

Complying with the New Head Start Program Performance Standards in 2024

October 2024



On August 21, 2024, the federal Office of Head Start (OHS) released [Supporting the Head Start Workforce and Consistent Quality Programming](#) (the “Final Rule”), which makes extensive regulatory changes to the Head Start Program Performance Standards. These changes (the “New HSPPS”) address a wide swath of topics, including staff wages and benefits, child safety, the integration of mental health into program services, and additional supports to pregnant people. The New HSPPS also establish overarching terminology for referencing Head Start services: “Head Start” now refers to any program under the Head Start Act, including “Head Start Preschool” (ages three to school-age) and “Early Head Start” (pregnant people and ages birth to three).

While the effective date of the New HSPPS is August 21, 2024, the actual compliance date for many of the new requirements is October 21, 2024, with a subset not becoming operative until months, or even years, after that. Nevertheless, OHS indicates in the introductory language that it will **not** begin monitoring the new requirements until August 21, 2025, to give programs additional time to adjust to them. In this article, CAPLAW addresses the requirements with compliance dates in 2024 to assist Community Action Agencies (CAAs) with understanding the New HSPPS. Future publications will cover other requirements, such as wages, as their compliance dates draw near.

The list below includes insights from the Preamble that may help CAAs comply with the New HSPPS and understand where flexibility exists. The “Preamble” is the introductory language to the Final Rule that contains OHS’s responses to public comments received on the 2023 proposed revisions to the HSPPS. These responses directly address the concerns of the impacted community and provide insight into how OHS might interpret the New HSPPS moving forward. OHS indicates throughout the Preamble that it may issue further guidance on the processes and procedures to assist organizations with compliance.

Standards in Effect Retroactively, as of March 2024

- The New HSPPS retroactively incorporated the following legislative requirements in the Further Consolidated Appropriations Act, 2024 (Pub. L. 118-47) that took effect earlier this year, which broaden eligibility for American Indian and Alaska Native (AIAN) and Migrant and Seasonal Head Start (MSHS) programs:
 - AIAN programs may serve all pregnant people and children in their service area who meet the Head Start age requirements, regardless of income. § 1302.12(e).
 - Tribes may prioritize selecting children who have at least one family or household member who is a tribal member. § 1302.14(a)(2).
 - MSHS programs can serve any child with at least one (rather than two) family member whose income comes primarily from agriculture. § 1302.12(f); 1305.2 (migrant family).
 - MSHS programs can prioritize children whose families have frequently relocated to pursue agricultural work within the past two years. § 1302.14(a)(3).



Compliance Required as of October 21, 2024

Client Mental Health

- The New HSPPS include updates to more fully integrate mental health into all aspects of service delivery. This includes added focus on parental mental health and the addition of mental health considerations into current health-related child status and safety requirements. OHS's approach may allow programs to build upon existing procedures and practices. Specifically, programs must:

For Children

- Collaborate and communicate with parents about a child's mental health needs in a timely manner. § 1302.41(a).
- Obtain advance authorization from parents for all mental health procedures administered through the program. § 1302.41(b)(1).
- Include mental health emergencies in existing health emergency policies shared with parents. § 1302.41(b)(2).
- Obtain determinations from health care professionals as to whether a child is up-to-date on a schedule of age-appropriate preventative and primary mental health care. OHS clarifies in the Preamble that a program can ensure a child is up-to-date by obtaining determinations from any social, emotional, or behavioral screening as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of its state Medicaid agency. § 1302.42(b)(1)(i).
- Take into account relevant developmental or mental health concerns when identifying each child's nutritional health needs. § 1302.42(b)(4).

