



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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WRITTEN  
TESTIMONY ONLY

**Testimony COMMENTING on S.B. 2748 S.D. 1  
RELATING TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

SENATOR KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY

SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

Hearing Date: 3/2/2022

Room Number: Conference Rm 211  
Via Videoconference

1 **Fiscal Implications:** The Department of Health (DOH) requires additional resources for the 2-3 year  
2 process to plan and prepare for the extended Part C option, and additional positions and funding for  
3 services to implement this option. The Department requests that passage of any appropriations in this  
4 measure does not replace or adversely impact priorities in the Executive Budget request.

5 **Department Testimony:** The Department appreciates the intent of this measure to establish an  
6 “extended Part C option” in which children ages birth to 3 years with developmental delays receiving  
7 early intervention (EI) services under the federal Part C of the Individuals with Disabilities Education  
8 Act (IDEA), and who are eligible for the Department of Education (DOE) preschool special education  
9 services at age 3 years, have the option to extend their EI services until they enter kindergarten. This  
10 bill appears to require DOH to apply for the extended Part C option for the next Federal Fiscal Year  
11 beginning October 1, 2022. However, there are major missing components necessary before applying  
12 for the extended Part C option, including establishing funding to implement services, stakeholder  
13 consensus, and resources and time for planning and preparation. The DOH application for the extended  
14 Part C option would not be the initial step but should instead be almost the final step of the long  
15 process.

16 The estimated cost to implement the extended Part C option to serve children up to age 5 years may be  
17 **over \$12 million annually.** This is based on the current cost for EI services of approximately \$7,200

1 per child per year and serving 934 children (FY 2019 data) exiting from EI services at age 3 years who  
2 are eligible for DOE preschool special education. These estimates do not include administrative and  
3 operational costs. General funds for additional staff positions for 3 state-run EI programs and funding  
4 for 15 EI purchase-of-service (POS) contracted programs to implement the extended Part C option  
5 would be needed.

6 The key step of obtaining stakeholder input was not fully explored. There has been no broad  
7 stakeholder input on the extended Part C option and whether it will apply to children from age three  
8 until start of the school year following the child's third, fourth, or fifth birthday. The DOH, DOE,  
9 providers, early intervention specialists, early childhood educators, community, families, and other  
10 stakeholders including the Hawaii Early Intervention Coordinating Council established by the  
11 legislature (H.R.S. 321-353) have not had the opportunity to develop consensus on whether to  
12 implement the extended Part C option and for which ages.

13 The DOH anticipates that the planning and preparation process will take at least 2-3 years. Positions  
14 and funding for implementation must be obtained during this time. Implementing the extended Part C  
15 option must include notice of rights and service option; educational component that promotes school  
16 readiness and incorporates preliteracy, language, and numeracy skills; informed consent; coordination  
17 of services between DOH EI services and DOE special education; transition of children to DOE; and a  
18 data system. The DOH and DOE will need to develop an additional interagency agreement and  
19 develop new policies and procedures. The DOH will need to seek and receive approval from the U.S.  
20 Department of Education/Office of Special Education Programs before implementation.

21 If the legislature decides to move forward with this measure, the Department recommends: (1) change  
22 Page 1, Line 4 of S.B. 2748 S.D. 1 from "department of health shall elect" to "department of health  
23 may elect", and (2) establish a full-time (1.0 FTE) permanent general-funded position of a Children  
24 and Youth Program Specialist V to plan, prepare, and oversee implementation with quality  
25 improvement processes for the extended Part C option. The DOH does not have staff for this extensive  
26 work.

27 Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEES ON WAYS AND MEANS AND JUDICIARY  
ON  
SENATE BILL NO. 2748, S.D. 1

**March 2, 2022  
9:30 a.m.  
Room 211 and Videoconference**

**RELATING TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2748, S.D. 1, requires the Department of Health (DOH) to submit a request to the United States Department of Education for the extended Part C option of the Individuals with Disabilities Education Act to allow parents of children with a disability to continue receiving early intervention services after the child turns three years of age and until the child enters kindergarten; and appropriates an unspecified amount of general funds in FY 23 to DOH to plan, prepare, and implement the extended Part C option, which may include the hiring of staff.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



