

# NOTE\*

## RETHINKING CONTINUITY FOR YOUNG CHILDREN UNDER THE IDEA

“We believe that this program can make a real difference in helping to meet the national goal of improving the school readiness of all young children, including young children with disabilities.”<sup>1</sup>

### I. INTRODUCTION

Early Intervention is a program for children ages birth through two that aspires “to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child’s first 3 years of life.”<sup>2</sup> The program is codified as Part C of the Individuals with Disabilities Education Act (“IDEA”).<sup>3</sup> A child is eligible to receive Early Intervention services (also referred to as “Part C services”) if they: (a) are experiencing developmental delays, (b) have a condition that makes it highly likely they will experience developmental delays, or (c) are at risk for a substantial developmental delay.<sup>4</sup>

The IDEA also contains a program for children with disabilities aged three through five in Part B of the Act. The preschool grant program under Part B is commonly referred to as “619 preschool” because it is Section 619 of the Act.<sup>5</sup> All children who are eligible for Part B services, including children three to five, are entitled to a free appropriate public education (“FAPE”).<sup>6</sup> Children are eligible for Part B services if they need special education and related services because: (a) they have one of an enumerated list of disabilities; or (b), at the discretion of states, they are experiencing developmental delays.<sup>7</sup>

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<sup>1</sup> *Reauthorization of Part H of the Individuals with Disabilities Education Act: Hearing Before the Subcomm. on Disability Policy of the S. Comm. on Labor and Human Res.*, 102nd Cong. 15 (1991) (statement of Dr. Robert Davila, Assistant Sec’y, Special Educ. and Rehab. Servs.).

<sup>2</sup> 20 U.S.C. § 1431 (2006).

<sup>3</sup> Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (codified as amended in 20 U.S.C. ch. 33).

<sup>4</sup> 20 U.S.C. § 1432. Under the statute, the “rigorous definition” of developmental delay is left to state discretion. *Id.* § 1435.

<sup>5</sup> *Id.* § 1419.

<sup>6</sup> See *infra* note 65 and accompanying text.

<sup>7</sup> See 20 U.S.C. § 1401(3).

A) In general.—The term ‘child with a disability’ means a child—  
(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopedic impairments,

The pending reauthorization of IDEA, which may occur as soon as 2013,<sup>8</sup> provides a new opportunity to rethink the appropriate alignment between Part B and Part C eligibility. In general, there has been ongoing congressional support for the expansion of Part B eligibility to include children experiencing developmental delay.<sup>9</sup> There is a possibility, however, that Part B eligibility could be (or may become in the future) overextended through an over-emphasis on continuity. Researchers have highlighted:

[A] large number of the infants and toddlers served by Part C need or may need services besides those offered by Part B. Continuity of services for such children is a much more complex issue than whether the stated policies of states' Part C and Part B programs permit seamless eligibility.<sup>10</sup>

619 preschool may not be a one-size-fits-all service solution for children aging out of Early Intervention services under Part C.

This Note proposes that rather than continuing to increase the continuity between Part C and Part B eligibility in the next reauthorization of the IDEA, or even maintaining the status quo, Congress should instead look outside of the IDEA early childhood framework and consider whether some potentially Part B eligible children would be better served in other, non-IDEA based, early education programs. This integration with the broader early childhood landscape would have the additional benefit of restoring the

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autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9.—The term ‘child with a disability’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

*Id.*

<sup>8</sup> See NAT'L SCH. BDS. ASS'N, ISSUE BRIEF, INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA): EARLY PREPARATION FOR REAUTHORIZATION 1 (2012), available at <http://www.nsba.org/Advocacy/Key-Issues/SpecialEducation/NSBA-Issue-Brief-Individuals-with-Disabilities-Education-Act-IDEA.pdf>.

<sup>9</sup> See H.R. REP. NO. 108-77, at 87 (2003).

