IDEA INFANT & TODDLER COORDINATORS ASSOCIATION
IDEAINFANTTODDLER.ORG

Washington Update December 1, 2004

Summary of Changes Made to Part C by IDEA Reauthorization of 2004

On November 19, 2004, the full House and full Senate passed IDEA reauthorization legislation. The President is expected to sign the bill into law shortly. Provisions of the new IDEA go into effect July 1, 2005.

The following describes the final changes that are made to Part C of IDEA through this reauthorization. Sections 616, 617 and 618 of part B also apply to Part C. In addition, several changes were made to Part B IEP language that will be of interest to Part C systems. These Part B changes will be described in a separate ITCA document to be released in December 2004.

Throughout the document, ***language contained in the Report that accompanied the bill is included in bold italics type.*** This language provides clarification and congressional intent on specific provisions in the bill. Report language is important because it is often used in the development of implementing regulations.

Note that **all additions to the Part C language are in bold.**

The reader should note that some statutory changes to Part B, although not included in Part C (e.g. definition of "parent", definition of "homeless children", definition of "assistive technology devices", etc) may impact on Part C regulations that will be promulgated by the U.S. Department of Education.

Section 631 - Findings and Policy

Changes the Part C Findings language in Sec. 631(a) in several ways:

- Adds the phrase **"and to recognize the significant brain development that occurs during a child's first 3 years of life";**
- Deletes the phrase "to minimize the likelihood of institutionalization of individuals with disabilities"; and
- Deletes the phrase "historically underrepresented populations" and replaces it with the phrase **"all children;"** and adds the term **"infants and toddlers in foster care."**

Section 632 – Definitions

Changes to the definition of "early intervention services" at Sec. 632(4) are as follows:

- Adds the bolded language to (4)(C) "are designed to meet the developmental needs of an infant or toddler with a disability, **as identified by the individualized family service plan team**, in any 1 or more of the following areas:..."
- Adds the bolded language to (4)(E)(iii): "speech-language pathology and audiology services, **and sign language and cued language services."** ***Report language accompanying the bill stated that "Conferees commend the Office of Special Education & Rehabilitative Services for developing updated early intervention materials that set out the full range of options for families with deaf and hard of hearing children who now have the potential to***

Continued on page 2

Section 632 – Definitions, continued

develop age appropriate language in whatever modality their parents choose. Dramatic improvements in hearing technology, both hearing aids and cochlear implants, provide new opportunities for families who wish to pursue spoken language for their child with hearing loss. These new materials and efforts further the goals of the IDEA that early intervention personnel actively provide comprehensive and bias-free information on the range of language options available to a child with hearing loss, including the benefits of early amplification and/or early implantation of a cochlear implant."

- Changes the term "nutritionists" to **"registered dietitians"** in (4)(F)(viii).
- Adds **"vision specialists, including ophthalmologists and optometrists"** to the list of qualified personnel under (4)(F)(x).
- The Senate bill had included an addition of "teachers of the deaf" to the list of qualified personnel, but the House bill did not include this provision. "Teachers of the Deaf" was not included in the final bill. However, the Report included the following language: ***"The conferees intend that the term 'special educators' includes teachers of the deaf. The conferees recognize that with the recent dramatic rise in newborn hearing screening, more infants are being identified with hearing loss early and they need the services of teachers of the deaf who can meet their language and communication needs."***
- Adds a new Sec 632(5)(B)(ii) to the definition of "infant or toddler with a disability" describing children that may be served under part C at a States discretion as follows: **"(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; and
(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.

Section 633 – General Authority

No changes were made to this section.

