

**Part C Option**  
**Excerpts from Statute, Regulations and Resources**  
**November 7, 2012**

**Part C Option: Age 3 to Kindergarten Age – Statute, IDEA Partnership**

[http://www.ideapartnership.org/index.php?option=com\\_content&view=article&id=343&catid=28&Itemid=57](http://www.ideapartnership.org/index.php?option=com_content&view=article&id=343&catid=28&Itemid=57) (This web page contains a summary of the provisions in the Statute that pertain to the Part C Option plus a Dialogue Starter for engaging stakeholders in understanding the statutory provisions for extending Part C.)

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. 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.

### **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)]

### **Reaction Questions**

1. Why do you think a \$460 million federal funding baseline was established for Part C as the standard for triggering the 15% reserve clause available for states to develop the Part C extended option?
2. What implications might exist for states should they choose to offer the Part C extended option without additional funding from the federal government?
3. What might be the benefits of using funding reserved under 619(d) to provide early intervention services or service coordination for families who opt to stay in Part C?
4. How might the provision for funding other state-level activities impact the quality of early intervention services provided to 3 and 4 year-olds who remain in Part C?
5. How might the flexible funding provision allow for a greater range and quality of services provided under the Part C extended option?
6. In what ways might the use of flexible funds increase collaboration among agencies?
7. How might the flexible funding option impact the formulation of the annual state plan?
8. How might the flexible funding option impact the development of the IFSP?

### **Application Questions**

1. What type of analysis might be helpful for agencies to determine the cost differential between services provided under Part C and Part B?
2. What types of state data and resources could be used to determine whether it is feasible for the state to offer the Part C extended option to 3 and 4 year olds?
3. Should a state choose this option, how might agencies and organizations collaborate to align resources and services to meet the requirements under the Part C option?
4. How might the state determine which activities will be selected for inclusion under Part C and how will they be evaluated?
5. What is the role of the Inter-agency Coordinating Council in helping a state decide how 619(d) funding should be spent?
6. How might a state determine whether funds for activities under 619 (d) and 619(e) have been used appropriately and effectively managed to equitably serve all children in the 619 program prior to reallocating dollars to serve 3 and 4 year olds who remain under Part C?
7. What policies and procedures might assist the state in apportioning 619(d) funds to support services under Part C?
8. Who might participate in the determination of how 619(d) funds should be distributed?
9. In using the flexible funding option provision, what logistical challenges might need to be addressed if Part C and Part B are administered by different lead agencies?
10. What system capacity requirements will be necessary to foster and promote flexibility between SEAs, LEAs, and agencies at a child and family-serving level?

## IDEA 2004 Regulations

### 619 State Administration and Other State-level activities

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C>

#### **§ 300.813 State administration.**

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), a State may use not more than 20 percent of the maximum amount the State may reserve under § 300.812 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act. (Authority: 20 U.S.C. 1419(e))

#### **§ 300.814 Other State-level activities.**

Each State must use any funds the State reserves under § 300.812 and does not use for administration under § 300.813—

(a) For support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than three or older than five as long as those services also benefit children with disabilities aged three through five;

(b) For direct services for children eligible for services under section 619 of the Act;

(c) For activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the Act;

(d) To supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than one percent of the amount received by the State under section 619 of the Act for a fiscal year;

(e) To provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten; or

(f) At the State's discretion, to continue service coordination or case management for families who receive services under Part C of the Act, consistent with § 300.814(e). (Authority: 20 U.S.C. 1419(f))

## **Part C of the Individuals with Disabilities Education Act** **Final Regulations, Nonregulatory Guidance**

**OSEP, November 2011**

**[http://idea-part-c.s3.amazonaws.com/topic-files/1/original\\_Final\\_Regulations-Part\\_C-DOC-ALL.pdf](http://idea-part-c.s3.amazonaws.com/topic-files/1/original_Final_Regulations-Part_C-DOC-ALL.pdf)**

(From the Building the Legacy website, [http://idea.ed.gov/part-c/major\\_topics/1](http://idea.ed.gov/part-c/major_topics/1))

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#### **Transition Plan**

- Section 303.344(h) clarifies that the steps included in the IFSP must support transition to one of the following: preschool services under Part B of the Act; early education, Head Start, Early Head Start, or child care programs; other appropriate services or, for children participating under a State's option in §303.211 to provide early intervention services to children beyond age three, to preschool services, kindergarten, or elementary school.