The intent of this new provision is to allow States to provide services to that limited population of children that are provided services under the Part C program under the category of developmental delay, but are occasionally denied services under the Part B Section 619 program if the State does not have a definition of developmental delay for that age range. A child at the age of three should not be denied services due to a transition problem between the two programs.

*Id.*

<sup>10</sup> Joan Danaher, Jo Shackelford & Gloria Harbin, *Revisiting a Comparison of Eligibility Policies for Infant/Toddler Programs and Preschool Special Education Programs*, 24 TOPICS IN EARLY CHILDHOOD SPECIAL EDUC. 59, 67 (2004).

distinctive missions of Part B and Part C, which have been partially obscured by the emphasis on seamless transitions within the IDEA system. This Note does not necessarily suggest that “experiencing developmental delay” should be removed from the Part B definition of children with disabilities entirely, particularly given the degree of variability in the availability of early learning opportunities from state to state and community to community. This Note instead submits that there may be a subset of children within that category who could be better served by a different type of program, and that this subset should be considered when making any revisions to the IDEA landscape.

Professor Ruth Colker raised a similar concern in her work on the integration presumption in special education.<sup>11</sup> Colker’s article argues that while “structural remedies, such as an integration presumption, can play an important role in achieving substantive equality, such remedies also need periodic reexamination.”<sup>12</sup> This Note suggests that, similarly, in the realm of early education, there has been a continuity presumption that, while well intentioned, has ultimately hampered the goal of providing children that are eligible for Early Intervention with appropriate preschool experiences. Colker concludes “[w]e need to have the courage to abandon the existing integration presumption when school districts offer a continuum of educational alternatives in order to develop more appropriate individualized education programs for our children in the future.”<sup>13</sup> The historical purpose of the continuity presumption was in part ensuring access to early education; today, this goal can be achieved through alternative means.

This Note will first describe the history of congressional attempts at continuity for young children with disabilities and the current early childhood landscape for children with and without disabilities. It will then compare the mission and eligibility requirements of, and services offered by, 619 preschool to four alternative early childhood programs: Head Start, Title I preschool, child care, and state-funded preschool. Finally, the Note will discuss how and why more children should be transitioned from Part C into these alternative programs and address some potential critiques of the proposal.

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<sup>11</sup> Ruth Colker, *The Disability Integration Presumption: Thirty Years Later*, 154 U. PA. L. REV. 789, 790 (2006).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 861–62.

II. CONTEXT FOR REAUTHORIZATION: THE EVOLUTION OF TRANSITIONS  
FOR YOUNG CHILDREN WITH DISABILITIES AND EARLY  
EDUCATION TODAY

A. *Congressional Debates and Changes in Congressional Thinking*

Congress created the Early Intervention program in 1986 to address the developmental needs of infants and toddlers with disabilities.<sup>14</sup> The program was added to the existing Education of the Handicapped Act as a new Part H of the Act.<sup>15</sup> According to the statute, children were eligible for the Early Intervention program if they were experiencing developmental delays or were at risk of experiencing developmental delays.<sup>16</sup>

The next reauthorization of the Education of the Handicapped Act took place in 1991 and renamed the Act the Individuals with Disabilities Education Act ("IDEA"), the name the Act retains today.<sup>17</sup> One substantive focus of the amendment process was the improvement of the Early Intervention program. The Senate Committee on Education and Labor issued a written report in June 1991 which praised the Early Intervention program for being "[w]idely hailed as a major step toward meeting the needs of infants and toddlers with developmental delay."<sup>18</sup> Nevertheless, the program was not fully integrated with the other provisions of the Act, particularly Part B which provided services for children ages three through five. To address this shortcoming:

The bill included several changes to Parts B and H of the Act designed to facilitate the development of a comprehensive "seamless" system of services for children aged birth to 5, inclusive and their families which will ensure: (1) a smooth transition for children moving from early intervention programs under part H to pre-school programs under part B and (2) the delivery of appropriate services.<sup>19</sup>

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<sup>14</sup> Education of the Handicapped Amendments of 1986, Pub. L. No. 99-457, 100 Stat. 1145 (codified as amended in 20 U.S.C. ch. 33).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* § 672.