For Parents

- Collaborate and provide opportunities for parents to learn about healthy pregnancy and postpartum care for parental mental health concerns, specifically depression and anxiety. Existing prenatal and postpartum information, education, and services must now also help pregnant women, mothers, fathers, partners, or other family members access mental health services, including referrals, to address mental health concerns. § 1302.46(b); 1302.81(b).
 - Offer ongoing support to assist parents' navigation through health and mental health systems and provide parents with information about how to access mental health services for children and families, including referrals if appropriate. § 1302.46(b)(2).
- Programs must work with mental health consultants on ways to build the capacity of an adult in a child's life (e.g., parents, guardians, family members, staff) to strengthen and support the mental health and social and emotional development of children. The standards describe several ways consultants may provide services, such as working with the program to implement strategies that promote a culture of mental health. OHS explains in the Preamble that this flexibility enables programs to decide what consultation services work best for them, rather than impose a required checklist of services to provide. § 1302.45(b).



- Updates expand who may qualify as a mental health consultant. Mental health professionals who are **not** licensed but work under the supervision of a licensed mental health professional may serve as mental health consultants. In the Preamble, OHS notes this expansion includes trainees who may be in the process of obtaining a license. OHS indicates further flexibility in this area by stating that a consultant can provide teleconsultation services for adults when unable to meet on site. § 1302.91(e)(8)(ii).
 - Note that further flexibility relating to mental health consultants is provided for the new requirement taking effect in August 2025 which requires programs to provide **monthly** mental health consultation services. For these services, if a mental health consultant is not available each month, other licensed professionals or behavioral health support specialists may provide the consultation if they work in collaboration with the mental health consultant. In the Preamble, OHS offers examples of who these other professionals or specialists may be, such as community health workers, behavior specialists, and traditional practitioners, who are especially important in Tribal communities. OHS notes that it added this flexibility in response to public comments that expressed concerns about the availability of mental health consultants, especially in rural areas. § 1302.45(a)(4)(i).

Workforce – Reporting and Training

- Newly added incident reporting procedures set a time frame for reporting and criteria for when programs must report incidents, specifically:
 - Programs must report immediately, but no more than 7 calendar days (OHS had initially proposed 3 days) following a significant health and safety incident. The 7-day period begins the day after the program becomes aware of the incident.
 - The reportable incident must be a “significant” one that (i) affects the health and safety of a child; (ii) occurs in a setting where Head Start services are provided, and (iii) involves either (1) a staff member, contractor, or volunteer that participates in a Head Start program or in a classroom at least partially funded by Head Start, regardless of whether the affected child receives Head Start services; or (2) a child that receives any Head Start-funded services or participates in a classroom that is at least partially funded by Head Start. § 1302.102(d)(1)(ii).
- The updates more clearly establish when incidents rise to the level of “significant” and, in response to public comment, OHS toned down some of the overly broad proposed reporting criteria that would result in overreporting:
 - Programs must now report (i) any suspected or known child maltreatment or endangerment in violation of the standards of conduct as set forth in the New HSPPS; (ii) serious harm, injury, or endangerment of a child resulting from lack of preventative maintenance or supervision; and (iii) any unauthorized release of a child.
 - The Preamble clarifies that closures of classrooms or centers do not include reporting scheduled breaks, holidays, or temporary closures for inclement weather. § 1302.102(d)(1)(iii).



- Professional development plans referenced in Section 648A(f) of the Head Start Act are now included in the New HSPPS. Section 648(f) requires programs to develop such plans for all full-time employees providing direct services to children and to implement the plans to the extent feasible and practicable. This change does not impose any new obligations, but rather reminds programs of the requirement and emphasizes the importance of leveraging staff input in professional development activities. § 1302.92(b)(1).
- Programs must provide a “systematic” approach to staff training and professional development to further support staff in increasing their ability to provide high-quality services. The Preamble indicates that this revision intends to ensure programs implement an approach to staff training and professional development that is informed by input from staff, identifies barriers to job performance, and includes other employee engagement practices. § 1302.92(b).
- Training on mandatory reporting of suspected or known child abuse and neglect, and on positive strategies to support children’s social and emotional development must now occur on an annual basis. § 1302.92(b)(2 – 3). The Preamble indicates that OHS will continue to support programs in meeting this requirement through TTA, including virtual TTA options for rural and remote programs. Programs also have the flexibility to determine the specific topics for positive strategies training that meet their staff’s needs. Appropriate training topics that satisfy this requirement include, for example:
 - Impact of trauma on children’s social and emotional development
 - Implicit bias in interpreting behaviors
 - Understanding basics of child social and emotional development
 - Individualizing supports for social and emotional development of children with disabilities
 - Other related topics

