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# **The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities**

**(name redacted)**

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## Summary

The Individuals with Disabilities Education Act (IDEA) is a statute that authorizes grant programs that support special education services. Under the IDEA, a series of conditions are attached to the receipt of grant funds. These conditions aim to provide certain educational and procedural guarantees for students with disabilities and their families.

The grant programs authorized under the IDEA provide federal funding for special education and early intervention services for children with disabilities (birth to 21 years old) and require, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE) (i.e., specially designed instruction provided at no cost to parents that meets the needs of a child with a disability) and an accessible early intervention system (a statewide system to provide and coordinate early intervention services for infants and toddlers with disabilities and their families). The IDEA also outlines and requires the use of procedural safeguards pertaining to the identification, evaluation, and placement of students in special education services that are intended to protect the rights of parents and children with disabilities. These procedures include parental rights to resolve disputes through a mediation process, and present and resolve complaints through a due process complaint procedure and through state complaint procedures.

Originally enacted in 1975, the IDEA has been the subject of numerous reauthorizations to extend services and rights to children with disabilities. The most recent reauthorization of the IDEA was P.L. 108-446, enacted in 2004. The 1986 reauthorization of the IDEA created a grants program that would provide early intervention services for infants and toddlers with disabilities and their families, what is now known as Part C, Infants and Toddlers with Disabilities.

Funding for Part B of the IDEA, Assistance for Education of all Children with Disabilities, the largest part of the act, is permanently authorized. Funding for Part C, Infants and Toddlers with Disabilities, and Part D, National Activities, was authorized through FY2011. Funding for Part C and Part D programs continues to be authorized through annual appropriations.

Part C of the IDEA authorizes a grant program to aid each state in implementing a system of early intervention services for infants and toddlers with disabilities and their families. In 2014, more than 350,000 infants and toddlers between birth and three years old received early intervention services under Part C of the IDEA. Annual funding to each state for Part C programs is based upon census figures of the number of children, birth through two years old, in the general population. In FY2016, approximately \$13 billion was appropriated for the IDEA, \$458.6 million of which was appropriated for Part C, representing 3.5% of total IDEA funding.

Part C requires each state to implement a public awareness program and Child Find activities to identify infants and toddlers who may be eligible for early intervention services. To be eligible for early intervention services under Part C of the IDEA, an infant or toddler must meet his or her state's definition of an infant or toddler with a disability or developmental delay. Once a child meets the IDEA's eligibility criteria, the early intervention system provides an assessment of the needs of both the child and the child's family. Early intervention coordinators then either help the family coordinate services for their child through outside service providers or directly provide early intervention services to the child and the child's family, depending on the design of the early intervention system in the state. Before a child receiving Part C services turns three years old, the child is assessed to determine whether he or she will continue receiving IDEA services, and, if so, whether the child will remain in an extended Part C service arrangement or transition into a special education preschool program funded by Section 619 of Part B of the IDEA.

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## Introduction

Part C (Infants and Toddlers with Disabilities) of the Individuals with Disabilities Education Act (IDEA, P.L. 108-446) authorizes a formula grant program for infants and toddlers with disabilities (ages birth through two) and their families. A general purpose of these grants is to aid states in developing and implementing “a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families.”<sup>1</sup> In 2014, more than 350,000 infants and toddlers received early intervention services under Part C of the IDEA.<sup>2</sup>

Originally enacted in 1975 as the Education for All Handicapped Children Act, P.L. 94-142,<sup>3</sup> the IDEA is the main federal law that provides for the education of children and youth with disabilities from birth through age 21.<sup>4</sup> When first enacted, the IDEA focused on ensuring that elementary and secondary school-aged children with disabilities would be provided a free and appropriate public education (FAPE). At that time, Congress found that more than half of all children with disabilities were not receiving appropriate educational services and that 1 million children with disabilities were excluded entirely from the public school system. Further, Congress found that many public school children were prevented from having successful educational experiences because their disabilities were undiagnosed.<sup>5</sup> Additional factors that precipitated the enactment of P.L. 94-142 included (1) judicial decisions that found constitutional requirements existed for the education of children with disabilities, (2) the inability of states and localities to fund education for children with disabilities, and (3) the potential long-term benefits of educating children with disabilities.<sup>6</sup>

The IDEA is primarily thought of as the nation’s special education law, and Part B, which focuses on providing special education and related services to children with disabilities between the ages of 3 and 21 years old, is the largest part of the IDEA both in terms of populations served and funding level. However, the IDEA covers more than special education. The IDEA consists of four parts. Part A contains the general provisions, including the purposes of the act and definitions. The aforementioned largest part, Part B, contains provisions relating to the education of school aged children (the grants-to-states program) and the state grants program for preschool children with disabilities (Section 619).<sup>7</sup> Part C, the focus of this report, authorizes state grants for programs serving infants and toddlers with disabilities. Finally, Part D contains the requirements for various national activities designed to improve the education of children with disabilities. **Appendix A** provides a more detailed summary of each of the four parts.

Since 1975, the IDEA has been the subject of numerous reauthorizations to extend services and rights for children with disabilities. The most recent reauthorization was P.L. 108-446 in 2004.<sup>8</sup> In

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<sup>1</sup> 20 U.S.C. 1431 (b)(1), P.L. 108-446.

<sup>2</sup> U.S. Department of Education, IDEA Section 618 Data Products: State Level Data Files, *Part C: Child Count and Settings*, 2014, <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#cccs>.

<sup>3</sup> The name was changed to the Individuals with Disabilities Education Act by P.L. 101-476. The public law also substituted the phrase “children with disabilities” for the phrase “handicapped children” throughout the act.

<sup>4</sup> 20 U.S.C. 1400 et seq.

<sup>5</sup> 20 U.S.C. §1401(b), P.L. 94-142 §601(b).

<sup>6</sup> For more information on each of the factors that contributed to the enactment of P.L. 94-142, see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by (name redacted) .

<sup>7</sup> For more information on funding for Part B of the IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted) .

<sup>8</sup> For a discussion of the 2004 amendments made by P.L. 108-446, see CRS Report RL32716, *Individuals with* (continued...)

the IDEA's 1986 reauthorization, Congress added a new part related to infants and toddlers with disabilities.<sup>9</sup> Known originally as Part H but later changed to Part C,<sup>10</sup> this addition extended IDEA programs to infants and toddlers with disabilities from birth to their third birthdays, when children become eligible for services under Part B of the IDEA. In 1986, Congress recognized “an urgent and substantial need” to

- enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;
- reduce the educational costs to our society, including our nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;
- minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society; and
- enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities.<sup>11</sup>

With the exception of two additions, the congressional findings are virtually unchanged in the current authorization of the IDEA. Congress now recognizes “the significant brain development that occurs during a child's first 3 years of life,” as a reason Part C of the IDEA is needed, and specifies Part C's intent to “enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.”<sup>12</sup>

## State Requirements

All states and eligible territories are currently participating in the Part C program. In order to participate in the Part C, Grants to Infants and Families program, each state must meet the requirements contained in the current IDEA statute and regulations, which include but are not limited to

- assuring that every eligible child and family will have early intervention available to them;
- designating a lead agency to administer and supervise the Part C program and appointing an Interagency Coordinating Council (ICC) that includes parents of infants and toddlers with disabilities, early intervention service providers, and employees of relevant state agencies to advise and assist the lead agency; and

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(...continued)

*Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by (name redacted) and (name redacted). For an overview of the IDEA regulations from the Department of Education, see CRS Report RL33649, *The Individuals with Disabilities Education Act (IDEA): Final Regulations for P.L. 108-446*, by (name redacted) and (name redacted) and CRS Report R40055, *The Individuals with Disabilities Education Act: Final Part B Regulations*, by (name redacted) and (name redacted).

<sup>9</sup> 20 U.S.C §1471, P.L. 99-457 §101, “Addition of a New Part Related to Handicapped Infants and Toddlers.”

<sup>10</sup> The reauthorization of the IDEA in 1997 changed Part H to Part C.

