-3 who have a disability and also to find childcare solutions for siblings.⁴ (See: CCD Letter to HHS, August 38, 2023)

Part 1305: Definitions

§ 1305.2: Terms

Recommendation: Amend the definition of Expulsion as noted in **bold** below.

Expulsion is the permanent removal of a child from the learning setting, **a permanent termination of a child's participation in a program for disciplinary purposes**, or a requirement that a child unenroll in a program.

Rationale: CCD recommends amending the definition of expulsion consistent with the Civil Rights Data Collection overseen by the U.S. Department of Education, Office for Civil Rights. See:

https://civilrightsdata.ed.gov/assets/downloads/2017-18_Master_List_of_CRDC_Definitions.pdf)

Recommendation: Add a definition of Seclusion as noted below.

Seclusion is the involuntary confinement of a child alone in a room or area from which the child is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the child in a non-locked setting, and is implemented for the purpose of calming. (See: U.S. Dept of Education, Master List of CRDC Definitions, at:

https://civilrightsdata.ed.gov/assets/downloads/2017-18_Master_List_of_CRDC_Definitions.pdf)

² In 2019, children living in poverty were more likely to have a disability (6.5%) than children living above the poverty threshold (3.8%). The difference in the prevalence of disability between children below and above the poverty threshold is noteworthy.

<https://www.census.gov/library/stories/2021/03/united-states-childhood-disability-rate-up-in-2019-from-2008.html>

³ *The Child Care Crisis Disproportionately Affects Children With Disabilities*, Center for American Progress, (2020).

<https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities/>

⁴ Ibid.

Rationale: Consistent with research based practice which supports the elimination of the use of all exclusionary discipline practices on children, including the use of seclusion in education settings, we urge the addition of this definition to better protect children in Head Start settings.

Recommendation: Amend the definition of Suspension as noted in **bold** below.

Suspension is the temporary removal of a child from the learning setting including all reductions in the amount of time a child may be in attendance of the regular group setting, either by requiring the child to cease attendance for a particular period of time or reducing the number of days or amount of time that a child may attend. Requiring a child to attend the program away from the other children in the regular group setting is included in this definition. Requiring the parent or the parent's designee to pick up a child for reasons other than illness or injury is also included in this definition. **Suspension includes both removals in which no individualized family service plan (IFSP) or individualized education program (IEP) services are provided because the removal is 10 days or less as well as removals in which the child continues to receive services according to his/her IFSP or IEP. A suspension includes any removal in which no educational services are provided, and removals in which educational services are provided (e.g., program provided at home instruction or tutoring).** (SEE: CRDC Master Definitions at: https://civilrightsdata.ed.gov/assets/downloads/2017-18_Master_List_of_CRDC_Definitions.pdf)

Rationale: Consistent with the CRDC, the Head Start Program Performance Standards must fully articulate what suspension means for all children, including students with disabilities as defined under federal law.

CCD appreciates the opportunity to comment. If you have any questions or need any further information, please contact Laura Kaloi @lkaloi@stridepolicy.com, Stephanie Flynt, @stephanie.flynt@ndrn.org, Kim Musheno @kmusheno@autism-society.org, Robyn Linscott @Linscott@thearc.org, or Lindsay Kubatzky @lkubatzky@nclld.org.

Sincerely,

Autism Society of America
Autistic Self-Advocacy Network
Center for Learner Equity
Council for Learning Disabilities
Council of Parent Attorneys and Advocates
Division for Early Childhood of the Council for Exceptional Children (DEC)
Family Voices
IDEA Infant and Toddler Coordinators Association (ITCA)
Learning Disabilities Association of America
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Disability Rights Network (NDRN)
National Down Syndrome Congress
The Advocacy Institute
The Arc of the United States