

Part C Option: Age 3 to Kindergarten Age

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. This document addresses provisions of IDEA regarding the Part C option to make Part C services available to children after age 3 that will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Flexibility to make Part C services available to children from age 3 until eligible to enter kindergarten or elementary school.

The Part C statewide system described in Section 633 may include a state policy, developed and implemented jointly by the local educational agency (LEA) and the state educational agency (SEA), under which parents of children with disabilities who are eligible for services under Section 619, and previously received services under Part C, may choose the continuation of early intervention services (which include an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills) for such children under Part C until such children enter, or are eligible under state law to enter, kindergarten.... [635(c)(1)]

In addition to using funds provided under Section 633 to maintain and implement the statewide system required by such section, a state may use such funds, with the written consent of the parents, to continue to provide early intervention services under Part C to children with disabilities from their third birthday until such children enter, or are eligible under state law to enter, kindergarten, in lieu of a free appropriate public education (FAPE) provided in accordance with Part B. [638(4)]

2. Expanded definition of “Infants and Toddlers.”

“Infants and toddlers” with a disability may include, at a state’s discretion, children with disabilities who are eligible for services under Section 619 who previously received services under Part C until the child enters, or is eligible under state law to enter, kindergarten or elementary school, provided that the programs include:

- An educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills; and

¹ Other topics in this series include: Disproportionality and Overidentification; Early Intervening Services; Changes in Initial Evaluations and Reevaluations; Individualized Education Program (IEP); Discipline; Statewide and Districtwide Assessments; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice, Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Alignment With the *No Child Left Behind Act*; Highly Qualified Teachers; Children Enrolled by Their Parents in Private Schools; State Funding; and Local Funding. Documents are available on the OSERS Web site at: www.ed.gov/about/offices/list/osers/index.html.

- A written notification to parents of their rights and regarding options under Part C and Section 619.

[632(5)(B)(ii)(II)]

3. If a statewide system includes this option, its system shall include a state policy to ensure that:

- Parents of children with disabilities served pursuant to this option are provided annual notice that contains:
 - A description of their rights to elect to receive early intervention services under Section 635(c)(1) or special education and related services under Part B; [635(c)(2)(A)(i)] and
 - An explanation of the differences between services provided under Section 635(c)(1) and services provided under Part B, including--types of services and the locations at which the services are provided; applicable procedural safeguards; and possible costs (including any fees to be charged to families as described in Section 632(4)(B)) to parents of infants or toddlers with disabilities; [635(c)(2)(A)(ii)(I), (II), and (III)]
- Services provided pursuant to Section 635(c) include an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills; [635(c)(2)(B)]
- The state policy will not affect the right of any child served pursuant to Section 635(c) to instead receive FAPE under Part B; [635(c)(2)(C)]
- All early intervention services outlined in the child's individualized family service plan (IFSP) under Section 636 are continued while any eligibility determination is being made for services under Section 635(c); [635(c)(2)(D)]
- The parents of infants or toddlers with disabilities (as defined in Section 632(5)(A)) provide informed written consent to the state, before such infants or toddlers turn 3 years old, as to whether such parents intend to choose the continuation of early intervention services pursuant to Section 635(c) for such infants or toddlers; [635(c)(2)(E)]
- The requirements under Section 637(a)(9) will not apply with respect to a child who is receiving services in accordance with Section 635(c) until not less than 90 days (and at the discretion of the parties to the conference, not more than nine months) before the time the child will no longer receive those services; [635(c)(2)(F)] and
- There will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in Section 320 of the *Family Violence Prevention and Services Act*).... [635(c)(2)(G)]

4. Reporting requirement.

If a state selects the option under Section 635(c)(1), it shall submit to the secretary, in the state's report under Section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under Section 619 but whose parents choose for such children to continue to receive early intervention services under Part C.... [635(c)(3)]

5. Policy regarding funding sources.

If a state selects the option under Section 635(c)(1), the policy shall describe the funds (including an identification as federal, state or local funds) that will be used to ensure that the option is

available to eligible children and families who provide the consent described in Section 635(c)(2)(E), including fees to be charged to families as described in Section 632(4)(B). [635(c)(4)]

6. Rules of construction on state flexibility.

If a state selects the option under Section 635(c)(1), services provided under this option to a child with a disability who is eligible for services under Section 619 shall not be required to provide the child with FAPE under Part B for the period of time during which the child is receiving services under Part C... Nothing in Section 635(c) shall be construed to require a provider of services under Part C to provide a child served under Part C with FAPE.... [635(c)(5)(A) and (B)]

A state that provides early intervention services in accordance with Part C to a child who is eligible for services under Section 619, is not required to provide such child with FAPE. [612(a)(1)(C)]

7. Allowable use of funds under Parts B and C.

- Reservation for state incentive grants:
For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under Section 644 exceeds \$460,000,000, the secretary shall reserve 15 percent of such appropriated amount to provide grants to states that are carrying out the policy described in Section 635(c) in order to facilitate the implementation of such policy. [643(e)]

8. Other state-level activities.

Each state may use any funds the state reserves under Subsection 619(d) [Reservation for State Activities] and does not use for administration under Subsection 619(e) [State Administration]...to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under this section and who previously received services under Part C until such children enter, or are eligible under state law to enter, kindergarten; or at the state's discretion, to continue service coordination or case management for families who receive services under Part C. [619(f)(5) and (6)]

9. Flexibility in using funds for Part C.

Any state eligible to receive a grant under Section 619 may use funds made available under Sections 611(e)(1)(A) [611 funds for state administration], 611(f)(3) [LEA funds available for reallocation], or 619(f)(5) [619 funds for state level activities to develop and implement a state policy jointly with the LEA under Part C and the SEA to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under Section 619 and who previously received services under Part C until such children enter, or are eligible under state law to enter, kindergarten, or elementary school. [611(e)(7)]