#### **Serving Children Ages Three and Older**

- Section 303.211 allows each State to develop and implement a policy under which parents of children who are receiving early intervention services and who are eligible to receive services under section 619 of Part B of the Act can choose for these children to continue receiving early intervention services under Part C of the Act. At the State's option, early intervention services could be available to these children beyond age three until they enter, or are eligible under State law to enter, kindergarten.
- Section 303.211(b)(1), requires parents whose child is receiving services beyond age three under §303.211 to be provided an annual notice of procedural safeguards.
- Section 303.211(b)(3) clarifies that parents whose child is receiving services under Part C past the age of three retain the right, at any time, to opt-out of these early intervention services and, instead, to obtain a free appropriate public education (FAPE) under Part B of the Act for their child.
- Section 303.211(b)(4) clarifies that the lead agency must continue to provide all early intervention services identified in the IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR §300.306.
- Section 303.211(b)(5) requires the lead agency to obtain informed consent from the parent of any child with a disability for the continuation of early intervention services for that child. Consent must be obtained before the child reaches three years of age, where practicable.



- In a State that elects to offer Part C services to children ages three and older, §§303.209(f) and 303.211(b)(6) clarify when and what transition requirements in §303.209 apply to toddlers with disabilities at age three and to children receiving services under §303.211 as they transition to preschool, kindergarten, or elementary school.

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## **H. Serving Children Ages Three and Older--§303.211**

The Final Regulations acknowledge the importance of providing States flexibility in the delivery of services to toddlers and young children with disabilities. The State lead agency may choose, for children who are receiving Part C services and are eligible for preschool services under section 619 of the IDEA, to extend Part C services to those children, beyond age three until they enter, or are eligible under State law to enter, kindergarten. The State may choose to implement this option for children beyond age three until the beginning of the school year following their third, fourth or fifth birthday. If the State chooses to implement this option, the Final Regulations at §303.211 provide a full description of the requirements the State must adopt to provide Part C services for children three and older. Here are a few of the requirements for States that elect to offer Part C services beyond age three:

- Section 303.211(b)(3) clarifies that any child receiving services under Part C of the IDEA who is three or older retains the right, at any time, to instead receive a free appropriate public education (FAPE) under Part B of the IDEA.
- Section 303.211(b)(4) clarifies that the lead agency must continue to provide all early intervention services identified in the IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the IDEA is made, unless the LEA has requested parental consent for the initial Part B evaluation and the parent has not provided that consent.
- Sections 303.209(f) and 303.211(b)(6) clarify when and what transition requirements in §303.209 apply to toddlers with disabilities under the age of three and to children receiving services under §303.211 as they transition to preschool, kindergarten, or elementary school.

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## **A. Confidentiality of Personally Identifiable Information and Early Intervention Records**

The Part C regulations in §§303.401 through 303.417 now explicitly include the confidentiality requirements that apply to Part C of the IDEA, instead of referencing Part B confidentiality provisions, and expressly reference the protections in the Family Educational Rights and Privacy Act (FERPA) in §303.401(b), the definition of personally identifiable information in §303.29, and the applicable FERPA exceptions in §303.414(b)(2). New specific confidentiality provisions for the Part C regulations include:

...

- Section 303.414(b) sets forth the specific exceptions to the parental consent requirements for the disclosure of personally identifiable information under

Part C of the IDEA. A lead agency or other participating agency may not disclose personally identifiable information (as defined in §303.29 to crossreference the FERPA definition with appropriate modifications), to any party

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except participating agencies (as defined at §303.403(c)) that are part of the State's Part C system without parental consent unless authorized to do so under:

- Sections 303.401(d) and 303.209(b)(1)(i) and (ii) that enable the lead agency, as well as LEAs and SEAs under Part B of the IDEA, to identify all children potentially eligible for services under Part B of the IDEA, by providing notification to the SEA and the appropriate LEA when children are transitioning from Part C to Part B services.
- Section 303.211(b)(6)(ii)(A) which describes transition requirements under the State option to provide Part C services beyond age three.
- The applicable FERPA exceptions in 34 CFR 99.31, which are crossreferenced in §303.414(b)(2).