

Head Start Performance Standards

INTRODUCTION

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Head Start and Early Head Start are comprehensive child development programs which serve children from birth to age 5, pregnant women, and their families. They are child-focused programs, and have the overall goal of increasing the social competence of young children in low-income families. By “social competence” is meant the child’s everyday effectiveness in dealing with both his or her present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of social, emotional, cognitive, and physical development.

Head Start services are also family-centered, following the tenets that children develop in the context of their family and culture and that parents are respected as the primary educators and nurturers of their children. Head Start offers family members with opportunities and support for growth and change, believing that people can identify their own strengths, needs, and interests and are capable of finding solutions.

To support the overall goal of improving social competence, Head Start embraces a core set of values, including commitments to:

- Establish a supportive learning environment for children, parents, and staff, in which the processes of enhancing awareness, refining skills, and increasing understanding are valued and promoted;

- Recognize that the members of the Head Start community — children, families, and staff — have roots in many cultures. Head Start families and staff, working together as a team, can effectively promote respectful, sensitive, and proactive approaches to diversity issues;

- Understand that the empowerment of families occurs when program governance is a responsibility shared by families, governing bodies, and staff, and when the ideas and opinions of families are heard and respected;

- Embrace a comprehensive vision of health for children, families, and staff, which assures that basic health needs are met, encourages practices that prevent future illnesses and injuries, and promotes positive, culturally relevant health behaviors that enhance life-long well-being;

- Respect the importance of all aspects of an individual’s development, including social, emotional, cognitive, and physical growth;

- Build a community in which each child and adult is treated as an individual while, at the same time, a sense of belonging to the group is reinforced;

- Foster relationships with the larger community, so that families and staff are respected and served by a network of community agencies in partnership with one another and ;

- Develop a continuum of care, education, and services that allow stable, uninterrupted support to families and children during and after their Head Start experience.

The Head Start program has a long tradition of delivering comprehensive and high quality services designed to foster healthy development in low-income children. Head Start grantee and delegate agencies provide a range of individualized services in the areas of education and early childhood development, medical, dental, and mental health, nutrition, and parent involvement. In addition, the entire range of Head Start services is responsive and appropriate to each child and family's developmental, ethnic, cultural, and linguistic heritage and experience.

Throughout the Guidance, "Head Start" is used to include both the Early Head Start and Head Start programs.

Head Start fosters the role of parents as the primary educators and nurturers, of and advocates for, their children. Therefore, local Head Start programs work in close partnership with parents to assist them in developing and utilizing individual and family strengths in order to successfully meet personal and family objectives. Parents are encouraged to become involved in all aspects of the program, from participation in children's activities to direct involvement in policy and program decisions.

Head Start is committed to cultivating partnerships within the community. Through the establishment of meaningful links with community organizations and programs focused upon early childhood development, family support, health, and education, each Head Start agency ensures that children and families receive an array of individualized services, and that community resources are used in an efficient and effective manner.

Head Start strives for excellence in program management that supports the provision of quality services for children and families. Policy groups, representative of Head Start parents and the larger community, and strong governing bodies play a critical role in overseeing the implementation of Head Start legislation, regulations, and policies. To achieve national excellence, local agencies are required to establish effective systems and procedures for program, financial, and human resources management. Additionally, a strong focus on staff training and development helps to ensure that children and families are served by individuals with the knowledge, skills, and experience necessary to provide high quality, comprehensive services.

The Head Start Program Performance Standards are designed to ensure that the Head Start goals and objectives are implemented successfully, that the Head Start philosophy continues to thrive, and that all grantee and delegate agencies maintain the highest possible quality in the provision of Head Start services. To assist agencies in their implementation of the standards, the Head Start Program Performance Standards (45 CFR Part 1304) are presented in this document, along with Guidance materials that illustrate some of the ways the standards could be implemented. Because Head Start services for children with disabilities are fully integrated into all areas of program services, the Head Start Program Performance Standards for Children with Disabilities (45 CFR Part 1308) are reissued in this document. To assist the reader in understanding all aspects of this comprehensive services program, this document also includes other applicable Head Start regulations (45 CFR Parts 1301, 1302, 1303, 1305, and 1306), a selected reference list, and an index.

How to Use This Publication

Those sections of the regulations with Guidance materials (Subparts B-D of Part 1304 and Subparts B-G of Part 1308) are presented in a two-column format. The standards represented in the left hand column constitute Head Start regulations regarding program operations and activities with which all grantee and delegate agencies are required to comply. They were first published in the Federal Register on November 5, 1996 (Part 1304) and January 21, 1993 (Part 1308).

Standards: The Head Start Program Performance Standards are the mandatory regulations that grantees and delegate agencies must implement in order to operate a Head Start program. The standards define the objectives and features of a quality Head Start program in concrete terms; they articulate a vision of service delivery to young children and families; and they provide a regulatory structure for the monitoring and enforcement of quality standards.

Because of the critical nature and comprehensive scope of the Head Start Program Performance Standards, it is important for grantee and delegate agencies to provide staff members and parents with ongoing training on the standards and on ways to implement them locally. Staff and parents may, for example, be provided with an orientation to this publication, as well as training related to each section. In addition to training staff, agencies are to provide appropriate training to members of Policy Committees and Policy Councils, as well as to other parents, members of governing bodies, and community partners.

The right-hand column of the section of the regulations with Guidance for Part 1304 contains four parts: an Introduction, a Rationale, Related Information, and Guidance.

Introduction: Each of the eleven sections of the Head Start Program Performance Standards in Part 1304 begins with an introductory statement summarizing the philosophy behind the section and the contents of the standards.

Rationale: The rationale statements explain why a Program Performance Standard is important.

Related Information: Related information provides cross-references to other standards and Guidance materials critical to implementing the standard represented in the left-hand column. References to other Head Start regulations and policy requirements outside the Program Performance Standards, as well as information about other Federal laws, also are listed under this heading. In looking at related information, one needs to look at both the standard and the accompanying guidance.

The number of cross-references highlights the way in which the Head Start Program Performance Standards are restructured to support an integrated approach to service delivery. No section of the Performance Standards and Guidance can be understood or implemented in isolation from the other sections.

Guidance: The Guidance provides examples or illustrations of how the standards could be implemented. Just as local Head Start programs are expected to honor the background and experience of all of the children and families served, the Administration on Children, Youth, and Families (ACYF) recognizes the uniqueness of each local program and the community within which it operates. Therefore, local programs are encouraged to develop approaches appropriate

to their own communities — approaches that best meet the needs of the children and families served. These approaches may build upon the Guidance or differ from it.

Rather than being mandatory, as the standards are, the guidance represents illustrations of ways agencies may operationalize the standards. These illustrations are not the only ways to implement the standards, but are meant to stimulate the thinking of staff and parents about how the standards might be operationalized in their own program.

PART 1301 — HEAD START GRANTS ADMINISTRATION

Subpart A — General

1301.1 Purpose and scope.

This part establishes regulations applicable to program administration and grants management for all grants under the Act, including grants for technical assistance and training and grants for research, demonstration, and pilot projects.

1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

Act means title V of the Economic Opportunity Act of 1964, as amended.

Budget period means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Community means a city, county, a multi-city or multi-county unit within a state, an Indian reservation, or any neighborhood or other geographic area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

Delegate agency means a public or private non-profit organization or agency to which a grantee has delegated all or part of its responsibility for operating a Head Start program.

Development and administrative costs mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Dual benefit costs mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Head Start Agency or “grantee” means a local public or private non-profit agency designated to operate a Head Start program by the responsible HHS official, in accordance with part 1302 of this chapter.

Head Start program means a program, funded under the Act and carried out by a Head Start agency or a delegate agency, that provides ongoing comprehensive child development services.

Independent auditor means an individual accountant or an accounting firm, public or private agency, association, corporation, or partnership, that is sufficiently independent of the agency being audited to render objective and unbiased opinions, conclusions, and judgments.

Indirect costs mean those costs of a Head Start agency, as approved by the cognizant agency, the agency which has authority to set the grantee's indirect cost rate, which are not readily identifiable with a particular project or program but nevertheless are necessary to the general operation of the agency and the conduct of its activities.

Major disaster means any natural disaster or catastrophe which is of such severity and magnitude as to directly affect the capability of the Head Start agency or agencies providing Head Start programs to the damaged community to continue the programs without an increase in the Federal share above 80 percent.

Program costs mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR part 1304).

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

Total approved costs mean the sum of all costs of the Head Start program approved for a given budget period by the Administration on Children, Youth and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the Federal share plus any approved non-Federal share, including non-Federal share above the statutory minimum.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

Subpart B —
General Requirements

1301.10 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants made under the Act:

45 CFR part 16 Department grant appeals process (except as provided in Sec. 1301.34)

45 CFR part 46 Protection of Human Subjects

45 CFR part 74 Administration of grants

45 CFR part 75 Informal grant appeals procedures (Indirect cost rates and other cost allocations)

45 CFR part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services — Effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81 Practice and procedure for hearings under part 80

45 CFR part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR part 74 is superseded as follows:

(1) Section 1301.11 of this subpart supersedes Sec. 74.15 of part 74 with respect to insurance and bonding of private, non-profit Head Start agencies; and

(2) Section 1301.12 of this subpart supersedes Sec. 74.61 of part 74 with respect to audit requirements for all Head Start agencies.

1301.11 Insurance and bonding.

(a) Private nonprofit Head Start agencies and their delegate agencies shall carry reasonable amounts of student accident insurance, liability insurance for accidents on their premises, and transportation liability insurance.

(b) Private nonprofit Head Start and delegate agencies shall make arrangements for bonding officials and employees authorized to disburse program funds.

1301.12 Annual audit of Head Start programs.

(a) An audit of the Head Start program covering the prior budget period of each Head Start agency and its delegate agencies, if any, shall be made by an independent auditor to determine:

- (1) Whether the agency's financial statements are accurate;
- (2) Whether the agency is complying with the terms and conditions of the grant; and
- (3) Whether appropriate financial and administrative procedures and controls have been installed and are operating effectively. Head Start agencies shall either include delegate agency audits as a part of their own audits or provide for separate independent audits of their delegate agencies.

(b) Upon a written request showing necessity, the responsible HHS official may approve a period other than the prior budget period to be covered by the annual audit.

(c) Unless otherwise approved by the responsible HHS official, the report of the audit shall be submitted to the responsible HHS official, in the manner and form prescribed by him or her, within 4 months after the end of the prior budget period.

1301.13 Accounting system certification.

(a) Upon request by the responsible HHS official, each Head Start agency or its delegate agency shall submit an accounting system certification, prepared by an independent auditor, stating that the accounting system or systems established by the Head Start agency, or its delegate, has appropriate internal controls for safeguarding assets, checking the accuracy and reliability of accounting data, and promoting operating efficiency.

(b) A Head Start agency shall not delegate any of its Head Start program responsibilities to a delegate agency prior to receiving a certification that the delegate agency's accounting system meets the requirements specified in paragraph (a) of this section.

Subpart C — Federal Financial Assistance

1301.20 Matching requirements.

(a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless:

- (1) An amount in excess of that percentage is approved under section 1301.21; or
- (2) The Head Start agency received Federal financial assistance in excess of 80 percent for any budget period falling within fiscal year 1973 or fiscal year 1974. Under the circumstances described in clause
- (3) Of the preceding sentence, the agency is entitled to receive the same percentage of Federal financial assistance that it received during such budget periods.

(b) The non-Federal share will not be required to exceed 20 percent of the total costs of the program.

(c) Federal financial assistance awarded to Head Start grantees for training and technical assistance activities shall be included in the Federal share in determining the total approved costs of the program. Such financial assistance is, therefore, subject to the 20 percent non-Federal matching requirement of this subpart.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

1301.21 Criteria for increase in Federal financial assistance.

The responsible HHS official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county:

- (a) That has a personal per capita income of less than \$3,000 per year; or
- (b) That has been involved in a major disaster.

Subpart D — Personnel and General Administration

1301.30 General requirements.

Head Start agencies and delegate agencies shall conduct the Head Start program in an effective and efficient manner, free of political bias or family favoritism. Each agency shall also provide reasonable public access to information and to the agency's records pertaining to the Head Start program.

1301.31 Personnel policies.

(a) Written Policies. Grantee and delegate agencies must establish and implement written personnel policies for staff, that are approved by the Policy Council or Policy Committee and that are made available to all grantee and delegate agency staff. At a minimum, such policies must include:

- (1) Descriptions of each staff position, addressing, as appropriate, roles and responsibilities, relevant qualifications, salary range, and employee benefits (see 45 CFR 1304.52(c) and (d));
- (2) A description of the procedures for recruitment, selection and termination (see paragraph (b) of this Section, Staff recruitment and selection procedures);
- (3) Standards of conduct (see 45 CFR 1304.52(h));
- (4) Descriptions of methods for providing staff and volunteers with opportunities for training, development, and advancement (see 45 CFR 1304.52(k), Training and development);
- (5) A description of the procedures for conducting staff performance appraisals (see 45 CFR 1304.52(i), Staff performance appraisals);
- (6) Assurances that the program is an equal opportunity employer and does not discriminate on the basis of gender, race, ethnicity, religion or disability; and
- (7) A description of employee-management relations procedures, including those for managing employee grievances and adverse actions.

(b) Staff recruitment and selection procedures.

- (1) Before an employee is hired, grantee or delegate agencies must conduct:
 - (i) An interview with the applicant;
 - (ii) A verification of personal and employment references; and

(iii) A State or national criminal record check, as required by State law or administrative requirement. If it is not feasible to obtain a criminal record check prior to hiring, an employee must not be considered permanent until such a check has been completed.

(2) Grantee and delegate agencies must require that all current and prospective employees sign a declaration prior to employment that lists:

(i) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(ii) Convictions related to other forms of child abuse and neglect; and

(iii) All convictions of violent felonies.

(3) Grantee and delegate agencies must review each application for employment individually in order to assess the relevancy of an arrest, a pending criminal charge, or a conviction.

(c) Declaration exclusions. The declaration required by paragraph (b)(2) of this section may exclude:

(1) Traffic fines of \$200.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(d) Probationary period. The policies governing the recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of the criminal record checks discussed in paragraph (b)(1) of this Section.

(e) Reporting child abuse or sexual abuse. Grantee and delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse as defined in 45 CFR 1340.1-2(b) whether it occurs inside or outside of the program.

(Approved by the Office of Management and Budget under control number 0980-0173)

[53 FR 5979, Feb. 29, 1988]

Appendix A to 1301.31 — Identification and Reporting of Child Abuse and Neglect

The Chapter N-30-356-1 in the Head Start Policy Manual reads as follows:

N-30-356-1-00 Purpose.

10 Scope.

20 Applicable law and policy.

30 Policy.

Authority: 80 Stat. 2304 (42 U.S.C. 2928h).

N-30-356-1-00 Purpose. This chapter sets forth the policy governing the prevention, identification, treatment, and reporting of child abuse and neglect in Head Start.

N-30-356-1-10 Scope. This policy applies to all Head Start grantee and delegate agencies that operate or propose to operate a Full-Year or Summer Head Start program, or experimental or demonstration programs funded by Head Start. This issuance constitutes Head Start policy and noncompliance with this policy will result in appropriate action by the responsible HEW official.

N-30-356-1-20 Applicable law and policy. Section 511 of the Head Start-Follow Through Act, Pub. L. 93-644, requires Head Start agencies to provide comprehensive health, nutritional educational, social and other services to the children to attain their full potential. The prevention, identification, treatment, and reporting of child abuse and neglect is a part of the social services in Head Start. In order for a State to be eligible for grants under the Child Abuse Prevention and Treatment Act (hereinafter called “the Act”), Pub. L. 93-247, the State must have a child abuse and neglect reporting law which defines “child abuse and neglect” substantially as that term is defined in the regulations implementing the Act, 45 CFR 1340.1-2(b). That definition is as follows:

A. “(b) ‘Child abuse and neglect’ means harm or threatened harm to a child’s health or welfare by a person responsible for the child’s health or welfare.

“1. ‘Harm or threatened harm to a child’s health or welfare’ can occur through: Non-accidental physical or mental injury; sexual abuse, as defined by State law; or neglectful treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services to be provided to the child, where his health requires it.

“2. ‘Child’ means a person under the age of eighteen.

“3. ‘A person responsible for a child’s health or welfare’ includes the child’s parent, guardian, or other person responsible for the child’s health or welfare, whether in the

same home as the child, a relative's home, a foster care home, or a residential institution.”

In addition, among other things, the State would have to provide for the reporting of known or suspected instances of child abuse and neglect.

It is to be anticipated that States will attempt to comply with these requirements. However, a Head Start program, in dealing with and reporting child abuse and neglect, will be subject to and will act in accordance with the law of the State in which it operates whether or not that law meets the requirements of the Act. Thus, it is the intention of this policy in the interest of the protection of children to insure compliance with and, in some respects, to supplement State or local law, not to supersede it. Thus, the phrase “child abuse and neglect,” as used herein, refers to both the definition of abuse and neglect under applicable State or local law, and the evidentiary standard required for reporters under applicable State or local law.

N-30-356-1-30 Policy — A. General provisions.

1. Head start agencies and delegate agencies must report child abuse and neglect in accordance with the provisions of applicable State or local law.
 - a. In those States and localities with laws which require such reporting by pre-school and day care staff, Head Start agencies and delegate agencies must report to the State or local agencies designated by the State under applicable State or local Child Abuse and Neglect reporting law.
 - b. In those States and localities in which such reporting by pre-school and day care staff is “permissive” under State or local law, Head Start agencies and delegate agencies must report child abuse and neglect if applicable State or local law provides immunity from civil and criminal liability for good-faith voluntary reporting.
2. Head Start agencies and delegate agencies will preserve the confidentiality of all records pertaining to child abuse or neglect in accordance with applicable State or local law.
3. Consistent with this policy, Head Start programs will not undertake, on their own, to treat cases of child abuse and neglect. Head Start programs will, on the other hand, cooperate fully with child protective service agencies in their communities and make every effort to retain in their programs children allegedly abused or neglected — recognizing that the child's participation in Head Start may be essential in assisting families with abuse or neglect problems.
4. With the approval of the policy council, Head Start programs may wish to make a special effort to include otherwise eligible children suffering from abuse or neglect, as referred by the child protective services agency.

However, it must be emphasized that Head Start is not nor is it to become a primary instrument for the treatment of child abuse and neglect. Nevertheless, Head Start has an important preventative role to play in respect to child abuse and neglect.

B. Special provisions —

1. Staff responsibility. Directors of Head Start agencies and delegate agencies that have not already done so shall immediately designate a staff member who will have responsibility for:

- a. Establishing and maintaining cooperative relationships with the agencies providing child protective services in the community, and with any other agency to which child abuse and neglect must be reported under State law, including regular formal and informal communication with staff at all levels of the agencies;
- b. Informing parents and staff of what State and local laws require in cases of child abuse and neglect;
- c. Knowing what community medical and social services are available for families with an abuse or neglect problem;
- d. Reporting instances of child abuse and neglect among Head Start children reportable under State law on behalf of the Head Start program;
- e. Discussing the report with the family if it appears desirable or necessary to do so;
- f. Informing other staff regarding the process for identifying and reporting child abuse and neglect. (In a number of States it is a statutory requirement for professional child-care staff to report abuse and neglect. Each program should establish a procedure for identification and reporting.)

2. Training. Head Start agencies and delegate agencies shall provide orientation and training for staff on the identification and reporting of child abuse and neglect. They should provide an orientation for parents on the need to prevent abuse and neglect and provide protection for abused and neglected children. Such orientation ought to foster a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers.

[53 FR 5979, Feb. 29, 1988]

1301.32 Limitations on costs of development and administration of a Head Start program.

(a) General provisions.

(1) Allowable costs for developing and administering a Head Start program may not exceed 15 percent of the total approved costs of the program, unless the responsible HHS

official grants a waiver approving a higher percentage for a specific period of time not to exceed twelve months.

(2) The limit of 15 percent for development and administrative costs is a maximum. In cases where the costs for development and administration are at or below 15 percent, but are judged by the responsible HHS official to be excessive, the grantee must eliminate excessive development and administrative costs.

(b) Development and administrative costs.

(1) Costs classified as development and administrative costs are those costs related to the overall management of the program. These costs can be in both the personnel and non-personnel categories.

(2) Grantees must charge the costs of organization-wide management functions as development and administrative costs. These functions include planning, coordination and direction; budgeting, accounting, and auditing; and management of purchasing, property, payroll and personnel.

(3) Development and administrative costs include, but are not limited to, the salaries of the executive director, personnel officer, fiscal officer/bookkeeper, purchasing officer, payroll/insurance/property clerk, janitor for administrative office space, and costs associated with volunteers carrying out administrative functions.

(4) Other development and administrative costs include expenses related to administrative staff functions such as the costs allocated to fringe benefits, travel, per diem, transportation and training.

(5) Development and administrative costs include expenses related to bookkeeping and payroll services, audits, and bonding; and, to the extent they support development and administrative functions and activities, the costs of insurance, supplies, copy machines, postage, and utilities, and occupying, operating and maintaining space.

(c) Program costs. Program costs include, but are not limited to:

(1) Personnel and non-personnel costs directly related to the provision of program component services and component training and transportation for staff, parents and volunteers;

(2) Costs of functions directly associated with the delivery of program component services through the direction, coordination or implementation of a specific component;

(3) Costs of the salaries of program component coordinators and component staff, janitorial and transportation staff involved in program component efforts, and the costs associated with parent involvement and component volunteer services; and

(4) Expenses related to program staff functions, such as the allocable costs of fringe benefits, travel, per diem and transportation, training, food, center/classroom supplies and equipment, parent activities funds, insurance, and the occupation, operation and maintenance of program component space, including utilities.

(d) Dual benefit costs.

(1) Some costs benefit both the program components as well as development and administrative functions within the Head Start program. In such cases, grantees must identify and allocate appropriately the portion of the costs that are for development and administration.

(2) Dual benefit costs include, but are not limited to, salaries, benefits and other costs (such as travel, per diem, and training costs) of staff who perform both program and development and administrative functions. Grantees must determine and allocate appropriately the part of these costs dedicated to development and administration.

(3) Space costs, and costs related to space, such as utilities, are frequently dual benefit costs. The grantee must determine and allocate appropriately the amount or percentage of space dedicated to development and administration.

(e) Relationship between development and administrative costs and indirect costs.

(1) Grantees must categorize costs in a Head Start program as development and administrative or program costs. These categorizations are separate from the decision to charge such costs directly or indirectly.

(2) Grantees must charge all costs, whether program or development and administrative, either directly to the project or as part of an indirect cost pool.

(f) Requirements for compliance.

(1) Head Start grantees must calculate the percentage of their total approved costs allocated to development and administration as a part of their budget submission for initial funding, refunding or for a request for supplemental assistance in connection with a Head Start program. These costs may be a part of the direct or the indirect cost pool.

(2) The Head Start grant applicant shall delineate all development and administrative costs in its application.

(3) Indirect costs which are categorized as program costs must be fully explained in the application.

(g) Waiver.

(1) The responsible HHS official may grant a waiver of the 15 percent limitation on development and administrative costs and approve a higher percentage for a specific period of time not to exceed twelve months. The conditions under which a waiver will be considered are listed below and encompass those situations under which development

and administrative costs are being incurred, but the provision of actual services has not begun or has been suspended. A waiver may be granted when:

- (i) A new Head Start grantee or delegate agency is being established or services are being expanded by an existing Head Start grantee or delegate agency, and the delivery of component services to children and families is delayed until all program development and planning is well underway or completed; or
- (ii) Component services are disrupted in an existing Head Start program due to circumstances not under the control of the grantee.

(2) A Head Start grantee that estimates that the cost of development and administration will exceed 15 percent of total approved costs must submit a request for a waiver that explains the reasons for exceeding the limitation. This must be done as soon as the grantee determines that it cannot comply with the 15 percent limit, regardless of where the grantee is within the grant funding cycle.