The term "handicapped infants and toddlers" means individuals from birth to age 2, inclusive, who need early intervention services because they- (A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, language and speech development, psychosocial development, or self-help skills, or (B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

*Id.*

<sup>17</sup> Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 587 (codified as amended in 20 U.S.C. ch. 33).

<sup>18</sup> S. REP. NO. 102-84, at 4 (1991).

<sup>19</sup> *Id.* at 14.

The primary change facilitating this transition was the expansion of the Part B definition of children with disabilities to include children three to five “experiencing developmental delays.”<sup>20</sup>

The Committee also identified an aspirational systems building component that was not operationalized through the text of the amendments. Recognizing that Part H was one in a vast array of services, “[t]he committee strongly recommend[ed] that States coordinate [P]art H efforts with other system efforts currently under development in States.”<sup>21</sup> The Committee went on to issue a prescient warning:

The committee caution[ed] that while great progress is occurring in systems development throughout the country, if such coordination does not occur, there is a danger that a new reality could emerge; that is, “multiple systems” instead of “multiple programs” at the local level. This new reality would be reflected in numerous but unrelated interagency efforts occurring at the community level with all the same agencies as members for each initiative. This is certainly not desirable as it could leave parents in the same position as before, negotiating across systems instead of agencies. It is certainly no timesaver for the agency representatives who must participate in each initiative.<sup>22</sup>

Congress returned to the issue of early childhood special education transitions once again in 2003.<sup>23</sup> Representative Castle’s (R-Del.) introduction of the bill on the House floor is illustrative of the shifting winds of federal education policy. He stated: “These children [with disabilities] are still among those at the greatest risk of being left behind. Now more than

<sup>20</sup> § 3, 105 Stat. at 587. Subsequent amendment further expanded eligibility for children experiencing developmental delay to children ages 3–9. *See* 20 U.S.C. § 1401(3)(B) (2006).

<sup>21</sup> S. REP. NO. 102-84, at 23–24 (1991).

<sup>22</sup> *Id.*

<sup>23</sup> *See* Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (codified as amended in 20 U.S.C. ch. 33). The IDEA underwent an intervening amendment and reauthorization process in 1997. *See* Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat. 37 (codified as amended in 20 U.S.C. ch. 33). The 1997 reauthorization rearranged the parts of the Act. *Id.* In this reorganization, Early Intervention moved from Part H to Part C of the Act. *Id.* Therefore, the Early Intervention portion of IDEA is referred to as Part H prior to these amendments and as Part C subsequently. Substantively, the 1997 amendments focused on achieving seven goals only tangentially related to young children:

(1) Strengthening the role of parents; (2) Ensuring access to the general education curriculum and reforms; (3) Focusing on teaching and learning while reducing unnecessary paperwork requirements; (4) Assisting educational agencies in addressing the costs of improving special education and related services to children with disabilities.

(5) Giving increased attention to racial, ethnic, and linguistic diversity to prevent inappropriate identification and mislabeling; (6) Ensuring schools are safe and conducive to learning; and (7) Encouraging parents and educators to work out their differences by using non-adversarial means.

H.R. REP. NO. 105-95, at 85 (1997), *reprinted in* 1997 U.S.C.C.A.N. 78, 82.

ever, we must make sure that children with disabilities are given access to an education that maximizes their unique abilities.”<sup>24</sup> This emphasis on leaving no child behind was understood by the Committee on Education and the Workforce to include a renewed commitment to promoting school readiness through early childhood opportunities.<sup>25</sup>

