



DEC Talking Points: OSERS Public Input Meetings on Proposed IDEA Regulations

The U.S. Department of Education (DOE) is holding public meetings so individuals can provide comment on the proposed regulations to implement the for PL 108-446, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The unofficial copy of this notice of proposed rulemaking (NPRM) will be published in the Federal Register. The DOE has posted an UNOFFICIAL copy at http://www.ed.gov/policy/speced/guid/idea/unofficial_proposed_idea-regs.doc. CEC has posted its initial side-by-side analysis of these unofficial proposed regulations at http://www.cec.sped.org/pdfs/Initial_Summary.pdf. They will also post their comments on the proposed IDEA regulations on their WebPages as they attend each of the meetings.

This handout is designed to give you ideas on:

- The process for testifying at the public meetings; and
- Issues on which you may want to provide comment. Please note that the issues suggested in this message are all supported by DEC.

Please **personalize and use the talking points below in developing your own written or oral comments**. Remember, you do not have to attend one of public meetings to provide input on the draft regulations. You may email your comments to comments@ed.gov.

Finally, if you would like to receive additional updates about IDEA and other issues, you can subscribe to the DEC Advocacy List by emailing Sarah Hadden at dsh5gn@virginia.edu. Additional information about governmental relations activities can also be obtained by visiting the DEC WePages: <http://www.dec-sped.org/>.

If you have any question, please contact us. Thank you!

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Process and Tips for Testifying

For those of you who will attend the public meetings to provide input on the IDEA regulations the process should go as follows (adapted from CEC):

- You may show up at a meeting an hour before or at anytime while it is taking place.
- Once you are there, you will **sign in and be given a number**, which indicates when you will speak.
- Depending on the number of people who show up at the meeting, you could speak almost immediately, or **you may have to wait** an hour to speak.
- We recommend that you **choose one topic to focus on** and discuss. In other words, do not try to comment on all the regulations.
- When your number is called, you will be given **five minutes to sit** in front of two or three people from the U.S. Department of Education and **provide your focused comments** (five minutes goes faster than you think).
- When you are finished, **someone from the Department may ask you a question** for clarification, but more often than not, they will say "thank you", and you are done.
- **Bring five written copies** of your comments to leave with the Department.
- **Your written comments can be as long as you want**, just make sure you can **summarize them orally in five minutes**.

Preparing and Commenting on Early Childhood Issues at the Meeting

Please feel free to **use any of the points or ideas provided below** but please remember the most important thing is to **speak from your perspective** about the importance of the federal early childhood programs.

- First **introduce yourself**, providing your name, title, and anything relevant about you that emphasizes the importance of the early childhood programs under IDEA – Part C Early Intervention and the Preschool Section 619 Program;
- When you begin, you should **indicate for whom you are testifying** – yourself? your family? your school district? your program?
- A suggested opening statement is “I am _____ (insert name and title and interest in the hearing)_____ and I am here today to offer comments on behalf of _____ . I appreciate this opportunity to provide comments on the IDEA regulations. I eagerly await the publication of the NPRM on the Part C regulations and request that additional public meetings be scheduled to allow public comment on the Part C NPRM.”
- Your second paragraph should **provide, from your perspective, the most important things you want them to know** about the Part C Early Intervention Program and the Preschool Special Education Program. It is critical that the panel hear your vocal advocacy for these important IDEA programs. They need to hear about how valuable Part C and preschool services are to children and their families.
- We recommend you begin by indicating that the proposed NPRM for Part B contains a great deal of information and it will take many weeks for the field to review it to develop extensive comments.
- In your remarks, you can suggest any federal regulations you want for Part C or Preschool and/or you may select items from DEC’s current list of recommendations as follows.

1. ***DEC recommends that language be clear that IDEA personnel qualifications include preschool special education teachers.*** Revised personnel qualifications language under the Part B statute states- “The State educational agency has established and maintains qualifications to ensure that **personnel necessary to carry out this part** are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities” (Sec. 612(a)(14)). The language further goes on to include specific language related to special education teachers at the elementary, middle and secondary level; related services personnel; and paraprofessionals. Although preschool special education teachers are not specifically addressed in this language, DEC believes the statutory language is clear that preschool special education teachers are included due to the reference above “**personnel necessary to carry out this part...**”

DEC believes that the revised statutory language intends all personnel providing services under IDEA, including preschool teachers, meet personnel qualification requirements established by states. Therefore, ***DEC recommends that language in the regulations clarify that states must establish and maintain qualifications to ensure preschool special education teachers are appropriately and adequately prepared and trained.***