(3) The request for the waiver must include the period of time for which the waiver is requested. It must also describe the action the grantee will take to reduce its development and administrative costs so that the grantee will be able to assure that these costs will not exceed 15 percent of the total approved costs of the program after the completion of the waiver period.

(4) If granted, the waiver and the period of time for which it will be granted will be indicated on the Financial Assistance Award.

(5) If a waiver requested as a part of a grant application for funding or refunding is not approved, no Financial Assistance Award will be awarded to the Head Start program until the grantee resubmits a revised budget that complies with the 15 percent limitation.

(Information collection requirements contained in paragraphs (f) (2) and (3) of this section were approved on January 26, 1993, by the Office of Management and Budget under Control Number 0980-1043).

[57 FR 41885, Sept. 14, 1992, as amended at 58 FR 26918, May 6, 1993]

1301.33 Delegation of program operations.

Federal financial assistance is not available for program operations where such operations have been delegated to a delegate agency by a Head Start agency unless the delegation of program operations is made by a written agreement and has been approved by the responsible HHS official before the delegation is made.

1301.34 Grantee appeals.

An agency receiving a grant under the Act for technical assistance and training, or for a research, demonstration, or pilot project may appeal adverse decisions in accordance with part 16 of this title. Head Start agencies are also subject to the appeal procedures in part 16 except appeals by those agencies for suspension, termination and denial of refunding are subject to part 1303 of this title.

PART 1302 — POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING,
AND REFUNDING OF HEAD START GRANTEEES, AND FOR SELECTION OF
REPLACEMENT GRANTEEES

PART 1302 — POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING,
AND REFUNDING OF HEAD START GRANTEEES,
AND FOR SELECTION OF REPLACEMENT GRANTEEES

Subpart A — General

1302.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the selection, initial funding and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or denial of refunding, of Head Start programs. It particularly provides for consideration of the need for selection of a replacement grantee where the continuing eligibility (legal status) and fiscal capability (financial viability) of a grantee to operate a Head Start program is cast in doubt by the cessation of funding under section 519 of the Act or by the occurrence of some other major change. It is intended that Head Start programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grantees be fully protected.

1302.2 Definitions.

As used in this part —

Act means Title V of The Economic Opportunity Act of 1964, as amended.

Approvable application means an application for a Head Start program, either as an initial application or as an application to amend an approved application governing an on-going Head Start program, which, in addition to showing that the applicant has legal status and financial viability, provides for comprehensive services for children and families and for effective and responsible administration which are in conformity with the Act and applicable regulations, the Head Start Manual and Head Start policies.

Community action agency means a public or private nonprofit agency or organization designated as a community action agency by the Director of the Community Services Administration pursuant to section 210(a) or section 210(d) of the Act.

Community action program means a program operated by a community action agency.

Financial viability means the capability of an applicant or the continuing capability of a grantee to furnish the non-Federal share of the cost of operating an approvable or approved Head Start program.

Head Start grantee or grantee means a public or private nonprofit agency or organization whose application to operate a Head Start program pursuant to section 514 of the Act has been approved by the responsible HHS official.

Indian tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (c)) or established pursuant to such Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Legal status means the existence of an applicant or grantee as a public agency or organization under the law of the State in which it is located, or existence as a private nonprofit agency or organization as a legal entity recognized under the law of the State in which it is located. Existence as a private non-profit agency or organization may be established under applicable State or Federal law.

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

1302.3 Consultation with public officials and consumers.

Responsible HHS officials will consult with Governors, or their representatives, appropriate local general purpose government officials, and Head Start Policy Council and other appropriate representatives of communities to be served on the proposed replacement of Head Start grantees.

1302.4 Transfer of unexpended balances.

When replacing a grantee, unexpended balances of funds in the possession of such grantee in the fiscal year following the fiscal year for which the funds were appropriated may be transferred to the replacement grantee if the approved application of the replacement grantee provides for the continuation of the Head Start services without significant change to the same enrollees and their parents and undertakes to offer employment to the staff of the terminating grantee. A letter of concurrence in the change should be obtained from the terminating grantee whenever possible.

1302.5 Notice for show cause and hearing.

(a) Except in emergency situations, the responsible HHS official will not suspend financial assistance under the Act unless the grantee has been given an opportunity, in accordance with part 1303, subpart D, of this chapter, to show cause why such action should not be taken.

(b) The responsible HHS official will not terminate a grant, suspend a grant for longer than 30 days, or deny refunding to a grantee, unless the grantee has been given an opportunity for a hearing in accordance with part 1303 of this chapter.

Subpart B — Bases for Selection of Grantees

1302.10 Selection among applicants.

(a) The basis for selection of applicants proposing to operate a Head Start program will be the extent to which the applicants demonstrate in their application the most effective Head Start program.

(b) In addition to the applicable criteria at section 641(d) of the Head Start Act, the criteria for selection will include:

(1) The cost effectiveness of the proposed program;

(2) The qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant to administer all Head Start programs carried out in the designated service area;

(3) The quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards (in 45 CFR part 1304) and program policies, including the opportunities provided for employment of target area residents and career development for paraprofessional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;

(4) The proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the program in accordance with program policies and regulations; and

(5) The need for Head Start services in the community served by the applicant.

[57 FR 41887, Sept. 14, 1992]

1302.11 Selection among applicants to replace grantee.

The bases for making a selection among applicants which submit approvable applications to replace a grantee, in addition to the basis in Sec. 1302.10 of this part, shall be:

(a) The extent to which provision is made for a continuation of services to the eligible children who have been participating as enrollees in the program;

(b) The extent to which provision is made for continuation of services to the target area or areas served by the program; and

(c) The extent to which provision is made for continued employment by the applicant of the qualified personnel of the existing program.

1302.12 Priority for previously selected Head Start agencies.

Before selecting Head Start agency, the responsible HHS official, in addition to considering the factors specified in Secs. 1302.10 and 1302.11, will give priority to an agency which was receiving funds under the Act on January 4, 1975, to operate a Head Start program.

Subpart C — Change in Grantee Requiring Amendment of
Approved Application or
Replacement of Head Start
Program

1302.20 Grantee to show both legal status and financial viability.

(a) Upon the occurrence of a change in the legal condition of a grantee or of a substantial diminution of the financial resources of a grantee, or both, for example, such as might result from cessation of grants to the grantee under section 514 of the Act, the grantee is required within 30 days after the effective date of the regulations in this Part or the date the grantee has notice or knowledge of the change, whichever is later, to show in writing to the satisfaction of the responsible HHS official that it has and will continue to have legal status and financial viability. Failure to make this showing may result in suspension, termination or denial of refunding.

(b) The responsible HHS official will notify the grantee in writing of the decision as to the grantee's legal status and financial viability within 30 days after receiving the grantee's written submittal.

(c) When it is consistent with proper and efficient administration, the responsible HHS official may extend a grantee's program year to end on the date when a change in its legal condition or a substantial diminution of financial resources, or both, is scheduled to take place.

1302.21 Grantee shows legal status but not financial viability.

(a) If a grantee shows legal status but impaired financial viability the responsible HHS official will entertain a timely request for amendment of the grantee's approved application which restores the grantee's financial viability either by a reduction in the program which produces minimum disruption to services and functions, or by an amendment which incorporates essential functions and services not previously funded as part of the total cost of the Head Start program, and, therefore, requires an increase in the amount of the Head Start grant but which will not result in a Federal share of the total cost of the Head Start program in excess of the percentage authorized by the Act or applicable regulations. In considering such a request which includes an increase in the Head Start grant the responsible HHS official will take into account the funds available to him for obligation and whether the proposed increase is consistent with that distribution of Head Start funds which:

(1) Maximizes the number of children served within his area of responsibility, or in the case of experimental or demonstration programs, the experimental or demonstration benefits to be achieved, and

(2) Maintains approximately the same distribution of Head Start program funds to States as exist during the fiscal year in which his decision is made.

(b) A request for amendment will be considered to be timely if it is included with the written submittal required by Sec. 1302.20(a) of this part, submitted within 30 days after receiving the notice required by Sec. 1302.20(b) of this part, or submitted as a part of a timely application for refunding.

(c) The grantee will be notified in writing by the responsible HHS official within 30 days after submission of the requested amendment of the decision to approve or disapprove the requested amendment. If the requested amendment is disapproved the notice will contain a statement of the reasons for disapproval.

1302.22 Suspension or termination of grantee which shows financial viability but not legal status.

If a grantee fails to show that it will continue to have legal status after the date of change even though it may show financial viability, the grant shall be suspended or terminated or refunding shall be denied as of the date of change. If it appears reasonable to the responsible HHS official that the deficiency in legal status will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or the date of submission of a timely request for amendment. If such correction has not been made within the 30 day period the grant shall be terminated.

1302.23 Suspension or termination of grantee which shows legal status but not financial viability.

(a) If the date of change of financial viability precedes or will precede the end of the grantee's program year the grant will be suspended or terminated on that date, or, if a request for amendment has been submitted under Sec. 1302.21 of this part, upon written notice of disapproval of the requested amendment, whichever is later. If it appears reasonable to the responsible HHS official that the deficiency in financial viability will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or notice of disapproval. If such correction has not been made within the 30 day period the grant will be terminated.

1302.24 Denial of refunding of grantee.

(a) If the date of change will coincide with or will come after the end of the program year and the grantee has notice or knowledge of such change prior to the end of the program year any action taken to approve the grantee's application for refunding for the following program year shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and financial viability and on any requested amendment submitted by the grantee. If the requested amendment is disapproved the responsible HHS official may extend the program year in accordance with Sec. 1302.20(c) of this part.

(b) If the date of change coincides with the end of the program year and the grantee does not have notice or knowledge of the change prior thereto and the grantee's application for refunding for the following program year has been approved, such approval shall be subject to rescission or

ratification depending upon the decision of the responsible HHS official on the grantee's legal status and viability and on any requested financial amendment submitted by the grantee.

(c) If the date of change will coincide with or will come after the end of the program year and if the responsible HHS official has prior notice thereof from the grantee or other official source such as the Community Services Administration action to approve any application for refunding submitted by the grantee shall be deferred pending decision by the responsible HHS official on the grantee's legal status and financial viability and any requested amendment submitted by the grantee.

(d) When the responsible HHS official determines to approve a requested amendment for refunding he will approve it for the full term of the proposed program period, if that period as approved is no longer than a program year.

1302.25 Control of funds of grantee scheduled for change.

Responsible HHS officials will place strict controls on the release of grant funds to grantees which are scheduled for change by cessation of their grants under section 519 of the Act. Specifically, the following controls will be established:

(a) Funds will be released on a monthly basis regardless of the form of grant payment.

(b) Funds released each month will be limited to the amount required to cover actual disbursements during that period for activities authorized under the approved Head Start program.

(c) The amount of funds released must be approved each month by the responsible HHS official.

Subpart D — Replacement of
Indian Tribal Grants

1302.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, or which has been denied refunding as a Head Start grantee, may identify an agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving Federal financial assistance to provide Head Start services to members of the tribe; and

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)

(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied.

(2) The tribe must identify the alternate agency to the responsible HHS official, in writing, within the time for filing an appeal under 45 CFR Part 1303.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify a suitable alternative agency, a replacement grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of 45 CFR Part 1303, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

1302.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §§ 1302.10(b)(1) through (5) and 1302.11 of this part.

1302.32 Alternative agency — prohibition.

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee, and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in the Head Start Act; and

(ii) Was the basis for the termination or denial of refunding described in § 1302.30 of this part.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

PART 1303 — APPEAL PROCEDURES FOR HEAD START GRANTEES
AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

PART 1303 — APPEAL PROCEDURES FOR HEAD START GRANTEES
AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

Subpart A — General

1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, et seq.

ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with Sec. 1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

- (1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;
- (2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or non-competing continuation renewal, extension or supplemental award);
- (3) Withdrawal of the unobligated balance as of the expiration of a grant;
- (4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed \$250.00 per day, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

1303.4 Remedies.

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with Sec. 1303.8 of this part.

1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) "Good cause" consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may “good cause” consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official or the Departmental Appeals Board shall have the right, on own motion or on motion of a party, to require such documentation as deemed necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee’s decision or the grantee’s failure to act on an application.

(g) The requirements of this section may not be waived.

Subpart B — Appeals by Grantees

1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in Sec. 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by Sec. 1303.5 or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

- (1) The grounds for the proposed suspension;
- (2) The effective date of the proposed suspension;
- (3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;
- (4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;
- (5) Invitation to correct the deficiency by voluntary action; and
- (6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may at his or her discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, the official will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting, or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, the official may suspend financial assistance in whole or in part and under such terms and conditions as he or she specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in Sec. 1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with Sec. 1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will be not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an

amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted.

(k) The responsible HHS official may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his or her own initiative or upon a satisfactory showing that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be re-imposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with Sec. 1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance in whole or in part without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of:

- (1) Substantial injury to property or loss of project funds; or
- (2) Violation of a Federal, State, or local criminal statute; or
- (3) If staff or participants' health and safety are at risk.

(b) The notice of summary suspension will be given to the grantee as required by Sec. 1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) The notice must include the following items:

- (1) The effective date of the suspension;
- (2) The grounds for the suspension;

(3) The extent of the terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five workdays after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five workdays after the grantee's request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two workdays of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with Sec. 1303.14 or Sec. 1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of Sec. 1303.13 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the circumstances described in paragraph (f)(4) or (h)(1) of this section exist.

(h)

(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and funding shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be re-imposed with or without further proceedings.

1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in paragraph Sec. 1303.12(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subparts B and C of 45 CFR part 1302.

(f) Any appeal to the Departmental Appeals Board must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, or unclaimed. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted

the suspension, its activities during the period of the suspension remain outside the scope of the program.

Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termination action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.

1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

- (1) The grantee is no longer financially viable;
- (2) The grantee has lost the requisite legal status or permits;
- (3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;
- (4) The grantee has failed to timely correct one or more deficiencies as defined in 45 CFR Part 1304;
- (5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;
- (6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;
- (7) The grantee has failed to comply with the requirements of the Head Start Act;
- (8) The grantee is debarred from receiving Federal grants or contracts;
- (9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

(1) The violations or actions justifying the termination.

(2) The fact that the termination may be appealed within 10 days to the Departmental Appeals Board (with a copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841. Such an appeal must be in writing and must fully set forth the grounds for the appeal and be accompanied by all of the documentation that the grantee believes is relevant and supportive of its position.

(3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

(4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.

(5) Information that the grantee has a right to request a hearing in writing within a period of time specified in the notice which is not later than 10 days from the date of sending the notice.

(d)

(1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.

(3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.

(4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.

(e) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the

same time the grantee's request is made of ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(f) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.

(g) If the responsible HHS official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(h) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

(i) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of written information and argument submitted by the parties to the Departmental Appeals Board.

(j) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within ten work days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in Sec. 1303.14(b) of this part.

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with Sec. 1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) A statement that indicates the grounds which justify the proposed denial of refunding;

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) A statement that, if the grantee wishes to appeal the denial of refunding of financial assistance, it must appeal directly to the Departmental Appeals Board, and send a copy of the appeal to the responsible HHS official and the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations.

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

1303.16 Conduct of hearing.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those stipulated in a pre-hearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination, denial of refunding or suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity the ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

Subpart C — Appeals by Current or Prospective Delegate Agencies

1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 day period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under Sec. 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of its position, including all written material or documentation submitted to the grantee under the procedures set forth in Sec. 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)

(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties requests an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the

responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request or the expiration of the time for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance; and

(4) Any other evidence deemed relevant by the responsible HHS official.

1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten workdays after the informal meeting. The decision, including a statement of the reasons therefor, will be in writing, and will be served on the parties within five workdays from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five workdays of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of an agreement to the grantee for prompt reconsideration and decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 workdays after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five workdays of its receipt of that decision. Any such appeal must comply with the requirements of Sec. 1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of the fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

1303.24 OMB control number.

The collection of information requirements in sections 1303.10 through 1303.23 of this part were approved on January 22, 1993, by the Office of Management and Budget and assigned OMB control number 0980-0242.

PART 1304 – PROGRAM PERFORMANCE
STANDARDS FOR OPERATION OF HEAD START
PROGRAMS BY GRANTEEES AND DELEGATE AGENCIES

PART 1304 – PROGRAM PERFORMANCE
STANDARDS FOR OPERATION OF HEAD START
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Subpart A – General

1304.1 Purpose and scope.

This part describes regulations implementing sections 641A, 644(a) and (c), and 645A(h) of the Head Start Act, as amended (42 U.S.C. 9801 et seq.). Section 641A, paragraph (a)(3)(C) directs the Secretary of Health and Human Services to review and revise, as necessary, the Head Start Program Performance Standards in effect under prior law. This paragraph further provides that any revisions should not result in an elimination or reduction of requirements regarding the scope or types of Head Start services to a level below that of the requirements in effect on November 2, 1978. Section 641A(a) directs the Secretary to issue regulations establishing performance standards and minimum requirements with respect to health, education, parent involvement, nutrition, social, transition, and other Head Start services as well as administrative and financial management, facilities, and other appropriate program areas. Sections 644(a) and (c) require the issuance of regulations setting standards for the organization, management, and administration of Head Start programs. Section 645A(h) requires that the Secretary develop and publish performance standards for the newly authorized program for low-income pregnant women and families with infants and toddlers, entitled "Early Head Start." The following regulations respond to these provisions in the Head Start Act, as amended, for new or revised Head Start Program Performance Standards. These new regulations define standards and minimum requirements for the entire range of Early Head Start and Head Start services, including those specified in the authorizing legislation. They are applicable to both Head Start and Early Head Start programs, with the exceptions noted, and are to be used in conjunction with the regulations at 45 CFR parts 1301, 1302, 1303, 1305, 1306, and 1308.

1304.2 Effective dates.

Early Head Start and Head Start grantee and delegate agencies must comply with these requirements on January 1, 1998. Nothing in this part prohibits grantee or delegate agencies from voluntarily complying with these regulations prior to the effective date.

1304.3 Definitions.

(a) As used in this part:

(1) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2) Children with disabilities means, for children ages 3 to 5, those with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, need special education and related services. The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services. Infants and toddlers with disabilities are those from birth to three years, as identified under the Part C Program (Individuals with Disabilities Education Act) in their State.

(3) Collaboration and collaborative relationships:

(i) With other agencies, means planning and working with them in order to improve, share and augment services, staff, information and funds; and

(ii) With parents, means working in partnership with them.

(4) Contagious means capable of being transmitted from one person to another.

(5) Curriculum means a written plan that includes:

(i) The goals for children's development and learning;

(ii) The experiences through which they will achieve these goals;

(iii) What staff and parents do to help children achieve these goals; and

(iv) The materials needed to support the implementation of the curriculum.

The curriculum is consistent with the Head Start Program Performance Standards and is based on sound child development principles about how children grow and learn.

(6) Deficiency means:

(i) An area or areas of performance in which an Early Head Start or Head Start grantee agency is not in compliance with State or Federal requirements, including but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title, and which involves:

- (A) A threat to the health, safety, or civil rights of children or staff;
- (B) A denial to parents of the exercise of their full roles and responsibilities related to program governance;
- (C) A failure to perform substantially the requirements related to Early Childhood Development and Health Services, Family and Community Partnerships, or Program Design and Management; or
- (D) The misuse of Head Start grant funds.

(ii) The loss of legal status or financial viability, as defined in part 1302 of this title, loss of permits, debarment from receiving Federal grants or contracts or the improper use of Federal funds; or

(iii) Any other violation of Federal or State requirements including, but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title, and which the grantee has shown an unwillingness or inability to correct within the period specified by the responsible HHS official, of which the responsible HHS official has given the grantee written notice of pursuant to section 1304.61.

(7) Developmentally appropriate means any behavior or experience that is appropriate for the age span of the children and is implemented with attention to the different needs, interests, and developmental levels and cultural backgrounds of individual children.

(8) Early Head Start program means a program that provides low-income pregnant women and families with children from birth to age 3 with family-centered services that facilitate child development, support parental roles, and promote self-sufficiency.

(9) Family means for the purposes of the regulations in this part all persons:

(i) Living in the same household who are:

(A) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program; or

(B) Related to the child by blood, marriage, or adoption; or

(ii) Related to the child enrolling or participating in the program as parents or siblings, by blood, marriage, or adoption.

(10) Guardian means a person legally responsible for a child.

(11) Health means medical, dental, and mental well-being.

(12) Home visitor means the staff member in the home-based program option assigned to work with parents to provide comprehensive services to children and their families through home visits and group socialization activities.

(13) Individualized Family Service Plan (IFSP) means a written plan for providing early intervention services to a child eligible under Part H of the Individuals with Disabilities Act (IDEA). (See 34 CFR 303.340-303.346 for regulations concerning IFSP's.)

(14) Minimum requirements means that each Early Head Start and Head Start grantee must demonstrate a level of compliance with Federal and State requirements such that no deficiency, as defined in this part, exists in its program.

(15) Policy group means the formal group of parents and community representatives required to be established by the agency to assist in decisions about the planning and operation of the program.

(16) Program attendance means the actual presence and participation in the program of a child enrolled in an Early Head Start or Head Start program.

(17) Referral means directing an Early Head Start or Head Start child or family member(s) to an appropriate source or resource for help, treatment or information.

(18) Staff means paid adults who have responsibilities related to children and their families who are enrolled in Early Head Start or Head Start programs.

(19) Teacher means an adult who has direct responsibility for the care and development of children from birth to 5 years of age in a center- based setting.

(20) Volunteer means an unpaid person who is trained to assist in implementing ongoing program activities on a regular basis under the supervision of a staff person in areas such as health, education, transportation, nutrition, and management.

(b) In addition to the definitions in this section, the definitions as set forth in 45 CFR 1301.2, 1302.2, 1303.2, 1305.2, 1306.3, and 1308.3 also apply, as used in this part.

PART 1304--PROGRAM PERFORMANCE STANDARDS FOR THE OPERATION OF
HEAD START PROGRAMS BY GRANTEE AND DELEGATE AGENCIES

Subpart B--Early Childhood Development and Health Services

§ 1304.20 Child health and developmental services.

(a) Determining child health status.

(1) In collaboration with the parents and as quickly as possible, but no later than 90 calendar days (with the exception noted in paragraph (a)(2) of this section) from the child's entry into the program (for the purposes of 45 CFR 1304.20(a)(1), 45 CFR 1304.20(a)(2), and 45 CFR 1304.20(b)(1), "entry" means the first day that Early Head Start or Head Start services are provided to the child), grantee and delegate agencies must:

(i) Make a determination as to whether or not each child has an ongoing source of continuous, accessible health care. If a child does not have a source of ongoing health care, grantee and delegate agencies must assist the parents in accessing a source of care;

(ii) Obtain from a health care professional a determination as to whether the child is up-to-date on a schedule of age appropriate preventive and primary health care which includes medical, dental and mental health. Such a schedule must incorporate the requirements for a schedule of well child care utilized by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the State in which they operate, and the latest immunization recommendations issued by the Centers for Disease Control and Prevention, as well as any additional recommendations from the local Health Services Advisory Committee that are based on prevalent community health problems:

(A) For children who are not up-to-date on an age-appropriate schedule of well child care, grantee and delegate agencies must assist parents in making the necessary arrangements to bring the child up-to-date;

(B) For children who are up-to-date on an age-appropriate schedule of well child care, grantee and delegate agencies must ensure that they continue to follow the recommended schedule of well child care; and

(C) Grantee and delegate agencies must establish procedures to track the provision of health care services.

(iii) Obtain or arrange further diagnostic testing, examination, and treatment by an appropriate licensed or certified professional for each child with an observable, known or suspected health or developmental problem; and

(iv) Develop and implement a follow-up plan for any condition identified in 45 CFR 1304.20(a)(1)(ii) and (iii) so that any needed treatment has begun.