The substantive changes made to the early childhood provisions of the Act acknowledged that what best promotes school readiness may differ from child to child and sought to adapt the program accordingly. The Act “encourage[d] the local educational agency [providing preschool services under Part B] to consider the elements of the [individualized family service plan (“IFSP”)] that continue to be relevant for the child, and are appropriate to be included in the [individualized education program (“IEP”)] for the child.”<sup>26</sup> A child’s service needs do not necessarily change immediately upon the child’s third birthday; the provision seeks to ease the transition from Early Intervention to 619 preschool.<sup>27</sup> The Act also contemplated that for some children, neither of these two options—transition to 619 preschool or transition with residual Early Intervention services—may be the most appropriate option. It expanded the definition of infant or toddler with a disability in Part C to allow children three to five who are eligible for services under section 619 to elect to stay in the Early Intervention program until kindergarten entry instead (so long as the program has an educational component that promotes school readiness).<sup>28</sup> The goal of this change was to “allow parents to determine when their child is ready to transition to the Part B [preschool] program, rather than having that determination made for them by the Act.”<sup>29</sup> The Committee in its report also took up once again the cause of service coordination. Presumably at least in part because states did not satisfactorily heed Congress’s 1991 warning, “the bill requires States to provide a descrip-

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<sup>24</sup> 149 CONG. REC. E527 (daily ed. Mar. 20, 2003) (statement of Rep. Michael N. Castle).

<sup>25</sup> See H.R. REP. NO. 108-77, at 123 (2003) (“The goal of Part C is to provide children with disabilities with a solid foundation that will prepare them for success in the public school system and later in life.”).

<sup>26</sup> *Id.* at 110. “The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with § 1414(d) of this title.” 20 U.S.C. § 1401(14) (2006). IEPs include statements regarding: a child’s current abilities; measurable annual goals; and special education and related services to be provided to the child. *Id.* § 1414(d). An IEP is first developed when a child becomes eligible for Part B services, either upon turning three or upon later diagnosis of a qualifying disability. *Id.* “The term ‘individualized family service plan’ has the meaning given the term in section 1436 of this title.” *Id.* § 1401(15). Like an IEP, an IFSP must be in writing and contain information regarding a child’s abilities and goals. *Id.* § 1436. It also contains more specific information regarding logistics for providing Early Intervention services. *Id.* An IFSP is created for each infant or toddler with a disability and their families. *Id.*

<sup>27</sup> H.R. REP. NO. 108-77, at 123 (2003).

<sup>28</sup> Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (codified as amended in 20 U.S.C. ch. 33).

<sup>29</sup> H.R. REP. NO. 108-77, at 123–24 (2003).

tion of their efforts to promote collaboration between Early Head Start programs and child-care services under Part C of this Act.”<sup>30</sup>

Taken as a whole, the 2004 amendments may be understood to stand for the observation that while 619 preschool can be instrumental to a child’s school readiness, it is not the only, or necessarily the best, option for young children with disabilities.

### B. *Pressure on 619 preschool programs*

Despite the marginal shift away from 619 preschool services in the 2004 amendments, which allow some children to remain in Early Intervention until they enter kindergarten,<sup>31</sup> 619 preschool programs face increasing capacity pressures.<sup>32</sup> A recent paper by the Education Law Center found there are not enough inclusive preschool slots available to accommodate all of the children eligible for preschool services under the IDEA.<sup>33</sup> According to the paper, “the majority of pre-k children who are eligible for special education are placed in segregated special education classrooms or schools solely attended by children with disabilities—only 33% of these children were educated in typical early childhood settings.”<sup>34</sup> The paper goes on to conclude “[t]here is an obvious need to significantly increase the number of programs where young children with disabilities can be educated in typical settings alongside pre-k children who do not have disabilities.”<sup>35</sup> Further compounding these difficulties is the failure of federal section 619 appropriations to keep pace with the growth in number of children served.<sup>36</sup> In 2010 (the most recent year for which data is available), federal appropriations per child fell to \$509, down substantially from the peak of \$803 in 1992 and the lowest level of funding per child since the program was scaled up in 1987.<sup>37</sup>

### C. *Growth of State Preschool Programs*

The number of children served by state-funded preschool programs has grown substantially since Part B eligibility was expanded to include devel-

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<sup>30</sup> *Id.* at 125.

<sup>31</sup> See *supra* note 28 and accompanying text.

