

## IDEA–Reauthorized Statute

### **Part C Amendments in IDEA 2004**

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 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.<sup>1</sup> This document addresses only the major substantive changes to Part C of IDEA that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

#### **IDEA 2004:**

##### **1. Adds new criteria related to the development of the individualized family service plan (IFSP).**

A statewide system described in Section 633 shall include, at a minimum:

- A policy that ensures that appropriate early intervention services are based on scientifically based research and are available to all infants and toddlers and their families, including ... infants and toddlers with disabilities who are homeless children and their families.

The IFSP shall be in writing and contain:

- A statement of specific early intervention services based on peer-reviewed research, to the extent practicable....;
- A statement of the measurable results or outcomes ... including preliteracy and language skills, as developmentally appropriate for the child; and
- A description of the appropriate transition services.

[635(a)(2), 636(a)(3), and 636(d)(3)-(4)]

##### **2. Adds new Child Find criteria with emphasis on specific subpopulations, including at-risk populations.**

Congress finds that there is an urgent and substantial need to enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly ... infants and toddlers with disabilities in foster care. [631(a)(5)]

In order to be eligible for a grant under Section 633, a state shall provide assurances to the secretary that the state has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the state and their families, including ...

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

infants and toddlers with disabilities and their families who are homeless and ... those who are wards of the state (See Section 602(36)). [634(1)]

A statewide system described in Section 633 shall include, at a minimum, the following components: ... a public awareness program ... including the preparation and dissemination by the lead agency... of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under Part C and of services under Section 619.... [635(a)(6)]

A state desiring to receive a grant under Section 633 shall submit an application to the secretary.... The application shall contain: ... A description of the state policies and procedures that require the referral for early intervention services under Part C of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect; or is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. [637(a)(6)]

If a statewide system includes a state policy allowing the continuation of early intervention services for children 3 years of age until entrance into elementary school, the statewide system shall ensure that: ... there will be a referral for evaluation for early intervention services of a child who experiences a substantial case of trauma due to exposure to family violence (as defined in Section 320 of the *Family Violence Prevention and Services Act*). [635(c)(1), 635(c)(2)(G)]

### **3. Adds new provisions for Early Childhood Transition.**

New option under Part C: 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.... [632(5)(B)(ii)]

A statewide system described in Section 633 shall provide ... a written IFSP ... including a description of the appropriate transition services.... [636(a)(3)]

A state’s application for a grant under Section 633 shall contain a description of the policies and procedures to be used to ensure a smooth transition for toddlers receiving early intervention services under Part C (***and children receiving those services under Section 635(c)) to preschool,*** school, other appropriate services, or exiting the program, including a description of how the lead agency designated or established under Section 635(a)(10) will, in the case of a child who may be eligible for preschool services, with the approval of the family of the child, convene a conference ... not less than 90 days (and at the discretion of all parties, ***not more than nine months***) before the child is eligible for the preschool services.... [637(a)(9)(A)(ii)(II)]

A state’s application for a grant under Section 633 shall contain a description of the policies and procedures to be used to establish a transition plan, including, as appropriate, steps to exit from the program. [637(a)(9)(C)]

A state's application for a grant under Section 633 shall contain a description of state efforts to promote collaboration among Early Head Start programs under Section 645A of the *Head Start Act*, early education and child care programs, and services under Part C. [637(a)(10)]

**4. Establishes additional dispute resolution options under Procedural Safeguards.**

Mediation: The procedural safeguards required to be included ... under Section 635(a)(13) shall provide ... the right of parents to use mediation in accordance with Section 615.... Section 615(e) specifies that mediation shall be available upon request regarding any matter, including matters arising prior to the filing of a due process complaint. If mediation results in resolution of a complaint, the parties must execute a legally binding agreement ... that is signed by the parent and agency representative, and is enforceable in any state court of competent jurisdiction or in a district court of the United States. For those Part C agencies that use Part B due process hearing procedures, revised provisions of Sections 615(b)-(d), (f), (i), (n) and (o) that relate to due process hearing requests and civil actions are also relevant. [Part C at 639(a)(8) and Part B at 615(e)(1) and (e)(2)(F)]

Adoption of Part B Due Process Procedures: If a lead agency has adopted under 34 CFR §303.420, the Part B due process hearing procedures, those procedures must be revised in accordance with the changes made to the due process procedures in Section 615. [Part C at 635(a)(13), 639 and Part B at 615]

**5. Adds definitions and clarifications.**

A statewide system described in Section 633 shall include:

- A rigorous definition of the term "developmental delay" that will be used by the state ...; and policies and procedures to ensure that, consistent with Section 636(d)(5), ... the provision of early intervention services ... occurs in a setting other than the natural environment that is most appropriate, as determined by the parent and the IFSP team, only when early intervention cannot be achieved satisfactorily ... in a natural environment.

[635(a)(1), 635(a)(16)(B)]

"Early Intervention Services." The term "early intervention services" means developmental services that:

- Include:
  - Sign language and cued language services;
  - Screening; and
- Are provided by qualified personnel, including:
  - Vision specialists, including ophthalmologists and optometrists; and
  - Registered dieticians.

[632(4)(E)(iii) and (ix) and 632(4)(F)(viii) and (x)]

Section 602 adds new definitions of "assistive technology," "homeless," "parent," and "ward of the state."

Findings amended to read: Congress finds that there is an urgent and substantial need ... to enhance the development of infants and toddlers with disabilities ... and to recognize the significant brain development that occurs during a child's first 3 years of life. [631(a)(1)]

**6. Adds new members to the State Interagency Coordinating Council (SICC) and eliminates the Federal Interagency Coordinating Council (FICC).**

The SICC shall be composed as follows:

- Not less than one member shall be from the agency responsible for the state Medicaid program;
- Not less than one member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths;
- Not less than one member shall be a representative from the state child welfare agency responsible for foster care; and
- Not less than one member shall be a representative from the state agency responsible for children's mental health.
- The authority for the FICC at 644, IDEA 1997, has been deleted.

[641(b)(1)(G), (K)-(M) and deletion of the FICC at 644, IDEA 1997]

**7. Revises the requirements for the Part C application.**

A state's application for a grant under Section 633 shall provide satisfactory assurance to the secretary that policies and procedures have been adopted to ensure the meaningful involvement of underserved groups, including ... homeless and rural families and children with disabilities who are wards of the state (See Section 602(36)), in the planning and implementation of all the requirements of Part C. [637(a) and (b)(7)]

The requirement to establish financial responsibility for services may be met through:

- State statute or regulation;
- Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- *Other appropriate written methods as determined by the chief executive officer of the state or designee of the officer and approved by the secretary through the review and approval of the state's application pursuant to Section 637.*

[640(b)(3)]

**8. Ensures the application of Sections 616-618 to Part C.**

Section 642 states that Sections 616, 617 and 618 shall, to the extent not inconsistent with Part C, apply to the program authorized by Part C. See these sections of the statute for relevant changes. [642]