

EARLY INTERVENING SERVICES

(See also Disproportionality and Overidentification, Local Funding, and State Funding)

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 early intervening services 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 “early intervening services” to the statute under local education agency (LEA) eligibility.**

An LEA may not use more than 15 percent of the amount it receives under IDEA Part B for any fiscal year, less any amount reduced by the agency pursuant to Section 613(a)(2)(C), if any, 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)]

Allows activities in implementing coordinated, early intervening services by LEAs.

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

[613(f)(2)]

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.

2. Clarifies the relationship between free appropriate public education (FAPE) and early intervening services.

Nothing in Section 613(f) shall be construed to limit or create a right to FAPE under Part B. [613(f)(3)]

3. Establishes reporting requirements.

Each LEA that develops and maintains coordinated, early intervening services under Section 613(f) shall annually report to the state education agency (SEA) on:

- The number of students served under Section 613(f); and
- The number of students served under Section 613(f) who subsequently receive special education and related services under IDEA during the preceding two-year period.

[613(f)(4)]

4. Establishes coordination with the *Elementary and Secondary Education Act (ESEA) of 1965*.²

Funds made available to carry out Section 613(f) may be used to carry out coordinated, early intervening 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. Permits the use of funds for early intervening services.

Notwithstanding Section 613(a)(2)(A) or Section 612(a)(17)(B) (relating to commingled funds), funds provided to the LEA under Part B may be used to develop and implement coordinated, early intervening educational services in accordance with Section 613(f). [613(a)(4)(A)(ii)]

6. Requires early intervening services in the case of significant disproportionality.

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, shall require any 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 the LEA, particularly children in those groups that were significantly overidentified under Section 618(d)(1). [618(d)(2)(B)]

² For purposes of this document, the *No Child Left Behind Act (NCLB)* is referred to as the *Elementary and Secondary Education Act (ESEA) of 1965*, as amended.