<sup>32</sup> See generally James Vaznis, *Special Needs Preschoolers on Rise*, BOS. GLOBE, Feb. 26, 2012, at 1 (“The number of preschoolers with disabilities in the Boston public schools has surged more than 50 percent over the last three years, an unanticipated increase that has prompted school officials to scramble to add classrooms.”).

<sup>33</sup> EDUC. LAW CTR., INCLUDING CHILDREN WITH DISABILITIES IN STATE PRE-K PROGRAMS 6 (2010).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> NAT’L EARLY CHILDHOOD TECHNICAL ASSISTANCE CTR., SECTION 619 PRESCHOOL PROGRAM FEDERAL APPROPRIATIONS AND NATIONAL CHILD COUNT 1977–2012 (2012), available at <http://www.nectac.org/~pdfs/growthcomp.pdf>.

<sup>37</sup> *Id.*

opmental delay in 1991.<sup>38</sup> From 2001–2011, 600,000 additional children were enrolled in state preschool programs.<sup>39</sup> In the 2010–2011 school year, 1,323,128 children attended state-funded preschool programs.<sup>40</sup> While this still only represents 28% of all four-year-olds, in some states more than 60% of four-year-olds are being served by such programs.<sup>41</sup> These programs have also been increasing in quality over the past decade.<sup>42</sup> Like 619 preschool, some state preschool programs have seen their per pupil spending decline as enrollment has increased.<sup>43</sup> Even still, the average amount of money spent by states per child was \$4,151 in 2011.<sup>44</sup>

Of the thirty-nine states with preschool programs, nine states and the District of Columbia provide preschool access to all children.<sup>45</sup> In addition, four states specifically list developmental disability as an independent eligibility category (not subject to income restrictions) and nineteen states consider “other risk factors” in addition to income, which may include developmental delay.<sup>46</sup>

#### D. Race to the Top—Early Learning Challenge

On May 25, 2011, the Obama Administration announced a \$500 million grant competition, the Race to the Top—Early Learning Challenge (“RTT-ELC”).<sup>47</sup> The grant was a joint undertaking of the Departments of Education and Health and Human Services.<sup>48</sup> At a broad level, the goal of the grant competition was to promote a coordinated system of early learning and development programs, in order to help “ensure that children, especially young children with high needs, such as those who are low-income, English learners, and children with disabilities or developmental delays, enter kindergarten ready to succeed in school and in life.”<sup>49</sup> Despite the warning of congressmen in 1991,<sup>50</sup> there is currently a vast and fragmented array of

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<sup>38</sup> See W. STEVEN BARNETT ET AL., *THE STATE OF PRESCHOOL 2011*, at 12 (2011).

<sup>39</sup> See *id.* To place this number in context, 735,000 children were enrolled in Section 619 preschool in 2010. NAT'L EARLY CHILDHOOD TECHNICAL ASSISTANCE CTR., *supra* note 36.

<sup>40</sup> BARNETT ET AL., *supra* note 38, at 8.

<sup>41</sup> *Id.* at 8–9.

<sup>42</sup> *Id.* at 12 (“The most impressive development in pre-K program quality was the widespread adoption of state Early Learning Standards. In 2001–2002, only about a third of states had comprehensive Early Learning Standards. Today, all but California and Ohio have comprehensive standards, and those two are working on them.”).

<sup>43</sup> *Id.* at 13.

<sup>44</sup> *Id.* at 18.

<sup>45</sup> *Id.* at 172–73.

<sup>46</sup> *Id.* at 174–76.