2. ***DEC appreciates*** the proposed NPRM language in 300.8(b) that clarifies that local school districts can select subsets of age ranges when determining their policy to use developmental delay to determine preschoolers eligible for Part B as DEC had recommended in our February comments.
3. ***DEC appreciates*** the addition of “travel training instruction” to the definition of “orientation and mobility services” at 300.34(c)(7) as DEC had recommended in our February comments.
4. Paperwork Reduction- According to the new statute, up to 15 states may receive authority from the Secretary to waive Part B requirements for no more than 4 years to reduce paperwork and noninstructional time burdens that do not assist in improving educational and functional results. Civil rights requirements cannot be waived and nothing can affect the right to FAPE or waive procedural safeguards under Section 615. (Sec 609) ***DEC recommends that regulatory language specifically clarify what Part B requirements can be waived, which cannot and what civil rights requirements apply.***
5. Natural Environments - ***DEC does not believe that the new statutory language in IDEA 2004 related to natural environments in Part C represents a change in federal policy.***

The conference report language indicates that the change was made “...to recognize that there may be instances when a child's individualized family service plan cannot be implemented satisfactorily in the natural environment.” This represents policy under IDEA'97 and does not reflect a change.

Further, the conference report language states “...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." This language seems to represent policy under IDEA'97 and does not reflect a change.

DEC also notes that other statutory language related to natural environments remains the same:

"To the maximum extent appropriate, early intervention services are provided in natural environments, including the home, and community settings in which children without disabilities participate (Sec. 634(4)(G))

The IFSP must contain "A statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment; (Sec. 636(d)(5))

Therefore, DEC strongly recommends that current regulations related to natural environments be retained and any additional regulatory language reinforce that: (a) the IFSP team determines the appropriate setting for the child; (b) no member of the IFSP team can unilaterally select the setting; (c) services can only be provided in a setting other than a natural environment if the child's outcomes cannot be achieved in a natural environment and the team's justification is documented; and (d) the home is not the only natural environment.

6. **Early Intervening Services** The new statute includes language that allows for the provision of early intervening services through interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment. (Sec. 613(f)) *DEC notes that the statute is silent on providing early intervening services for children aged 3 to 5 and does not restrict this provision for use in preschool. Given the current emphasis on early academic and behavioral support, DEC recommends that the NPRM language at 300.226(a) be revised to specify this provision can be applied to the entire age range under Part B of 3-21 years.*
7. **Part C Invited to IEP Meeting** - New IEP language was added as follows: "(D) IEP Team Transition- In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services." (Sec. 614(d)(1)(D))
DEC recommends that regulatory language in the NPRM at 300.321(f) be clarified to require that LEAs must notify parents of this opportunity to invite Part C personnel to the IEP meeting.
8. **CAPTA Requirements** - The new statute includes language requiring policies and procedures to accept referrals for a child B-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;” Conference report language states: “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.”

DEC recommends that the conference report language related to CAPTA be incorporated into the regulations clarifying that states may develop and implement policies that allow screening of children referred under 637(a)(6) in order to determine if evaluations are necessary. Under this language a child would have to be evaluated if the screening yielded information that the child needs an evaluation.

9. **Three Years to Kindergarten Option** - DEC recommends that regulatory language be included to clarify that when the amount appropriated for Part C exceeds the \$460 million trigger, 15% of the amount of funds that exceed \$460 million level would be made available to states that opt to participate in the three to kindergarten option.

In addition DEC requests clarification as follows:

- States be allowed to take a portion of the option e.g. age 3-4 or only age 3 or only age 4.
- Language should be included that a child cannot return to Part C after transitioning to Part B preschool services.
- “Kindergarten age” should be defined by the state.

10. **Definitions** DEC requests regulatory language be included for the term “scientifically-based” and the guidance should be aligned with NCLB language as long as the guidance ensures that single-subject, correlational, and qualitative research are included in the definition along with random assignment experiments.

DEC notes that the *DEC’s Recommended Practices* initiative is one which identifies, promotes and supports the use of scientifically valid practices based on a synthesis of best available research evidence integrated with professional and family wisdom and values.

In addition, DEC recommends regulatory language on “peer-reviewed research” be consistent with the work of the National Research Council (2005). Further, related to the matter of involving consumers in the peer review process, DEC asks that the department find ways of involving consumers that do not compromise the quality of the review decisions. Examples of this, which should be considered, are found in NCR report (e.g. participating in retrospective reviews of agency portfolios, serving on priority-setting committees).

- When you are finished with your comments, we suggest you thank the US Department of Education panel again, offer to provide additional information at their request and leave your contact information.

Again, the DEC Board and Governmental Relations Committee THANK YOU for testifying on behalf of quality programs and services for young children with disabilities and their families.