Safety Practices, Conduct, and Management Systems

- New requirements broaden who must follow safety practices and standards of conduct and align definitions in both areas with federal child abuse and prevention law. Specifically:
 - Contractors and volunteers are added to the list of individuals (previously just staff and consultants) who must follow (i) appropriate practices to keep children safe during Head Start activities and (ii) standards of conduct that require reporting of reasonably suspected or known incidents of child abuse and neglect. In the Preamble, OHS clarifies that for contractors, or individuals on a contract, these requirements only apply (1) when their activities involve contact with and/or direct services to children and families, and (2) if they could have unsupervised access to children and families. The standards further clarify safety practices by requiring the provision of appropriate supervision at all times (replacing “indoor and outdoor” supervision). § 1302.47(b)(5); 1302.90(c)(1)(iii); 1302.47(b)(5)(iii).
 - The “child abuse and neglect” definition is aligned with the Child Abuse Prevention and Treatment Act (another federal statute) in both the safety practices and standard of conduct sections. § 1302.47(b)(5); 1302.90(c).



- The standards of conduct now provide a more robust description of prohibited behaviors, including non-exhaustive examples, that result in child maltreatment and endangerment. While most of the behaviors are generally recognized as harmful to children, OHS opted to maintain a few proposed examples like “seclusion” and “restraining” despite public comments that such actions may not always result in child maltreatment and endangerment. The Preamble explains that the expanded list is informed by Centers for Disease Control and Prevention (CDC) guidance and research. Programs should note that these behaviors constitute reportable incidents. § 1302.90(c)(1)(ii).
- Management system requirements more directly encourage programs to focus on employee development and engagement, as well as consistent implementation of incident reporting procedures by:
 - Promoting clear and reasonable roles and responsibilities for all staff and providing regular and ongoing staff supervision with meaningful and effective employee engagement practices. In the Preamble, OHS aims to discourage top-down approaches to staff supervision and instead promote the importance of staff engagement to employee well-being and program quality. OHS provides examples in the Preamble of meaningful and effective employee engagement practices, such as discussions of explicit and implicit expectations, and open communication between management, staff, and their representatives. While practices will vary by program, OHS stresses the importance of understanding the expectations imposed on staff, identifying and addressing barriers experienced by staff, and recognizing high-quality work. § 1302.101(a)(2).
 - Ensuring that all staff are trained to implement the new incident reporting procedures. These are the procedures added to §1302.102(d)(1)(ii) that address the time frame for reporting and when reporting is required. § 1302.101(a)(5).

Eligibility, Recruitment, Selection, Enrollment, Attendance (ERSEA)

- Once a child participating in an MSHS program is deemed eligible for services, they remain eligible until they turn 3 years old, which is consistent with what Early Head Start permits. § 1302.12(j)(5).
- Programs may consider and prioritize the enrollment of children of staff members as part of their selection criteria. § 1302.14(a)(6).
- Programs must ensure at least 10% of their total “actual” (rather than “funded”) enrollment is filled with children with disabilities. This change addresses confusion about seemingly conflicting language in the HSPPS and the Head Start Act. § 1302.14(b)(1).
- The revised definition of “income” means gross income that includes only wages, business income, unemployment compensation, pension or annuity payments, gifts that exceed the



threshold for taxable income, and certain military income, as well as stipends. The definition specifically excludes refundable tax credits and any form of public assistance. Further, OHS removed Social Security benefits, veterans' benefits, and alimony from the definition because of concerns about whether these were reliable sources of income and whether their inclusion adversely impacted disabled veterans and grandparents raising their grandchildren. In the Preamble, OHS notes that it declined to add child support payments to the definition. § 1305.2 (income).