<sup>47</sup> U.S. DEP'T. OF EDUC., *RACE TO THE TOP—EARLY LEARNING CHALLENGE: APPLICATION FOR INITIAL FUNDING 3* (2011), available at <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/2011-412.doc>.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.*

<sup>50</sup> See *supra* note 22 and accompanying text.



early learning and development programs in the country.<sup>51</sup> The application for RTT-ELC summarized the existing coordination challenges as follows:

Each of these programs has its own funding stream and accompanying requirements, standards, expectations, policies, and procedures. Each also has its own unique strengths and makes unique contributions to young children and their families. For States, the challenges to be addressed by RTT-ELC are to sustain and build on the strengths of these programs, acknowledge and appreciate their differences, reduce inefficiency, improve quality, and ultimately deliver a coordinated set of services and experiences that support young children's success in school and beyond.<sup>52</sup>

While only nine states were awarded grants through the first phase of this competition,<sup>53</sup> to the extent the application signifies a broader shift in how to think about early education programs for all types of children, it is an opportune time to reconsider how best to serve children exiting Early Intervention.

#### *E. 2013 Obama Administration Plan for Early Education*

During his February 2013 State of the Union Address, President Obama announced a new proposal to expand access to high-quality preschool to every child.<sup>54</sup> “The President’s proposal will improve quality and expand access to preschool, through a cost sharing partnership with all 50 states, to extend federal funds to expand high-quality public preschool to reach all low- and moderate-income four-year olds from families at or below 200% of poverty.”<sup>55</sup> States would also have the ability to serve middle-income families through arrangements such as a sliding fee scale.<sup>56</sup> Funds would be allo-

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<sup>51</sup> U.S. DEP’T. OF EDUC., *RACE TO THE TOP*, *supra* note 47, at 6. The application specifically lists:

Head Start/Early Head Start programs, the Child Care and Development Fund (CCDF) program (pursuant to the Child Care and Development Block Grant Act (42 U.S.C. 9858 et seq.)), State-funded preschool, programs authorized under section 619 of part B of the Individuals with Disabilities Education Act (IDEA) and part C of IDEA, and other State and locally supported programs.

*Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Race to the Top—Early Learning Challenge: Awards*, U.S. DEP’T. OF EDUC., <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/awards.html> (last modified Dec. 11, 2012).

<sup>54</sup> President Barack Obama, Address Before a Joint Session of Congress on the State of the Union (Feb. 12, 2013).

<sup>55</sup> Office of the Press Secretary, *Fact Sheet President Obama’s Plan for Early Education for all Americans*, THE WHITE HOUSE (Feb. 13, 2013), <http://www.whitehouse.gov/the-press-office/2013/02/13/fact-sheet-president-obama-s-plan-early-education-all-americans>. In addition to the preschool partnership, the proposal also seeks to promote early learning through increased investments in full-day kindergarten, Early Head Start, and evidence-based home visiting. *Id.*

<sup>56</sup> *Id.*

cated among the states based on each state's share of low-income four-year-olds and would be the first federal funding stream dedicated specifically to preschool.<sup>57</sup> Receipt of funds would be contingent on state programs meeting quality standards including: “[w]ell-trained teachers, who are paid comparably to K-12 staff; [s]mall class sizes and low adult to child ratios; [a] rigorous curriculum; [c]omprehensive health and related services; and [e]ffective evaluation and review of programs.”<sup>58</sup>

At the time of writing, the fate of this proposal is uncertain. Many key details, including the amount of available funding, remain to be negotiated before the proposal could even reach a congressional vote. Should the preschool program be enacted as proposed it would substantially increase the robustness of the early childhood system outside of the IDEA, however it is difficult at this stage to predict the path the proposal may take going forward.

### III. COMPARISON OF EXISTING EARLY CHILDHOOD PROGRAMS

#### A. Methodology

Before exploring any potential changes to the current early learning landscape for children experiencing developmental delays, it is important to examine the availability of early learning programs that are both distinct from IDEA services under Part C or Part B and potentially appropriate for children transitioning out of Early Intervention. In order to determine whether such early childhood opportunities exist today, this Note considers five types of early childhood programs: 619 preschool; Head Start;<sup>59</sup> Title I preschool;<sup>60</sup> child care;<sup>61</sup> and state preschool programs.<sup>62</sup> Each program is reviewed in terms of three criteria: mission, eligibility requirements, and services provided.