(2) Grantee and delegate agencies operating programs of shorter durations (90 days or less) must complete the above processes and those in 45 CFR 1304.20(b)(1) within 30 calendar days from the child's entry into the program.

(b) Screening for developmental, sensory, and behavioral concerns.

(1) In collaboration with each child's parent, and within 45 calendar days of the child's entry into the program, grantee and delegate agencies must perform or obtain linguistically and age appropriate screening procedures to identify concerns regarding a child's developmental, sensory (visual and auditory), behavioral, motor, language, social, cognitive, perceptual, and emotional skills (see 45 CFR 1308.6(b)(3) for additional information). To the greatest extent possible, these screening procedures must be sensitive to the child's cultural background.

(2) Grantee and delegate agencies must obtain direct guidance from a mental health or child development professional on how to use the findings to address identified needs.

(3) Grantee and delegate agencies must utilize multiple sources of information on all aspects of each child's development and behavior, including input from family members, teachers, and other relevant staff who are familiar with the child's typical behavior.

(c) Extended follow-up and treatment.

(1) Grantee and delegate agencies must establish a system of ongoing communication with the parents of children with identified health needs to facilitate the implementation of the follow-up plan.

(2) Grantee and delegate agencies must provide assistance to the parents, as needed, to enable them to learn how to obtain any prescribed medications, aids or equipment for medical and dental conditions.

(3) Dental follow-up and treatment must include:

(i) Fluoride supplements and topical fluoride treatments as recommended by dental professionals in communities where a lack of adequate fluoride levels has been determined or for every child with moderate to severe tooth decay; and

(ii) Other necessary preventive measures and further dental treatment as recommended by the dental professional.

(4) Grantee and delegate agencies must assist with the provision of related services addressing health concerns in accordance with the Individualized Education Program (IEP) and the Individualized Family Service Plan (IFSP).

(5) Early Head Start and Head Start funds may be used for professional medical and dental services when no other source of funding is available. When Early Head Start or

Head Start funds are used for such services, grantee and delegate agencies must have written documentation of their efforts to access other available sources of funding.

(d) Ongoing care. In addition to assuring children's participation in a schedule of well child care, as described in § 1304.20(a) of this part, grantee and delegate agencies must implement ongoing procedures by which Early Head Start and Head Start staff can identify any new or recurring medical, dental, or developmental concerns so that they may quickly make appropriate referrals. These procedures must include: periodic observations and recordings, as appropriate, of individual children's developmental progress, changes in physical appearance (e.g., signs of injury or illness) and emotional and behavioral patterns. In addition, these procedures must include observations from parents and staff.

(e) Involving parents. In conducting the process, as described in §§ 1304.20 (a), (b), and (c), and in making all possible efforts to ensure that each child is enrolled in and receiving appropriate health care services, grantee and delegate agencies must:

(1) Consult with parents immediately when child health or developmental problems are suspected or identified;

(2) Familiarize parents with the use of and rationale for all health and developmental procedures administered through the program or by contract or agreement, and obtain advance parent or guardian authorization for such procedures. Grantee and delegate agencies also must ensure that the results of diagnostic and treatment procedures and ongoing care are shared with and understood by the parents;

(3) Talk with parents about how to familiarize their children in a developmentally appropriate way and in advance about all of the procedures they will receive while enrolled in the program;

(4) Assist parents in accordance with 45 CFR 1304.40(f)(2) (i) and (ii) to enroll and participate in a system of ongoing family health care and encourage parents to be active partners in their children's health care process; and

(5) If a parent or other legally responsible adult refuses to give authorization for health services, grantee and delegate agencies must maintain written documentation of the refusal.

(f) Individualization of the program.

(1) Grantee and delegate agencies must use the information from the screening for developmental, sensory, and behavioral concerns, the ongoing observations, medical and dental evaluations and treatments, and insights from the child's parents to help staff and parents determine how the program can best respond to each child's individual characteristics, strengths and needs.

(2) To support individualization for children with disabilities in their programs, grantee and delegate agencies must assure that:

(i) Services for infants and toddlers with disabilities and their families support the attainment of the expected outcomes contained in the Individualized Family Service Plan (IFSP) for children identified under the infants and toddlers with disabilities program (Part H) of the Individuals with Disabilities Education Act, as implemented by their State or Tribal government;

(ii) Enrolled families with infants and toddlers suspected of having a disability are promptly referred to the local early intervention agency designated by the State Part H plan to coordinate any needed evaluations, determine eligibility for Part H services, and coordinate the development of an IFSP for children determined to be eligible under the guidelines of that State's program. Grantee and delegate agencies must support parent participation in the evaluation and IFSP development process for infants and toddlers enrolled in their program;

(iii) They participate in and support efforts for a smooth and effective transition for children who, at age three, will need to be considered for services for preschool age children with disabilities; and

(iv) They participate in the development and implementation of the Individualized Education Program (IEP)

§ 1304.21 Education and early childhood development.

(a) Child development and education approach for all children.

(1) In order to help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life, grantee and delegate agencies' approach to child development and education must:

(i) Be developmentally and linguistically appropriate, recognizing that children have individual rates of development as well as individual interests, temperaments, languages, cultural backgrounds, and learning styles;

(ii) Be inclusive of children with disabilities, consistent with their Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP) (see 45 CFR 1308.19);

(iii) Provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition;

(iv) Provide a balanced daily program of child-initiated and adult-directed activities, including individual and small group activities; and

(v) Allow and enable children to independently use toilet facilities when it is developmentally appropriate and when efforts to encourage toilet training are supported by the parents.

(2) Parents must be:

(i) Invited to become integrally involved in the development of the program's curriculum and approach to child development and education;

(ii) Provided opportunities to increase their child observation skills and to share assessments with staff that will help plan the learning experiences; and

(iii) Encouraged to participate in staff-parent conferences and home visits to discuss their child's development and education (see 45 CFR 1304.40(e)(4) and 45 CFR 1304.40(i)(2)).

(3) Grantee and delegate agencies must support social and emotional development by:

(i) Encouraging development which enhances each child's strengths by:

(A) Building trust;

(B) Fostering independence;

(C) Encouraging self-control by setting clear, consistent limits, and having realistic expectations;

(D) Encouraging respect for the feelings and rights of others; and

(E) Supporting and respecting the home language, culture, and family composition of each child in ways that support the child's health and wellbeing; and

(ii) Planning for routines and transitions so that they occur in a timely, predictable and unrushed manner according to each child's needs.

(4) Grantee and delegate agencies must provide for the development of each child's cognitive and language skills by:

(i) Supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration;

(ii) Ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue;

(iii) Promoting interaction and language use among children and between children and adults; and

(iv) Supporting emerging literacy and numeracy development through materials and activities according to the developmental level of each child.

(5) In center-based settings, grantee and delegate agencies must promote each child's physical development by:

(i) Providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross motor skills;

(ii) Providing appropriate time, space, equipment, materials and adult guidance for the development of fine motor skills according to each child's developmental level; and

(iii) Providing an appropriate environment and adult guidance for the participation of children with special needs.

(6) In home-based settings, grantee and delegate agencies must encourage parents to appreciate the importance of physical development, provide opportunities for children's outdoor and indoor active play, and guide children in the safe use of equipment and materials.

(b) Child development and education approach for infants and toddlers.

- (1) Grantee and delegate agencies' program of services for infants and toddlers must encourage (see 45 CFR 1304.3(a)(5) for a definition of curriculum):
 - (i) The development of secure relationships in out-of-home care settings for infants and toddlers by having a limited number of consistent teachers over an extended period of time. Teachers must demonstrate an understanding of the child's family culture and, whenever possible, speak the child's language (see 45 CFR 1304.52(g)(2));
 - (ii) Trust and emotional security so that each child can explore the environment according to his or her developmental level; and
 - (iii) Opportunities for each child to explore a variety of sensory and motor experiences with support and stimulation from teachers and family members.
 - (2) Grantee and delegate agencies must support the social and emotional development of infants and toddlers by promoting an environment that:
 - (i) Encourages the development of self-awareness, autonomy, and self-expression; and
 - (ii) Supports the emerging communication skills of infants and toddlers by providing daily opportunities for each child to interact with others and to express himself or herself freely.
 - (3) Grantee and delegate agencies must promote the physical development of infants and toddlers by:
 - (i) Supporting the development of the physical skills of infants and toddlers including gross motor skills, such as grasping, pulling, pushing, crawling, walking, and climbing; and
 - (ii) Creating opportunities for fine motor development that encourage the control and coordination of small, specialized motions, using the eyes, mouth, hands, and feet.
- (c) Child development and education approach for preschoolers.
- (1) Grantee and delegate agencies, in collaboration with the parents, must implement a curriculum (see 45 CFR 1304.3(a)(5)) that:
 - (i) Supports each child's individual pattern of development and learning;
 - (ii) Provides for the development of cognitive skills by encouraging each child to organize his or her experiences, to understand concepts, and to develop age appropriate literacy, numeracy, reasoning, problem solving and decision-making skills which form a foundation for school readiness and later school success;
 - (iii) Integrates all educational aspects of the health, nutrition, and mental health services into program activities;
 - (iv) Ensures that the program environment helps children develop emotional security and facility in social relationships;
 - (v) Enhances each child's understanding of self as an individual and as a member of a group;
 - (vi) Provides each child with opportunities for success to help develop feelings of competence, self-esteem, and positive attitudes toward learning; and
 - (vii) Provides individual and small group experiences both indoors and outdoors.

- (2) Staff must use a variety of strategies to promote and support children's learning and developmental progress based on the observations and ongoing assessment of each child (see 45 CFR 1304.20(b), 1304.20(d), and 1304.20(e)).

§ 1304.22 Child health and safety.

- (a) Health emergency procedures. Grantee and delegate agencies operating center-based programs must establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained. At a minimum, these policies and procedures must include:
- (1) Posted policies and plans of action for emergencies that require rapid response on the part of staff (e.g., a child choking) or immediate medical or dental attention;
 - (2) Posted locations and telephone numbers of emergency response systems. Up-to-date family contact information and authorization for emergency care for each child must be readily available;
 - (3) Posted emergency evacuation routes and other safety procedures for emergencies (e.g., fire or weather-related) which are practiced regularly (see 45 CFR 1304.53 for additional information);
 - (4) Methods of notifying parents in the event of an emergency involving their child; and
 - (5) Established methods for handling cases of suspected or known child abuse and neglect that are in compliance with applicable Federal, State, or Tribal laws.
- (b) Conditions of short-term exclusion and admittance.
- (1) Grantee and delegate agencies must temporarily exclude a child with a short-term injury or an acute or short-term contagious illness, that cannot be readily accommodated, from program participation in center-based activities or group experiences, but only for that generally short-term period when keeping the child in care poses a significant risk to the health or safety of the child or anyone in contact with the child.
 - (2) Grantee and delegate agencies must not deny program admission to any child, nor exclude any enrolled child from program participation for a long-term period, solely on the basis of his or her health care needs or medication requirements unless keeping the child in care poses a significant risk to the health or safety of the child or anyone in contact with the child and the risk cannot be eliminated or reduced to an acceptable level through reasonable modifications in the grantee or delegate agency's policies, practices or procedures or by providing appropriate auxiliary aids which would enable the child to participate without fundamentally altering the nature of the program.
 - (3) Grantee and delegate agencies must request that parents inform them of any health or safety needs of the child that the program may be required to address. Programs must share information, as necessary, with appropriate staff regarding accommodations needed in accordance with the program's confidentiality policy.

(c) Medication administration. Grantee and delegate agencies must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child. Grantee and delegate agencies may modify these procedures as necessary to satisfy State or Tribal laws, but only where such laws are consistent with Federal laws. The procedures must include:

- (1) Labeling and storing, under lock and key, and refrigerating, if necessary, all medications, including those required for staff and volunteers;
- (2) Designating a trained staff member(s) or school nurse to administer, handle and store child medications;
- (3) Obtaining physicians' instructions and written parent or guardian authorizations for all medications administered by staff;
- (4) Maintaining an individual record of all medications dispensed, and reviewing the record regularly with the child's parents;
- (5) Recording changes in a child's behavior that have implications for drug dosage or type, and assisting parents in communicating with their physician regarding the effect of the medication on the child; and
- (6) Ensuring that appropriate staff members can demonstrate proper techniques for administering, handling, and storing medication, including the use of any necessary equipment to administer medication.

(d) Injury prevention. Grantee and delegate agencies must:

- (1) Ensure that staff and volunteers can demonstrate safety practices; and
- (2) Foster safety awareness among children and parents by incorporating it into child and parent activities.

(e) Hygiene.

- (1) Staff, volunteers, and children must wash their hands with soap and running water at least at the following times:
 - (i) After diapering or toilet use;
 - (ii) Before food preparation, handling, consumption, or any other food-related activity (e.g., setting the table);
 - (iii) Whenever hands are contaminated with blood or other bodily fluids; and

- (iv) After handling pets or other animals.
- (2) Staff and volunteers must also wash their hands with soap and running water:
- (i) Before and after giving medications;
 - (ii) Before and after treating or bandaging a wound (nonporous gloves should be worn if there is contact with blood or blood-containing body fluids); and
 - (iii) After assisting a child with toilet use.
- (3) Nonporous (e.g., latex) gloves must be worn by staff when they are in contact with spills of blood or other visibly bloody bodily fluids.
- (4) Spills of bodily fluids (e.g., urine, feces, blood, saliva, nasal discharge, eye discharge or any fluid discharge) must be cleaned and disinfected immediately in keeping with professionally established guidelines (e.g., standards of the Occupational Safety Health Administration, U.S. Department of Labor). Any tools and equipment used to clean spills of bodily fluids must be cleaned and disinfected immediately. Other blood-contaminated materials must be disposed of in a plastic bag with a secure tie.
- (5) Grantee and delegate agencies must adopt sanitation and hygiene procedures for diapering that adequately protect the health and safety of children served by the program and staff. Grantee and delegate agencies must ensure that staff properly conduct these procedures.
- (6) Potties that are utilized in a center-based program must be emptied into the toilet and cleaned and disinfected after each use in a utility sink used for this purpose.
- (7) Grantee and delegate agencies operating programs for infants and toddlers must space cribs and cots at least three feet apart to avoid spreading contagious illness and to allow for easy access to each child.
- (f) First aid kits.
- (1) Readily available, well-supplied first aid kits appropriate for the ages served and the program size must be maintained at each facility and available on outings away from the site. Each kit must be accessible to staff members at all times, but must be kept out of the reach of children.
 - (2) First aid kits must be restocked after use, and an inventory must be conducted at regular intervals.

Sec. 1304.23 Child nutrition.

- (a) Identification of nutritional needs. Staff and families must work together to identify each child's nutritional needs, taking into account staff and family discussions concerning:
- (1) Any relevant nutrition-related assessment data (height, weight, hemoglobin/hematocrit) obtained under 45 CFR 1304.20(a);
 - (2) Information about family eating patterns, including cultural preferences, special dietary requirements for each child with nutrition-related health problems, and the feeding requirements of infants and toddlers and each child with disabilities (see 45 CFR 1308.20);
 - (3) For infants and toddlers, current feeding schedules and amounts and types of food provided, including whether breast milk or formula and baby food is used; meal patterns; new foods introduced; food intolerances and preferences; voiding patterns; and observations related to developmental changes in feeding and nutrition. This information must be shared with parents and updated regularly; and
 - (4) Information about major community nutritional issues, as identified through the Community Assessment or by the Health Services Advisory Committee or the local health department.
- (b) Nutritional services.
- (1) Grantee and delegate agencies must design and implement a nutrition program that meets the nutritional needs and feeding requirements of each child, including those with special dietary needs and children with disabilities. Also, the nutrition program must serve a variety of foods which consider cultural and ethnic preferences and which broaden the child's food experience.
 - (i) All Early Head Start and Head Start grantee and delegate agencies must use funds from USDA Food and Consumer Services Child Nutrition Programs as the primary source of payment for meal services. Early Head Start and Head Start funds may be used to cover those allowable costs not covered by the USDA.
 - (ii) Each child in a part-day center-based setting must receive meals and snacks that provide at least $\frac{1}{3}$ of the child's daily nutritional needs. Each child in a center-based full-day program must receive meals and snacks that provide $\frac{1}{2}$ to $\frac{2}{3}$ of the child's daily nutritional needs, depending upon the length of the program day.
 - (iii) All children in morning center-based settings who have not received breakfast at the time they arrive at the Early Head Start or Head Start program must be served a nourishing breakfast.

- (iv) Each infant and toddler in center-based settings must receive food appropriate to his or her nutritional needs, developmental readiness, and feeding skills, as recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226.
 - (v) For 3- to 5-year-olds in center-based settings, the quantities and kinds of food served must conform to recommended serving sizes and minimum standards for meal patterns recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226.
 - (vi) For 3- to 5-year-olds in center-based settings or other Head Start group experiences, foods served must be high in nutrients and low in fat, sugar, and salt.
 - (vii) Meal and snack periods in center-based settings must be appropriately scheduled and adjusted, where necessary, to ensure that individual needs are met. Infants and young toddlers who need it must be fed “on demand” to the extent possible or at appropriate intervals.
- (2) Grantee and delegate agencies operating home-based program options must provide appropriate snacks and meals to each child during group socialization activities (see 45 CFR 1306.33 for information regarding home-based group socialization).
 - (3) Staff must promote effective dental hygiene among children in conjunction with meals.
 - (4) Parents and appropriate community agencies must be involved in planning, implementing, and evaluating the agencies’ nutritional services.
- (c) Meal service. Grantee and delegate agencies must ensure that nutritional services in center-based settings contribute to the development and socialization of enrolled children by providing that:
- (1) A variety of food is served which broadens each child’s food experiences;
 - (2) Food is not used as punishment or reward, and that each child is encouraged, but not forced, to eat or taste his or her food;
 - (3) Sufficient time is allowed for each child to eat;
 - (4) All toddlers and preschool children and assigned classroom staff, including volunteers, eat together family style and share the same menu to the extent possible;
 - (5) Infants are held while being fed and are not laid down to sleep with a bottle;
 - (6) Medically-based diets or other dietary requirements are accommodated; and

- (7) As developmentally appropriate, opportunity is provided for the involvement of children in food-related activities.
- (d) Family assistance with nutrition. Parent education activities must include opportunities to assist individual families with food preparation and nutritional skills.
- (e) Food safety and sanitation.
 - (1) Grantee and delegate agencies must post evidence of compliance with all applicable Federal, State, Tribal, and local food safety and sanitation laws, including those related to the storage, preparation and service of food and the health of food handlers. In addition, agencies must contract only with food service vendors that are licensed in accordance with State, Tribal or local laws.
 - (2) For programs serving infants and toddlers, facilities must be available for the proper storage and handling of breast milk and formula.

Sec. 1304.24 Child mental health.

(a) Mental health services.

- (1) Grantee and delegate agencies must work collaboratively with parents (see 45 CFR 1304.40(f) for issues related to parent education) by:**
 - (i) Soliciting parental information, observations, and concerns about their child's mental health;**
 - (ii) Sharing staff observations of their child and discussing and anticipating with parents their child's behavior and development, including separation and attachment issues;**
 - (iii) Discussing and identifying with parents appropriate responses to their child's behaviors;**
 - (iv) Discussing how to strengthen nurturing, supportive environments and relationships in the home and at the program;**
 - (v) Helping parents to better understand mental health issues; and**
 - (vi) Supporting parents' participation in any needed mental health interventions.**
- (2) Grantee and delegate agencies must secure the services of mental health professionals on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health; and**
- (3) Mental health program services must include a regular schedule of on-site mental health consultation involving the mental health professional, program staff, and parents on how to:**
 - (i) Design and implement program practices responsive to the identified behavioral and mental health concerns of an individual child or group of children;**
 - (ii) Promote children's mental wellness by providing group and individual staff and parent education on mental health issues;**
 - (iii) Assist in providing special help for children with atypical behavior or development; and**
 - (iv) Utilize other community mental health resources, as needed.**

Subpart C—Family and Community Partnerships

Sec. 1304.40 Family partnerships.

(a) Family goal setting.

- (1) Grantee and delegate agencies must engage in a process of collaborative partnership-building with parents to establish mutual trust and to identify family goals, strengths, and necessary services and other supports. This process must be initiated as early after enrollment as possible and it must take into consideration each family's readiness and willingness to participate in the process.
- (2) As part of this ongoing partnership, grantee and delegate agencies must offer parents opportunities to develop and implement individualized family partnership agreements that describe family goals, responsibilities, timetables and strategies for achieving these goals as well as progress in achieving them. In home-based program options, this agreement must include the above information as well as the specific roles of parents in home visits and group socialization activities (see 45 CFR 1306.33(b)).
- (3) To avoid duplication of effort, or conflict with, any preexisting family plans developed between other programs and the Early Head Start or Head Start family, the family partnership agreement must take into account, and build upon as appropriate, information obtained from the family and other community agencies concerning preexisting family plans. Grantee and delegate agencies must coordinate, to the extent possible, with families and other agencies to support the accomplishment of goals in the preexisting plans.
- (4) A variety of opportunities must be created by grantee and delegate agencies for interaction with parents throughout the year.
- (5) Meetings and interactions with families must be respectful of each family's diversity and cultural and ethnic background.

(b) Accessing community services and resources.

- (1) Grantee and delegate agencies must work collaboratively with all participating parents to identify and continually access, either directly or through referrals, services and resources that are responsive to each family's interests and goals, including:
 - (i) Emergency or crisis assistance in areas such as food, housing, clothing, and transportation;
 - (ii) Education and other appropriate interventions, including opportunities for parents to participate in counseling programs or to receive information on mental health issues that place families at risk, such as substance abuse, child abuse and neglect, and domestic violence; and

(iii) Opportunities for continuing education and employment training and other employment services through formal and informal networks in the community.

(2) Grantee and delegate agencies must follow-up with each family to determine whether the kind, quality, and timeliness of the services received through referrals met the families' expectations and circumstances.

(c) Services to pregnant women who are enrolled in programs serving pregnant women, infants, and toddlers.

(1) Early Head Start grantee and delegate agencies must assist pregnant women to access comprehensive prenatal and postpartum care, through referrals, immediately after enrollment in the program. This care must include:

(i) Early and continuing risk assessments, which include an assessment of nutritional status as well as nutrition counseling and food assistance, if necessary;

(ii) Health promotion and treatment, including medical and dental examinations on a schedule deemed appropriate by the attending health care providers as early in the pregnancy as possible; and

(iii) Mental health interventions and follow-up, including substance abuse prevention and treatment services, as needed.

(2) Grantee and delegate agencies must provide pregnant women and other family members, as appropriate, with prenatal education on fetal development (including risks from smoking and alcohol), labor and delivery, and postpartum recovery (including maternal depression).

(3) Grantee and delegate agencies must provide information on the benefits of breast feeding to all pregnant and nursing mothers. For those who choose to breast feed in center-based programs, arrangements must be provided as necessary.

(d) Parent involvement—general.

(1) In addition to involving parents in program policy-making and operations (see 45 CFR 1304.50), grantee and delegate agencies must provide parent involvement and education activities that are responsive to the ongoing and expressed needs of the parents, both as individuals and as members of a group. Other community agencies should be encouraged to assist in the planning and implementation of such programs.

(2) Early Head Start and Head Start settings must be open to parents during all program hours. Parents must be welcomed as visitors and encouraged to observe children as often as possible and to participate with children in group activities. The participation

of parents in any program activity must be voluntary, and must not be required as a condition of the child's enrollment.

- (3) Grantee and delegate agencies must provide parents with opportunities to participate in the program as employees or volunteers (see 45 CFR 1304.52(b)(3) for additional requirements about hiring parents).

(e) Parent involvement in child development and education.