**S E A C**  
**Special Education Advisory Council**  
1010 Richards Street Honolulu, HI 96813  
Phone: 586-8126 Fax: 586-8129  
email: [spin@doh.hawaii.gov](mailto:spin@doh.hawaii.gov)  
March 2, 2022

**Special Education  
Advisory Council**

Ms. Martha Guinan, *Chair*  
Ms. Susan Wood, *Vice Chair*

Ms. Sara Alimoot  
Ms. Virginia Beringer  
Ms. Mary Brogan  
Ms. Deborah Cheeseman  
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Mr. Kerry Iwashita  
Ms. Melissa Johnson  
Ms. Tina King  
Ms. Jennifer Leoiki-Drino  
Ms. Dale Matsuura  
Ms. Cheryl Matthews  
Dr. Paul Meng  
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Ms. Lisa Vegas  
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Ms. Annie Kalama, *liaison to  
the Superintendent*

Amanda Kaahanui, Staff  
Susan Rocco, Staff

Senator Donovan M. Dela Cruz, Chair  
Committee on Ways and Means  
Senator Karl Rhoads, Chair  
Committee on Judiciary  
Hawaii State Capitol  
Honolulu, HI 96813

RE: SB 2748, SD 1 - Relating to the Individuals with Disabilities  
Education Act

Dear Chairs Dela Cruz and Rhoads and Committee Members,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), supports the intent of SB 2748, SD 1 which expands family choice by requiring the Department of Health to request to the US DOE to allow parents of children with a disability to continue receiving early intervention services after the child turns three years of age and until kindergarten.

In Hawaii and most other states, toddlers who are found eligible for Part B (special education and related services) must exit early intervention by the child's 3rd birthday and be offered the opportunity to transition to a public preschool program offering specially designed instruction and related services. SB 2748 would create an option for the families of these 3-year olds to continue to receive family-centered early intervention services from the Department of Health up to the beginning of kindergarten.

Several states and the District of Columbia currently offer the Part C Extended Option, and they generally find that between 10-15% of early intervention families opt to continue in Part C with its emphasis on parent coaching to support young children to participate in daily activities and routines. While it is hard to estimate how many of Hawaii's early intervention families would choose the extended option, it is likely that most working families would opt for the full service and six-hour daily schedule offered through the Department of Education.



Testimony to the Ways and Means and Judiciary Committees

March 2, 2022

Page 2

SEAC members discussed the funding and staffing ramifications of this proposed legislation at our February 11, 2022 meeting. Early intervention, like many other essential services, has experienced staff shortages during the pandemic and may be challenged to meet the staffing needs for an expanded population of young children and their families. Personnel serving three to five year olds would also need additional training to address the new emphasis on pre-literacy and school readiness. It is therefore critical that adequate funding be provided to the Department of Health to allow for planning, adjustments to their data system, and additional personnel.

SEAC strongly recommends that both the Department of Health and the Department of Education reach out to stakeholders, and especially to the families of young children with disabilities, to help determine the most appropriate service delivery to prepare these children for positive academic, behavioral and functional outcomes.

Mahalo for this opportunity to submit testimony. If you have any questions, we are happy to answer them.

Respectfully,

Martha Guinan  
Chair



**LATE**

Committee on Ways and Means  
Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarret Keohokalole, Vice Chair

Date: March 2, 2022  
Time: 9:30 A.M.  
Place: Via Videoconference

SB 2748 SD1 Relating to the Individuals with Disabilities Education Act  
**Testimony in SUPPORT**

Dear Committee Chairs, Vice Chairs and Members of the Committees:

We are writing today to offer testimony in support with comments on SB2748 SD1, relating to the Individuals with Disabilities Act (IDEA). As a professional organization dedicated to the many consumers and providers of applied behavior analysis (ABA), the Hawai'i Association for Behavior Analysis (HABA) stands in support of young keiki with disabilities having expanded access to early intervention services.

Currently in the state of Hawai'i, early intervention services cease as a keiki turns age three. Congress afforded the state of Hawai'i the flexibility to extend IDEA Part C Option for young keiki with disabilities with the 2004 amendment of the IDEA. Families should have the option to choose whether their keiki continue to have access to early intervention services beyond the age of three and until entering or becoming eligible to enter kindergarten. HABA supports the amendments made to this measure including making an appropriation to the Department of Health to prepare, plan and implement the extended Part C option, and hiring qualified staff. In addition, HABA supports the continuity of care and access to variety of needed support services, including ABA for children with disabilities to help provide a successful transition between early intervention and school aged support services.

