

# CAPLAW *e-news brief*

## Highlights of the Head Start Eligibility Determination Final Rule

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Earlier this year, the Office of Head Start (OHS) released its [final rule on Head Start eligibility determination procedures](#). The rule clarifies the eligibility requirements for Head Start and Early Head Start program enrollment and provides instructions for program staff to determine, verify, certify and maintain eligibility records for children enrolled in Head Start programs. The rule became effective as of March 12, 2015 and applies to all new eligibility determinations made on or after this date. Programs do not need to re-determine the eligibility of children who are already enrolled in Head Start or are on waiting lists for enrollment. Even though the recently issued proposed Head Start Performance Standards revise the eligibility determination requirements further, those revisions will not take effect until the proposed Performance Standards are finalized, which may be several years from now. In the interim, the final rule that became effective in March will govern Head Start eligibility determinations.

While most provisions of the final rule clarify or reiterate current eligibility determination procedures, some new requirements affecting the process by which Head Start program staff members determine eligibility for program enrollment were introduced. Recognizing that previous eligibility requirements were located in multiple places (i.e., the 2007 reauthorized Head Start Act, the current Performance Standards and Policy Clarifications), OHS attempted with the final rule to consolidate and update the various requirements in one location, 45 C.F.R. Part 1305, by introducing a revised definitions section (§ 1305.2) and a revised eligibility determination section (§ 1305.4).

The final rule seeks to ensure that Head Start grantees prioritize serving the neediest families first and is a direct response to findings of a Government Accountability Office investigation that certain Head Start programs were enrolling over-income children while legitimate under-income and categorically eligible children remained on waiting lists. HHS also sought

to address allegations of fraud and abuse involving certain Head Start staff members accused of manipulating the family income of applicants to make over-income families appear under-income and of enrolling more over-income children than allowed by the Head Start Act. In light of these goals, the final rule introduces and/or clarifies the following key provisions:

1. **Staff must create and preserve an eligibility determination record for each Head Start participant [§ 1305.4(l)].** The regulations no longer merely specify the documents that program staff must review to determine income and categorical eligibility, but also require programs to keep an eligibility determination record for each child during the period in which he or she is enrolled and for at least one year after the child ceases to receive services or is no longer enrolled. Records may be maintained in electronic or hard-copy form, and each record must include (i) copies of all documents or statements used to verify eligibility, including documentation of income such as paystubs and W-2 forms, (ii) a statement that program staff made reasonable efforts to verify information and (iii) a determination of whether the child meets the over-income eligibility requirements or categorical eligibility requirements. OHS encourages, though does not require, programs to use the [Head Start Eligibility Verification form](#) approved by the Office of Management and Budget to determine eligibility. However, OHS also makes clear that it does not prescribe any particular method for how programs may collect eligibility information, but rather holds program management ultimately responsible for each eligibility determination.
2. **Staff may conduct phone interviews to determine eligibility if in-person interviews are not possible [§ 1305.4(a)].** Program staff are required to conduct an in-person

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interview with each family to verify that the eligibility requirements in 45 C.F.R. § 1305.4 have been satisfied. However, the final rule provides that if an in-person interview is not possible, staff may conduct an interview of the family over the phone and note in the eligibility determination record why the in-person interview was not possible.

3. **Staff may, in certain circumstances, (i) accept written self-declarations from families to show income eligibility if families cannot produce the standard eligibility documentation or (ii) verify eligibility through third parties if the family gives written consent, provided that such verification documents are kept in the eligibility determination record [§§ 1305.4(i) and (j)].** If a family reports no income or is homeless, the program may accept a family's written declaration to that effect, provided that the program makes a reasonable effort to verify the family's income or seek information from third parties about the family's eligibility, if the family gives written consent. The scope of such verification should be limited to that which is relevant to eligibility and adhere to program safety and security policies. All documents related to third-party verification must be kept as part of the eligibility determination record.
4. **"Public assistance" for purposes of Head Start income eligibility only includes Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI).** Despite comments suggesting the inclusion of childcare, the Supplemental Nutrition Assistance Program (SNAP), and Medicaid in the definition of "public assistance", OHS clarified that for income eligibility purposes, "public assistance" only includes TANF and SSI. This clarification is consistent with prior Head Start guidance.
5. **Homeless children and children in foster care are categorically eligible for Head Start services and the lack of documentation cannot be a barrier to enrollment [§ 1305.4(f)].** The final rule makes clear that programs do not need to verify the income of families experiencing homelessness or

of families of children in foster care and that programs must allow such children to attend Head Start programs without records of immunization or other medical records, proof of residency, birth certificates or other documents.

6. **Infants and children between birth and age three are eligible for Early Head Start and children between age three and the compulsory school age are eligible for Head Start [§ 1305.4(a)].** Unlike the prior regulations, the final rule specifies that to be eligible for Early Head Start, a child must be an infant or toddler between the ages of zero and three years old. A child that is at least three years old or will turn three by the date used to determine eligibility for public school is eligible for Head Start. However, the child will no longer be eligible for Head Start once he or she is older than compulsory school age. HHS specifically rejected a comment to allow Head Start programs the flexibility to enroll children who are old enough to attend kindergarten in their school districts, but have an Individualized Education Plan that states that they need another year of preschool. Staff are not required to review birth certificates to verify age eligibility and can rely on a parent's statement of the child's age.
7. **Programs may enroll over-income children and pregnant women in Head Start programs, subject to certain limitations [§§ 1305.4(c) and (d)].** The final rule clarifies that 10 percent of a program's enrollment may be made up of children and pregnant women who are neither income nor categorically eligible for Head Start services. Further, programs may enroll an additional 35 percent of participants beyond the 10 percent enrollment whose families have incomes over 100 percent but below 130 percent of the federal poverty guidelines. However, prior to serving over-income children, grantees must (i) enroll at least 10 percent of children with disabilities and (ii) confirm that they have implemented outreach and enrollment policies and procedures to be fully enrolled with income or categorically eligible children. If a grantee serves over-income children, it

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must also submit reports annually to the Head Start Regional Office documenting how the grantee is meeting the needs of income and categorically eligible children.

8. **Programs must establish policies and procedures to address staff members who intentionally enroll ineligible families [§ 1305.4(m)].** All Head Start and Early Head Start grantees are now required to establish policies and procedures describing actions that will be taken against staff who intentionally enroll children and families who do not meet the eligibility requirements. The regulations emphasize that such policies will also protect staff members from allegations of fraud in the case of inadvertent or mistaken enrollments.
9. **Programs must develop and implement training for staff, governing bodies and policy councils on the new eligibility determination procedures.** Head Start programs must now train all governing body, policy council, management and those staff members who are responsible for making eligibility determinations on federal regulations and program policies and procedures, including verification, certification and documentation requirements. Existing management and staff members should have received training within 90 days after the effective date of the final rule, or by June 10, 2015, and after the initial training, programs must train each newly hired staff member as soon as possible, but within 90 days of hire. Programs must also train all governing body and policy council members within 180 days after the effective date of the final rule, or by September 8, 2015.

For further information about the eligibility determination requirements, view OHS's [webinar](#) explaining the determination and documentation requirements and read OHS's [FAQ](#) addressing specific issues raised by the Head Start community.

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