Section 634 – Eligibility

- Changes the requirement for States "to demonstrate" to the Secretary that the state has adopted the policy to ensure services to **"to provide assurances"** to the Secretary.
- Adds to the statewide policy in Sec. 634(1) that appropriate early intervention services are available to the following children - **"...infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State... ."**

Section 635 – Requirements for Statewide System

The following changes were made to this section of Part C:

- Adds the bolded language to (a)(1) as follows: "(1) A **rigorous** definition of the term `developmental delay' that will be used by the State in carrying out programs under this part **in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part."** The Senate bill had included minimum criteria for developmental delay. The House bill did not include this requirement. No minimal criteria were included in the final bill. However, the term **"rigorous"** was included and the Report language stated the following: ***"The Conferees intend that States establish rigorous standards for identifying and serving infants and toddlers with developmental delays. The Conferees believe that these standards should encompass a sufficient scope of developmental delays to ensure that these infants and toddlers receive the benefit of Part C services designed to lessen the infant or toddler's need for future or more extensive services."***
- Adds the bolded language to (a)(2) as follows: "(2) A State policy that is in effect and that ensures that appropriate early intervention services **based on scientifically based research, to the extent practicable,** are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers **with disabilities** and their families residing on a reservation geographically located in the State **and infants and toddlers with disabilities who are homeless children and their families."**
- Adds the bolded language to (a)(5) as follows: "(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources **and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services."**
- Adds the bolded language to (a)(6) as follows: "(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information **to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications,** on the availability of early intervention services **under this part and of services under section 619, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities."** The Report included the following language: ***"The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system."***
- Deletes the requirement in (a)(6) to have "procedures for determining the extent to which such sources disseminate such information..."
- Deletes reference in (a)(8) to Part B CSPD since Part B CSPD has been eliminated from IDEA.
- Adds the bolded language to (a)(8) as follows: "A comprehensive system of personnel development, including the

Continued on page 4

Section 635 – Requirements for Statewide System, continued

training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that--**shall** (used to be "may") include--(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and (iii) training personnel to coordinate transition services for infants and toddlers served under this part **from a program providing early intervention services under this part and under part B (other than section 619), to a preschool program receiving funds under section 619, or another appropriate program**; and (B) may include--(i) training personnel to work in rural and inner-city areas; and**(ii) training personnel in the emotional and social development of young children."**

- Replaces the term "standards" in relation to personnel requirements with the term **"qualifications"** in two instances in (a)(9).
- Deletes the following language in (a)(9)(B) of current law- "to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State... ."
- Changes the language related to natural environments under (a)(16) adding bold language as follows: "Policies and procedures to ensure that, consistent with section 636(d)(5)--

  (A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

  (B) the provision of early intervention services for any infant or toddler **with a disability** occurs in a setting other than a natural environment **that is most appropriate, as determined by the parent and the individualized family service plan team,** only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment." The Report contained the following language: ***"The legislation amends current law to recognize that there may be instances when a child's individualized family service plan cannot be implemented satisfactorily in the natural environment. The Conferees intend that in these instances, the child's parents and the other members of the individualized family service plan team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided."***
- In Sec. 635(b), deletes the phrase "consistent with state law, within 3 years" at the end of the following - "(b) POLICY- In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9) (onsistent with state law, within 3 years—) ."
- Adds the following new State birth to six option as Sec. 635(c):

  "(c) Flexibility To Serve Children 3 Years of Age Until Entrance Into Elementary School-

Continued on page 5

Section 635 – Requirements for Statewide System, continued

(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**

Continued on page 6

Section 635 – Requirements for Statewide System, continued

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 636 – Individualized Family Services Plan

- Added the bolded language to (a)(3) that requires an IFSP: "(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), **including a description of the appropriate transition services for the infant or toddler."**
- Made a number of changes to the content of the IFSP at (d) as follows:
  - Deleted the term "major" as a modifier for "outcomes" in (d)(3) and added the following bolded language – "(3) a statement of the **measurable results or** outcomes expected to be achieved for the infant or toddler and the family, **including 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;"
  - Added the bolded language to (d)(4) as follows: "(4) a statement of specific early intervention services **based on peer-reviewed research, to the extent practicable,** necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;"
  - Added the bolded language to (d)(6) as follows: "(6) the projected dates for initiation of services and the anticipated **length,** duration,

Continued on page 7

Section 636– Individualized Family Services Plan, continued

and frequency of the services;"

- Added the bolded language to (d)(7) as follows: "(7) the identification of the service coordinator 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**; and"
- Added the word **"only"** to (e) as follows: "(e) PARENTAL CONSENT- The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then **only** the early intervention services to which consent is obtained shall be provided."