We appreciate the opportunity to testify in **support** of SB2748 SD1.

Sincerely,

Ashley Hogan, BCBA, LBA  
HABA President 2022

**LATE**

**SB-2748-SD-1**

Submitted on: 3/1/2022 3:08:15 PM

Testimony for JDC on 3/2/2022 9:30:00 AM

| <b>Submitted By</b>     | <b>Organization</b> | <b>Testifier Position</b> | <b>Remote Testimony Requested</b> |
|-------------------------|---------------------|---------------------------|-----------------------------------|
| Mr and Mrs John McComas | Individual          | Support                   | No                                |

Comments:

Aloha Esteemed Committee Members.

We strongly support the passing of SB2728. As parents of two children with disabilities, we wish we had been given the choice of keeping their DOH Early Intervention supports. Neither one was ready physically, emotionally, socially for the chaotic transition from EI services to HIDOE special Education pre-school programming. This did not benefit them.

Families who know their children best should have the option to roll over the EI services when the child turns 3 if it will best benefit the child.

Some time ago, the late US Senator, Daniel Akaka wrote to a parent the reasons that Congress voted to give Hawaii a choice for its youngest and most vulnerable children to avoid upheaval from one agency to another when the child turns 3 years of age. Parents were so grateful for his understanding of this critical need.

We humbly ask that you provide this legislative policy change by passing SB2748 and give families the choice of what is best for their child- to either continue with early intervention services or receive HIDOE special education services....not both.

Thank you for the opportunity to share our testimony.

Mr. and Mrs. John McComas



**LATE**

March 2, 2022 @ 9:30a JDC/WAM Decision Making for SB2748

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

Aloha. I am in **SUPPORT of SB2748**, supporting a policy change to give parents the option to continue early intervention services (Part C) on their disabled child's third birthday OR receive special education preschool services. Congress provided additional funding grants this past year to states that chose this "Part C Option", and a few more states recently have provided new policies to the US DOE and are able to implement the Part C option while the state's policies and procedures are pending. Relevant Individuals with Disabilities Education Act (IDEA) law is attached: **20 USC Sec. 1435**.

I believe this bill is in line with **Act 046 (2020, HB2543 HD1 SD2) Access to Early Learning**. Parents, boards, councils, teachers and providers are not able to provide their input and expertise when a state policy gives no option to discuss possibilities.

Some families still face today what mine faced almost 20 years ago: a solution untouchable, no choice in services for a young child with disabilities turning three years old, and children separated from their families, siblings, and neuro-typical children due to disabilities. Family choices and access to Hawaii's programs such as Open Doors, childcare and preschool programs, and Pre-Plus are diminished.

For reference, Early Intervention (DOH) provides Individual Family Service Plans (IFSP), and the Special Education Preschool (DOE) provides Individualized Education Programs (IEP). The DHS provides funding for childcare and preschool programs.

The late United States Senator Senator Daniel K. Akaka had written me the attached letter not long after the IDEA was reauthorized in 2004. He explained some reasoning behind Congress' decision to give the state this option, such as a family not having to change providers/programs on a child's third birthday which may cause a gap in services over summer break or until the next school year begins if the child wants to enroll in a private preschool, childcare program or homeschool. My child was not functionally nor developmentally ready for a segregated special education classroom. My child thrived learning to speak with sign language at home and in the community, including music-movement classes with younger developmentally-matched and neuro-typical children with similar interests. Families want and need this option, including military families. I appreciate your taking the time to review this letter and testimonies provided in earlier committees as well.

Thank you for the opportunity to provide testimony in support of SB2748 SD1.

Linda Elento, Constituent

DANIEL K. AKAKA  
KAWAII

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United States Senate

WASHINGTON, DC 20510-1103

April 21, 2006

COMMITTEES:  
ARMED SERVICES  
ENERGY AND NATURAL RESOURCES  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
INDIAN AFFAIRS  
VETERANS' AFFAIRS



Dear Ms. Elento:

Thank you for your inquiry regarding Part C (infants and toddlers with disabilities) of the Individuals with Disabilities Education Improvement Act (P.L. 108-446).