<sup>11</sup> 20 U.S.C §1472(a), P.L. 99-457 §671(a). The findings of Congress stated in P.L. 99-457, the Education of the Handicapped Act Amendments of 1986, Part H. The reauthorization of the IDEA in 1997 changed Part H to Part C.

<sup>12</sup> 20 U.S.C §1431(a)(5), P.L. 108-446 §631(a)(5).

- specifying the policies and procedures that will be implemented to ensure the required components of the comprehensive statewide early intervention system are enacted.

## **Lead Agency**

Each state's governor is responsible for designating the agency in the state that will serve as the "lead agency" for the early intervention system. Since governors choose the agency they deem most appropriate to serve as lead agency in their states, lead agencies vary from state to state, commonly being found in Departments of Education, Health, or Human Services.<sup>13</sup> Other examples of agencies where a state's lead agency for the early intervention system may be located include the Department of Rehabilitation Services, Department of Public Welfare, Department of Developmental Services, and the Department of Economic Security.<sup>14</sup>

The lead agency is responsible both for receiving the Part C grant and for administering the Part C program. In addition, the statute requires the lead agency in each state to

- identify and coordinate all available resources within the state from federal, state, local, and private sources;
- assign financial responsibility to the appropriate agencies;
- enter into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services; and
- develop procedures to ensure that both early intervention services for infants and toddlers with disabilities and dispute resolution services for families, agencies, and service providers are provided in a timely manner.

## **State Interagency Coordinating Council**

In addition to designating the state's lead agency, the governor is responsible for appointing a state ICC to advise and assist the lead agency in various activities, including identifying and assigning financial responsibility to the appropriate agencies, promoting interagency agreements, and preparing applications and amendments for Part C. The ICC also advises and assists the state educational agency (SEA) in matters related to the transitioning of toddlers with disabilities out of early intervention services and into preschool programs or other services, and prepares an annual report to the governor and the Secretary of Education (hereinafter referred to as the Secretary) on the status of early intervention services for infants and toddlers with disabilities and their families within the state.

In appointing members to the ICC, the Governor needs to ensure the council reasonably represents the population of the state and is comprised of members of various stakeholder groups. At least 20% of the ICC must be comprised of parents of children with disabilities, and at least one of the parent members must have a child with a disability who is younger than seven years old. Another 20% or more of the ICC must be comprised of early intervention service providers. The ICC must also contain at least one member from each of the following groups: (1) the state

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<sup>13</sup> According to a 2014 list compiled by the Early Childhood Technical Assistance Center (<http://ectacenter.org/partc/ptclead.asp>), 28 state lead agencies are led or co-led by their state's Health Department, 15 by their state's Department of Education, and 12 by the Department of Human Services or Resources.

<sup>14</sup> Early Childhood Technical Assistance Center. (2014, April). *ECTA Center List of Part C Lead Agencies as of April 2014*. <http://ectacenter.org/partc/ptclead.asp>.

legislature, (2) the SEA responsible for preschool services to children with disabilities, (3) an agency involved in personnel preparation, (4) each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families, (5) the agency responsible for the state Medicaid program, (6) a Head Start agency or program, (7) a state agency responsible for child care, (8) the agency responsible for the state regulation of health insurance, (9) a representative designated by the Office of Coordinator for Education of Homeless Children and Youths, (10) the state child welfare agency responsible for foster care, and (11) the state agency responsible for children’s mental health.<sup>15</sup>

## Services for Infants and Toddlers with Disabilities

Early intervention (EI) is designed to ensure that all infants and toddlers with diagnosed disabilities or developmental delays are identified and evaluated and have an individualized plan developed to meet their and their families’ unique needs. This section of the report addresses (1) criteria infants and toddlers must meet to receive services under Part C of the IDEA, (2) how young children are identified and evaluated for early intervention services, and (3) the procedures for developing an individualized plan to provide services.

### Infants and Toddlers with Disabilities

Part C of the IDEA defines an “infant or toddler with a disability” as a child who is experiencing a developmental delay or who because of a diagnosed condition has a high probability of experiencing a developmental delay. Thus, the key concept for receipt of early intervention services is developmental delay.<sup>16</sup> States are required to develop and use a “rigorous definition of the term ‘developmental delay’”<sup>17</sup> and provide a timely and comprehensive evaluation of each child suspected of having a developmental delay, or a disability which may cause a developmental delay, in one or more of the following developmental areas:

- physical development (e.g., sitting up, rolling, crawling, or walking);
- cognitive development (e.g., processing information, learning, problem solving, thinking);
- communication development (e.g., listening, understanding, speaking);
- social or emotional development (e.g., interacting, playing, dealing with challenges);

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<sup>15</sup> 20 U.S.C §1441(b), P.L. 108-446 §641(b). The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council. Note: the BIA school system is now known as the Bureau of Indian Education (BIE). The BIE was formerly the Office of Indian Education Programs (OIEP) in the BIA. In 2006, the Secretary of the Interior moved the OIEP out of the BIA and made it an agency equivalent to the BIA, renaming it the BIE.

<sup>16</sup> 20 U.S.C §1432(5)(A), P.L. 108-446 §632(5)(A). In contrast, under Part B of the IDEA a child may qualify for special education under any one of 14 different disability categories: autism, deaf-blindness, deafness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. 20 U.S.C §1401(3)(A), P.L. 108-446 §602(3)(A).

<sup>17</sup> 20 U.S.C §1435(a)(1), P.L. 108-446 §635(a)(1). Information on states’ definitions of developmental delay can be found at Early Childhood Technical Assistance Center (2014). *States’ Part C Rules, Regulations and Policies*, <http://www.ectacenter.org/partc/statepolicies.asp>.



- adaptive development (e.g., self-help, eating, dressing, adjusting to new situations).

The definition of the term “developmental delay” in Part C of the IDEA is broad, allowing each state to specify both the criteria that constitute a developmental delay in each of the aforementioned five developmental areas and the evaluation and assessment procedures to measure children’s development in that area.<sup>18</sup> In addition to serving infants and toddlers with developmental delays, states may serve infants and toddlers who are at-risk for experiencing substantial developmental delays if they do not receive early intervention services.

## **Accessing and Entering the Early Intervention System**

In order for children to start receiving early intervention services, they must first be identified as having a disability that qualifies for services and then they must be evaluated to determine if they meet their state’s criteria for services. To ensure the prompt and proper identification and evaluation of children with disabilities, each state is required to develop a public awareness program focused on early identification of infants and toddlers with disabilities. This section of the report discusses how a child enters the early intervention system, starting with the state’s public awareness program and child find system, followed by the identification and evaluation process.

### **Pre-referral: Public Awareness Program and Child Find**

The main purpose of the public awareness program is to inform parents of infants and toddlers with disabilities about the availability of early intervention services and parents of preschool-aged children about services provided under Section 619 of the IDEA.<sup>19</sup> Part C of the IDEA requires each state to operate a public awareness program to inform state residents about (1) early intervention services available to help eligible infants and toddlers with developmental delays or disabilities; (2) the steps to take to have an infant or toddler evaluated for early intervention eligibility; and (3) who families should contact in the early intervention system, if they have a child who may be in need of early intervention services. To this end, each state’s lead agency is responsible for preparing and disseminating information on early intervention services and Section 619 to primary referral sources—those people and institutions most likely to interact with infants and toddlers who may have disabilities. The Part C regulations provide a list of primary referral sources that includes

- hospitals (including prenatal and postnatal care facilities),
- physicians,
- parents of infants and toddlers (especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications),
- child care and early learning programs,
- local educational agencies (LEAs),

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<sup>18</sup> For more information on states’ criteria for Part C eligibility see Sharon Ringwalt, *Summary Table of States’ and Territories’ Definitions of/Criteria for IDEA Part C Eligibility*, NECTAC, the National Early Childhood Technical Assistance Center, Chapel Hill, NC, June 1, 2012, [http://www.nectac.org/~pdfs/topics/earlyid/partc\\_elig\\_table.pdf](http://www.nectac.org/~pdfs/topics/earlyid/partc_elig_table.pdf).