- (1) Grantee and delegate agencies must provide opportunities to include parents in the development of the program's curriculum and approach to child development and education (see 45 CFR 1304.3(a)(5) for a definition of curriculum).
- (2) Grantees and delegate agencies operating home-based program options must build upon the principles of adult learning to assist, encourage, and support parents as they foster the growth and development of their children.
- (3) Grantee and delegate agencies must provide opportunities for parents to enhance their parenting skills, knowledge, and understanding of the educational and developmental needs and activities of their children and to share concerns about their children with program staff (see 45 CFR 1304.21 for additional requirements related to parent involvement).
- (4) Grantee and delegate agencies must provide, either directly or through referrals to other local agencies, opportunities for children and families to participate in family literacy services by:
 - (i) Increasing family access to materials, services, and activities essential to family literacy development; and
 - (ii) Assisting parents as adult learners to recognize and address their own literacy goals.
- (5) In addition to the two home visits, teachers in center-based programs must conduct staff-parent conferences, as needed, but no less than two per program year, to enhance the knowledge and understanding of both staff and parents of the educational and developmental progress and activities of children in the program (see 45 CFR 1304.21(a)(2)(iii) and 45 CFR 1304.40(i) for additional requirements about staff-parent conferences and home visits).

(f) Parent involvement in health, nutrition, and mental health education.

- (1) Grantee and delegate agencies must provide medical, dental, nutrition, and mental health education programs for program staff, parents, and families.

- (2) Grantee and delegate agencies must ensure that, at a minimum, the medical and dental health education program:
- (i) Assists parents in understanding how to enroll and participate in a system of ongoing family health care.
 - (ii) Encourages parents to become active partners in their children's medical and dental health care process and to accompany their child to medical and dental examinations and appointments; and
 - (iii) Provides parents with the opportunity to learn the principles of preventive medical and dental health, emergency first-aid, occupational and environmental hazards, and safety practices for use in the classroom and in the home. In addition to information on general topics (e.g., maternal and child health and the prevention of Sudden Infant Death Syndrome), information specific to the health needs of individual children must also be made available to the extent possible.
- (3) Grantee and delegate agencies must ensure that the nutrition education program includes, at a minimum:
- (i) Nutrition education in the selection and preparation of foods to meet family needs and in the management of food budgets; and
 - (ii) Parent discussions with program staff about the nutritional status of their child.
- (4) Grantee and delegate agencies must ensure that the mental health education program provides, at a minimum (see 45 CFR 1304.24 for issues related to mental health education):
- (i) A variety of group opportunities for parents and program staff to identify and discuss issues related to child mental health;
 - (ii) Individual opportunities for parents to discuss mental health issues related to their child and family with program staff; and
 - (iii) The active involvement of parents in planning and implementing any mental health interventions for their children.

(g) Parent involvement in community advocacy.

(1) Grantee and delegate agencies must:

- (i) Support and encourage parents to influence the character and goals of community services in order to make them more responsive to their interests and needs; and

- (ii) Establish procedures to provide families with comprehensive information about community resources (see 45 CFR 1304.41(a)(2) for additional requirements).
 - (2) Parents must be provided regular opportunities to work together, and with other community members, on activities that they have helped develop and in which they have expressed an interest.
- (h) Parent involvement in transition activities.
- (1) Grantee and delegate agencies must assist parents in becoming their children's advocate as they transition both into Early Head Start or Head Start from the home or other child care setting, and from Head Start to elementary school, a Title I of the Elementary and Secondary Education Act preschool program, or a child care setting.
 - (2) Staff must work to prepare parents to become their children's advocate through transition periods by providing that, at a minimum, a staff-parent meeting is held toward the end of the child's participation in the program to enable parents to understand the child's progress while enrolled in Early Head Start or Head Start.
 - (3) To promote the continued involvement of Head Start parents in the education and development of their children upon transition to school, grantee and delegate agencies must:
 - (i) Provide education and training to parents to prepare them to exercise their rights and responsibilities concerning the education of their children in the school setting; and
 - (ii) Assist parents to communicate with teachers and other school personnel so that parents can participate in decisions related to their children's education.
 - (4) See 45 CFR 1304.41© for additional standards related to children's transition to and from Early Head Start or Head Start.
 - (i) Parent involvement in home visits.
 - (1) Grantee and delegate agencies must not require that parents permit home visits as a condition of the child's participation in Early Head Start or Head Start center-based program options. Every effort must be made to explain the advantages of home visits to the parents.
 - (2) The child's teacher in center-based programs must make no less than two home visits per program year to the home of each enrolled child, unless the parents expressly forbid such visits, in accordance with the requirements of 45 CFR 1306.32(b)(8). Other staff working with the family must make or join home visits, as appropriate.

- (3) Grantee and delegate agencies must schedule home visits at times that are mutually convenient for the parents or primary caregivers and staff.
- (4) In cases where parents whose children are enrolled in the center-based program option ask that the home visits be conducted outside the home, or in cases where a visit to the home presents significant safety hazards for staff, the home visit may take place at an Early Head Start or Head Start site or at another safe location that affords privacy. Home visits in home-based program options must be conducted in the family's home. (See 45 CFR 1306.33 regarding the home-based program option.)
- (5) In addition, grantee and delegate agencies operating home-based program options must meet the requirements of 45 CFR 1306.33(a)(1) regarding home visits.
- (6) Grantee and delegate agencies serving infants and toddlers must arrange for health staff to visit each newborn within two weeks after the infant's birth to ensure the well-being of both the mother and the child.

Sec. 1304.41 Community partnerships.

(a) Partnerships.

- (1) Grantee and delegate agencies must take an active role in community planning to encourage strong communication, cooperation, and the sharing of information among agencies and their community partners and to improve the delivery of community services to children and families in accordance with the agency's confidentiality policies. Documentation must be maintained to reflect the level of effort undertaken to establish community partnerships (see 45 CFR 1304.51 for additional planning requirements).
- (2) Grantee and delegate agencies must take affirmative steps to establish ongoing collaborative relationships with community organizations to promote the access of children and families to community services that are responsive to their needs, and to ensure that Early Head Start and Head Start programs respond to community needs, including:
 - (i) Health care providers, such as clinics, physicians, dentists, and other health professionals;
 - (ii) Mental health providers;
 - (iii) Nutritional service providers;
 - (iv) Individuals and agencies that provide services to children with disabilities and their families (see 45 CFR 1308.4 for specific service requirements);
 - (v) Family preservation and support services;
 - (vi) Child protective services and any other agency to which child abuse must be reported under State or Tribal law;
 - (vii) Local elementary schools and other educational and cultural institutions, such as libraries and museums, for both children and families;
 - (viii) Providers of child care services; and
 - (ix) Any other organizations or businesses that may provide support and resources to families.
- (3) Grantee and delegate agencies must perform outreach to encourage volunteers from the community to participate in Early Head Start and Head Start programs.
- (4) To enable the effective participation of children with disabilities and their families, grantee and delegate agencies must make specific efforts to develop interagency agreements with local education agencies (LEAs) and other agencies within the

grantee and delegate agency's service area (see 45 CFR 1308.4(h) for specific requirements concerning interagency agreements).

(b) Advisory committees. Each grantee directly operating an Early Head Start or Head Start program, and each delegate agency, must establish and maintain a Health Services Advisory Committee which includes Head Start parents, professionals, and other volunteers from the community. Grantee and delegate agencies also must establish and maintain such other service advisory committees as they deem appropriate to address program service issues such as community partnerships and to help agencies respond to community needs.

(c) Transition services.

(1) Grantee and delegate agencies must establish and maintain procedures to support successful transitions for enrolled children and families from previous child care programs into Early Head Start or Head Start and from Head Start into elementary school, a Title I of the Elementary and Secondary Education Act preschool program, or other child care settings. These procedures must include:

- (i) Coordinating with the schools or other agencies to ensure that individual Early Head Start or Head Start children's relevant records are transferred to the school or next placement in which a child will enroll or from earlier placements to Early Head Start or Head Start;
- (ii) Outreach to encourage communication between Early Head Start or Head Start staff and their counterparts in the schools and other child care settings including principals, teachers, social workers and health staff to facilitate continuity of programming;
- (iii) Initiating meetings involving Head Start teachers and parents and kindergarten or elementary school teachers to discuss the developmental progress and abilities of individual children; and
- (iv) Initiating joint transition-related training for Early Head Start or Head Start staff and school or other child development staff.

(2) To ensure the most appropriate placement and services following participation in Early Head Start, transition planning must be undertaken for each child and family at least six months prior to the child's third birthday. The process must take into account: The child's health status and developmental level, progress made by the child and family while in Early Head Start, current and changing family circumstances, and the availability of Head Start and other child development or child care services in the community. As appropriate, a child may remain in Early Head Start, following his or her third birthday, for additional months until he or she can transition into Head Start or another program.

- (3) See 45 CFR 1304.40(h) for additional requirements related to parental participation in their child's transition to and from Early Head Start or Head Start.

Subpart D—Program Design and Management

Sec. 1304.50 Program governance.

(a) Policy Council, Policy Committee, and Parent Committee structure.

(1) Grantee and delegate agencies must establish and maintain a formal structure of shared governance through which parents can participate in policy making or in other decisions about the program. This structure must consist of the following groups, as required:

(i) Policy Council. This Council must be established at the grantee level.

(ii) Policy Committee. This Committee must be established at the delegate agency level when the program is administered in whole or in part by such agencies (see 45 CFR 1301.2 for a definition of a delegate agency).

(iii) Parent Committee. For center-based programs, this Committee must be established at the center level. For other program options, an equivalent Committee must be established at the local program level. When programs operate more than one option from the same site, the Parent Committee membership is combined unless parents choose to have a separate Committee for each option.

(2) Parent Committees must be comprised exclusively of the parents of children currently enrolled at the center level for center-based programs or at the equivalent level for other program options (see 45 CFR 1306.3(h) for a definition of a Head Start parent).

(3) All Policy Councils, Policy Committees, and Parent Committees must be established as early in the program year as possible. Grantee Policy Councils and delegate Policy Committees may not be dissolved until successor Councils or Committees are elected and seated.

(4) When a grantee has delegated the entire Head Start program to one delegate agency, it is not necessary to have a Policy Committee in addition to a grantee agency Policy Council.

(5) The governing body (the group with legal and fiscal responsibility for administering the Early Head Start or Head Start program) and the Policy Council or Policy Committee must not have identical memberships and functions.

(b) Policy group composition and formation.

(1) Each grantee and delegate agency governing body operating an Early Head Start or Head Start program must (except where such authority is ceded to the Policy Council or Policy Committee) propose, within the framework of these regulations, the total size of their respective policy groups (based on the number of centers, classrooms or other program option units, and the number of children served by their Early Head Start or Head Start program), the procedures for the election of parent members, and the procedure for the

selection of community representatives. These proposals must be approved by the Policy Council or Policy Committee.

- (2) Policy Councils and Policy Committees must be comprised of two types of representatives: parents of currently enrolled children and community representatives. At least 51 percent of the members of these policy groups must be the parents of currently enrolled children (see 45 CFR 1306.3(h) for a definition of a Head Start parent).
 - (3) Community representatives must be drawn from the local community: businesses; public or private community, civic, and professional organizations; and others who are familiar with resources and services for low-income children and families, including for example the parents of formerly enrolled children.
 - (4) All parent members of Policy Councils or Policy Committees must stand for election or re-election annually. All community representatives also must be selected annually.
 - (5) Policy Councils and Policy Committees must limit the number of one-year terms any individual may serve on either body to a combined total of three terms.
 - (6) No grantee or delegate agency staff (or members of their immediate families) may serve on Policy Councils or Policy Committees except parents who occasionally substitute for regular Early Head Start or Head Start staff. In the case of Tribal grantees, this exclusion applies only to Tribal staff who work in areas directly related to or which directly impact upon any Early Head Start or Head Start administrative, fiscal or programmatic issues.
 - (7) Parents of children currently enrolled in all program options must be proportionately represented on established policy groups.
- (c) Policy group responsibilities—general. At a minimum policy groups must be charged with the responsibilities described in paragraphs (d), (f), (g), and (h) of this section and repeated in appendix A of this section.
- (d) The Policy Council or Policy Committee.
- (1) Policy Councils and Policy Committees must work in partnership with key management staff and the governing body to develop, review, and approve or disapprove the following policies and procedures:
 - (i) All funding applications and amendments to funding applications for Early Head Start and Head Start, including administrative services, prior to the submission of such applications to the grantee (in the case of Policy Committees) or to HHS (in the case of Policy Councils);
 - (ii) Procedures describing how the governing body and the appropriate policy group will implement shared decision-making;

- (iii) Procedures for program planning in accordance with this part and the requirements of 45 CFR 1305.3;
 - (iv) The program's philosophy and long- and short-range program goals and objectives (see 45 CFR 1304.51(a) and 45 CFR 1305.3 for additional requirements regarding program planning);
 - (v) The selection of delegate agencies and their service areas (this regulation is binding on Policy Councils exclusively) (see 45 CFR 1301.33 and 45 CFR 1305.3(a) for additional requirements about delegate agency and service area selection, respectively);
 - (vi) The composition of the Policy Council or the Policy Committee and the procedures by which policy group members are chosen;
 - (vii) Criteria for defining recruitment, selection, and enrollment priorities, in accordance with the requirements of 45 CFR part 1305;
 - (viii) The annual self-assessment of the grantee or delegate agency's progress in carrying out the programmatic and fiscal intent of its grant application, including planning or other actions that may result from the review of the annual audit and findings from the Federal monitoring review (see 45 CFR 1304.51(i)(1) for additional requirements about the annual self-assessment);
 - (ix) Program personnel policies and subsequent changes to those policies, in accordance with 45 CFR 1301.31, including standards of conduct for program staff, consultants, and volunteers;
 - (x) Decisions to hire or terminate the Early Head Start or Head Start director of the grantee or delegate agency; and
 - (xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the grantee or delegate agency.
- (2) In addition, Policy Councils and Policy Committees must perform the following functions directly:
- (i) Serve as a link to the Parent Committees, grantee and delegate agency governing bodies, public and private organizations, and the communities they serve;
 - (ii) Assist Parent Committees in communicating with parents enrolled in all program options to ensure that they understand their rights, responsibilities, and opportunities in Early Head Start and Head Start and to encourage their participation in the program;

- (iii) Assist Parent Committees in planning, coordinating, and organizing program activities for parents with the assistance of staff, and ensuring that funds set aside from program budgets are used to support parent activities;
 - (iv) Assist in recruiting volunteer services from parents, community residents, and community organizations, and assist in the mobilization of community resources to meet identified needs; and
 - (v) Establish and maintain procedures for working with the grantee or delegate agency to resolve community complaints about the program.
- (e) Parent Committee. The Parent Committee must carry out at least the following minimum responsibilities:
- (1) Advise staff in developing and implementing local program policies, activities, and services;
 - (2) Plan, conduct, and participate in informal as well as formal programs and activities for parents and staff; and
 - (3) Within the guidelines established by the governing body, Policy Council, or Policy Committee, participate in the recruitment and screening of Early Head Start and Head Start employees.
- (f) Policy Council, Policy Committee, and Parent Committee reimbursement. Grantee and delegate agencies must enable low-income members to participate fully in their group responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the members.
- (g) Governing body responsibilities.
- (1) Grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body members and that inform them of the management procedures and functions necessary to implement a high quality program.
 - (2) Grantee and delegate agencies must ensure that appropriate internal controls are established and implemented to safeguard Federal funds in accordance with 45 CFR 1301.13.
- (h) Internal dispute resolution. Each grantee and delegate agency and Policy Council or Policy Committee jointly must establish written procedures for resolving internal disputes, including impasse procedures, between the governing body and policy group.

Sec. 1304.51 Management systems and procedures.

(a) Program planning.

(1) Grantee and delegate agencies must develop and implement a systematic, ongoing process of program planning that includes consultation with the program's governing body, policy groups, and program staff, and with other community organizations that serve Early Head Start and Head Start or other low-income families with young children. Program planning must include:

(i) An assessment of community strengths, needs and resources through completion of the Community Assessment, in accordance with the requirements of 45 CFR 1305.3;

(ii) The formulation of both multi-year (long-range) program goals and short-term program and financial objectives that address the findings of the Community Assessment, are consistent with the philosophy of Early Head Start and Head Start, and reflect the findings of the program's annual self-assessment; and

(iii) The development of written plan(s) for implementing services in each of the program areas covered by this part (e.g., Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management). See the requirements of 45 CFR parts 1305, 1306, and 1308.

(2) All written plans for implementing services, and the progress in meeting them, must be reviewed by the grantee or delegate agency staff and reviewed and approved by the Policy Council or Policy Committee at least annually, and must be revised and updated as needed.

(b) Communications—general. Grantee and delegate agencies must establish and implement systems to ensure that timely and accurate information is provided to parents, policy groups, staff, and the general community.

(c) Communication with families.

(1) Grantee and delegate agencies must ensure that effective two-way comprehensive communications between staff and parents are carried out on a regular basis throughout the program year.

(2) Communication with parents must be carried out in the parents' primary or preferred language or through an interpreter, to the extent feasible.

(d) Communication with governing bodies and policy groups. Grantee and delegate agencies must ensure that the following information is provided regularly to their grantee and delegate governing bodies and to members of their policy groups:

(1) Procedures and timetables for program planning;

- (2) Policies, guidelines, and other communications from HHS;
 - (3) Program and financial reports; and
 - (4) Program plans, policies, procedures, and Early Head Start and Head Start grant applications.
- (e) Communication among staff. Grantee and delegate agencies must have mechanisms for regular communication among all program staff to facilitate quality outcomes for children and families.
- (f) Communication with delegate agencies. Grantees must have a procedure for ensuring that delegate agency governing bodies, Policy Committees, and all staff receive all regulations, policies, and other pertinent communications in a timely manner.
- (g) Record-keeping systems. Grantee and delegate agencies must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding children, families, and staff and must ensure appropriate confidentiality of this information.
- (h) Reporting systems. Grantee and delegate agencies must establish and maintain efficient and effective reporting systems that:
- (1) Generate periodic reports of financial status and program operations in order to control program quality, maintain program accountability, and advise governing bodies, policy groups, and staff of program progress; and
 - (2) Generate official reports for Federal, State, and local authorities, as required by applicable law.
- (i) Program self-assessment and monitoring.
- (1) At least once each program year, with the consultation and participation of the policy groups and, as appropriate, other community members, grantee and delegate agencies must conduct a self-assessment of their effectiveness and progress in meeting program goals and objectives and in implementing Federal regulations.
 - (2) Grantees must establish and implement procedures for the ongoing monitoring of their own Early Head Start and Head Start operations, as well as those of each of their delegate agencies, to ensure that these operations effectively implement Federal regulations.
 - (3) Grantees must inform delegate agency governing bodies of any deficiencies in delegate agency operations identified in the monitoring review and must help them develop plans, including timetables, for addressing identified problems.

Sec. 1304.52 Human resources management.

(a) Organizational structure.

- (1) Grantee and delegate agencies must establish and maintain an organizational structure that supports the accomplishment of program objectives. This structure must address the major functions and responsibilities assigned to each staff position and must provide evidence of adequate mechanisms for staff supervision and support.
- (2) At a minimum, grantee and delegate agencies must ensure that the following program management functions are formally assigned to and adopted by staff within the program:
 - (i) Program management (the Early Head Start or Head Start director);
 - (ii) Management of early childhood development and health services, including child development and education; child medical, dental, and mental health; child nutrition; and, services for children with disabilities; and
 - (iii) Management of family and community partnerships, including parent activities.

(b) Staff qualifications—general.

- (1) Grantee and delegate agencies must ensure that staff and consultants have the knowledge, skills, and experience they need to perform their assigned functions responsibly.
 - (2) In addition, grantee and delegate agencies must ensure that only candidates with the qualifications specified in this part and in 45 CFR 1306.21 are hired.
 - (3) Current and former Early Head Start and Head Start parents must receive preference for employment vacancies for which they are qualified.
 - (4) Staff and program consultants must be familiar with the ethnic background and heritage of families in the program and must be able to serve and effectively communicate, to the extent feasible, with children and families with no or limited English proficiency.
- (c) Early Head Start or Head Start director qualifications. The Early Head Start or Head Start director must have demonstrated skills and abilities in a management capacity relevant to human services program management.
- (d) Qualifications of content area experts. Grantee and delegate agencies must hire staff or consultants who meet the qualifications listed below to provide content area expertise and

oversight on an ongoing or regularly scheduled basis. Agencies must determine the appropriate staffing pattern necessary to provide these functions.

- (1) Education and child development services must be supported by staff or consultants with training and experience in areas that include: The theories and principles of child growth and development, early childhood education, and family support. In addition, staff or consultants must meet the qualifications for classroom teachers, as specified in section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of teachers.
 - (2) Health services must be supported by staff or consultants with training and experience in public health, nursing, health education, maternal and child health, or health administration. In addition, when a health procedure must be performed only by a licensed/certified health professional, the agency must assure that the requirement is followed.
 - (3) Nutrition services must be supported by staff or consultants who are registered dietitians or nutritionists.
 - (4) Mental health services must be supported by staff or consultants who are licensed or certified mental health professionals with experience and expertise in serving young children and their families.
 - (5) Family and community partnership services must be supported by staff or consultants with training and experience in field(s) related to social, human, or family services.
 - (6) Parent involvement services must be supported by staff or consultants with training, experience, and skills in assisting the parents of young children in advocating and decision-making for their families.
 - (7) Disabilities services must be supported by staff or consultants with training and experience in securing and individualizing needed services for children with disabilities.
 - (8) Grantee and delegate agencies must secure the regularly scheduled or ongoing services of a qualified fiscal officer.
- (e) Home visitor qualifications. Home visitors must have knowledge and experience in child development and early childhood education; the principles of child health, safety, and nutrition; adult learning principles; and family dynamics. They must be skilled in communicating with and motivating people. In addition, they must have knowledge of community resources and the skills to link families with appropriate agencies and services.
- (f) Infant and toddler staff qualifications. Early Head Start and Head Start staff working as teachers with infants and toddlers must obtain a Child Development Associate (CDA) credential for Infant and Toddler Caregivers or an equivalent credential that addresses

comparable competencies within one year of the effective date of the final rule or, thereafter, within one year of hire as a teacher of infants and toddlers. In addition, infants and toddler teachers must have the training and experience necessary to develop consistent, stable, and supportive relationships with very young children. The training must develop knowledge of infant and toddler development, safety issues in infant and toddler care (e.g., reducing the risk of Sudden Infant Death Syndrome), and methods for communicating effectively with infants and toddlers, their parents, and other staff members.

(g) Classroom staffing and home visitors.

- (1) Grantee and delegate agencies must meet the requirements of 45 CFR 1306.20 regarding classroom staffing.
- (2) When a majority of children speak the same language, at least one classroom staff member or home visitor interacting regularly with the children must speak their language.
- (3) For center-based programs, the class size requirements specified in 45 CFR 1306.32 must be maintained through the provision of substitutes when regular classroom staff are absent.
- (4) Grantee and delegate agencies must ensure that each teacher working exclusively with infants and toddlers has responsibility for no more than four infants and toddlers and that no more than eight infants and toddlers are placed in any one group. However, if State, Tribal or local regulations specify staff:child ratios and group sizes more stringent than this requirement, the State, Tribal or local regulations must apply.
- (5) Staff must supervise the outdoor and indoor play areas in such a way that children's safety can be easily monitored and ensured.

(h) Standards of conduct.