As you know, P.L. 108-446 authorizes IDEA Part C grants to states for the continuation of early intervention services leading to programs under Section 619, Part B. During drafting of the legislation, parents noted that it was undesirable to change providers when transitioning from Part C services to Part B services. To accommodate parents' concerns, Congress responded by including the new Part C grants in the Act. The new policy provides state flexibility for a seamless zero to five program that ensures special needs children receive consistent services at a developmentally critical age.

In addition, the new Part C grants require an Individualized Family Services Plan to include transition services that acknowledge the need to help children move onto elementary education. These services also recognize the possibility – and in some cases, the goal – that children will no longer need services. More information on special education programs is available on the U.S. Department of Education's Web site: <http://www.ed.gov/policy/speced/guid/idea/idea2004.html>.

Once again, mahalo for contacting me.

Aloha pumehana,

Handwritten signature of Daniel K. Akaka in black ink.

DANIEL K. AKAKA  
U.S. Senator

## **20 U.S.C.**

United States Code, 2011 Edition

Title 20 - EDUCATION

CHAPTER 33 - EDUCATION OF INDIVIDUALS WITH DISABILITIES

SUBCHAPTER III - INFANTS AND TODDLERS WITH DISABILITIES

Sec. 1435 - Requirements for statewide system

From the U.S. Government Publishing Office, [www.gpo.gov](http://www.gpo.gov)

### **§1435. Requirements for statewide system**

#### **(a) In general**

A statewide system described in section 1433 of this title shall include, at a minimum, the following components:

a(1) A rigorous definition of the term “developmental delay” that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.

(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.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436 of this title, including service coordination services in accordance with such service plan.

(5) A comprehensive child find system, consistent with subchapter II, 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 subchapter that will reduce the need for future services.

(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 subchapter and of services under section 1419 of this title, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the 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—

(A) shall 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 subchapter; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this subchapter from a program providing early intervention services under this subchapter and under subchapter II (other than section 1419 of this title), to a preschool program receiving funds under section 1419 of this title, 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.

(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this subchapter (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this subchapter to infants and toddlers with disabilities.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration and supervision of programs and activities receiving assistance under section 1433 of this title, and the monitoring of programs and activities used by the State to carry out this subchapter, whether or not such programs or activities are receiving assistance made available under section 1433 of this title, to ensure that the State complies with this subchapter;

(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 1437(a)(2) of this title to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this subchapter in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this subchapter in accordance with section 1440(a) of this title.

(13) Procedural safeguards with respect to programs under this subchapter, as required by section 1439 of this title.

(14) A system for compiling data requested by the Secretary under section 1418 of this title that relates to this subchapter.

(15) A State interagency coordinating council that meets the requirements of section 1441 of this title.

(16) Policies and procedures to ensure that, consistent with section 1436(d)(5) of this title—

(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.

## **(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).

## **(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 10402 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.

(Pub. L. 91–230, title VI, §635, as added Pub. L. 108–446, title I, §101, Dec. 3, 2004, 118 Stat. 2747; amended Pub. L. 111–320, title II, §202(b), Dec. 20, 2010, 124 Stat. 3509.)

**Prior Provisions**

A prior section 1435, Pub. L. 91–230, title VI, §635, as added Pub. L. 105–17, title I, §101, June 4, 1997, 111 Stat. 108, related to requirements for statewide system, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108–446.

Another prior section 1435, Pub. L. 91–230, title VI, §635, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98–199, §§3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372; Pub. L. 99–457, title III, §311, Oct. 8, 1986, 100 Stat. 1169; Pub. L. 101–476, title IV, §405, Oct. 30, 1990, 104 Stat. 1135; Pub. L. 102–119, §§9(c)(2), 10, 25(a)(13), Oct. 7, 1991, 105 Stat. 595, 606, authorized appropriations, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105–17.

**Amendments**

**2010**—Subsec. (c)(2)(G). Pub. L. 111–320 substituted “section 10402 of title 42” for “section 10421 of title 42”.

**LATE**

**SB-2748-SD-1**

Submitted on: 3/1/2022 10:08:26 PM

Testimony for JDC on 3/2/2022 9:30:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Remote Testimony Requested</b> |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Jason               | Individual          | Support                   | No                                |

Comments:

Vote yes,