

**Individuals with Disabilities Education Improvement Act
of 2004 (IDEA 2004)**

Presentation for the NECTAC Part C Option Call
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State Option under Part C to Make Part C Services Available After Age Three

Policy Requirement Provisions at

Sections: 632(5)(B)(ii), 635(c), 638(4), 612, and 619(f)(5))

Potential Funding Sources at

Sections: 611(e)(1)(A), 611(e)(7), 611(f)(3), 619(f)(5) and 643(e)

Section 632(5):

Infant or Toddler with a Disability- The term ‘infant or toddler with a disability’--(B) may also include, at a State's discretion--(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include--(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills....

Section 635(c):

Flexibility To Serve Children 3 Years of Age Until Entrance Into Elementary School-

(1) IN GENERAL- A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, 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 this part until such children enter, or are eligible under State law to enter, kindergarten.

(2) REQUIREMENTS- If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains--(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and (ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including--(I) types of services and the locations at which the services are provided; (II) applicable procedural safeguards; and (III) 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;

(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

- (C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;
- (D) all early intervention services outlined in the child's individualized family service plan under section 636 are continued while any eligibility determination is being made for services under this subsection;
- (E) 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 this subsection for such infants or toddlers;
- (F) the requirements under section 637(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and
- (G) 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).
- (3) REPORTING REQUIREMENT- If a statewide system includes a State policy described in paragraph (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 this part.
- (4) AVAILABLE FUNDS- If a statewide system includes a State policy described in paragraph (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 paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).
- (5) RULES OF CONSTRUCTION-(A) SERVICES UNDER PART B- If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 619 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part. (B) SERVICES UNDER THIS PART- Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

Section 638(4):

Use of Funds – In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds--(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B.

Section 612(a)(1)(C):

Part B – State Eligibility Requirements – State Flexibility – 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 a free appropriate public education.

Section 619(f)(5):

Preschool Grants: Other State-Level Activities - Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)--... (5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten.

Potential Funding Sources:

Sections: 611(e)(1)(A), 611(e)(7), 611(f)(3) and 619(f)(5)

Funds set aside for administration or reallocation under 611 or state-level activities under 619 may be used to provide Part C services to section 619-eligible children receiving Part C services, until they are eligible to enter (or enter) kindergarten.