<sup>19</sup> 20 U.S.C §1419, P.L. 108-446 §619. Section 619 is in Part B of the IDEA. Section 619 deals with preschool grants for children with disabilities who are three through five years old.

- public health facilities,
- social service agencies,
- clinics or health care providers,
- child welfare agencies, and
- homeless and domestic violence shelters.<sup>20</sup>

The IDEA Part C regulations require that these primary referral sources are provided with certain specific pieces of information. The state’s lead agency is responsible for alerting the primary referral sources that early intervention services are available to all infants and toddlers with qualifying disabilities or developmental delays. In addition, primary referral sources must be provided with the following information:<sup>21</sup>

- A description of the child find system (explained in more detail in the next section of this report) and procedures for referring a child under the age of three for an evaluation or early intervention services; and
- A central directory that is accessible to the general public (i.e., through the lead agency’s website and other appropriate means) and includes accurate, up-to-date information about
  - public and private early intervention services, resources, and experts available in the state;
  - professional and other groups (including parent support, and parent training and information centers, such as those funded under the IDEA) that provide assistance to infants and toddlers with disabilities eligible under Part C of the IDEA and their families; and
  - research and demonstration projects being conducted in the state related to infants and toddlers with disabilities.

In addition, the lead agency must ensure that parents of toddlers with disabilities are informed about the availability of services under Section 619 of the IDEA (i.e., services for children with disabilities who are over three years old) not fewer than 90 days prior to their child’s third birthday.

### ***Child Find***

Each state must have in effect policies and procedures to ensure that all children with disabilities residing in the state who are in need of early intervention services or special education are identified, located, and evaluated. These policies and procedures are referred to in the statute as “child find.”<sup>22</sup> The infants and toddlers covered under child find include those with disabilities who are

- homeless or wards of the state,
- Indians residing on reservations,
- suspected of having a disability, and

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<sup>20</sup> 34 C.F.R. §303.303.

<sup>21</sup> 20 C.F.R. §303.301. A list of information that primary referral sources must be provided is not contained in the statute.

<sup>22</sup> 20 U.S.C §1412(a)(3), P.L. 108-446 §612(a)(3) and 20 U.S.C §1435(a)(5), P.L. 108-446 §635(a)(5).

- highly mobile children, including migrant children.

An infant or toddler who has been identified as having (or possibly having) a disability or a developmental delay must be evaluated before receiving early intervention services to determine whether the child is a child with a disability and to determine the developmental needs of the child.<sup>23</sup> Either the parent or a member of one of the primary referral sources may request an initial evaluation.<sup>24</sup>

A comprehensive child find system is a key component of both Part B<sup>25</sup> and Part C of the IDEA. However, Part C includes several additional child find requirements specific to identifying infants and toddlers with disabilities, who due to their young age are not affiliated with the school system yet and therefore need to be identified for possible services through different mechanisms than their Part B peers. The first additional requirement of a state's Part C child find system is that it must include an efficient system for making referrals to service providers.<sup>26</sup> In addition, each state's child find system must provide for participation by the primary referral sources discussed in the previous section of this report. Finally, Part C requires the referral system to employ "rigorous standards for appropriately identifying infants and toddlers with disabilities for services ... that will reduce the need for future services."<sup>27</sup>

### **Referral Activities: Screening, Evaluations, and Assessment**

Once the required components of a child find system are in place, each state has options as to how they will implement their child find system. States may choose to use screening procedures to determine which children are suspected of having disabilities, or they may choose to rely on health care workers and other primary referral sources that interact with infants and toddlers with disabilities to refer families of children with potential need of early intervention services for evaluation. In either case, the parent of a child being referred must be provided with prior written notice of their rights and provide consent before the initial screening, evaluation, or assessment of their child takes place. If the state conducts an initial screening, and that screening does not identify any potential disability or developmental delay, but the parent suspects one exists, the parent can request a full evaluation.

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<sup>23</sup> 20 U.S.C. §1414(a), P.L. 108-446 §414(a). This subsection contains the requirements for evaluations, parental consent, and reevaluations.

<sup>24</sup> The LEA may refuse the parent's request for an initial evaluation if it does not suspect that the child has a disability. However, the public agency must provide written notice to the parents, consistent with 34 C.F.R. §300.503(b)(2010) and §615(c)(1) of the act, which explains, among other things, why the public agency refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge such a refusal by requesting a due process hearing. (71 Fed. Reg. 46636 (August 14, 2006)).

<sup>25</sup> For more information about Part B of the IDEA see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted).

<sup>26</sup> Timelines must be included in the state's system for making referrals to service providers to ensure its efficiency. 20 U.S.C. §1435, P.L. 108-446 §635 (a)(5)

<sup>27</sup> 20 U.S.C. §1435, P.L. 108-446 §635 (a)(5).

In conducting the evaluation, each statewide early intervention system must provide a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler suspected of having a disability. In general, the lead agency must obtain informed consent from the parent before conducting an initial evaluation.<sup>29</sup> However, parental consent for an evaluation cannot be construed as consent for early intervention services or special education services.<sup>30</sup>

A child's records<sup>31</sup> may be used to establish eligibility (without conducting an evaluation of the child) if those records indicate that the child's level of functioning<sup>32</sup> constitutes a developmental delay or that the child has a diagnosed condition that creates a high probability that the child will experience a developmental delay. For example, an infant's medical records are often used to establish eligibility for early intervention, when a baby is born prematurely or diagnosed with a disability at birth.

Once a child is determined to be a Part C eligible infant or toddler, the early intervention system must provide a multidisciplinary assessment of the unique strengths and needs of the child and identify the services appropriate to meet those needs.<sup>33</sup> The assessment of each infant or toddler with a disability must be conducted by qualified personnel who can identify both the child's needs and the appropriate early intervention services to meet those needs. With the parents' consent, early intervention services may start prior to the completion of the assessment.<sup>34</sup>

In addition to the assessment of the child, the early intervention system requires a family-directed assessment of the resources, priorities, and concerns of each child's family and identification of the supports and services necessary to enhance the family's abilities to meet the developmental needs of their infant or toddler with a disability.<sup>35</sup> The focus on the needs of a child's family and assessing the supports and training the family needs in order to best support their child with a

### Child Evaluation

When an evaluation of an infant or toddler is needed, multiple procedures must be employed, including

- administering an evaluation instrument;
- taking the child's history (including interviewing the parent);
- identifying the child's level of functioning in each developmental area;<sup>28</sup>
- gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and
- reviewing medical, educational, or other records.

<sup>28</sup> The developmental areas that must be evaluated are physical development, cognitive development, communication development, social or emotional development, and adaptive development.

<sup>29</sup> The term "consent" is defined at 34 C.F.R. §300.9, and means, in part, that "the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication." For more information on parental consent, see also 34 C.F.R. §300.300 (2010).

<sup>30</sup> In addition, at the time of the referral or parent request for evaluation, the LEA must provide the parent with the "Procedural Safeguards Notice," which is a comprehensive written explanation of IDEA's legal rights and protections for children with disabilities and their parents. See 20 U.S.C. §1415(d), P.L. 108-446 §615(d). For further information on procedural safeguards, see "Procedural Safeguards" in this report.

<sup>31</sup> Records in this instance refers to either medical or other relevant records, 34 C.F.R. §303.321(a)(3)(i).

<sup>32</sup> Levels of functioning in one or more of the developmental areas identified in the Part C definition of disability. For a discussion of the definition of disability and developmental delay in Part C of the IDEA see the earlier section of this report, "Infants and Toddlers with Disabilities."

<sup>33</sup> 20 U.S.C §1436(a)(1), P.L. 108-446 §636(a)(1) and 34 C.F.R. §303.321(c)(1).

<sup>34</sup> A thorough evaluation may take several weeks, particularly if a child is being evaluated by multiple specialists (e.g., speech therapist, special education teacher, occupational therapist, physical therapist, etc.).