- (1) Grantee and delegate agencies must ensure that all staff, consultants, and volunteers abide by the program's standards of conduct. These standards must specify that:
 - (i) They will respect and promote the unique identity of each child and family and refrain from stereotyping on the basis of gender, race, ethnicity, culture, religion, or disability;
 - (ii) They will follow program confidentiality policies concerning information about children, families, and other staff members;
 - (iii) No child will be left alone or unsupervised while under their care; and
 - (iv) They will use positive methods of child guidance and will not engage in corporal punishment, emotional or physical abuse, or humiliation. In addition, they will not employ methods of discipline that involve isolation, the use of food as punishment or reward, or the denial of basic needs.
- (2) Grantee and delegate agencies must ensure that all employees engaged in the award and administration of contracts or other financial awards sign statements that they

will not solicit or accept personal gratuities, favors, or anything of significant monetary value from contractors or potential contractors.

- (3) Personnel policies and procedures must include provision for appropriate penalties for violating the standards of conduct.
- (i) Staff performance appraisals. Grantee and delegate agencies must, at a minimum, perform annual performance reviews of each Early Head Start and Head Start staff member and use the results of these reviews to identify staff training and professional development needs, modify staff performance agreements, as necessary, and assist each staff member in improving his or her skills and professional competencies.
 - (j) Staff and volunteer health.
 - (1) Grantee and delegate agencies must assure that each staff member has an initial health examination (that includes screening for tuberculosis) and a periodic re-examination (as recommended by their health care provider or as mandated by State, Tribal, or local laws) so as to assure that they do not, because of communicable diseases, pose a significant risk to the health or safety of others in the Early Head Start or Head Start program that cannot be eliminated or reduced by reasonable accommodation. This requirement must be implemented consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act.
 - (2) Regular volunteers must be screened for tuberculosis in accordance with State, Tribal or local laws. In the absence of State, Tribal or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings (see 45 CFR 1304.3(20) for a definition of volunteer).
 - (3) Grantee and delegate agencies must make mental health and wellness information available to staff with concerns that may affect their job performance.
 - (k) Training and development.
 - (1) Grantee and delegate agencies must provide an orientation to all new staff, consultants, and volunteers that includes, at a minimum, the goals and underlying philosophy of Early Head Start and/or Head Start and the ways in which they are implemented by the program.
 - (2) Grantee and delegate agencies must establish and implement a structured approach to staff training and development, attaching academic credit whenever possible. This system should be designed to help build relationships among staff and to assist staff in acquiring or increasing the knowledge and skills needed to fulfill their job responsibilities, in accordance with the requirements of 45 CFR 1306.23.
 - (3) At a minimum, this system must include ongoing opportunities for staff to acquire the knowledge and skills necessary to implement the content of the Head Start Program Performance Standards. This program must also include:

- (i) Methods for identifying and reporting child abuse and neglect that comply with applicable State and local laws using, so far as possible, a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers; and
 - (ii) Methods for planning for successful child and family transitions to and from the Early Head Start or Head Start program.
- (4) Grantee and delegate agencies must provide training or orientation to Early Head Start and Head Start governing body members. Agencies must also provide orientation and ongoing training to Early Head Start and Head Start Policy Council and Policy Committee members to enable them to carry out their program governance responsibilities effectively.

Sec. 1304.53 Facilities, materials, and equipment.

- (a) Head Start physical environment and facilities.
- (1) Grantee and delegate agencies must provide a physical environment and facilities conducive to learning and reflective of the different stages of development of each child.
 - (2) Grantee and delegate agencies must provide appropriate space for the conduct of all program activities (see 45 CFR 1308.4 for specific access requirements for children with disabilities).
 - (3) The center space provided by grantee and delegate agencies must be organized into functional areas that can be recognized by the children and that allow for individual activities and social interactions.
 - (4) The indoor and outdoor space in Early Head Start or Head Start centers in use by mobile infants and toddlers must be separated from general walkways and from areas in use by preschoolers.
 - (5) Centers must have at least 35 square feet of usable indoor space per child available for the care and use of children (i.e., exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.
 - (6) Facilities owned or operated by Early Head Start and Head Start grantee or delegate agencies must meet the licensing requirements of 45 CFR 1306.30.
 - (7) Grantee and delegate agencies must provide for the maintenance, repair, safety, and security of all Early Head Start and Head Start facilities, materials and equipment.
 - (8) Grantee and delegate agencies must provide a center-based environment free of toxins, such as cigarette smoke, lead, pesticides, herbicides, and other air pollutants as well as soil and water contaminants. Agencies must ensure that no child is present during the spraying of pesticides or herbicides. Children must not return to the affected area until it is safe to do so.
 - (9) Outdoor play areas at center-based programs must be arranged so as to prevent any child from leaving the premises and getting into unsafe and unsupervised areas. Enroute to play areas, children must not be exposed to vehicular traffic without supervision.
 - (10) Grantee and delegate agencies must conduct a safety inspection, at least annually, to ensure that each facility's space, light, ventilation, heat, and other physical arrangements are consistent with the health, safety and developmental needs of children. At a minimum, agencies must ensure that:

- (i) In climates where such systems are necessary, there is a safe and effective heating and cooling system that is insulated to protect children and staff from potential burns;
- (ii) No highly flammable furnishings, decorations, or materials that emit highly toxic fumes when burned are used;
- (iii) Flammable and other dangerous materials and potential poisons are stored in locked cabinets or storage facilities separate from stored medications and food and are accessible only to authorized persons. All medications, including those required for staff and volunteers, are labeled, stored under lock and key, refrigerated if necessary, and kept out of the reach of children;
- (iv) Rooms are well lit and provide emergency lighting in the case of power failure;
- (v) Approved, working fire extinguishers are readily available;
- (vi) An appropriate number of smoke detectors are installed and tested regularly;
- (vii) Exits are clearly visible and evacuation routes are clearly marked and posted so that the path to safety outside is unmistakable (see 45 CFR 1304.22 for additional emergency procedures);
- (viii) Indoor and outdoor premises are cleaned daily and kept free of undesirable and hazardous materials and conditions;
- (ix) Paint coatings on both interior and exterior premises used for the care of children do not contain hazardous quantities of lead;
- (x) The selection, layout, and maintenance of playground equipment and surfaces minimize the possibility of injury to children;
- (xi) Electrical outlets accessible to children prevent shock through the use of child-resistant covers, the installation of child-protection outlets, or the use of safety plugs;
- (xii) Windows and glass doors are constructed, adapted, or adjusted to prevent injury to children;
- (xiii) Only sources of water approved by the local or State health authority are used;
- (xiv) Toilets and handwashing facilities are adequate, clean, in good repair, and easily reached by children. Toileting and diapering areas must be separated from areas used for cooking, eating, or children's activities;
- (xv) Toilet training equipment is provided for children being toilet trained;

(xvi) All sewage and liquid waste is disposed of through a locally approved sewer system, and garbage and trash are stored in a safe and sanitary manner; and

(xvii) Adequate provisions are made for children with disabilities to ensure their safety, comfort, and participation.

(b) Head Start equipment, toys, materials, and furniture.

(1) Grantee and delegate agencies must provide and arrange sufficient equipment, toys, materials, and furniture to meet the needs and facilitate the participation of children and adults. Equipment, toys, materials, and furniture owned or operated by the grantee or delegate agency must be:

(i) Supportive of the specific educational objectives of the local program;

(ii) Supportive of the cultural and ethnic backgrounds of the children;

(iii) Age-appropriate, safe, and supportive of the abilities and developmental level of each child served, with adaptations, if necessary, for children with disabilities;

(iv) Accessible, attractive, and inviting to children;

(v) Designed to provide a variety of learning experiences and to encourage each child to experiment and explore;

(vi) Safe, durable, and kept in good condition; and

(vii) Stored in a safe and orderly fashion when not in use.

(2) Infant and toddler toys must be made of non-toxic materials and must be sanitized regularly.

(3) To reduce the risk of Sudden Infant Death Syndrome (SIDS), all sleeping arrangements for infants must use firm mattresses and avoid soft bedding materials such as comforters, pillows, fluffy blankets or stuffed toys.

Subpart E—Implementation and Enforcement

Sec. 1304.60 Deficiencies and quality improvement plans.

- (a) Early Head Start and Head Start grantee and delegate agencies must comply with the requirements of this part in accordance with the effective date set forth in 45 CFR 1304.2.
- (b) If the responsible HHS official, as a result of information obtained from a review of an Early Head Start or a Head Start grantee, determines that the grantee has one or more deficiencies, as defined in Sec. 1304.3(a)(6) of this part, and therefore also is in violation of the minimum requirements as defined in Sec. 1304.3(a)(14) of this part, he or she will notify the grantee promptly, in writing, of the finding, identifying the deficiencies to be corrected and, with respect to each identified deficiency, will inform the grantee that it must correct the deficiency either immediately or pursuant to a Quality Improvement Plan.
- (c) An Early Head Start or Head Start grantee with one or more deficiencies to be corrected under a Quality Improvement Plan must submit to the responsible HHS official a Quality Improvement Plan specifying, for each identified deficiency, the actions that the grantee will take to correct the deficiency and the timeframe within which it will be corrected. In no case can the timeframes proposed in the Quality Improvement Plan exceed one year from the date that the grantee received official notification of the deficiencies to be corrected.
- (d) Within 30 days of the receipt of the Quality Improvement Plan, the responsible HHS official will notify the Early Head Start or Head Start grantee, in writing, of the Plan's approval or
[[Page 199]]
specify the reasons why the Plan is disapproved.
- (e) If the Quality Improvement Plan is disapproved, the Early Head Start or Head Start grantee must submit a revised Quality Improvement Plan, making the changes necessary to address the reasons that the initial Plan was disapproved.
- (f) If an Early Head Start or Head Start grantee fails to correct a deficiency, either immediately, or within the timeframe specified in the approved Quality Improvement Plan, the responsible HHS official will issue a letter of termination or denial of refunding. Head Start grantees may appeal terminations and denials of refunding under 45 CFR part 1303, while Early Head Start grantees may appeal terminations and denials of refunding only under 45 CFR part 74 or part 92. A deficiency that is not timely corrected shall be a material failure of a grantee to comply with the terms and conditions of an award within the meaning of 45 CFR 74.61(a)(1), 45 CFR 74.62 and 45 CFR 92.43(a).

Sec. 1304.61 Noncompliance.

- (a) If the responsible HHS official, as a result of information obtained from a review of an Early Head Start or Head Start grantee, determines that the grantee is not in compliance with Federal or State requirements (including, but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title) in ways that do not constitute a deficiency, he or she will notify the grantee promptly, in writing, of the finding, identifying the area or areas of noncompliance to be corrected and specifying the period in which they must corrected.

- (b) Early Head Start or Head Start grantees which have received written notification of an area of noncompliance to be corrected must correct the area of noncompliance within the time period specified by the responsible HHS official. A grantee which is unable or unwilling to correct the specified areas of noncompliance within the prescribed time period will be judged to have a deficiency which must be corrected, either immediately or pursuant to a Quality Improvement Plan (see 45 CFR 1304.3(a)(6)(iii) and 45 CFR 1304.60).

**PART 1305 — ELIGIBILITY, RECRUITMENT, SELECTION,
ENROLLMENT
AND ATTENDENCE IN HEAD START**

1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304, as applicable.

1305.2 Definitions.

- (a) Children with disabilities means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term “children with disabilities” for children aged 3 to 5, inclusive, may, at a State’s discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.
- (b) Enrollment means the official acceptance of a family by a Head Start program and the completion of all procedures necessary for a child and family to begin receiving services.
- (c) Enrollment opportunities mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.
- (d) Enrollment year means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.
- (e) Family means all persons living in the same household who are:
 - (1) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program, and
 - (2) related to the parent(s) or guardian(s) by blood, marriage, or adoption.
- (f) Funded enrollment means the number of children which the Head Start grantee is to serve, as indicated on the grant award.
- (g) Head Start eligible means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the

requirements of section 645(a) (2) of the Head Start Act. Up to ten percent of the children enrolled may be from families that exceed the low-income guidelines. Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are excepted from this limitation.

- (h) Head Start program means a Head Start grantee or its delegate agency(ies).
- (i) Income means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of “income,” which appears in U.S. Bureau of the Census, Current Population Reports, Series P-60-185.
- (j) Income guidelines means the official poverty line specified in section 652 of the Head Start Act.
- (k) Indian Tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (45 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.
- (l) Low-income family means a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.
- (m) Migrant family means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.
- (n) Recruitment means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.
- (o) Recruitment area means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.
- (p) Responsible HHS official means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

- (q) Selection means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.
- (r) Service area means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.
- (s) Vacancy means an unfilled enrollment opportunity for a child and family in the Head Start program.

1305.3 Determining community strengths and needs.

- (a) Each Early Head Start and Head Start grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally recognized Indian reservation. With regard to Indian Tribes, the service area may include areas designated as near-reservation by the Bureau of Indian Affairs (BIA) or, in the absence of such a designation, a Tribe may propose to define its service area to include nearby areas where Indian children and families native to the reservation reside, provided that the service area is approved by the Tribe's governing council. Where the service area of a Tribe includes a non-reservation area, and that area is also served by another Head Start grantee, the Tribe will be authorized to serve children from families native to the reservation residing in the non-reservation area as well as children from families residing on the reservation.
- (b) The grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and, except in situations where a near-reservation designation or other expanded service area has been approved for a Tribe, does not overlap with that of other Head Start grantees.
- (c) Each Early Head Start and Head Start grantee agency must conduct a Community Assessment within its service area once every three years. The Community Assessment must include the collection and analysis of the following information about the grantee's Early Head Start or Head Start area:
 - (1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;
 - (2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;
 - (3) The estimated number of children with disabilities four years old or younger, including types of disabilities and relevant services and resources provided to these children by community agencies;
 - (4) Data regarding the education, health, nutrition and social service needs of Head Start eligible children and their families;

- (5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;
 - (6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.
- (d) The Early Head Start and Head Start grantee and delegate agency must use information from the Community Assessment to:
- (1) Help determine the grantee's philosophy, and its long-range and short-range program objectives;
 - (2) Determine the type of component services that are most needed and the program option or options that will be implemented;
 - (3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.
 - (4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.
 - (5) Determine appropriate locations for centers and the areas to be served by home-based programs; and
 - (6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.
- (e) In each of the two years following completion of the Community Assessment the grantee agency must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the Community Assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.
- (f) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.
- (g) In determining the recruitment area when it does not include the entire service area, the grantee must:
- (1) Select an area or areas that are among those having the greatest need for Early Head Start or Head Start services as determined by the Community Assessment; and

- (2) Include as many Head Start eligible children as possible within the recruitment area, so that:
 - (h) The greatest number of Head Start eligible children can be recruited and have an opportunity to be considered for selection and enrollment in the Head Start program, and
 - (i) The Head Start program can enroll the children and families with the greatest need for its services.

1305.4 Age of children and family income eligibility.

- (a) To be eligible for Head Start services, a child must be at least three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located, except in cases where the Head Start program's approved grant provides specific authority to serve younger children. Examples of such exceptions are programs serving children of migrant families and Early Head Start programs.
- (b)
 - (1) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families.
 - (2) Except as provided in paragraph (b)(3) of this section, up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet the criteria that the program has established for selecting such children and who would benefit from Head Start services.
 - (3) A Head Start program operated by an Indian Tribe may enroll more than ten percent of its children from families whose incomes exceed the low-income guidelines when the following conditions are met:
 - (i) All children from Indian and non-Indian families living on the reservation that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program;
 - (ii) All children from income-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe's service area, who wish to be enrolled in Head Start are served by the program. In those instances in which the non-reservation area is not served by another Head Start program, the Tribe must serve all of the income-eligible Indian and non-Indian children whose families wish to enroll them in Head Start prior to serving over-income children.
 - (iii) The Tribe has the resources within its Head Start grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines without using additional funds from HHS intended to expand Head Start services; and
 - (iv) At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines.

- (4) Programs which meet the conditions of paragraph (b)(3) of this section must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.
- (c) The family income must be verified by the Head Start program before determining that a child is eligible to participate in the program.
- (d) Verification must include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance.
- (e) A signed statement by an employee of the Head Start program, identifying which of these documents was examined and stating that the child is eligible to participate in the program, must be maintained to indicate that income verification has been made.

1305.5 Recruitment of children.

- (a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases and advertising, and use of family referrals and referrals from other public and private agencies.
- (b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.
- (c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

1305.6 Selection process.

- (a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

- (b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in Sec. 1305.3(d)(6). Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.
- (c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in Sec. 1305.2(a). An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence as he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP) or Individualized Family Service Plans (IFSP), with services provided directly by Head Start or Early Head Start or in conjunction with other providers.
- (d) Each Head Start program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

1305.7 Enrollment and re-enrollment.

- (a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.
- (b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.
- (c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Children who are enrolled in a program receiving funds under the authority of section 645A of the Head Start Act (programs for families with infants and toddlers, or Early Head Start) remain income eligible while they are participating in the program. When a child moves from a program serving infants and toddlers to a Head Start program serving children age three and older, the family income must be reverified. If one agency operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the agency's

Early Head Start program, the agency must ensure, whenever possible, that the child receives Head Start services until enrolled in school.

1305.8 Attendance.

- (a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.
- (b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.
- (c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

1305.9 Policy on fees.

- (a) A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.
- (b) Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

PART 1306 — HEAD START STAFFING REQUIREMENTS
AND PROGRAM OPTIONS

Subpart A — General

1306.1 Purpose and scope.

This Part sets forth requirements for Early Head Start and Head Start program staffing and program options that all Early Head Start and Head Start grantee and delegate agencies, with the exception of Parent Child Center programs, must meet. The exception for Parent Child Centers is for fiscal years 1995, 1996, and 1997 as consistent with section 645A(e)(2) of the Head Start Act, as amended. These requirements, including those pertaining to staffing patterns, the choice of the program options to be implemented and the acceptable ranges in the implementation of those options, have been developed to help maintain and improve the quality of Early Head Start and Head Start and to help promote lasting benefits to the children and families being served. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR 1304, as applicable.

1306.2 Effective dates.

- (a) Except as provided in paragraph (b) of this section, Head Start grantees funded or refunded after June 7, 1993, must comply with these requirements by such times in their grant cycles as new groups of children begin receiving services. This does not preclude grantees from voluntarily coming into compliance with these regulations prior to the effective date.
- (b) With respect to the requirements of Sec. 1306.32(b)(2), grantees that are currently operating classes in double session center-based options for less than three and a half hours per day, but for at least three hours per day, may continue to do so until September 1, 1995, at which time they must comply with the three and one-half hour minimum class time requirement.

1306.3 Definitions.

- (a) Center-based program option means Head Start services provided to children primarily in classroom settings.
- (b) Combination program option means Head Start services provided to children in both a center setting and through intensive work with the child's parents and family at home.
- (c) Days of operation means the planned days during which children will be receiving direct Head Start component services in a classroom, on a field trip or on trips for health-related activities, in group socialization or when parents are receiving a home visit.
- (d) Double session variation means a variation of the center-based program option that operates with one teacher who works with one group of children in a morning session and a different group of children in an afternoon session.

- (e) Full-day variation means a variation of the center-based program option in which program operations continue for longer than six hours per day.
- (f) Group socialization activities means the sessions in which children and parents enrolled in the home-based or combination program option interact with other home-based or combination children and parents in a Head Start classroom, community facility, home, or on a field trip.
- (g) Head Start class means a group of children supervised and taught by two paid staff members (a teacher and a teacher aide or two teachers) and, where possible, a volunteer.
- (h) Head Start parent means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent, guardian or the person with whom the child has been placed for purposes of adoption pending a final adoption decree.
- (i) Head Start program is one operated by a Head Start grantee or delegate agency.
- (j) Home-based program option means Head Start services provided to children, primarily in the child's home, through intensive work with the child's parents and family as the primary factor in the growth and development of the child.
- (k) Home visits means the visits made to a child's home by the class teacher in a center-based program option, or home visitors in a home-based program option, for the purpose of assisting parents in fostering the growth and development of their child.
- (l) Hours of operation means the planned hours per day during which children and families will be receiving direct Head Start component services in a classroom, on a field trip, while receiving medical or dental services, or during a home visit or group socialization activity. Hours of operation do not include travel time to and from the center at the beginning and end of a session.
- (m) Parent-teacher conference means the meeting held at the Head Start center between the child's teacher and the child's parents during which the child's progress and accomplishments are discussed.

Subpart B — Head Start Program Staffing Requirements

1306.20 Program staffing patterns.

- (a) Grantees must meet the requirements of 45 CFR 1304.52(g), Classroom staffing and home visitors, in addition to the requirements of this Section.
- (b) Grantees operating center-based program options must employ two paid staff persons (a teacher and a teacher aide or two teachers) for each class. Whenever possible, there should be a third person in the classroom who is a volunteer.
- (c) Grantees operating home-based program options must employ home visitors responsible for home visits and group socialization activities.
- (d) Grantees operating a combination program option must employ, for their classroom operations, two paid staff persons, a teacher and a teacher aide or two teachers, for each class. Whenever possible, there should be a third person in the classroom who is a volunteer. They must employ staff for home visits who meet the qualifications the grantee requires for home visitors.
- (e) Classroom staff and home visitors must be able to communicate with the families they serve either directly or through a translator. They should also be familiar with the ethnic background of these families.

1306.21 Staff qualification requirements.

Head Start programs must comply with section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of classroom teachers.

1306.22 Volunteers.

- (a) Head Start programs must use volunteers to the fullest extent possible. Head Start grantees must develop and implement a system to actively recruit, train and utilize volunteers in the program.
- (b) Special efforts must be made to have volunteer participation, especially parents, in the classroom and during group socialization activities.

1306.23 Training.

- (a) Head Start grantees must provide pre-service training and in-service training opportunities to program staff and volunteers to assist them in acquiring or increasing the knowledge and skills they need to fulfill their job responsibilities. This training must be directed toward improving the ability of staff and volunteers to deliver services required by Head Start regulations and policies.

(b) Head Start grantees must provide staff with information and training about the underlying philosophy and goals of Head Start and the program options being implemented.

Subpart C — Head Start Program Options

1306.30 Provisions of comprehensive child development services.

- (a) All Head Start grantees must provide comprehensive child development services, as defined in the Head Start Performance Standards.
- (b) All Head Start grantees must provide classroom or group socialization activities for the child as well as home visits to the parents. The major purpose of the classroom or socialization activities is to help meet the child's development needs and to foster the child's social competence. The major purpose of the home visits is to enhance the parental role in the growth and development of the child.
- (c) The facilities used by Early Head Start and Head Start grantee and delegate agencies for regularly scheduled center-based and combination program option classroom activities must comply with State and local requirements concerning licensing. In cases where these licensing standards are less comprehensive or less stringent than the Head Start regulations, grantee and delegate agencies are required to assure that their facilities are in compliance with the Head Start Program Performance Standards related to health and safety as found in 45 CFR 1304.53(a), Physical environment and facilities.
- (d) All grantees must identify, secure and use community resources in the provision of services to Head Start children and their families prior to using Head Start funds for these services.

1306.31 Choosing a Head Start program option.

- (a) Grantees may choose to implement one or more than one of three program options: a center-based option, a home-based program option or a combination program option.
- (b) The program option chosen must meet the needs of the children and families as indicated by the community needs assessment conducted by the grantee.
- (c) When assigning children to a particular program option, Head Start grantees that operate more than one program option must consider such factors as the child's age, developmental level, disabilities, health or learning problems, previous preschool experiences and family situation. Grantees must also consider parents' concerns and wishes prior to making final assignments.

1306.32 Center-based program option.

- (a) Class size.
 - (1) Head Start classes must be staffed by a teacher and an aide or two teachers and, whenever possible, a volunteer.

