



April 24, 2020

Please note that the advice and analysis provided on Individuals with Disabilities Education Act (IDEA) Part C public participation are specific, and limited, to the facts presented and to the statutory and regulatory structure, and relevant requirements, of Part C of the IDEA. It is intended to be consistent with the U.S. Department of Education's (Department's) current understanding of the Center for Disease Control and Prevention's COVID-19 guidance, and guidance of available flexibilities issued by the Office of Management and Budget, regarding this national emergency. Use of this advice is limited to the period of this national emergency. Also, because this situation is fluid, the Department reserves the right to alter or reverse this advice or analysis during this period.

## PUBLIC PARTICIPATION — IDEA PART C

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### Relevant Requirements:

- The public requirements relevant to Part C are set forth in the Part C regulations at [34 C.F.R. § 303.208](#) and in section 441(b)(7) of GEPA (20 U.S.C. 1232d(b)(7))<sup>1</sup> as follows:
  - a) *Application*. At least 60 days prior to being submitted to the Department, each application for funds under this part (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the State for at least a 60-

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<sup>1</sup> (7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

(C) the State will hold public hearings on the proposed plans if required by the Secretary by regulation; and

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

day period, with an opportunity for public comment on the application for at least 30 days during that period.

- (b) *State Policies and Procedures*. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C and its implementing regulations, the lead agency —
  - (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure):
  - (2) Provides notice of the hearings held in accordance with paragraph (b)(1) of this section at least 30 days before the hearings are conducted to enable public participation; and
  - (3) Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with part C of the Act and these regulations.

#### **Options for Flexibility:**

- Because of the exigent circumstances surrounding this pandemic that have resulted in school closures and State imposed restrictions on public gatherings, the Department would like to highlight the following flexibility with regards to hearings for meeting the public participation requirements under Part C of IDEA:
  - The IDEA does not require that public hearings be in person in order to meet the public participation requirement.
  - The use of virtual hearings to satisfy the IDEA public participation requirement is not prohibited by the IDEA; however, States should consult with their attorneys prior to conducting virtual hearings for this purpose to ensure that this practice is not prohibited under State law.
  - Virtual hearings must be accessible consistent with federal civil rights laws, to ensure that individuals with disabilities have ample opportunities to participate.
  - After the COVID-19 emergency has ended and it is again possible to hold in person hearings, we recommend holding hearings in person to the greatest extent possible to ensure that individuals with limited access to technology also can participate.

## TECHNICAL ASSISTANCE RESOURCES

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- [The Early Childhood Technical Assistance Center](#) (ECTA) is funded by the Office of Special Education Programs (OSEP) at the Department to support State Part C and Section 619 programs in developing high-quality early intervention and preschool special education service systems, increasing local implementation of evidence-based practices, and enhancing outcomes for young children with disabilities and their families.
- Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) work with families of children with youth with disabilities, birth to 26 and help parents participate effectively in their children's education and development. To locate the Parent Center that serves your area, visit: <https://www.parentcenterhub.org/find-your-center/>.