<sup>35</sup> 20 U.S.C §1436, P.L. 108-446 §636 and 34 C.F.R. §303.321(c)(2).

disability is one of the main elements that differentiates the Part C early intervention system from the Part B special education system. Early intervention (Part C) focuses on training family members to provide the interventions and supports their child's needs in the child's natural environment (i.e., at home or in a community setting). Special education (Part B) generally provides supports and services in a school setting and rarely includes assessing the needs of or providing training for other members of the child's family.

The IDEA Part C family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability. The family assessment and the child assessment may be conducted together or separately depending on the needs of the family. Assessments and other evaluation materials used to assess a child must be selected and administered so as not to be discriminatory on a racial or cultural basis. In addition, all assessments and evaluations of both children and their families must be provided and administered in the family's native language unless clearly not feasible to do so.<sup>37</sup>

### Child and Family Assessment

Assessment of the child must include

- a review of the results of the evaluation conducted to determine the child's eligibility for EI services;
- personal observations of the child; and
- the identification of the child's needs in each of five developmental areas.<sup>36</sup>

Family-directed assessment must

- be voluntary on the part of each family member participating in the assessment;
- be based on information obtained through an assessment tool and also through an interview with those family members who choose to participate in the assessment; and
- include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

## Individualized Family Services Plan (IFSP)

Every child who is found eligible for early intervention services is required to have an individualized family services plan (IFSP) developed within a reasonable time after the assessment is completed. Like the IEP,<sup>38</sup> its counterpart for children with disabilities ages 3 to 21 years old, the IFSP is a plan developed by a multidisciplinary team, including the child's parents, which outlines the early intervention services the child is going to receive. However, IFSPs differ from IEPs in much the same way the early intervention assessment process differs from the special education assessment process—IFSPs focus not only on the infant or toddler's needs but also on the needs, priorities, and concerns of other family members regarding the child.

Each child's IFSP must contain the following:

- the infant's or toddler's present physical, cognitive, communication, social or emotional, and adaptive development levels and needs;

<sup>36</sup> The developmental areas that must be evaluated are physical development, cognitive development, communication development, social or emotional development, and adaptive development.

<sup>37</sup> 20 U.S.C. §1414, P.L. 108-446 §614 (b)(3)(A) and §1412, P.L. 108-446 §612 (a)(6) and 34 C.F.R. §303.321(a).

<sup>38</sup> The Individualized Education Program (IEP) is a plan for providing an individual child with special education and related services. For more information on the IEP process and special education services for children with disabilities ages 3 to 21 years old, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted).

- the family’s resources, priorities, and concerns relating to enhancing the development of the infant or toddler with a disability;
- measurable results or outcomes expected to be achieved for the infant or toddler and the family;<sup>39</sup>
- the specific services the infant or toddler will be receiving, including a statement of the frequency, intensity, and method of delivering services;
- a statement of the natural environments (e.g., home or community setting) in which early intervention services will be provided to the infant or toddler, or, if any services will not be delivered in a natural environment, a justification for why not;<sup>40</sup>
- when and where the child will receive services, and when the services are expected to begin;
- the number of days or sessions the infant or toddler will receive each service and how long each session will last;
- the name of the service coordinator overseeing the implementation of the IFSP;<sup>41</sup> and
- the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.<sup>42</sup>

The IFSP must be fully explained to the parents, and their suggestions must be considered. In addition, a parent must give written consent for each proposed service. If a parent or guardian does not give his or her consent in writing for a particular service, the child will not receive that service.

## **Timeframes**

The IFSP must be reviewed every six months and the child must be evaluated at least once a year to determine if the child still qualifies for Part C services and if the current IFSP is still appropriate. The IFSP can be reviewed more frequently when that is appropriate for the child or family’s needs. These provisions take into account that children can learn, grow, and change quickly in a short period of time.

The timeline for all the procedures leading up to and including the writing of the IFSP is short (45 days) for the same reasons. In comparison, twice as long (90 days) can elapse from the time a parent provides permission for their child to be evaluated for Part B special education services

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<sup>39</sup> These include “pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary.” (20 U.S.C. §1435, P.L. 108-446 §636 (d)(3))

<sup>40</sup> Natural environments are defined in the Part C regulations as “settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with [other Part C provisions regarding natural environments].” (34 C.F.R. §303.26)

<sup>41</sup> The service coordinator must be selected “from the profession most immediately relevant to the infant’s or toddler’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services.” (20 U.S.C. §1435, P.L. 108-446 §636 (d)(7)).

<sup>42</sup> 20 U.S.C. §1435, P.L. 108-446 §636 (d).



until the time the child's initial IEP is written.<sup>43</sup> The Part C 45-day time clock starts running when the lead agency or early intervention services provider receives a referral about an infant or toddler with a suspected disability or developmental delay, and within that 45-day timeframe, the early intervention system must complete the steps discussed thus far to prepare the child for early intervention services:

- child find,
- screening,<sup>44</sup>
- initial evaluation of the child,
- initial assessments of the child and family, and
- writing the IFSP (if the child has been found eligible).<sup>45</sup>

There are two exceptions to the 45-day timeline: (1) if a child is referred less than 45 days prior to his or her third birthday, the lead agency is not required to evaluate the child,<sup>46</sup> and (2) if the parent has not provided consent to the initial screening, evaluation, or assessment of the child, despite documented, repeated attempts to obtain parental consent.

## **Transition/Exiting Part C**

Transition services are services that help a toddler with a disability and his or her family transition from the child's early intervention program under Part C of the IDEA to the child's next program or services, or help them prepare for the end of services under the IDEA. Every toddler with a disability receiving Part C services must have a transition plan in place, at the earliest 9 months and at the latest 90 days, before their third birthday. The transition plan must outline the transition services he or she is to receive. The transition plan is part of a child's IFSP, not an additional document. The transition services outlined in the transition plan may be designed to help the toddler and his or her family (1) transition into a Part B program, (2) continue in an extended Part C program,<sup>47</sup> or (3) prepare for the end of services under the IDEA, if the child is no longer eligible to receive Part C or Part B services.

Each state must provide a description of the policies and procedures to be used to ensure a smooth transition for toddlers receiving early intervention services under Part C to preschool, school, other appropriate services, or out of early intervention, in the application and assurances they submit to the Secretary in order to receive Part C funds.<sup>48</sup> States must delineate

- procedures for the establishment of a transition plan for each child, including, when appropriate, steps to exit from the Part C program;

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<sup>43</sup> Up to 30 days is allowed for an IEP team to be convened and draft the initial IEP for a child receiving special education; and up to 60 days is allowed to evaluate a child for special education services. (20 U.S.C. §1414, P.L. 108-446 §614 (c)(i))

<sup>44</sup> This step is only required in states where screening is a designated step in the early intervention process.

<sup>45</sup> 20 U.S.C. §1436, P.L. 108-446 §636, and 34 C.F.R. §303.310.