- (2) Grantees must determine their class size based on the predominant age of the children who will participate in the class and whether or not a center-based double session variation is being implemented.
- (3) For classes serving predominantly four or five-year-old children, the average class size of that group of classes must be between 17 and 20 children, with no more than 20 children enrolled in any one class.
- (4) When double session classes serve predominantly four or five-year-old-children, the average class size of that group of classes must be between 15 and 17 children. A double session class for four or five-year old children may have no more than 17 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)
- (5) For classes serving predominantly three-year-old children, the average class size of that group of classes must be between 15 and 17 children, with no more than 17 children enrolled in any one class.
- (6) When double session classes serve predominantly three-year-old children, the average class size of that group of classes must be between 13 and 15 children. A double session class for three-year-old children may have no more than 15 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)
- (7) It is recommended that at least 13 children be enrolled in each center-based option class where feasible.
- (8) A class is considered to serve predominantly four- or five-year-old children if more than half of the children in the class will be four or five years old by whatever date is used by the State or local jurisdiction in which the Head Start program is located to determine eligibility for public school.
- (9) A class is considered to serve predominantly three-year-old children if more than half of the children in the class will be three years old by whatever date is used by the State or local jurisdiction in which Head Start is located to determine eligibility for public school.
- (10) Head Start grantees must determine the predominant age of children in the class at the start of the year. There is no need to change that determination during the year.
- (11) In some cases, State or local licensing requirements may be more stringent than these class requirements, preventing the required minimum numbers of children from being enrolled in the facility used by Head Start. Where this is the case, Head Start grantees must try to find alternative facilities that satisfy licensing requirements for the numbers of children cited above. If no alternative facilities are available, the responsible HHS official has the discretion to approve enrollment of fewer children than required above.

(12) The chart below may be used for easy reference:

Predominant age of children in the class	Funded class size [Funded enrollment]
4 and 5 year olds.	Program average of 17-20 children enrolled per class in these classes. No more than 20 children enrolled in any class.
4 and 5 year olds in double session classes.	Program average of 15-17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds.	Program average of 15-17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds in double session classes.	Program average of 13-15 children enrolled per class in these classes. No more than 15 children enrolled in any class.

(b) Center-based program option requirements.

- (1) Classes must operate for four or five days per week or some combination of four and five days per week.
- (2) Classes must operate for a minimum of three and one-half to a maximum of six hours per day with four hours being optimal.
- (3) The annual number of required days of planned class operations (days when children are scheduled to attend) is determined by the number of days per week each program operates. Programs that operate for four days per week must provide at least 128 days per year of planned class operations. Programs that operate for five days per week must provide at least 160 days per year of planned class operations. Grantees implementing a combination of four and five days per week must plan to operate between 128 and 160 days per year. The minimum number of planned days of service per year can be determined by computing the relative number of four and five day weeks that the program is in operation. All center-based program options must provide a minimum of 32 weeks of scheduled days of class operations over an eight or nine month period. Every effort should be made to schedule makeup classes using existing resources if planned class days fall below the number required per year.
- (4) Programs must make a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate makeup classes and provide these classes, when needed, to prevent the number of days of service available to the children from falling below 128 days per year.
- (5) Each individual child is not required to receive the minimum days of service, although this is to be encouraged in accordance with Head Start policies regarding attendance. The minimum number of days also does not apply to children with

disabilities whose individualized education plan may require fewer planned days of service in the Head Start program.

- (6) Head Start grantees operating migrant programs are not subject to the requirement for a minimum number of planned days, but must make every effort to provide as many days of service as possible to each migrant child and family.
 - (7) Staff must be employed for sufficient time to allow them to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to conduct home visits, to conduct health examinations, screening and immunization activities, to maintain records, and to keep service component plans and activities current and relevant. These activities should take place outside of the time scheduled for classes in center-based programs or home visits in home-based programs.
 - (8) Head Start grantees must develop and implement a system that actively encourages parents to participate in two home visits annually for each child enrolled in a center-based program option. These visits must be initiated and carried out by the child's teacher. The child may not be dropped from the program if the parents will not participate in the visits.
 - (9) Head Start grantees operating migrant programs are required to plan for a minimum of two parent-teacher conferences for each child during the time they serve that child. Should time and circumstance allow, migrant programs must make every effort to conduct home visits.
- (c) Double session variation.
- (1) A center-based option with a double session variation employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon. Because of the larger number of children and families to whom the teacher must provide services, double session program options must comply with the requirements regarding class size explained in paragraph (a) of this section and with all other center-based requirements in paragraph (b) of this section with the exceptions and additions noted in paragraphs (c) (2) and (3) of this section.
 - (2) Each program must operate classes for four days per week.
 - (3) Each double session classroom staff member must be provided adequate break time during the course of the day. In addition, teachers, aides and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment and to give individual attention to children entering and leaving the center.
- (d) Full day variation.
- (1) A Head Start grantee implementing a center-based program option may operate a full day variation and provide more than six hours of class operations per day using Head Start funds. These programs must comply with all the requirements regarding the center-based program option found in paragraphs (a) and (b) of this section with the exception of paragraph (b)(2) regarding the hours of service per day.
 - (2) Programs are encouraged to meet the needs of Head Start families for full day services by securing funds from other agencies. Before implementing a full day variation of a center-based option, a Head Start grantee should demonstrate that

alternative enrollment opportunities or funding from non-Head Start sources are not available for Head Start families needing full-day child care services.

- (3) Head Start grantees may provide full day services only to those children and families with special needs that justify full day services or to those children whose parents are employed or in job training with no caregiver present in the home. The records of each child receiving services for more than six hours per day must show how each child meets the criteria stated above.
- (e) Non-Head Start services. Grantees may charge for services which are provided outside the hours of the Head Start program.

1306.33 Home-based program option.

- (a) Grantees implementing a home-based program option must:
 - (1) Provide one home visit per week per family (a minimum of 32 home visits per year) lasting for a minimum of 1 and 1/2 hours each.
 - (2) Provide, at a minimum, two group socialization activities per month for each child (a minimum of 16 group socialization activities each year).
 - (3) Make up planned home visits or scheduled group socialization activities that were canceled by the grantee or by program staff when this is necessary to meet the minimums stated above. Medical or social service appointments may not replace home visits or scheduled group socialization activities.
 - (4) Allow staff sufficient employed time to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to maintain records, and to keep component and activities plans current and relevant. These activities should take place when no home visits or group socialization activities are planned.
 - (5) Maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.
- (b) Home visits must be conducted by trained home visitors with the content of the visit jointly planned by the home visitor and the parents. Home visitors must conduct the home visit with the participation of parents. Home visits may not be conducted by the home visitor with only baby-sitters or other temporary caregivers in attendance.
 - (1) The purpose of the home visit is to help parents improve their parenting skills and to assist them in the use of the home as the child's primary learning environment. The home visitor must work with parents to help them provide learning opportunities that enhance their child's growth and development.
 - (2) Home visits must, over the course of a month, contain elements of all Head Start program components. The home visitor is the person responsible for introducing, arranging and/or providing Head Start services.
- (c) Group socialization activities must be focused on both the children and parents. They may not be conducted by the home visitor with baby-sitters or other temporary caregivers.
 - (1) The purpose of these socialization activities for the children is to emphasize peer group interaction through age appropriate activities in a Head Start classroom,

community facility, home, or on a field trip. The children are to be supervised by the home visitor with parents observing at times and actively participating at other times.

- (2) These activities must be designed so that parents are expected to accompany their children to the group socialization activities at least twice each month to observe, to participate as volunteers or to engage in activities designed specifically for the parents.
- (3) Grantees must follow the nutrition requirements specified in 45 CFR 1304.23(b)(2) and provide appropriate snacks and meals to the children during group socialization activities.

1306.34 Combination program option.

(a) Combination program option requirements:

- (1) Grantees implementing a combination program option must provide class sessions and home visits that result in an amount of contact with children and families that is, at a minimum, equivalent to the services provided through the center-based program option or the home-based program option.
- (2) Acceptable combinations of minimum number of class sessions and corresponding number of home visits are shown below. Combination programs must provide these services over a period of 8 to 12 months.

Number of class sessions	Number of home visits
96	8
92-95	9
88-91	10
84-87	11
80-83	12
76-79	13
72-75	14
68-71	15
64-67	16
60-63	17
56-59	18
52-55	19
48-51	20
44-47	21
40-43	22
36-39	23
32-35	24

- (3) The following are examples of various configurations that are possible for a program that operates for 32 weeks:

- (a) A program operating classes three days a week and providing one home visit a month (96 classes and 8 home visits a year);
 - (b) A program operating classes two days a week and providing two home visits a month (64 classes and 16 home visits a year);
 - (c) A program operating classes one day a week and providing three home visits a month (32 classes and 24 home visits a year).
- (4) Grantees operating the combination program option must make a reasonable estimate of the number of days during a year that centers may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate make-up classes up to the estimated number, and provide these classes, when necessary, to prevent the number of days of classes from falling below the number required by paragraph (a)(2) of this section. Grantees must make up planned home visits that were canceled by the program or by the program staff if this is necessary to meet the minimums required by paragraph (a)(2) of this section. Medical or social service appointments may not replace home visits.

(b) Requirements for class sessions:

- (1) Grantees implementing the combination program option must comply with the class size requirements contained in Sec. 1306.32(a).
- (2) The provisions of the following sections apply to grantees operating the combination program option: Sec. 1306.32(b) (2), (5), (6), (7) and (9).
- (3) If a grantee operates a double session or a full day variation, it must meet the provisions concerning double-sessions contained in Sec. 1306.32(c)(1) and (3) and the provisions for the center-based program option's full day variation found in Sec. 1306.32(d).

(c) Requirements for home visits:

- (1) Home visits must last for a minimum of 1 and 1/2 hours each.
- (2) The provisions of the following section, concerning the home-based program option, must be adhered to by grantees implementing the combination program option: Sec. 1306.33(a) (4) and (5); and Sec. 1306.33(b).

1306.35 Additional Head Start program option variations.

In addition to the center-based, home-based and combination program options defined above, the Commissioner of the Administration on Children, Youth and Families retains the right to fund alternative program variations to meet the unique needs of communities or to demonstrate or test alternative approaches for providing Head Start services.

1306.36 Compliance waiver.

An exception to one or more of the requirements contained in Secs. 1306.32 through 1306.34 of subpart C will be granted only if the Commissioner of the Administration on Children, Youth and Families determines, on the basis of supporting evidence, that the grantee made a reasonable

effort to comply with the requirement but was unable to do so because of limitations or circumstances with a specific community or communities served by the grantee.

**PART 1308 — HEAD START PROGRAM PERFORMANCE
STANDARDS ON SERVICES FOR CHILDREN WITH
DISABILITIES**

Subpart A — General

1308.1 Purpose and application.

This rule sets forth the requirements for providing special services for 3- through 5-year old children with disabilities enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304. The purpose of this part is to ensure that children with disabilities enrolled in Head Start Programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR part 1304, as amended.

1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

1308.3 Definitions.

- (a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.
- (b) The term *children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, need special education and related services. The term children with disabilities for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the States and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.
- (c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.
- (d) The term *day* means a calendar day.
- (e) The term *delegate agency* means a public or private non-profit agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.
- (f) The term *disabilities coordinator* means the person on the Head Start staff designated to manage on a full or part-time basis the services for children with disabilities described in part 1308.

- (g) The term ***eligibility criteria*** means the criteria for determining that a child enrolled in Head Start requires special education and related services because of a disability.
- (h) The term ***grantee*** means the public or private non-profit agency which has been granted financial assistance by ACYF to administer a Head Start program.
- (i) The term ***individualized education program (IEP)*** means a written statement for a child with disabilities, developed by the public agency responsible for providing free appropriate public education to a child, and contains the special education and related services to be provided to an individual child.
- (j) The term ***least restrictive environment*** means an environment in which services to children with disabilities are provided:
 1. to the maximum extent appropriate, with children who are not disabled and in which;
 2. special classes or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (k) The terms ***Performance Standards*** means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.
- (l) The term ***related services*** means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training. It includes other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education, including assistive technology services and devices.
- (m) The term ***assistive technology device*** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.
- (n) The term ***assistive technology service*** means any service that directly assists and individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: The evaluation of the needs of an individual with a disability; purchasing, leasing, or otherwise providing for the acquisition of assistive technology

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devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and training or technical assistance to professionals who employ or provide services involved in the major life functions of individuals with disabilities.

- (o) The term ***responsible HHS official*** means the official who is authorized to make the grant of assistance in question or his or her designee.

- (p) The term ***special education*** means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. These services include classroom or home-based instruction, instruction in hospitals and institutions, and specially designed physical education if necessary.

**Part 1308 - Head Start Program Performance Standards on Services
for Children with Disabilities**

SUBPART B — DISABILITIES SERVICE PLAN

1308.4 Purpose and scope of disabilities service plan.

- (a) A Head Start grantee, or delegate agency, if appropriate, must develop a disabilities service plan providing strategies for meeting the special needs of children with disabilities and their parents. The purposes of this plan are to assure:
- (1) That all components of Head Start are appropriately involved in the integration of children with disabilities and their parents;
 - (2) That resources are used efficiently.
- (b) The plan must be updated annually.
- (c) The plan must include provisions for children with disabilities to be included in the full range of activities and services normally provided to all Head Start children and provisions for any modifications necessary to meet the special needs of the children with disabilities.
- (d) The Head Start grantee and delegate agency must use the disabilities service plan as a working document which guides all aspects of the agency's effort to serve children with disabilities. This plan must take into account the needs of the children for small group activities, for modifications of large group activities and for any individual special help.
- (e) The grantee or delegate agency must designate a coordinator of services for children with disabilities (disabilities coordinator) and arrange for preparation of the disabilities service plan and of the grantee application budget line items for services for children with disabilities. The grantee or delegate must ensure that all relevant coordinators, other staff and parents are consulted.
- (f) The disability service plan must contain:
- (1) Procedures for timely screening;
 - (2) Procedures for making referrals to the LEA for evaluation to determine whether there is a need for special education and related services for a child, as early as the child's third birthday;
 - (3) Assurances of accessibility of facilities; and
 - (4) Plans to provide appropriate special furniture, equipment and materials if needed.
- (g) The plan, when appropriate, must address strategies for the transition of children into Head Start from infant/ toddler programs (0-3 years), as well as the transition from Head Start into the next placement. The plan must include preparation of staff and parents for the entry of children with severe disabilities into the Head Start program.
- (h) The grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate

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agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:

- (1) Audiology services, including identification of children with hearing loss and referral for medical or other professional attention; provision of needed rehabilitative services such as speech and language therapy and auditory training to make best use of remaining hearing; speech conservation; lip reading; determination of need for hearing aids and fitting of appropriate aids; and programs for prevention of hearing loss;
 - (2) Physical therapy to facilitate gross motor development in activities such as walking prevent or slow orthopedic problems and improve posture and conditioning;
 - (3) Occupational therapy to improve, develop or restore fine motor functions in activities such as using a fork or knife;
 - (4) Speech or language services including therapy and use of assistive devices necessary for a child to develop or improve receptive or expressive means of communication;
 - (5) Psychological services such as evaluation of each child's functioning and interpreting the results to staff and parents; and counseling and guidance services for staff and parents regarding disabilities;
 - (6) Transportation for children with disabilities to and from the program and to special clinics or other service providers when the services cannot be provided on-site. Transportation includes adapted buses equipped to accommodate wheelchairs or other such devices if required; and
 - (7) Assistive technology services or devices necessary to enable a child to improve functions such as vision, mobility or communication to meet the objectives in the IEP.
- (i) The disabilities service plan must include options to meet the needs and take into consideration the strengths of each child based upon the IEP so that a continuum of services available from various agencies is considered.
- (j) The options may include:
- (1) Joint placement of children with other agencies;
 - (2) Shared provision of services with other agencies
 - (3) Shared personnel to supervise special education services, when necessary to meet State requirement on qualifications;
 - (4) Administrative accommodations such as having two children share one enrollment slot when wahc child's IEP calls for part-time service because of their individual needs; and
 - (5) Any other strategies to be used to insure that special needs are met. These may include:
 - (i) Increased staff;
 - (ii) Use of volunteers; and

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(iii) Use of supervised students in such fields as child development, special education, child psychology, various therapies and family services to assist the staff.

(k) The grantee must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994-95 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994-95 program year.

(l) The disabilities service plan must include commitment to specific efforts to develop interagency agreements with the LEAs and other agencies within the grantee's service area. If no agreement can be reached, the grantee must document its efforts and inform the Regional Office. The agreements must address:

- (1) Head Start participation in the public agency's Child Find plan under Part B of IDEA;
- (2) Joint training of staff and parents;
- (3) Procedures for referral for evaluations, IEP meetings and placement decisions;
- (4) Transition;
- (5) Resource sharing;
- (6) Head Start commitment to provide the number of children receiving services under IEPs to the LEA for the LEA Child Count report by December 1 annually, and
- (7) Any other items agreed to by both parties. Grantees must make efforts to update the agreements annually.

(m) The disabilities coordinator must work with the director in planning and budgeting of grantee funds to assure that the special needs identified in the IEP are fully met; that children most in need of an integrated placement and of special assistance are served; and that the grantee maintains the level of fiscal support to children with disabilities consistent with the Congressional mandate to meet their special needs.

(n) The grant application budget form and supplement submitted with applications for funding must reflect requests for adequate resources to implement the objectives and activities in the disability services plan and fulfill the requirements of these Performance Standards.

(o) The budget request included with the application for funding must address the implementation of the disabilities service plan. Allowable expenditures include:

- (1) *Salaries.* Allowable expenditures include salaries of a full or part-time coordinator of services for children with disabilities (disabilities coordinator), who is essential to assure that programs have the core capability to recruit, enroll, arrange for the evaluation of children, provide or arrange for services to children with disabilities and work with Head Start coordinators and staff of other agencies which are working cooperatively with the grantee. Salaries of special education resource teachers who can augment the work of the regular teacher are an allowable expenditure.

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(2) *Evaluation of Children.* When warranted by screening or rescreening results, teacher observation or parent request, arrangements must be made for evaluation of the child's development and functioning. If, after referral for evaluation to the LEA, evaluations are not provided by the LEA, they are an allowable expenditure.

(3) *Services.* Program funds may be used to pay for services which include special education, related services, and summer services deemed necessary on an individual basis and to prepare for serving children with disabilities in advance of the program year.

(4) *Making Services Accessible.* Allowable costs include elimination of architectural barriers which affect the participation of children with disabilities, in conformance with 45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance and with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101). The Americans with Disabilities Act requires that public accommodations including private schools and day care centers may not discriminate on the basis of disability. Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense.) If not, alternative methods of providing the services must be offered, if those methods are readily achievable. Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Program funds may be used for ramps, remodeling or modifications such as grab bars or railings. Grantees must meet new statutory and regulatory requirements that are enacted.

(5) *Transportation.* Transportation is a related service to be provided to children with disabilities. When transportation to the program site and to special services can be accessed from other agencies, it should be used. When it is not available, program funds are to be used to provide it. Special buses or use of taxis are allowable expenses if there are no alternatives available and they are necessary to enable a child to be served.

(6) *Special Equipment and Materials.* Purchase or lease of special equipment and materials for use in the program and home is an allowable program expense. Grantees must make available assistive devices necessary to make it possible for a child to move, communicate, improve functioning or address objectives which are listed in the child's IEP.

(7) *Training and Technical Assistance.* Increasing the abilities of staff to meet the special needs of children with disabilities is an allowable expense. Appropriate expenditures may include but are not limited to:

- (i) Travel and per diem expenses for disabilities coordinators, teachers and parents to attend training and technical assistance events related to special services for children with disabilities;
- (ii) The provision of substitute teaching staff to enable staff to attend training and technical assistance events;

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(iii) Fees for courses specifically related to the requirements of the disabilities service plan, a child's IEP or State certification to serve children with disabilities; and

(iv) Fees and expenses for training/technical assistance consultants if such help is not available from another provider at no cost.

1308.5 Recruitment and enrollment of children with disabilities.

(a) The grantee or delegate agency outreach and recruitment activities must incorporate specific actions to actively locate and recruit children with disabilities.

(b) A grantee must insure that staff engaged in recruitment and enrollment of children are knowledgeable about the provisions of 45 CFR Part 84, Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and of the Americans with Disabilities Act of 1990, (42 U.S.C. 12101).

(c) A grantee must not deny placement on the basis of a disability or its severity to any child when:

- (1) The parents wish to enroll the child,
- (2) The child meets the Head Start age and income eligibility criteria,
- (3) Head Start is an appropriate placement according to the child's IEP, and
- (4) The program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to children with disabilities. In that case children who have a disability and non-disabled children would compete for the available enrollment opportunities.

(d) The grantee must access resources and plan for placement options, such as dual placement, use of resource staff and training so that a child with a disability for whom Head Start is an appropriate placement according to the IEP is not denied enrollment because of:

- (1) Staff attitudes and/or apprehensions;
- (2) Inaccessibility of facilities;
- (3) Need to access additional resources to serve a specific child;
- (4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and
- (5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

(e) The same policies governing Head Start program eligibility for other children, such as priority for those most in need of the services, apply to children with disabilities. Grantees also must take the following factors into account when planning enrollment procedures:

- (1) The number of children with disabilities in the Head Start service area including types of disabilities and their severity;
- (2) The services and resources provided by other agencies; and

(3) State laws regarding immunization of preschool children. Grantees must observe applicable State laws which usually require that children entering State preschool programs complete immunizations prior to or within thirty days after entering to reduce the spread of communicable diseases.

(f) The recruitment effort of a Head Start grantee must include recruiting children who have severe disabilities, including children who have been previously identified as having disabilities.

1308.6 Assessment of children.

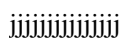
(a) The disabilities coordinator must be involved with other program staff throughout the full process of assessment of children, which has three steps:

- (1) All children enrolled in Head Start are screened as the first step in the assessment process;
- (2) Staff also carry out on-going developmental assessment for all enrolled children throughout the year to determine progress and to plan program activities;
- (3) Only those children who need further specialized assessment to determine whether they have a disability and may require special education and related services proceed to the next step, evaluation. The disabilities coordinator has primary responsibility for this third step, evaluation, only.

(b) *Screening, the first step in the assessment process*, consists of standardized health screening and developmental screening which includes speech, hearing and vision. It is a brief process, which can be repeated, and is never used to determine that a child has a disability. It only indicates that a child may need further evaluation to determine whether the child has a disability. Rescreening must be provided as needed.

- (1) Grantees must provide for developmental, hearing and vision screenings of all Early Head Start and Head Start children within 45 days of the child's entry into the program. This does not preclude starting screening in the spring, before program services begin in the fall.
- (2) Grantees must make concerted efforts to reach and include the most in need and hardest to reach in the screening effort, providing assistance but urging parents to complete screening before the start of the program year.
- (3) Developmental screening is a brief check to identify children who need further evaluation to determine whether they may have disabilities. It provides information in three major developmental areas: visual/motor, language and cognition, and gross motor/body awareness for use along with observation data, parent reports and home visit information. When appropriate standardized developmental screening instruments exist, they must be used. The disabilities coordinator must coordinate with the health coordinator and staff who have the responsibility for implementing health screening and with the education staff who have the responsibility for implementing developmental screening.

(c) Staff must inform parents of the types and purposes of the screening well in advance of the screening, the results of these screenings and the purposes and results of any subsequent evaluations.



(d) *Developmental assessment, the second step*, is the collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, attention skills, self-help, social and receptive skills and expressive language. The disabilities coordinator must coordinate with the education coordinator in the on-going assessment of each Head Start child's functioning in all developmental areas by including this developmental information in later diagnostic and program planning activities for children with disabilities.

(e) *The disabilities coordinator must arrange for further, formal, evaluation of a child who has been identified as possibly having a disability, the third step.*

(1) The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, starting as early as the child's third birthday.

(2) If the LEA does not evaluate the child, Head Start is responsible for arranging or providing for an evaluation, using its own resources and accessing others. In this case, the evaluation must meet the following requirements:

(i) Testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory, administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(ii) Testing and evaluation procedures must be administered by trained (State certified or licensed) personnel.

(iii) No single procedure may be the sole criterion for determining an appropriate educational program for a child.

