

TITLE 20--EDUCATION

CHAPTER 33--EDUCATION OF INDIVIDUALS WITH DISABILITIES

SUBCHAPTER III--INFANTS AND TODDLERS WITH DISABILITIES

Sec. 1435. Requirements for statewide system

(c) Flexibility to serve children 3 years of age until entrance into elementary school

(1) In general

A statewide system described in section 1433 of this title 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 1419 of this title and previously received services under this subchapter, 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 subchapter 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 subchapter II; and

(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under subchapter II, 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 1432(4)(B)) of this title, 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 subchapter II;

(D) all early intervention services outlined in the child's

individualized family service plan under section 1436 of this title 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 1432(5)(A) of this title) 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 1437(a)(9) of this title shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10421 of title 42).

(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 1437(b)(4)(A) of this title, a report on the number and percentage of children with disabilities who are eligible for services under section 1419 of this title but whose parents choose for such children to continue to receive early intervention services under this subchapter.

(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 1432(4)(B) of this title.

(5) Rules of construction

(A) Services under subchapter II

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 1419 of this title shall not be required to provide the child with a free appropriate public education under subchapter II for the period of time in which the child is receiving services under this subchapter.

(B) Services under this subchapter

Nothing in this subsection shall be construed to require a provider of services under this subchapter to provide a child served under this subchapter with a free appropriate public

education.