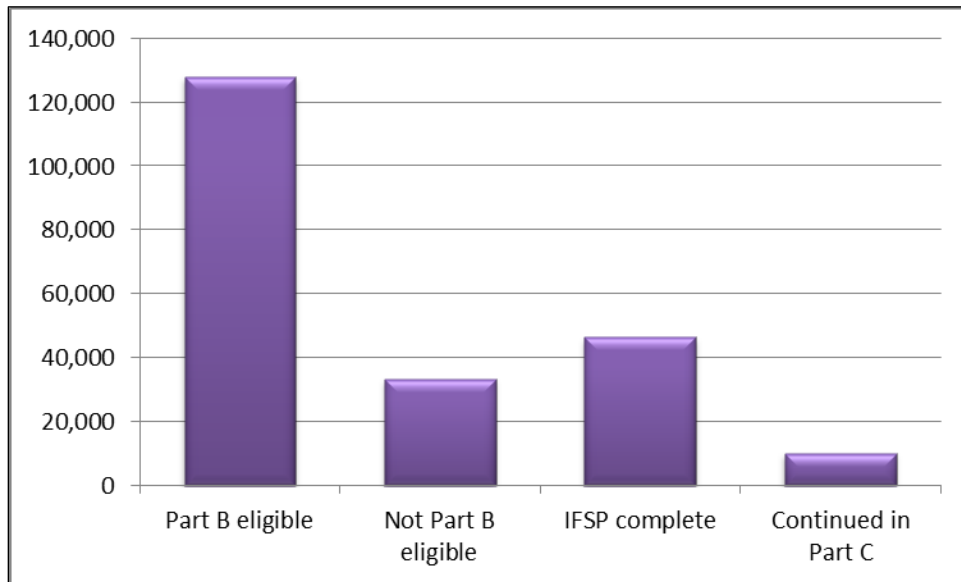
<sup>46</sup> Instead, if the child may be eligible for services under Part B of the IDEA, the lead agency, with parental consent, is required to refer the child to the Part B program. 34 C.F.R. §303.209(b)(1)(iii)

<sup>47</sup> Part C services generally end when a child turns three, but §303.211 allows each state to develop and implement a policy in which parents can choose to continue receiving services under Part C instead of transitioning to services under Section 619 of Part B of the IDEA.

<sup>48</sup> 20 U.S.C. §1437, P.L. 108-446 §637 (a)(9).

- descriptions of how the families of toddlers receiving early intervention services will be included in the transition plans;
- procedures that will be used to review each child’s program options for the period from the child’s third birthday through the remainder of the school year; and
- how the lead agency will (1) notify LEAs when each child will shortly reach the age of eligibility for preschool services under Part B; (2) convene a conference among the lead agency, the family, and the LEA, between 9 months and 90 days before the child is eligible for preschool services, to discuss any such services that the child may receive; and (3) in the case of a child who may not be eligible for preschool services, convene a conference among the lead agency, the family, and providers of appropriate services for children who are not eligible for preschool services under Part B,<sup>49</sup> to discuss the appropriate services that the child may receive.

**Figure I. Number of Children Who Exited Part C by Post-Exit Transition Category: 2013-2014 School Year**



**Source:** Calculations by CRS based on data from the IDEA Section 618 Data Products: State Level Data Files, 2013-14 IDEA Part C Exiting, <http://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html#ce>.

**Notes:** Total number of children exiting Part C was approximately 336,000. This figure reflects only data on those exiting children whose reasons for exiting included the environments they would transition to when they turned three years old. Other categories reported to the Office of Special Education Programs (OSEP) in the U.S. Department of Education but not shown here include attempts to contact unsuccessful, deceased, moved out of state, Part B eligibility not determined, and withdrawal by parent.

“Continued in Part C” refers to children whose families requested they continue receiving Part C services when their child turned three years old, and would normally transition to Part B services. This option sometimes occurs when services are only expected to last a month or two into a child’s third year, at which point they will stop receiving any IDEA (Part C or Part B) services.

<sup>49</sup> Examples of appropriate service providers include private speech, occupational, or physical therapists for children who continue to have some areas of weakness but who are no longer delayed enough to be eligible for IDEA mandated services.



**Figure 1** displays the most recent state reported data on the programs or services children receiving early intervention services transition to when they turn three years old. The columns on either end of the chart (Part B eligible and Continued in Part C) represent children who were determined to continue to have disabilities or developmental delays that require IDEA intervention services. The two inner columns (Not Part B eligible and IFSP complete) represent children who no longer qualified as having a disability or developmental delay after receiving early intervention services and were transitioning out of Part C by their third birthday. Over one-third (36.6%) of the children represented in **Figure 1** no longer required IDEA services by the time they turned three years old.<sup>50</sup>

## Procedural Safeguards

Procedural safeguards<sup>51</sup> are provisions protecting the rights of parents of infants and toddlers with disabilities and the infants and toddlers themselves regarding appropriate early intervention services. The various types of procedural safeguards include parental rights to

- inspect and review educational records;
- receive timely administrative resolution of complaints;
- maintain confidentiality of personally identifiable information;<sup>52</sup>
- receive prior written notice in their native language when the lead agency or an early intervention services provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to their infant or toddler;<sup>53</sup>
- receive a procedural safeguards notice, which is a comprehensive written explanation of the IDEA's legal rights and protections for infants and toddlers with disabilities and their parents;<sup>54</sup>
- resolve disputes through a mediation process;<sup>55</sup>

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<sup>50</sup> The total number of children exiting Part C in 2013-2014 was approximately 336,000. The difference between the total number and the number in **Figure 1** (approx. 118,000) was due to the exclusion of categories such as "Attempts to contact unsuccessful," "Part B eligibility not determined," and "Withdrawal by parents." If all categories were included, the percentage of students who no longer required IDEA services by their third birthday would be 24%.

<sup>51</sup> For information on the legal issues pertaining to procedural safeguards, including burden of proof, parental rights, attorneys' and expert witness fees, see CRS Report R40690, *The Individuals with Disabilities Education Act (IDEA): Statutory Provisions and Recent Legal Issues*, coordinated by (name redacted) 20 U.S.C. §1439, P.L. 108-446 §639, and 34 C.F.R. §303.405

<sup>52</sup> This includes "the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law," 20 U.S.C. §1439(a)(2), P.L. 108-446 §639(a)(2), and 34 C.F.R. §303.402.

<sup>53</sup> 20 U.S.C. §1439(a), P.L. 108-446 §639(a)(6) and (7), and 34 C.F.R. §303.421(a) and (c). For the statutory and regulatory provision regarding the content of the notice, see 20 U.S.C. §1415(c)(1), P.L. 108-446 §615(c)(1), and 34 C.F.R. §303.421(b).

<sup>54</sup> Part C extends procedural safeguards for children in Part B to "Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents." (Part B: 20 U.S.C. §1415(d), P.L. 108-446 §615(d). Part C: 20 U.S.C. §1439(a), P.L. 108-446 §639(a)(5) and (6), and 34 C.F.R. §303.422)

<sup>55</sup> Part C extends "The right of parents to use mediation in accordance with section 615, except that—(A) any reference (continued...)"

- determine whether they, their infant or toddler, or other family members will accept or decline any early intervention services without jeopardizing other early intervention services; and
- continue receiving<sup>56</sup> appropriate early intervention services for their infant or toddler, during the pendency of any proceeding or action involving a complaint filed on their family's behalf.

## **Prior Written Notice**

The most primary of the procedural safeguards may be the right to prior written notice of any changes to a child's early intervention services. Prior written notice, delineating the list of procedural safeguards highlighted above, must be provided to parents within a "reasonable" time before the lead agency or an early intervention services provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of an infant or toddler, or the provision of early intervention services to an infant or toddler with a disability.<sup>57</sup> If an infant or toddler is not found eligible for early intervention services, the lead agency must provide the parent with prior written notice that includes information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms, such as requesting a due process hearing, mediation, or filing a state complaint.

## **Mediation**

Mediation<sup>58</sup> is a process of resolving disputes initiated by either the parent or the local service provider involving any matter under the IDEA including those under Part C. It is a way of resolving complaints without the formal due process hearing, discussed below. Either a parent or a local service provider can initiate the mediation process, which must be voluntary for each party. Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The cost of the mediation process is borne by the state. The state cannot deny a family or service provider the opportunity for mediation. However, either party can refuse to participate in mediation, requiring the remaining party to pursue due process or state complaint procedures to resolve their dispute.

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(...continued)

in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10); (B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and (C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities." (Part B: 20 U.S.C. §1415(e), P.L. 108-446 §615(e). Part C: 20 U.S.C. §1439(a), P.L. 108-446 §639(a)(8))

<sup>56</sup> "... or, if applying for initial services, shall receive the services not in dispute," §1439(b), P.L. 108-446 §639(b).

<sup>57</sup> 20 U.S.C. §1439, P.L. 108-446 §639 (a)(6) and 34 C.F.R. §303.421.

