

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 became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “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.¹ This document addresses only the changes to the provisions of IDEA regarding the Part C option to make Part C services available to children after age 3 that became effective on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

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

A statewide system described in Section 633 may include a state policy, developed and implemented jointly by the lead agency and the state education 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 shall 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)]

2. Expands the definition of “infants and toddlers.”

The term “infant or toddler with a disability” may also include, at a state’s discretion, ... 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, as appropriate, provided that any programs under Part C serving such children shall include:

- An educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills; and
- A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C or participate in preschool programs under Section 619.

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

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: www.ed.gov/about/offices/list/osers/index.html.

3. Adds requirements in implementing this option.

If a statewide system includes the option under Section 635(c)(1), the statewide system shall ensure that:

- Parents of children with disabilities served pursuant to Section 635(c) are provided annual notice that contains:
 - A description of the rights of such parents to elect to receive early intervention services pursuant to Section 635(c) or under Part B; and
 - An explanation of the differences between services provided pursuant to Section 635(c) and services provided under Part B, including: (1) types of services and the locations at which the services are provided; (2) applicable procedural safeguards; and (3) possible costs (including any fees to be charged to families as described in Section 632(4)(B)), if any, to parents of infants or toddlers with disabilities;
- Services provided pursuant to Section 635(c) include an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills;
- The state policy will not affect the right of any child served pursuant to Section 635(c) to instead receive a free appropriate public education (FAPE) under Part B;
- 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);
- 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 reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to Section 635(c) for such infants or toddlers;
- The requirements under Section 637(a)(9) shall 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; 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)]

4. Adds a reporting requirement.

If a statewide system includes the option under Section 635(c)(1), the state 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. Requires identification of funding sources in the state's policy.

If a statewide system includes 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 described in Section 635(c)(1) is available to eligible children and families who

provide the consent described in Section 635(c)(2)(E), including fees, if any, to be charged to families as described in Section 632(4)(B). [635(c)(4)]

6. Creates rules of construction on state flexibility.

If a statewide system includes the option under Section 635(c)(1), a state that provides services in accordance with Section 635(c) 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 in 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 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. Allows the use of funds for the Part C option.

In addition to using funds provided under Section 633 to maintain and implement the statewide system required by Section 633, 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 FAPE provided in accordance with Part B. [638(4)]

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)(1)]

Each state shall use any funds the state reserves under Section 619(d) (reservation for state activities) and does not use for administration under Section 619(e) (state administration) ... to conduct the specific activities authorized under Section 619(f) including: providing 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 at the state's discretion, to continue service coordination or case management for families who receive services under Part C. [619(f)(5)-(6)]

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) (local education agency (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 lead agency 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 as appropriate. [611(e)(7)]