- “Poverty line” is a newly added definition which refers to the amount set by the poverty guidelines updated periodically in the Federal Register by HHS. The definition is not intended to impact Head Start eligibility, but rather reflect how the term is used in the Head Start Act and by OHS. § 1305.2 (poverty line).
- Programs may now adjust a family’s income to account for excessive housing costs when determining eligibility. “Housing costs” are defined as the total annual applicable expenses on housing which may include rent or mortgage payments, homeowner’s or renter’s insurance, utilities, interest, and taxes on the home. The Preamble explains that utilities may include electricity, gas, water, sewer and trash, and programs can use bills and expenses from one month to calculate the average expenses that a family has throughout the year. OHS notes that verification methods did not change so recipients may still use tax forms and pay stubs as proof of income and adds to those methods, bills, lease agreements, mortgage statements, etc. OHS clarifies further that use of housing costs is optional, so if a family is categorically eligible via receipt of SNAP or TANF, using housing costs to determine eligibility is not required. § 1302.12(i)(1) (i) and (ii); 1305.2 (housing costs).
- Programs must provide families with more modern, user-friendly, and accessible options and communications in the recruitment and enrollment processes. The intent is to create a family-centric approach that will look different in each community but is not intended to discourage in-person participation. Options include using:
 - Modern technology when recruiting and enrolling to encourage and assist families in applying and reduce the family’s administrative and paperwork burden. OHS notes in the Preamble that programs must make the use of modern technology optional. § 1302.13.
 - Regular examination of enrollment processes and, when identified, implementation of user-friendly improvements to streamline the process. § 1302.15(g).
 - Accessible communication methods and modalities that meet the needs of the community when engaging with prospective and enrolled families. OHS notes in the Preamble that it expects programs will incorporate family input. § 1302.34(b)(9).



Program Services, Assessment, & Facilities

- Family engagement strategies must include communicating with families in a format that meets the needs of each individual family. This is consistent with how programs must approach communications that engage and enroll families. In the Preamble, OHS encourages programs to consider multi-generational approaches that meet the needs of all family members. § 1302.50(a).
- Newborn visits must include a discussion of maternal mental and physical health, safe sleep, infant health, and support for basic needs. OHS clarifies in the Preamble that the newborn visit only needs to be scheduled within two weeks of birth, not conducted. § 1302.80(d).
- If a curriculum is used to provide family partnership services to pregnant people, it should be a maternal health curriculum that supports prenatal and postpartum education needs. Using a curriculum continues to be optional, but the revisions clarify that curriculums should be appropriate for the service population. § 1302.82(a).
- “Suspension” is now defined and means any temporary removal of a child from the learning setting due to a child’s behavior. The definition clarifies the disciplinary practices that effectively result in a suspension. Language is also added to further describe a “temporary suspension” as a last resort when interventions and supports recommended by a mental health consultant have not reduced the serious safety threat and the program needs more time to put additional appropriate services in place. § 1302.17(a); 1305.2 (suspension).
- Participation in a state or local Quality Rating and Improvement System (QRIS) is now highly encouraged but not mandated. This change recognizes that for some programs, participation in QRIS presents an undue burden or duplication of efforts. § 1302.53(b)(2).
- OHS responds only in the Preamble to requests for clarification regarding the application of Davis-Bacon and Related Acts (DBRA) to Head Start. The response clarifies that “routine maintenance” is generally not subject to DBRA. § 1303.11.
- Newly added requirements to prevent lead exposure are less prescriptive and administratively burdensome than those proposed. OHS opted for a more flexible approach that allows programs to account for the age and condition of their facilities. All programs must develop a plan to prevent lead exposure and implement appropriate remediation or abatement actions. However, if lead may exist in a building, programs must implement testing and inspection practices at least every 2 years with support from trained professionals, which aligns with the reevaluation requirement for Housing and Urban Development (HUD)-assisted properties. In the Preamble, OHS recognizes that in some newer facilities or where a program can document that water or paint is free from lead contamination, regular testing and inspection may not be necessary. § 1302.47(b)(10).