<sup>58</sup> Part C extends "The right of parents to use mediation in accordance with section 615, except that—(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10); (B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and (C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities." (Part B: 20 U.S.C. §1415(e), P.L. 108-446 §615(e) and 34 C.F.R. §300.506 (2010). Part C: 20 U.S.C. §1439(a), P.L. 108-446 §639(a)(8))

If the local service provider and parent resolve a dispute through the mediation process, they must execute a legally binding agreement that is signed by the parent and a representative of the local service provider. This agreement is enforceable in state or U.S. district court. Discussions that occur during the mediation process must be confidential and may not be used in any subsequent due process hearing or civil proceeding of any federal or state court.

## **Due Process Complaint Procedures**

States may elect to adopt either IDEA Part B or Part C due process procedures for families of children served under Part C of the IDEA. This report will first discuss the due process complaint procedures developed for Part C and then will examine the differences between the IDEA Part B and Part C due process procedures.

### **Part C Due Process Procedures**

The Part C due process complaint procedure begins with filing a due process complaint, which is in effect a request for a due process hearing, on matters relating to the identification, evaluation, or assessment of an infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler. Generally, unless the state's lead agency or the local service provider and the parent otherwise agree, the infant or toddler must continue to receive the appropriate early intervention services in the setting identified in his or her IFSP pending the outcome of the due process complaint procedures or of a court proceeding.<sup>59</sup>

A parent, early intervention service provider, or lead agency may file a due process complaint. The due process complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the lead agency.<sup>60</sup> Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing is completed and a written decision mailed to each of the parties.<sup>61</sup> The due process hearing is conducted by an impartial hearing officer.<sup>62</sup> Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in state or federal court.<sup>63</sup>

### **Differences between the IDEA Part B and Part C Due Process Procedures**

The Part B due process regulations contain additional steps and procedures that states which elect to use them must follow.<sup>64</sup> U.S. Department of Education officials suggest that the requirement

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<sup>59</sup> 20 U.S.C. §1439(b), P.L. 108-446 §639(b) and 34 C.F.R. §300.430 (e).

<sup>60</sup> There are two exceptions to this timeline. The timeline does not apply if (1) the parent was prevented from requesting a hearing due to specific misrepresentations by the local service provider that it had resolved the problem forming the basis of the due process complaint, or (2) the local service provider withheld information from the parent that was required to be provided to the parent. 20 U.S.C. §1415(b)(6), P.L. 108-446 §615(b)(6), and 34 C.F.R. §303.443 (2010).

<sup>61</sup> The only exception to this timeline is in cases where one of the parties requests and is granted an extension by the hearing officer. 34 C.F.R. §303.437.

<sup>62</sup> For information on conducting a due process hearing, for Part B see 20 U.S.C. §1415(f), P.L. 108-446 §615(f), for Part C see 34 C.F.R. §§303.435-438. For information on the required qualifications of the hearing officer, see 34 C.F.R. §303.435.

<sup>63</sup> For more detail, see the regulatory provisions at 34 C.F.R. §303.438 (2010).

<sup>64</sup> For more information on the Part B due process procedures for children with disabilities ages 3 to 21 years old, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted).

that states that chose to implement Part B due process procedures for hearings involving children served under Part C abide by additional procedures, explains a large part of why many more states choose to adopt Part C due process procedures rather than adopt Part B due process procedures.<sup>65</sup> In 2013, 15 states, the District of Columbia, Guam, and the Northern Marianas Islands reported exercising the option to adopt the Part B due process procedures, while the remaining 35 states, Puerto Rico, American Samoa, and the U.S. Virgin Islands reported adopting the Part C due process procedures (see **Table 1** for a complete listing).

**Table 1. Due Process Procedures for Complaints Under Part C of the IDEA**

| States and Outlying Areas Using Part B Due Process Procedures |                   | States and Outlying Areas Using Part C Due Process Procedures |                |                |
|---|-------------------|---|----------------|----------------|
| Alabama   | Northern Marianas | Alaska  | Kansas         | Pennsylvania   |
| District of Columbia  | Ohio              | American Samoa  | Kentucky       | Puerto Rico    |
| Florida   | Oklahoma          | Arizona   | Louisiana      | Rhode Island   |
| Guam  | Oregon            | Arkansas  | Massachusetts  | South Carolina |
| Illinois  | South Dakota      | California  | Mississippi    | Texas          |
| Maryland  | Tennessee         | Colorado  | Missouri       | Utah           |
| Maine   | Vermont           | Connecticut   | Montana        | Virgin Islands |
| Michigan  |                   | Delaware  | New Hampshire  | Virginia       |
| Minnesota   |                   | Georgia   | New Jersey     | Washington     |
| Nebraska  |                   | Hawaii  | New Mexico     | West Virginia  |
| Nevada  |                   | Idaho   | New York       | Wisconsin      |
|   |                   | Indiana   | North Carolina | Wyoming        |
|   |                   | Iowa  | North Dakota   |                |

**Source:** Table prepared by CRS. Information collected from Lead Agencies' 2015 Annual Performance Reports (FFY 2013) to the U.S. Department of Education Office of Special Education Programs (OSEP) by the national Center for Appropriate Dispute Resolution in Special Education (CADRE).

In some states that adopted the Part B due process procedures, the Part C lead agency is the SEA. In such states, the SEA administers both Parts B and C of the IDEA. In addition, in some states that use the Part B due process procedures, children receiving services under Part C of the act are also entitled under state law to some of the principal protections afforded to children under Part B, primarily the right to receive a free and appropriate public education (FAPE). These states provide parents with procedural protections under both Parts B and C of the IDEA.<sup>66</sup>

## State Complaint Procedures<sup>67</sup>

The IDEA regulations require each state lead agency to adopt written procedures for resolving complaints that allege the lead agency, public agency, or early intervention services provider has violated a requirement of the Part C statute or regulations. In its analysis of comments and changes to the final Part B regulations, ED distinguishes between the due process complaint process and the state complaint process as follows:

The due process complaint procedures and the State complaint procedures are separate and distinct. The State complaint procedures remain a viable alternative to the due

<sup>65</sup> 34 C.F.R. Part 303 (2010). Analysis of Comments and Changes: *States That Choose to Adopt the Part B Due Process Procedures under Section 615 of the Act* (§§303.440 through 303.447).

<sup>66</sup> 34 C.F.R. Part 303 (2010). Analysis of Comments and Changes: *States That Choose to Adopt the Part B Due Process Procedures under Section 615 of the Act* (§§303.440 through 303.447).

<sup>67</sup> 34 C.F.R. §303.432 through §303.334 (2010).

process procedures for parents to resolve disputes with public agencies in a less formal and more cost effective manner.<sup>68</sup>

Unlike requests for mediation or for complaints filed under due process procedures, where only a parent, early intervention service provider, or a lead agency can file a complaint, a state complaint can be filed by any organization or individual, including those from another state. State complaint procedures must ensure that complaints will be resolved within 60 calendar days from the date the complaint is filed unless an extension is permitted.<sup>69</sup>

## Funding, Expenditure Requirements, and Compliance

The IDEA provides federal funding for early intervention programs for infants and toddlers with disabilities and developmental delays and imposes certain conditions for the receipt of federal funds. This section addresses (1) the structure and funding of the IDEA; (2) state formula allocations and expenditure requirements; and (3) the responsibilities of lead agencies, early intervention service providers, and parents regarding paying for early intervention services.

### Structure and Funding of the IDEA

The IDEA consists of four parts. Part A contains general provisions, including the purposes of the act and definitions that apply to the entire act. Part B contains provisions relating to the education of school aged children (the grants-to-states program) and state grants program for preschool children with disabilities (Section 619).<sup>70</sup> Part C, the focus of this report, authorizes state grants for programs serving infants and toddlers with disabilities. Finally, Part D contains the requirements for various national activities designed to improve the education of children with disabilities. **Table 2** shows the structure and funding of the IDEA. **Appendix A** provides a more detailed summary of each of the four parts.

