

**EARLY INTERVENING SERVICES****(See also Disproportionality and Overidentification)**

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 only the changes to the provisions regarding early intervening services of IDEA 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. Adds “Early Intervening Services” to the Statute Under Local Educational Agency Eligibility.**

Allows a local educational agency (LEA) to use not more than 15 percent of the amount it receives under IDEA Part B for any fiscal year (less any amount reduced by the agency under Section 613(a)(2)(C)) in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

[613(f)(1)]

**Activities Allowed in Implementing Coordinated, Early Intervening Services by LEAs Include:**

- Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable them to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction and, when appropriate, instruction on the use of adaptive and instructional software;
- Providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.

[613(f)(2)]

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<sup>1</sup> 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](http://www.ed.gov/about/offices/list/osers/index.html).

## **2. Free Appropriate Public Education (FAPE).**

Nothing in the section on early intervening services shall be construed to limit or create a right to FAPE under the provision of Part B.

[613(f)(3)]

## **3. Reporting.**

Each LEA that develops and maintains coordinated, early intervening services must annually report to the state educational agency (SEA) on:

- The number of students served by early intervening services; and
- The number of students served by early intervening services who subsequently receive special education and related services under IDEA during the preceding two-year period.

[613(f)(4)]

## **4. Coordination with the *Elementary and Secondary Education Act (ESEA) of 1965.*<sup>2</sup>**

Funds made available to develop and implement coordinated, early intervening services may be used to carry those services aligned with activities funded by, and carried out under, ESEA, if such funds are used to supplement, and not supplant, funds made available under ESEA for the activities and services assisted under Section 613(f).

[613(f)(5)]

## **5. Permissive Use of Funds.**

Notwithstanding paragraph (2)(A) or Section 612(a)(17)(B) (relating to commingled funds), funds provided to the LEA under this part may be used to develop and implement coordinated, early intervening educational services in accordance with Section 613 (f).

[613(a)(4)(A)(ii)]

## **6. Disproportionality: Review and Revision of Policies, Practices and Procedures.**

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with Section 618(d)(1), the state or the secretary of the interior, as the case may be, will require an LEA identified under Section 618(d)(1) to reserve the maximum amount of funds under Section 613(f) to provide comprehensive coordinated early intervening services to serve children in such LEA, particularly children in those groups that were significantly overidentified.... [618(d)(2)(B)]

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<sup>2</sup> For purposes of this document, *No Child Left Behind* (NCLB) also will be referred to as the *Elementary and Secondary Education Act* (ESEA) of 1965, as amended.