Section 637– State Application and Assurances

- Deletes language in current law at (a)(2) that states "a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies." and replaces it with a new (a)(2) as follows – **"(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;"**
- Adds the term **"statewide"** as follows to (a)(4) – "(4) if the State provides services to at-risk infants and toddlers through the **statewide** system, a description of such services;"
- Adds a new (a)(6) as follows: **"(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who--**
  (A) is involved in a substantiated case of child abuse or neglect; or
  (B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;"

  The Report provides additional language as follows: ***"The Conferees intend that every child described in 637(a)(6)(A) and (B) will be screened by a Part C provider or designated primary referral source to determine whether a referral for an evaluation for early intervention services under Part C is warranted. If the screening indicates the need for a referral, the Conferees expect a referral to be made. However, the Conferees do not intend this provision to require every child described in Section 637 (a)(6)(A) and (B) to receive an evaluation or early intervention services under Part C."***
- Adds the following bolded language to (a)(9): "(9) a description of the policies and procedures to be used--

  (A) to ensure a smooth transition for toddlers receiving early intervention services under this part **(and children receiving those services under section 635(c))** to preschool, school, other appropriate services, **or exiting the program**, including a description of how--

  (i) the families of such toddlers **and children** will be included in the transition plans required by subparagraph (C); and..."

Continued on page 8

Section 637– State Application and Assurances, continued

- Changes "up to 6 months" to **"not more than 9 months"** in the language at (a)(9)(A)(ii)(II) related to timelines for convening the transition conference for children who may be eligible for Part B preschool services.
- Adds language to the existing requirement to establish a transition plan under (a)(9)(C) as follows: "(C) to establish a transition plan, **including, as appropriate, steps to exit from the program;"**
- Adds a new (a)(10) as follows: **"(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and"**
- Adds the bolded language to (b)(7) as follows: "(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, **homeless**, and rural families **and children with disabilities who are wards of the State**, in the planning and implementation of all the requirements of this part; and"

Section 638 – Use of Funds

- Adds a new provision at (4) as follows: **"(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; and..."**

Section 639 – Procedural Safeguards

No changes were made to this section.

Section 640 – Payor of Last Resort

- Adds a new set of provision to Section 640 as follows: **"(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES-**

(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES-

(A) IN GENERAL- The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure-

(i) the provision of, and financial responsibility for, services provided under this part; and

(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B- The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12), where appropriate.

(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY-

(A) IN GENERAL- If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

(B) REIMBURSEMENT- Such local educational agency or State agency is authorized to claim reimbursement

Continued on page 9

Section 640 – Payor of Last Resort, continued

for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

(3) SPECIAL RULE- The requirements of paragraph (1) may be met through--

(A) State statute or regulation;

(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637."

Section 642 – Federal Administration

No changes were made to this section.

Section 643 – Allocation of Funds

- Added new provisions for the funding of the new optional State birth to six program as follows: **"(e) RESERVATION FOR STATE INCENTIVE GRANTS-`(1) IN GENERAL- 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.**

(2) AMOUNT OF GRANT-

(A) IN GENERAL- Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under

Continued on page 10

Section 641 – State Interagency Coordinating Council

- Added new required members to the SICC in (b) including representatives from: **the State Medicaid agency, the Office of the Coordinator of Education of Homeless Children and Youth, the State child welfare agency responsible for foster care, the State agency responsible for children's mental health.** In addition, the term "governance" was changed to **"regulation"** in relation to the agency responsible for the State **regulation** of health insurance.
- Changes the conflict of interest language at (f) as follows: - No member of the council shall cast a vote on any matter that **is likely to provide** a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law. The language "would provide" is deleted.

Section 643 – Allocation of Funds, continued

such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.
(B) MAXIMUM AMOUNT- No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

(3) CARRYOVER OF AMOUNTS-
(A) FIRST SUCCEEDING FISCAL YEAR- Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.
(B) SECOND SUCCEEDING FISCAL YEAR- Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 633 (from their allotments under this section) during such second succeeding fiscal year."

Section 644 – Federal Interagency Coordinating Council

This section was deleted from current law.

Section 644 – Authorization of Appropriations

This section was renumbered from Section 645 in current law. Part C has been authorized at **"such sums as may be necessary"** for each year from 2005-2010. Part C was not permanently authorized.