While funding for Part B, Assistance for Education of all Children with Disabilities, is permanently authorized, the 2004 reauthorization of the IDEA authorized funding for Part C, Infants and Toddlers with Disabilities, and Part D, National Activities, through FY2010. These authorities were automatically extended for an additional fiscal year by the General Education Provisions Act (GEPA).<sup>71</sup> Funding for Part C continues to be authorized through annual appropriations. In FY2016, \$458.6 million was appropriated for Part C, representing 3.5% of total IDEA funding. **Appendix B** provides the amounts appropriated for Part C each year since the 2004 reauthorization and **Appendix C** displays funding levels for Part C in both actual and constant dollar amounts from the program's first year of funding in FY1987 through FY2015. Annual funding for each state for Part C programs is based upon each state's relative share of the general population birth through two. The IDEA is administered by the Office of Special

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<sup>68</sup> 71 Fed. Reg. 46700 (August 14, 2006).

<sup>69</sup> An extension of the 60-day time limit may be permitted only if exceptional circumstances exist with respect to a particular complaint or if the complainant and the lead agency, public agency, or early intervention services provider agree to extend the time to engage in mediation.

<sup>70</sup> For more information on funding for Part B of the IDEA, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted).

<sup>71</sup> General Education Provisions Act (GEPA; 20 U.S.C. §1226a). For more information see CRS Report R41119, *General Education Provisions Act (GEPA): Overview and Issues*, by (name redacted) and (name redacted)

Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS) in the Department of Education (ED).

**Table 2. Structure and Funding of the IDEA**  
(Funding in thousands of dollars)

| IDEA Part   | Description  | FY2016 Funding            | Percentage of Total IDEA Funding |
|---|--|---------------------------|----------------------------------|
| Part A—General Provisions   | Includes findings, purposes, and definitions   | —                         | —                                |
| Part B—Assistance for Education of all Children with Disabilities             | Contains provisions relating to the education of school aged children (the grants-to-states program) and state grants program for preschool children with disabilities (Section 619) | \$12,281,086 <sup>a</sup> | 94.7%                            |
| Part C—Infants and Toddlers with Disabilities                                 | Authorizes state grants for programs serving infants and toddlers with disabilities  | \$458,556                 | 3.5%                             |
| Part D—National Activities to Improve Education of Children with Disabilities | Contains the requirements for various national activities  | \$227,133                 | 1.8%                             |
| <i>IDEA Total</i>   |  | \$12,966,775              | 100%                             |

**Source:** Table prepared by CRS. Funding amounts are from Department of Education budget tables for FY2016.

- a. Of this amount, \$368.2 million, or 2.8% of the total IDEA FY2016 appropriation, was appropriated for the state grants program for preschool children with disabilities (Section 619).

### State Formula Allocations

Of the funds appropriated for Part C of the IDEA, the Secretary may reserve no more than 1% of the appropriation for the outlying areas,<sup>72</sup> and must reserve 1.25% of the appropriation for tribes, tribal organizations, and consortia of those groups for the provision of early intervention services on reservations.<sup>73</sup> The remaining Part C funds are allocated to the 50 states, the District of Columbia, and Puerto Rico according to the ratio of infants and toddlers in each state to the number of infants and toddlers in all states. The minimum allotment for each state is either \$500,000 or one-half of 1% of the total Part C funds allotted to the states, whichever is greater. If the appropriation for Part C is reduced to a level insufficient to pay the full amounts that all states are eligible to receive in a given year, the Secretary must ratably reduce the states' payments, meaning the reduction will be proportionately reflected in the allotment for each state.<sup>74</sup>

<sup>72</sup> 20 U.S.C. §1411(b)(1), P.L. 108-446 §616(b)(1). The outlying areas are defined in §602(22) as the “United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.” Part C §643(2) further states “The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.”

<sup>73</sup> Section 643(b)(1) reserves 1.25% of the Part C appropriation for the Department of the Interior for the “coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior.”

<sup>74</sup> If additional funds become available for making payments for a fiscal year in which payments to states were ratably reduced, the allotments that were reduced must be increased on the same basis the allotments were reduced. §643(c)(3)



## **State Expenditure Requirements**

Part C does not require states to create new early intervention systems for children with disabilities under three years of age; instead, it requires the coordination of existing early intervention services into one accessible system. States use IDEA funds to coordinate these services through state interagency agreements, contracts, and cooperative arrangements. Therefore, Part C grants finance primarily administrative functions, and do not directly provide services.

The IDEA state expenditure requirements are aimed at increasing overall early intervention spending, rather than substituting federal funds for early intervention spending at the state and local levels. Supplement, not supplant (SNS) requirements generally prohibit a state or lead agency from using IDEA grants to provide services, purchase equipment, and so forth, that state, local, or other federal funds currently provide or purchase or, in the absence of the IDEA funds, that those other funds would have provided or would have purchased. Both states and lead agencies must use IDEA funds to supplement state, local, and other federal funds and not to supplant them.<sup>75</sup>

### **Who Pays for Early Intervention Services?**

Depending on the state's policies, parents of infants and toddlers with disabilities may have to pay for certain early intervention services. Parents may be charged a sliding-scale fee for some services, based on what they earn. However, early intervention services cannot be denied to a child simply because his or her family is not able to pay for services, and Part C of the IDEA requires the following services to be provided at no cost to families: Child Find services; evaluations and assessments; the development and review of the IFSP; and service coordination.

A description of the state's payment system must be made available in writing and given to the parents of participating children at the beginning of the early intervention process. Some early intervention services may be covered by parents' health insurance, by Medicaid, or by the Indian Health Service. The Part C system may ask parents for their permission to access their public or private insurance in order to pay for their child's early intervention services. In most cases, the early intervention system may not use a family's health care insurance (private or public) without their express, written consent. If the family denies consent, the early intervention system may not limit or refuse to provide services for them or their child.

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<sup>75</sup> 20 U.S.C. §1437(b)(5)(B), P.L. 108-446 §637(b)(5)(B).

## **Appendix A. Structure of the IDEA**

### **Part A—General Provisions**

Part A includes congressional findings pertinent to the act, the purposes of the act, and definitions. These definitions include, among others, definitions of child with a disability, specific learning disability, free appropriate public education, core academic subjects, highly qualified, individualized education program, local educational agency, related services, special education, supplementary aids and services, transition services, and excess costs.

### **Part B—Assistance for Education of All Children with Disabilities**

Part B authorizes federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE) to children with disabilities between the ages of 3 and 21. Provisions in Part B require that school districts must identify, locate, and evaluate all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services. Further, they require that each child receiving services has an Individualized Education Program (IEP), created by an IEP team, delineating the specific special education and related services to be provided to meet his or her needs. The statute also contains procedural safeguards, which are provisions to protect the rights of parents and children with disabilities to ensure the provision of FAPE.

Section 619 of IDEA Part B authorizes grants to states for preschool programs serving children with disabilities ages three to five. Since Part B grants to states are used to serve children with disabilities as young as three years of age (as well as school-age children), Section 619 is not so much a separate program as it is supplementary funding for services to this age group. In general, the provisions, requirements, and guarantees under the grants to states program that apply to school-age children with disabilities also apply to children in this age group. As a result, Section 619 is a relatively brief section of the law and deals primarily with the state and substate funding formulas for the grants and state-level activities.

### **Part C—Infants and Toddlers with Disabilities**

The general purpose of Part C is to aid each state in creating and maintaining “a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families.”<sup>76</sup> The provisions in Part C require that services focus on children from birth through age two who are experiencing or have a high probability of experiencing “developmental delay” (as defined by the state) with respect to physical, mental, or other capacities, and on their families.<sup>77</sup> Services are detailed for each child and his or her family in an Individualized Family Service Plan (IFSP). Services are to be provided, to the maximum extent feasible, in “natural environments,” including the home, with other infants and toddlers who are not disabled. Under the provisions of Part C, states are required to identify a state lead agency, which might be the state educational agency (SEA) but could be other state agencies, to coordinate the program.

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<sup>76</sup> 20 U.S.C. §1431(b)(1), P.L. 108-446 §631(b)(1).