(iv) The evaluation must be made by a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability.

(v) Evaluators must use only assessment materials which have been validated for the specific purpose for which they are used.

(vi) Tests used with children with impaired sensory, manual or communication skills must be administered so that they reflect the children's aptitudes and achievement levels and not just the disabilities.

(vii) Tests and materials must assess all areas related to the suspected disability.

(viii) In the case of a child whose primary disability appears to be a speech or language impairment, the team must assure that enough tests are used to determine that the impairment is not a symptom of another disability and a speech or language pathologist should be involved in the evaluation.

(3) Parental consent in writing must be obtained before a child can have an initial evaluation to determine whether the child has a disability.

(4) Confidentiality must be maintained in accordance with grantee and State requirements. Parents must be given the opportunity to review their child's records in a timely manner and they must be notified and give permission if additional evaluations are proposed. Grantees must explain the purpose and

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results of the evaluation and make concerted efforts to help the parents understand them.

(5) The multidisciplinary team provides the results of the evaluation, and its professional opinion that the child does or does not need special education and related services, to the disabilities coordinator. If it is their professional opinion that a child has a disability, the team is to state which of the eligibility criteria applies and

provide recommendations for programming, along with their findings. Only children whom the evaluation team determines need special education and related services may be counted as children with disabilities.

1308.7 Eligibility criteria: Health Impairment.

(a) A child is classified as health impaired who has limited strength, vitality or alertness due to a chronic or acute health problem which adversely affects learning.

(b) The health impairment classification may include, but is not limited to, cancer, some neurological disorders, rheumatic fever, severe asthma, uncontrolled seizure disorders, heart conditions, lead poisoning, diabetes, AIDS, blood disorders, including hemophilia, sickle cell anemia, cystic fibrosis, heart disease and attention deficit disorder.

(c) This category includes medically fragile children such as ventilator dependent children who are in need of special education and related services.

(d) A child may be classified as having an attention deficit disorder under this category who has chronic and pervasive developmentally inappropriate inattention, hyperactivity, or impulsivity. To be considered a disorder, this behavior must affect the child's functioning severely. To avoid overuse of this category, grantees are cautioned to assure that only the enrolled children who most severely manifest this behavior must be classified in this category.

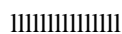
(1) The condition must severely affect the performance of a child who is trying to carry out a developmentally appropriate activity that requires orienting, focusing, or maintaining attention during classroom instructions and activities, planning and completing activities, following simple directions, organizing materials for play or other activities, or participating in group activities. It also may be manifested in overactivity or impulsive acts which appear to be or are interpreted as physical aggression. The disorder must manifest itself in at least two different settings, one of which must be the Head Start program site.

(2) Children must not be classified as having attention deficit disorders based on:

(i) Temporary problems in attending due to events such as a divorce, death of a family member or post-traumatic stress reactions to events such as sexual abuse or violence in the neighborhood;

(ii) Problems in attention which occur suddenly and acutely with psychiatric disorders such as depression, anxiety and schizophrenia;

(iii) Behaviors which may be caused by frustration stemming from inappropriate programming beyond the child's ability level or by



developmentally inappropriate demands for long periods of inactive, passive activity;

(iv) Intentional noncompliance or opposition to reasonable requests that are typical of good preschool programs; or

(v) Inattention due to cultural or language differences.

(3) An attention deficit disorder must have had its onset in early childhood and have persisted through the course of child development when children normally mature and become able to operate in a socialized preschool environment. Because many children younger than four have difficulty orienting, maintaining and focussing attention and are highly active, when Head Start is responsible for the evaluation, attention deficit disorder applies to four and five year old children in Head Start but not to three year olds.

(4) Assessment procedures must include teacher reports which document the frequency and nature of indications of possible attention deficit disorders and describe the specific situations and events occurring just before the problems manifested themselves. Reports must indicate how the child's functioning was impaired and must be confirmed by independent information from a second observer.

1308.8 Eligibility criteria: Emotional/behavioral disorders

(a) An emotional/behavioral disorder is a condition in which a child's behavioral or emotional responses are so different from those of the generally accepted, age-appropriate norms of children with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress or classroom behavior. A child is classified as having an emotional/ behavioral disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) Seriously delayed social development including an inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers);

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative);

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Has a professional diagnosis of serious emotional disturbance.

(b) The eligibility decision must be based on multiple sources of data, including assessment of the child's behavior or emotional functioning in multiple settings.

(c) The evaluation process must include a review of the child's regular Head Start physical examination to eliminate the possibility of misdiagnosis due to an underlying physical condition.

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1308.9 Eligibility criteria: Speech or language impairments.

- (a) A speech or language impairment means a communicatio disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child’s learning.
- (b) A child is classified as having a speech or language impairment whose speech is unintelligible much of the time, or who has been professionally diagnosed as having speech impairments which require intervention or who is professionally diagnosed as having a delay in development in his or her primary language which requires intervention.
- (c) A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).
- (d) A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).
- (e) A child should not be classified as having a speech or language impairment whose speech or language differences may be attributed to:
 - (1) Cultural, ethnic, bilingual, or dialectical differences or being non-English speaking; or
 - (2) Disorders of a temporary nature due to conditions such as a dental problem; or
 - (3) Delays in developing the ability to articulate only the most difficult consonants or blends of sounds within the broad general range for the child's age.

1308.10 Eligibility criteria: Mental retardation.

- (a) A child is classified mentally retarded who exhibits significantly sub-average intellectual functioning and exhibits deficits in adaptive behavior which adversely affect learning. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.
- (b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records. An assessment of the child's functioning must also be made in settings outside the classroom.
- (c) Valid and reliable instruments appropriate to the age range must be used. If they do not exist for the language and cultural group to which the child belongs, observation and professional judgement are to be used instead.
- (d) Determination that a child is mentally retarded is never to be made on the basis of any one test alone.

1308.11 Eligibility criteria: Hearing impairment including deafness.

- (a) A child is classified as deaf if a hearing impairment exists which is so severe that the chld is impaired in processing linguistic information through hearing, with or without

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amplification, and learning is affected. A child is classified as hard of hearing who has a permanent or fluctuating hearing impairment which adversely affects learning; or

(b) Meets the legal criteria for being hard of hearing established by the State of residence; or

(c) Experiences recurrent temporary or fluctuating hearing loss caused by otitis media, allergies, or eardrum perforations and other outer or middle ear anomalies over a period of three months or more. Problems associated with temporary or fluctuating hearing loss can include impaired listening skills, delayed language development, and articulation problems. Children meeting these criteria must be referred for medical care, have their hearing checked frequently, and receive speech, language or hearing services as indicated by their IEPs. As soon as special services are no longer needed, these children must no longer be classified as having a disability.

1308.12 Eligibility criteria: Orthopedic impairment.

(a) A child is classified as having an orthopedic impairment if the condition is severe enough to adversely affect the child's learning. An orthopedic impairment involves muscles, bones, or joints and is characterized by impaired ability to maneuver in educational or non-educational settings to perform fine or gross motor activities, or to perform self-help skills and by adversely affected educational performance.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

1308.13 Eligibility criteria: Visual impairment including blindness.

(a) A child is classified as visually impaired when visual impairment, with correction, adversely affects a child's learning. The term includes both blind and partially seeing children. A child is visually impaired if:

(1) The vision loss meets the definition of legal blindness in the State of residence; or

(2) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child is classified as having a visual impairment if central acuity with corrective lenses is between 20/70 and 20/200 in either eye, or if visual acuity is undetermined, but there is demonstrated loss of visual function that adversely affects the learning process, including faulty muscular action, limited field of vision, cataracts, etc.

1308.14 Eligibility criteria: Learning disabilities.

(a) A child is classified as having a learning disability who has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak or, for preschool age children, acquire the precursor skills for reading, writing, spelling or

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doing mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, and aphasia.

(b) An evaluation team may recommend that a child be classified as having a learning disability if:

- (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (a) above when provided with appropriate learning experiences for the age and ability; or
- (2) The child has a severe discrepancy between achievement of developmental milestones and intellectual ability in one or more of these areas: oral expression, listening comprehension, pre-reading, pre-writing and pre-mathematics; or
- (3) The child shows deficits in such abilities as memory, perceptual and perceptual-motor skills, thinking, language and non-verbal activities which are not due to visual, motor, hearing or emotional disabilities, mental retardation, cultural or language factors, or lack of experiences which would help develop these skills.

(c) This definition for learning disabilities applies to four and five year old children in Head Start. It may be used at a program's discretion for children younger than four or when a three year old child is referred with a professional diagnosis of learning disability. But because of the difficulty of diagnosing learning disabilities for three year olds, when Head Start is responsible for the evaluation it is not a requirement to use this category for three year olds.

1308.15 Eligibility criteria: Autism.

A child is classified as having autism when the child has a developmental disability that significantly affects verbal and non-verbal communication and social interaction, that is generally evident before the age of three and that adversely affects educational performance.

1308.16 Eligibility criteria: Traumatic brain injury.

A child is classified as having traumatic brain injury whose brain injuries are caused by an external physical source, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

1308.17 Eligibility criteria: Other impairments.

(a) The purposes of this classification, "Other impairments," are:

- (1) To further coordination with LEAs and reduce problems of recordkeeping;
- (2) To assist parents in making the transition from Head Start to other placements; and

(3) To assure that no child enrolled in Head Start is denied services which would be available to other preschool children who are considered to have disabilities in their State.

(b) If the State Education Agency eligibility criteria for preschool children include an additional category which is appropriate for a Head Start child, children meeting the criteria for that category must receive services as children with disabilities in Head Start programs. Examples are "preschool disabled," "in need of special education," "educationally handicapped," and "non-categorically handicapped."

(c) Children ages three to five, inclusive, who are experiencing developmental delays, as defined by their State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof need special education and related services may receive services as children with disabilities in Head Start programs.

(d) Children who are classified as deaf-blind, whose concomitant hearing and visual impairments cause such severe communication and other developmental problems that they cannot be accommodated in special education programs solely for deaf or blind children are eligible for services under this category.

(e) Children classified as having multiple disabilities whose concomitant impairments (such as mental retardation and blindness), in combination, cause such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments are eligible for services under this category. The term does not include deaf-blind children, for recordkeeping purposes.

1308.18 Disabilities/health services coordination.

(a) The grantee must ensure that the disabilities coordinator and the health coordinator work closely together in the assessment process and follow up to assure that the special needs of each child with disabilities are met.

(b) The grantee must ensure coordination between the disabilities coordinator and the staff person responsible for the mental health component to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications, including prescription and over-the-counter drugs, to children with disabilities in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Obtain the doctor's instructions and parental consent before and medication is administered.

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents. Record changes in a child's behavior which have implications for drug dosage or type and share this information with the staff, parents and the physician. Assure that all medications, including those

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required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary

SUBPART E — EDUCATION SERVICES
PERFORMANCE STANDARDS

1308.19 Developing individualized education programs (IEPs).

- (a) When Head Start provides for the evaluation, the multidisciplinary evaluation team makes the determination whether the child meets the Head Start eligibility criteria. The multidisciplinary evaluation team must assure that the evaluation findings and recommendations, as well as information from developmental assessment, observations and parent reports, are considered in making the determination whether the child meets Head Start eligibility criteria.
- (b) Every child receiving services in Head Start who has been evaluated and found to have a disability and in need of special education must have an IEP before special education and related services are provided to ensure that comprehensive information is used to develop the child's program.
- (c) When the LEA develops the IEP, a representative from Head Start must attempt to participate in the IEP meeting and placement decision for any child meeting Head Start eligibility requirements.
- (d) If Head Start develops the IEP, the IEP must take into account the child's unique needs, strengths, developmental potential and the family strengths and circumstances as well as the child's disabilities.
- (e) The IEP must include:
 - (1) A statement of the child's present level of functioning in the social-emotional, motor, communication, self-help, and cognitive areas of development, and the identification of needs in those areas requiring specific programming.
 - (2) A statement of annual goals, including short term objectives for meeting these goals.
 - (3) A statement of services to be provided by each Head Start component that are in addition to those services provided for all Head Start children, including transition services.
 - (4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a Head Start program. This includes services provided by other agencies and non-Head start professionals.
 - (5) The identification of the personnel responsible for the planning and supervision of services and for the delivery of services.
 - (6) The projected dates for initiation of services and the anticipated duration of services.

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short-term objectives are being achieved or need to be revised.

(8) Family goals and objectives related to the child's disabilities when they are essential to the child's progress.

(f) When Head Start develops the IEP, the team must include:

- (1) The Head Start disabilities coordinator or a representative who is qualified to provide or supervise the provision of special education services;
- (2) The child's teacher or home visitor;
- (3) One or both of the child's parents or guardians; and
- (4) At least one of the professional members of the multi-disciplinary team which evaluated the child.

(g) An LEA representative must be invited in writing if Head Start is initiating the request for a meeting.

(h) The grantee may also invite other individuals at the request of the parents and other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's disability.

(i) A meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon as possible after the development of the IEP.

(j) Grantees and their delegates must make vigorous efforts to involve parents in the IEP process. The grantee must:

- (1) Notify parents in writing and, if necessary, also verbally or by other appropriate means of the purpose, attendees, time and location of the IEP meeting far enough in advance so that there is opportunity for them to participate;
- (2) Make every effort to assure that the parents understand the purpose and proceedings and that they are encouraged to provide information about their child and their desires for the child's program;
- (3) Provide interpreters, if needed, and offer the parents a copy of the IEP in the parents' language of understanding after it has been signed;
- (4) Hold the meeting without the parents only if neither parent can attend, after repeated attempts to establish a date or facilitate their participation. In that case, document its efforts to secure the parents' participation, through records of phone calls, letters in the parents' native language or visits to parents' homes or places of work, along with any responses or results; and arrange an opportunity to meet with the parents to review the results of the meeting and secure their input and signature.

(k) Grantees must initiate the implementation of the IEP as soon as possible after the IEP meeting by modifying the child's program in accordance with the IEP and arranging for the provision of related services. If a child enters Head Start with an IEP completed

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SUBPART F — NUTRITION
PERFORMANCE STANDARDS

1308.20 Nutrition services.

- (a) The disabilities coordinator must work with staff to ensure that provisions to meet special needs are incorporated into the nutrition program.
- (b) Appropriate professionals, such as physical therapists, speech therapists, occupational therapists, nutritionists or dietitians must be consulted on ways to assist Head Start staff and parents of children with severe disabilities with problems of chewing, swallowing and feeding themselves.
- (c) The plan for services for children with disabilities must include activities to help children with disabilities participate in meal and snack times with classmates.
- (d) The plan for services for children with disabilities must address prevention of disabilities with a nutrition basis.

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SUBPART G — PARENT INVOLVEMENT
PERFORMANCE STANDARDS

1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the staff must carry out the following tasks:

- (1) Support parents of children with disabilities entering from infant/toddler programs.
- (2) Provide information to parents on how to foster the development of their child with disabilities.
- (3) Provide opportunities for parents to observe large group, small group and individual activities described in their child's IEP.
- (4) Provide follow-up assistance and activities to reinforce program activities at home.
- (5) Refer parents to groups of parents of children with similar disabilities who can provide helpful peer support.
- (6) Inform parents of their rights under IDEA.
- (7) Inform parents of resources which may be available to them from the Supplemental Security Income (SSI) Program, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program and other sources and assist them with initial efforts to access such resources.
- (8) Identify needs (caused by the disability) of siblings and other family members.
- (9) Provide information in order to prevent disabilities among younger siblings.
- (10) Build parent confidence, skill and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) Grantees must plan to assist parents in the transition of children from Head Start to public school or other placement, beginning early in the program year.

(c) Head Start grantees, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment.

**PART 1309--HEAD START FACILITIES PURCHASE, MAJOR
RENOVATION AND CONSTRUCTION**

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PART 1309--HEAD START FACILITIES PURCHASE, MAJOR RENOVATION AND CONSTRUCTION

Subpart A—General

Sec. 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c), (f) and (g) and 645A(b)(9) of the Head Start Act, 42 U.S.C. 9801 et seq., as they apply to grantees operating Head Start programs (including Early Head Start grantees) under the Act. It prescribes the procedures for applying for Head Start grant funds to purchase, construct, or make major renovations to facilities in which to operate Head Start programs. It also details the measures which must be taken to protect the Federal interest in such facilities purchased, constructed or renovated with Head Start grant funds.

Sec. 1309.2 Approval of the use of Head Start funds to continue purchase of facilities.

Head Start grantees (including Early Head Start grantees) which purchased facilities after December 31, 1986, and which are continuing to pay costs of purchasing those facilities, may apply to receive Head Start funds to meet those costs by submitting applications which conform to the requirements of this part and the Act. A grantee may only use grant funds to pay facility purchase costs incurred after the responsible HHS official approves its application.

Sec. 1309.3 Definitions.

As used in this part;

ACF means the Administration for Children and Families in the Department of Health and Human Services, and includes the Regional Offices.

Acquire means to purchase or construct in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, and for professional fees, closing costs and any other costs associated with the purchase or construction of the property that are usual and customary for the locality.

Act means the Head Start Act, 42 U.S.C. section 9801, et seq. *ACYF* means the Administration on Children, Youth and Families, a component of the Administration for Children and Families in the Department of Health and Human Services.

Construction means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

Facility means a structure such as a building or modular unit appropriate for use by a Head Start grantee to carry out a Head Start program.

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(a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease in the service area is suitable for use by the Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.

Sec. 1309.5 Eligibility--Major Renovations.

Before submitting an application under Sec. 1309.10, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe, or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit or prevent the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by written statement from a licensed real estate professional in the grantee's service area.

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Subpart B--Application Procedures

1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under Sec. 1309.4 to apply for funds to construct a facility, or Sec. 1309.5 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

- (a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, early education programs, social services and health providers, and on all other program activities and services.
- (b) Plans and specifications of the facility to be acquired, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located or will be located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted, must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation or construction project, the applicant must submit a written estimate of all costs associated with the project. An architect or engineer must prepare the written estimate.
- (c) The cost comparison described in Sec. 1309.11.
- (d) The intended use of the facility proposed for acquisition or major renovation, including information showing the percentage of floor space that will be used as a Head Start center or a direct support facility for a Head Start program. As provided under section 644(f)(2)(D) of the Act, in the case of a request regarding funding for the continuing purchase of a facility, the application must include information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program.
- (e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee will also assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.
- (f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented

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operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the use of Head Start funds to continue purchase of a facility is unable to provide such statements based on circumstances which existed at the time the purchase began, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovations, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or for which Head Start funds will be used to continue to purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that, upon completion of major renovation to a facility or construction of a facility, that an inspection by a licensed engineer or architect will be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurance that the applicant will obtain, or has obtained, a fee simple or such other estate or interest in the site of the facility to assure undisturbed use and possession for the purpose of operating a Head Start program. A grantee seeking funding for acquisition or major renovation of a facility that is sited on land not owned by the grantee must establish in its application that there is no other feasible alternative to acquisition or leasing of the facility for providing a suitable facility appropriate to the needs of the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is or will be situated, the application must include a copy of the existing or proposed land lease or other document which protects the Federal interest in the facility and ensures undisturbed use and possession of the facility by the grantee, or other organization designated by ACF, for the purpose of operating a Head Start program or other program designated by ACF. A grantee applying

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for funding to make major renovations to a facility it does not own must include with its application written permission from the owner of the building projected to undergo major renovation and a copy of the lease or proposed lease for the facility. A grantee receiving funds for acquisition or the major renovation of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(m) An assessment of the impact of the proposed project on the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500 through 1508), as well as a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq. and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of the use of Head Start funds to continue purchase of a facility, a statement of the extent to which it has attempted to comply and will be able to comply with the provision of Sec. 1309.22.

(q) Such additional information as the responsible HHS official may require.

Sec. 1309.11 Cost comparison for purchase, construction and major renovation of facilities.

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the costs of the proposed activity as provided under paragraph (c) of this section and provide any additional information requested by the responsible HHS official.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, or which the grantee will continue to purchase with Head Start funds or to receive major renovation, made by a professional appraiser, must be included.

(c)
(1) Grantees proposing to purchase a facility, without requesting funds for major renovations to the facility, must compare costs of the proposed facility to the cost of the

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facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and suitable for use as a Head Start facility or which can be made suitable through incidental alteration or renovations, the cost of which shall be included in the cost comparison. In the case of an application for approval of the use of Head Start funds to continue purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, or the grantee had no previous facility, the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service area at the time of its purchase of the current facility. Grantees which have established under Sec. 1309.10(f) that there is a lack of alternative facilities that will prevent or would have prevented operation of the program are not required to provide a cost comparison under this paragraph.

(2) Grantees proposing to construct a facility must compare the costs of constructing the proposed facility to the costs of purchasing a suitable alternate facility or owning, purchasing or leasing an alternative facility which can be made suitable for use through incidental alterations and renovations or major renovations. The alternative facility is one now owned by the grantee or available for lease or purchase in the grantee's service area. If no such facility is available, this statement must explain how this fact was determined and the claim must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(3) A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated, if the grantee is proposing to purchase the facility) to the costs of constructing a facility of comparable size. In place of the cost comparison required in the preceding sentence, a grantee proposing to make major renovations to a leased facility must show that the monthly or annual occupancy costs for the term of the lease, including the cost of the major renovations, is less than, or comparable to, the costs of purchasing or leasing any other facility in the grantee's service area which can be made suitable through major renovations, if such a facility is available.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including but not limited to, costs of purchasing the facility to be renovated, the down payment, professional fees, moving expenses, the cost of site preparation; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

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(e) The period of comparison for purchase, construction or major renovation of a facility is twenty years, except that for the purchase of a modular unit the period of comparison is ten years and the period of comparison for major renovation of a leased facility is the period of the lease remaining after the renovations are completed. For approvals of the use of Head Start funds to continue purchase of the facility the period of comparison begins on the date the purchase began.

(f) If the facility is to be used for other purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

Sec. 1309.12 Timely decisions.

The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.

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Subpart C--Protection of Federal Interest

Sec. 1309.20 Title.

Title to facilities acquired with grant funds vests with the grantee upon acquisition, subject to the provisions of this part.

Sec. 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the Federal interest in such property to that of a lender, which financed the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section.

(b) Facilities acquired with grant funds may not be mortgaged or used as collateral, or sold or otherwise transferred to another party, without the written permission of the responsible HHS official.

(c) Use of the facility for other than the purpose for which the facility was funded, without the express written approval of the responsible HHS official, is prohibited.

(d)

(1) A grantee receiving funds to acquire or make major renovations to a facility that is or will be sited on land not owned by the grantee must have a lease or other arrangement which protects the Federal interest in the facility and ensures the grantee's undisturbed use and possession of the facility. The lease or document evidencing another arrangement shall include provisions to protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease or other arrangement and such other terms required by the responsible HHS official. The designation of an alternate tenant or occupant of the facility by ACF shall be subject to approval by the Lessor, which will not be withheld except for good reason, not including the willingness of another party to pay a higher rent. A grantee receiving funds for the major renovation or acquisition of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(2) Except as required under Sec. 1309.31 for certain modular units, the grantee must record the Notice of Federal Interest in the appropriate official records for the jurisdiction where a facility is or will be located immediately upon: purchasing a facility or land on which a facility is to be constructed; receiving permission to use funds to continue purchase of a facility; commencing major renovation of a facility or construction of a facility. In the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments. In the case of a facility now sited or to be constructed on land not owned by the grantee, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest.

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The lease or other document must ensure the right of the grantee to have undisturbed use and possession of the facility. In the event that filing of a lease is prohibited by State law, the grantee shall file an affidavit signed by the representatives of the grantee and the Lessor stating that the lease includes terms which protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease.