- Changes to the facility application process (i.e., to purchase, construct or renovate a facility) intended to provide flexibility and streamline the process include:
 - No longer requiring a written statement from an independent real estate professional to demonstrate a lack of suitable facilities in a program's service area. § 1303.42.
 - Clarifying that once federal funds are approved for reasonable fees and costs associated with preliminary eligibility and the application, the funds are allowable even if the application is not ultimately approved. § 1303.43.
 - Clarifying that an appraiser can conduct estimates either on-site or virtually. § 1303.44(a)(7).
 - Limiting the additional information an OHS official can require as part of the process to only what is needed to determine compliance with regulations. § 1303.44(a)(14).
- Revisions to “major renovation” and “federal interest” definitions clarify that minor renovations and repairs are neither major renovations nor do they create a federal interest, unless specifically included in a purchase application. The changes to “major renovation” also raise the threshold from \$250,000 to \$350,000, clarify when renovations are grouped together for purposes of meeting the threshold, and apply the higher CCDF threshold when tribes jointly use CCDF and Head Start funds for major renovations. § 1305.2 (major renovation & federal interest).

Compliance Required as of December 19, 2024

- A new subsection to the HSPPS requires programs to track and record services received by enrolled pregnant people to help identify services and resources they need to support a healthy pregnancy. § 1302.80(e).

Compliance Required in 2025 and Beyond

- This article solely focuses on the New HSPPS updates for which compliance in 2024 is required. CAPLAW will be issuing another article that addresses the New HSPPS revisions with compliance dates after 2024, e.g., staff salaries and benefits, multidisciplinary approach to mental health, community assessments, etc.

Key Proposed but Rejected Requirements

- In the Preamble, OHS responds to the concerns and considerations raised in the over 1,000 public comments they received on the Notice of Proposed Rulemaking (NPRM) posted in the Federal Register on November 20, 2023. The following are some key aspects of the NPRM that were not retained in the New HSPPS in response to points raised by commenters from the Head Start community:
 - **Barriers to Enrollment.** The NPRM proposed that programs survey and analyze data on barriers to enrollment and attendance from families who were selected for services, but did not enroll. This proposal was removed because of the significant administrative burden it would impose.



- **Classroom Ratios.** The proposed changes to the center-based option that encouraged smaller teacher to child ratios for children under 12 months were not retained. Programs may continue to be flexible in reducing or expanding group sizes and ratios in classrooms.
- **Service Duration.** The proposed 46-week service duration minimum for Early Head Start was not retained in response to public comments emphasizing the need for programs to determine a schedule that best meets their community's needs.
- **Expulsion.** The New HSPPS maintain the broad requirement that programs directly facilitate the transition of children whose continued enrollment presents a serious safety threat to a more appropriate placement. The NPRM included clarifying language that was not retained in the New HSPPS, but the Preamble indicates that the interpretation of this requirement has not changed. OHS's Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings contains further details on expulsion practices in Head Start programs.
- **Paid Family Leave.** Rather than adding new requirements for paid family and medical leave, the New HSPPS acknowledge the existing Family and Medical Leave Act (FMLA) requirements. Smaller Head Start organizations not subject to the FMLA are therefore not required to provide family and medical leave under the New HSPPS, unless required otherwise.
- **Multidisciplinary Mental Health Team.** OHS removed the requirement for a "multidisciplinary mental health team" in response to public comments that expressed concerns and confusion about the role of the team. Instead, OHS outlines a multidisciplinary approach to mental health for programs to adopt starting in August 2025.
- **Unscheduled Staff Breaks.** OHS removed the proposed requirement for programs to provide staff with unscheduled five-minute wellness breaks. Although OHS emphasizes the importance of unscheduled breaks for staff wellness in the Preamble, it ultimately decided to allow programs flexibility to determine the best approach to implement breaks.
- **Adult Furniture.** OHS responded to overwhelmingly negative public comments about the proposal to require adult sized furniture in classrooms by not retaining the requirement.

Resources

- [OHS Timeline for Compliance with Updated Performance Standard Requirements](#)
- [Complete New HSPPS Revisions Shown in Tracked Changes](#)

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