<sup>77</sup> Under certain circumstances, children with disabilities age three and over may continue to receive Part C early intervention services until they are eligible to enter kindergarten; 20 U.S.C. §14345(c), P.L. 108-446 §635(c).



## **Part D—National Activities to Improve Education of Children with Disabilities<sup>78</sup>**

Part D authorizes competitive grants to improve the education of children with disabilities in three areas: (1) state personnel development (Subpart 1); (2) personnel preparation, technical assistance, model demonstration projects, and dissemination of information (Subpart 2); and (3) support to improve results for children (Subpart 3).

- Under Subpart 1, state personnel development grants are authorized. These grants assist SEAs “in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transitions services.”<sup>79</sup>
- Under Subpart 2, a competitive grants program is authorized through which grants are made to entities such as SEAs, local education agencies (LEAs),<sup>80</sup> institutions of higher education (IHEs), and nonprofit organizations for personnel development to help ensure that there are adequate numbers of personnel with skills and knowledge needed to help children with disabilities succeed, for technical assistance and dissemination of material based on knowledge gained through research and practice, and for studies and evaluations.
- Under Subpart 3, a competitive grants program is authorized through which grants are made to nonprofit organizations for parent training and information centers, which provide parents of children with disabilities with needed training and information to work with professionals in meeting the early intervention and special education needs of their children.<sup>81</sup> Also, under Subpart 3, competitive grants are authorized for entities such as SEAs, LEAs, IHEs, and nonprofit organizations to support research, development, and other activities that promote the use of technology in providing special education and early intervention services.<sup>82</sup>

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<sup>78</sup> In addition to the statutory provisions in Part D, see the following for more information on these activities: U.S. Department of Education, *Fiscal Year 2012, Budget Summary*, pp. 34-36; and U.S. Department of Education, *Guide to U.S. Department of Education Programs, 2010*, pp. 254-262.

<sup>79</sup> 20 U.S.C. §1451(a), P.L. 108-446 §651(a).

<sup>80</sup> The term “local educational agency” means “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.” 20 U.S.C. §14011(19), P.L. 108-446 §601(19). The term “school district” is often used instead of local educational agency.

<sup>81</sup> 20 U.S.C. §1471, §1472, and §1473, P.L. 108-446 §671, §672, and §673.

<sup>82</sup> 20 U.S.C. §1474, P.L. 108-446 §674.

## Appendix B. IDEA, Part C Appropriations

Table B-1. IDEA, Part C Grants to States: Appropriations from FY2004 to FY2016

| Fiscal Year | Appropriation (in millions) |
|-------------|-----------------------------|
| 2004        | \$444.4                     |
| 2005        | \$440.8                     |
| 2006        | \$436.4                     |
| 2007        | \$436.4                     |
| 2008        | \$435.7                     |
| 2009        | \$439.4                     |
| 2010        | \$439.4                     |
| 2011        | \$438.6                     |
| 2012        | \$442.7                     |
| 2013        | \$419.7                     |
| 2014        | \$438.5                     |
| 2015        | \$438.6                     |
| 2016        | \$458.6                     |

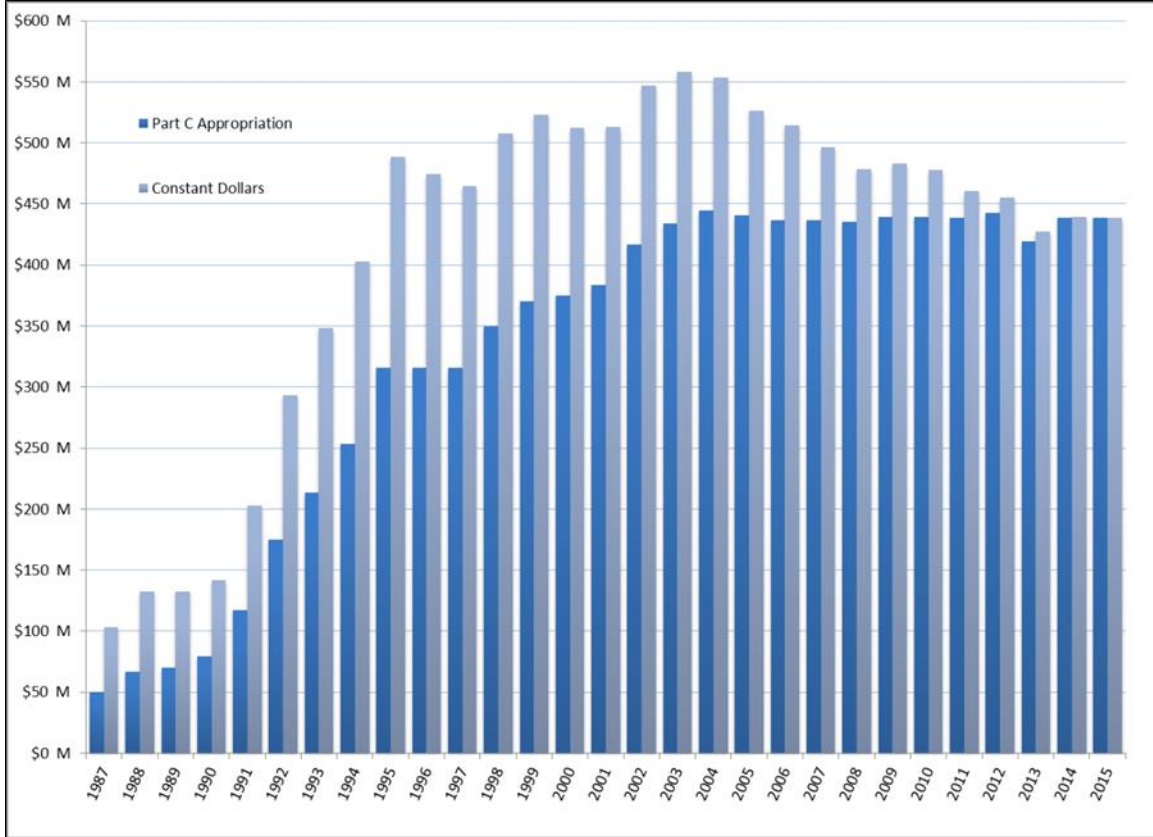
**Source:** Table created by CRS based on FY2004 to FY2016 appropriation data from the U.S. Department of Education.

**Note:** FY2013 amount reflects sequestration.

## Appendix C. Part C Funding, FY1987 to FY2015

**Figure C-1. Part C, Infants and Families Program Funding, FY1987-FY2015**

Funding in millions, shown in actual and constant FY2015 dollar amounts



**Source:** Figure prepared by CRS. Funding amounts are from U.S. Department of Education budget tables.

**Notes:** Constant dollar amounts show inflation-adjusted funding amounts calculated using the Consumer Price Index–All Urban Consumers (CPI-U).

The funding amount for FY2009 only displays regular appropriations; additional IDEA funding provided by the American Recovery and Reinvestment Act (ARRA) is not displayed.

## **Appendix D. Commonly Used Acronyms**

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|             |   |
|-------------|---|
| <b>APPE</b> | Average Per Pupil Expenditure               |
| <b>APR</b>  | Annual Performance Report                   |
| <b>ED</b>   | U.S. Department of Education                |
| <b>EI</b>   | Early Intervention                          |
| <b>EIS</b>  | Early Intervention Services                 |
| <b>ESEA</b> | Elementary and Secondary Education Act      |
| <b>FAPE</b> | Free Appropriate Public Education           |
| <b>IDEA</b> | Individuals with Disabilities Education Act |
| <b>IEP</b>  | Individualized Education Program            |
| <b>IFSP</b> | Individualized Family Services Plan         |
| <b>LEA</b>  | Local Educational Agency                    |
| <b>MOE</b>  | Maintenance of Effort                       |
| <b>SEA</b>  | State Education Agency                      |
| <b>SNS</b>  | Supplement, Not Supplant                    |
| <b>SPP</b>  | State Performance Plan                      |

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