(3) The Notice of Federal Interest for property sited on land not owned by the grantee shall include the following information:

- (i) The date of the award of grant funds for the acquisition or major renovation of the property to be used as a Head Start facility, and the address and legal description of the property to be acquired or renovated;
- (ii) That the grant incorporated conditions which included restrictions on the use of the property and provide for a Federal interest in the property;
- (iii) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;
- (iv) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;
- (v) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and
- (vi) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(4) A lease, serving as a Notice of Federal Interest, an affidavit filed in the land records as a substitute for the lease, or other document protecting the Federal interest in a facility acquired with grant funds and sited on land not owned by the grantee, shall include the following information:

- (i) The address and legal description of the property;
- (ii) That the grant incorporated conditions which include restrictions on the use of the property and provide for a Federal interest in the property for the term of the lease or other arrangement; and
- (iii) That the property may not be used for any purpose during the lease or other arrangement that is inconsistent with that authorized by the Head Start Act and applicable regulations.

(e) Grantees must meet all of the requirements in 45 CFR parts 74 or 92 pertaining to the purchase and disposition of real property, or the use and disposal of equipment, as appropriate.

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(f) In subordinating its interest in a facility acquired or upon which major renovations have been undertaken with grant funds, the responsible HHS official does not waive application of paragraph (d) of this section and Sec. 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

(1)

(i) The lender shall notify the Office of the Regional Administrator, Administration for Children and Families, the Office of the Commissioner, Administration on Children, Youth and Families, Washington, D.C., and the Office of the General Counsel, Department of Health and Human Services, Washington, DC, or their successor agencies, immediately, both telephonically and in writing of any default by the Head Start grantee;

(ii) Written notice of default must be sent by registered mail return receipt requested; and,

(iii) The lender will not foreclose on the property until at least 60 days after the required notice by the lender has been sent.

(2) Such notice will include:

(i) The full names, addresses, and telephone numbers of the lender and the Head Start grantee;

(ii) The following statement prominently displayed at the top of the first page of the notice: ``The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official";

(iii) The date and nature of the default and the manner in which the default may be cured; and

(iv) In the event that the lender will be exercising its remedy of foreclosure or other remedies, the date or expected date of the foreclosure or other remedies.

(3) Head Start grantees which purchase facilities with respect to which the responsible HHS official has subordinated the Federal Interest to that of the lender must keep the lender informed of the current addresses and telephone numbers of the agencies to which the lender is obligated under paragraph (b) of this section to give notice in the event of a default.

Sec. 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring or undertaking a major renovation of a facility or receiving approval for the use of Head Start funds to continue purchase the grantee shall obtain insurance coverage for the facility which is not lower in value than coverage it has obtained for other real property it

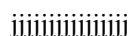
owns, and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section. For facilities, which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

(1) A title insurance policy which insures the fee interest in the facility for an amount not less than the full appraised value as approved by ACF, or the amount of the purchase price, whichever is greater, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails. If no endorsement naming ACF as loss payee is made, the grantee is required to pay ACF the title insurance proceeds it receives in the event of title failure; and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is owned by the grantee.

(b) The grantee shall submit copies of such insurance policies to ACF within five days of acquiring the facility or receiving approval for the previous purchase of a facility. If the grantee has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance policies within five days of acquiring the facility or receiving approval for the previous purchase of a facility, and it shall submit copies of the policies within five days of its receipt of them.

(c) The grantee must maintain facilities acquired with grant funds in a manner consistent with the purposes for which the funds were provided and in compliance with State and local government property standards and building codes.



Subpart D--Modular Units

1309.30 General.

In addition to the special requirements of Secs. 1309.31 through 1309.34, the proposed purchase or request for approval of continuing purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) The requirements of Sec. 1309.33 apply rather than the requirement of Sec. 1309.10(i); and

(b) Section 1309.21(d) of this part does not apply to the proposed purchase of modular units if the land on which the unit is installed is not owned by the grantee.

Sec. 1309.31 Site description.

(a) An application for the purchase or approval of a continuing purchase of a modular unit pursuant to Sec. 1309.2 must state specifically where the modular unit is or will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase the land on which to install the modular unit or if the modular unit the grantee is continuing to purchase with Head Start funds is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

(b) Modular units which are purchased with grant funds and which are not permanently affixed to land, or which are affixed to land which is not owned by the grantee, must have posted in a conspicuous place the following notice: ``On (date), the Department of Health and Human Services (DHHS) awarded (grant number) to (Name of grantee). The grant provided Federal funds for conduct of a Head Start program, including purchase of this modular unit. The grant incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the express written approval of the responsible DHHS official, or sold or transferred to another party without the written permission of the responsible DHHS official. These conditions are in accordance with the statutory provisions set forth in 42 U.S.C. 9839; the regulatory provisions set forth in 45 CFR part 1309, 45 CFR part 74 and 45 CFR part 92; and Administration for Children and Families' grants policy."`

(c) A modular unit which has been approved for purchase and installation in one location may not be moved to another location without the written permission of the responsible HHS official.

Sec. 1309.32 Statement of procurement procedure for modular units.

(a) An application for the purchase of a modular unit must include a statement describing the procedures which will be used by the grantee to purchase the modular unit.

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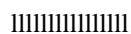
(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR parts 74 and 92, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval for the use of Head Start funds for continued purchase of a modular unit must also include a copy of the specifications for the unit.

Sec. 1309.33 Inspection.

A grantee which purchases a modular unit with grant funds or receives approval of a continuing purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a continuing purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

Sec. 1309.34 Costs of installation of modular unit.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, all reasonable costs necessary to the installation of a modular unit the purchase of which has been approved by the responsible HHS official are payable with grant funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.



Subpart E--Other Administrative Provisions

Sec. 1309.40 Copies of documents.

Certified copies of the deed, lease, loan instrument, mortgage, and any other legal documents related to the acquisition or major renovation of the facility or the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

Sec. 1309.41 Record retention.

All records pertinent to the acquisition or major renovation of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership (or occupancy, in the case of leased facilities) of the facility plus three years.

Sec. 1309.42 Audit of mortgage.

Any audit of a grantee, which has acquired or made major renovations to a facility with grant funds, shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit and appraisal are payable with grant funds.

Sec. 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the acquisition or major renovation of a facility (including reasonable and necessary fees and costs incurred to establish preliminary eligibility under Secs. 1309.4 and 1309.5, or otherwise prior to the submission of an application under Sec. 1309.10 or acquisition of the facility) are payable with grant funds, and require prior, written approval of the responsible HHS official.

Sec. 1309.44 Independent analysis.

(a) The responsible HHS official may direct the grantee applying for funds to acquire or make major renovations to a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to Sec. 1309.11, or the statement under 1309.10(f) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part. (b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property to be purchased or renovated is situated. (c) Section 1309.43 of this part applies to payment of the cost of the analysis.

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Subpart F—Construction and Major Renovation

Sec. 1309.51 Submission of drawings and specifications.

(a) The grantee may not advertise for bids or award a contract for any part of construction or major renovation funded by grant funds until the grantee has submitted to the responsible HHS official final working drawings and written specifications for the project, a written certification by a licensed engineer or architect as to technical appropriateness of the proposed construction or renovation and the conformity of the project as shown in the final working drawings and specifications with Head Start programmatic requirements, and a written estimate of the costs of the project by a licensed architect or engineer.

(b) The responsible HHS official may authorize the grantee to advertise bids or award a contract after receiving the information provided under paragraph (a) of this section and determining that sufficient funding is, or will be, available to cover the costs of the project as estimated by the architect or engineer, and that the scope of the project as described in the drawings and specifications is appropriate to the needs of the grantee.

Sec. 1309.52 Procurement procedures.

(a) All facility construction and major renovation transactions must comply with the procurement procedure in 45 CFR parts 74 or 92, and must be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) All contracts for construction or major renovation of a facility to be paid for in whole or in part with Head Start funds require the prior, written approval of the responsible HHS official and shall be on a lump sum fixed-price basis.

(c) Prior written approval of the responsible HHS official is required for unsolicited modifications that would change the scope or objective of the project or would materially alter the costs of the project by increasing the amount of grant funds needed to complete the project.

(d) All construction and major renovation contracts for facilities acquired with grant funds shall contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and require that the contractor shall facilitate such access and inspection.

Sec. 1309.53 Inspection of work.

(a) The grantee must provide and maintain competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications.

(b) The grantee must submit a final architectural or engineering inspection report of the facility to the responsible HHS official within 30 calendar days of substantial completion of the construction or renovation.

Sec. 1309.54 Davis-Bacon Act.

Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the Davis- Bacon Act (40 U.S.C. 276a et seq.) and the Regulations of the Department of Labor, 29 CFR part 5. The grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

PART 1310--HEAD START TRANSPORTATION

PART 1310--HEAD START TRANSPORTATION

Subpart A--General

1310.1 Purpose.

Under the authority of sections 640(i) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 et seq.), this part prescribes regulations on safety features and the safe operation of vehicles used to transport children participating in Head Start and Early Head Start programs. Under the authority of sections 644(a) and (c) and 645A(b)(9) of the Head Start Act, this part also requires Head Start, Early Head Start, and delegate agencies to provide training in pedestrian safety and to make reasonable efforts to coordinate transportation resources to control costs and to improve the quality and the availability of transportation services.

1310.2 Applicability.

(a) This rule applies to all Head Start and Early Head Start agencies, and their delegate agencies (hereafter, agency or agencies), including those that provide transportation services, with the exceptions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider. Transportation services to children served under the home-based option for Head Start and Early Head Start services are excluded from the requirements of 45 CFR 1310.12, 1310.15(c), and 1310.16. Except when there is an applicable State or local requirement that sets a higher standard on a matter covered by this part, agencies must comply with requirements of this part.

(b) Sections 1310.12(a) and 1310.22(a) of this part are effective January 18, 2006. Sections 1310.11 and 1310.15(c) of this part are effective January 20, 2004. Paragraph (c) of this section and Sec. 1310.12(b) of this part are effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective February 20, 2001 an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. "Good cause" for a waiver will exist when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the agency. Under no circumstance will the cost of complying with one or more of the specific requirements of this part constitute good cause. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

1310.3 Definitions.

Agency as used in this regulation means a Head Start or Early Head Start or delegate agency unless otherwise designated.

Agency Providing Transportation Services means an agency providing transportation services, either directly or through another arrangement with a private or public transportation provider, to children enrolled in its Head Start or Early Head Start program.

Allowable Alternate Vehicle means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

Bus monitor means a person with specific responsibilities for assisting the driver in ensuring the safety of the children while they ride, board, or exit the vehicle and for assisting the driver during emergencies.

Child Restraint System means any device designed to restrain, seat, or position children who weigh 50 pounds or less which meets the requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213.

Commercial Driver's License (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

Delegate Agency means a local public or private not-profit or for-profit agency to which a Head Start or Early Head Start agency has delegated all or part of its responsibility for operation of a Head Start program.

Early Head Start Agency means a public or private non-profit or for-profit agency or delegate agency designated to operate an Early Head Start program pursuant to Section 645A of the Head Start Act.

Early Head Start Program means a program of services provided by an Early Head Start Agency funded under the Head Start Act.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

Head Start Agency means a local public or private non-profit or for-profit agency designated to operate a Head Start program pursuant to Section 641 of the Head Start Act.

Head Start Program means a program of services provided by a Head Start agency or delegate agency and funded under the Head Start Act.

National Driver Register means the National Highway Traffic Safety Administration's automated system for assisting State driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

National Standards for School Buses and School Bus Operations means the recommendations resulting from the Eleventh National Conference on School Transportation, May 1990, published by the National Safety Council, Chicago, Illinois.

Reverse beeper means a device which automatically sounds an intermittent alarm whenever the vehicle is engaged in reverse.

School Bus means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

Seat Belt Cutter means a special device that may be used in an emergency to rapidly cut through the seat belts used on vehicles in conjunction with child restraint systems.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Transportation Services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

Trip routing means the determination of the fixed routes to be traveled on a regular basis for the purpose of transporting children to and from the Head Start or Early Head Start program or activities.

Subpart B--Transportation Requirements

1310.10 General.

- (a) Each agency must assist as many families as possible who need transportation in order for their children to attend the program in obtaining that transportation.
- (b) When an agency has decided not to provide transportation services, either for all or a portion of the children, it must provide reasonable assistance to the families of such children to arrange transportation to and from its activities. The specific types of assistance being offered must be made clear to all prospective families in the program's recruitment announcements.
- (c) Each agency providing transportation services is responsible for compliance with the applicable requirements of this Part. When an agency provides transportation through another organization or an individual, the agency must ensure the compliance of the transportation provider with the requirements of this part.
- (d) Each agency providing transportation services, must ensure that each vehicle used in providing such services is equipped with:
- (1) a communication system to call for assistance in case of an emergency;
 - (2) safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted near the driver's seat and a sign indicating its location;
 - (3) a first aid kit and a sign indicating the location of such equipment; and
 - (4) a seat belt cutter for use in an emergency evacuation and a sign indicating its location.
- (e) Each agency providing transportation services must ensure that any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under Sec. 1310.13(a) of this subpart.
- (f) Each agency providing transportation services must ensure that all accidents involving vehicles that transport children receiving such services are reported in accordance with applicable State requirements.
- (g) Each agency must ensure that children are only released to a parent or legal guardian, or other individual identified in writing by the parent or legal guardian. This regulation applies when children are not transported and are picked up from the classroom, as well as when they are dropped off by a vehicle. Agencies must maintain lists of the persons, including alternates in case of emergency, and up-to-date child rosters must be maintained at all times to ensure that no child is left behind, either at the classroom or on the vehicle at the end of the route.

1310.11 Child Restraint Systems.

Effective January 20, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving such services is equipped for use of height- and weight-appropriate child safety restraint systems.

1310.12 Required use of School Buses or Allowable Alternate Vehicles.

(a) Effective January 18, 2006, each agency providing transportation services must ensure that children enrolled in its program are transported in school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(b) Effective February 20, 2001, each Head Start and Early Head Start agency receiving permission from the responsible HHS official to purchase a vehicle with grant funds for use in providing transportation services to children in its program or a delegate agency's program must ensure that the funds are used to purchase a vehicle that is either a school bus or an allowable alternate vehicle and is equipped

- (1) for use of height- and weight-appropriate child restraint systems; and
- (2) with a reverse beeper.

(c) as provided in 45 CFR 1310.2(a), paragraph (b) of this section does not apply to vehicles purchased for use in transporting children served under the home-based option for Head Start and Early Head Start.

1310.13 Maintenance of vehicles.

Each agency providing transportation services must ensure that vehicles used to provide such services are maintained in safe operating condition at all times. The organization operating the vehicle must establish and implement procedures for:

- (a) a thorough safety inspection of each vehicle on at least an annual basis through an inspection program licensed or operated by the State;
- (b) systematic preventive maintenance on such vehicles; and
- (c) daily pre-trip inspection of the vehicles by the driver.

1310.14 Inspection of new vehicles at the time of delivery.

Each agency providing transportation services must ensure that bid announcements for school buses and allowable alternate vehicles for use in transporting children in its program include the correct specifications and a clear statement of the vehicle's intended use. Such agencies must

ensure that there is a prescribed procedure for examining such vehicles at the time of delivery to ensure that they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

1310.15 Operation of vehicles.

Each agency providing transportation services, either directly or through an arrangement with another organization or an individual, to children enrolled in its program must ensure that:

(a) On a vehicle equipped for use of such devices, any child weighing 50 pounds or less is seated in a child restraint system appropriate to the height and weight of the child while the vehicle is in motion.

(b) Baggage and other items transported in the passenger compartment are properly stored and secured and the aisles remain clear and the doors and emergency exits remain unobstructed at all times.

(c) Effective January 20, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(d) Except for bus monitors who are assisting children, all vehicle occupants must be seated and wearing height- and weight- appropriate safety restraints while the vehicle is in motion.

1310.16 Driver qualifications.

(a) Each agency providing transportation services must ensure that persons who drive vehicles used to provide such services, at a minimum:

(1) in States where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and

(2) meet any physical, mental, and other requirements established under applicable law or regulations as necessary to perform job-related functions with any necessary reasonable accommodations.

(b) Each agency providing transportation services must ensure that there is an applicant review process for use in hiring drivers, that applicants for driver positions must be advised of the specific background checks required at the time application is made, and that there are criteria for the rejection of unacceptable applicants. The applicant review procedure must include, at minimum:

(1) all elements specified in 45 CFR 1304.52(b), with additional disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) a check of the applicant's driving record through the appropriate State agency, including a check of the applicant's record through the National Driver Register, if available in the State; and

(3) after a conditional offer of employment to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(c) As provided in 45 CFR 1310.2(a), this section does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

1310.17 Driver and bus monitor training.

(a) Each agency providing transportation services must ensure that persons employed to drive vehicles used in providing such services will have received the training required under paragraphs (b) and (c) of this section no later than 90 days after the effective date of this section as established by Sec. 1310.2 of this part. The agency must ensure that drivers who are hired to drive vehicles used in providing transportation services after the close of the 90 day period must receive the training required under paragraphs (b) and (c) prior to transporting any child enrolled in the agency's program. The agency must further ensure that at least annually after receiving the training required under paragraphs (b) and (c), all drivers who drive vehicles used to provide such services receive the training required under paragraph (d) of this section.

(b) Drivers must receive a combination of classroom instruction and behind-the wheel instruction sufficient to enable each driver to:

(1) operate the vehicle in a safe and efficient manner;

(2) safely run a fixed route, including loading and unloading children, stopping at railroad crossings and performing other specialized driving maneuvers;

(3) administer basic first aid in case of injury;

(4) handle emergency situations, including vehicle evacuation procedures;

(5) operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints;

(6) conduct routine maintenance and safety checks of the vehicle; and

(7) maintain accurate records as necessary.

(c) Drivers must also receive instruction on the topics listed in 45 CFR 1304.52(k)(1), (2) and (3)(i) and the provisions of the Head Start Program Performance Standards for Children with Disabilities (45 CFR 1308) relating to transportation services for children with disabilities.

(d) Drivers must receive refresher training courses including the topics listed in paragraphs (b) and (c) of this section and any additional necessary training to meet the requirements applicable in the State where the agency operates.

(e) Each agency providing transportation services must ensure that drivers who transport children receiving the services qualify under the applicable driver training requirements in its State.

(f) Each agency providing transportation services must ensure that:

(1) the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance; and

(2) before bus monitors assigned to vehicles used to provide such services begin their duties, they are trained on child boarding and exiting procedure, use of child restraint systems, any required paperwork, responses to emergencies, emergency evacuation procedures, use of special equipment, child pick-up and release procedures and pre- and post-trip vehicle check.

Subpart C--Special Requirements

1310.20 Trip routing.

- (a) Each agency providing transportation services must ensure that in planning fixed routes the safety of the children being transported is the primary consideration.
- (b) The agency must also ensure that the following basic principles of trip routing are adhered to:
 - (1) The time a child is in transit to and from the Head Start or Early Head Start program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical.
 - (2) Vehicles must not be loaded beyond the maximum passenger capacity at any time.
 - (3) Vehicles must not be required to back up or make “U” turns, except when necessary for reasons of safety or because of physical barriers.
 - (4) Stops must be located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle.
 - (5) When possible, stops must be located to eliminate the need for children to cross the street or highway to board or leave the vehicle.
 - (6) If children must cross the street before boarding or after leaving the vehicle because curbside drop off or pick up is impossible, they must be escorted across the street by the bus monitor or another adult.
 - (7) Specific procedures must be established for use of alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing. In selecting among alternatives, transportation providers must choose routes that comply as much as possible with the requirements of this section.

1310.21 Safety education.

- (a) Each agency must provide training for parents and children in pedestrian safety. The training provided to children must be developmentally appropriate and an integral part of program experiences. The need for an adult to accompany a preschool child while crossing the street must be emphasized in the training provided to parents and children. The required transportation and pedestrian safety education of children and parents, except for the bus evacuation drills required by paragraph (d) of this section, must be provided within the first thirty days of the program year.
- (b) Each agency providing transportation services, directly or through another organization or an individual, must ensure that children who receive such services are taught:

- (1) safe riding practices;
 - (2) safety procedures for boarding and leaving the vehicle;
 - (3) safety procedures in crossing the street to and from the vehicle at stops;
 - (4) recognition of the danger zones around the vehicle; and
 - (5) emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.
- (c) Each agency providing transportation services must provide training for parents that:
- (1) emphasizes the importance of escorting their children to the vehicle stop and the importance of reinforcing the training provided to children regarding vehicle safety; and
 - (2) complements the training provided to their children so that safety practices can be reinforced both in Head Start and at home by the parent.
- (d) Each agency providing transportation services must ensure that at least two bus evacuation drills in addition to the one required under paragraph (b)(5) of this section are conducted during the program year.
- (e) Each agency providing transportation services must develop activities to remind children of the safety procedures. These activities must be developmentally appropriate, individualized and be an integral part of the Head Start or Early Head Start program activities.

1310.22 Children with disabilities.

- (a) Effective January 18, 2006 each agency must ensure that there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.
- (b) Each Head Start, Early Head Start and delegate agency must ensure compliance with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), the HHS regulations at 45 CFR part 84, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Head Start Program Performance Standards on Services for Children with Disabilities (45 CFR part 1308) as they apply to transportation services.
- (c) Each agency must specify any special transportation requirements for a child with a disability when preparing the child's Individual Education Plan (IEP) or Individual Family Service Plan

(IFSP), and ensure that in all cases special transportation requirements in a child's IEP or IFSP are followed, including:

- (1) special pick-up and drop-off requirements;
- (2) special seating requirements;
- (3) special equipment needs;
- (4) any special assistance that may be required; and
- (5) any special training for bus drivers and monitors.

1310.23 Coordinated transportation.

(a) Each agency providing transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

(b) At a minimum, the agency must:

- (1) identify the true costs of providing transportation in order to knowledgeably compare the costs of providing transportation directly versus contracting for the service;
- (2) explore the option of participating in any coordinated public or private transportation systems existing in the community; and
- (3) where no coordinated public or private non-profit transportation system exists in the community, make every effort to identify other human services agencies also providing transportation services and, where reasonable, to participate in the establishment of a local transportation coordinating council.

PART 1311—HEAD START FELLOWS PROGRAM

1311.1 Head Start Fellows Program Purpose.

(a) This part establishes regulations implementing section 648A(d) of the Head Start Act, as amended, 42 U.S.C. 9801 et seq., applicable to the administration of the Head Start Fellows Program, including selection, placement, duration and status of the Head Start Fellows.

(b) As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

1311.2 Definitions.

As used in this part:

Act means the Head Start Act, as amended, 42 U.S.C. 9801 et seq.

Associate Commissioner means the Associate Commissioner of the Head Start Bureau in the Administration on Children, Youth and Families.

Head Start Fellows means individuals who participate in the Head Start Fellows Program, who may be staff in local Head Start programs or other individuals working in the field of child development and family services.

1311.3 Application process.

An individual who wishes to obtain a Fellowship must submit an application to the Associate Commissioner. The Administration for Children and Families will publish an annual announcement of the availability and number of Fellowships in the Federal Register. Federal employees are not eligible to apply. (The information collection requirement contained in this section is approved under OMB Control Number 0970-0140.)

1311.4 Qualifications, selection, and placement.

(a) The Act specifies that an applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed. The Associate Commissioner will make the final selection of the Head Start Fellows.

(b) Head Start Fellows may be placed in:

(1) The Head Start national and regional offices;

- (2) Local Head Start agencies and programs;
 - (3) Institutions of higher education;
 - (4) Public or private entities and organizations concerned with services to children and families;
and
 - (5) Other appropriate settings.
- (c) A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies
- (d) Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence Federal, State or local legislation.

1311.5 Duration of Fellowships and status of Head Start Fellows.

- (a) Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.
- (b) For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the Federal Government.
- (c) Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the Federal Government for the purposes of chapter 11 of title 18, United States Code, and for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.