#### B. The Differences Between Part C and Part B Services

As introduced above, IDEA Parts C and B are not designed to provide identical services to exactly the same children.<sup>63</sup> 619 preschool is not Early Intervention for three to five year olds any more than Early Intervention is preschool for children birth to two. Part B §619, *Preschool Grants*, is intended to assist states in providing special education and related services to

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<sup>57</sup> *See id.*

<sup>58</sup> *Id.*

<sup>59</sup> 42 U.S.C. § 9831 (2006).

<sup>60</sup> *See* 20 U.S.C. § 6301 (2006).

<sup>61</sup> 42 U.S.C. § 9858 (2006).

<sup>62</sup> Since there is substantial variation among state preschool programs, this Note focuses its analysis on one state: Massachusetts.

<sup>63</sup> *See supra* Part II.B.

children ages three to five.<sup>64</sup> This means that children receiving services under this section are entitled to a FAPE.<sup>65</sup> Conversely, Part C is “a state-wide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families.”<sup>66</sup> These services are provided by a range of service providers<sup>67</sup> in “natural environments, including the home, and community settings in which children without disabilities participate,”<sup>68</sup> and parents may be charged for the services based on a schedule of sliding fees.<sup>69</sup>

Table 1 shows the number and percentage of children ages three to five in Massachusetts served under Part B in 2009-2010 (by disability category). Table 2 shows the number of infants and toddlers birth to two served under IDEA Part C who exited Part C programs in Massachusetts in 2009-2010 (by exit reason).

Read together, these tables demonstrate that even though each program is serving a similar number of children, the transition between the programs is not a completely seamless one. However, these tables also suggest that not all of the rupture is due to changes in eligibility; any attempt to improve the continuity of services would have to involve a significant parent engagement component.

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<sup>64</sup> 34 C.F.R. § 300.800 (2007).

The Secretary provides grants under section 619 of the Act to assist States to provide special education and related services in accordance with Part B of the Act—

- (a) To children with disabilities aged three through five years; and
- (b) At a State’s discretion, to two-year-old children with disabilities who will turn three during the school year.

*Id.*

<sup>65</sup> *Id.* § 300.804. Under the Act, FAPE is defined as:

special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. § 1401(9) (2006).

<sup>66</sup> 34 C.F.R. § 303.1 (2011); *see also* 20 U.S.C § 1432(4)(E) (2006) (listing services that may be provided under the section).

<sup>67</sup> 20 U.S.C § 1432(4)(F) (2006) (“qualified personnel, including—(i) special educators; (ii) speech-language pathologists and audiologists; (iii) occupational therapists; (iv) physical therapists; (v) psychologists; (vi) social workers; (vii) nurses; (viii) registered dietitians; (ix) family therapists; (x) vision specialists, including ophthalmologists and optometrists; (xi) orientation and mobility specialists; and (xii) pediatricians and other physicians”).

<sup>68</sup> *Id.* § 1432(4)(G).

<sup>69</sup> *Id.* § 1432(4)(B).

TABLE 1:<sup>70</sup>

Number of Children					Percentage of Children				
Dev. delay	Speech or language impairments	Mental retardation, emotional disturbance, specific learning disabilities	Other	Total	Dev. delay	Speech or language impairments	Mental retardation, emotional disturbance, specific learning disabilities	Other	Total
6963	5824	222	3262	16721	42.8	35.8	1.4	20	100

TABLE 2:<sup>71</sup>

Complete prior to max. age	Part B eligible	Exit with referrals	Exit with no referrals	Part B eligibility not determined	Deceased	Moved out of state	Withdrawal by parent	Unsuccessful contact	Exiting total
4995	5923	1102	237	446	18	536	1523	1937	16717

### C. Head Start

Head Start is at its heart an anti-poverty program. It was originally created in 1965 as a summer program during President Johnson's War on Poverty.<sup>72</sup> Its most recent reauthorization, in 2007, focused primarily on improving program quality in order to better reflect evolving knowledge regarding early childhood development and education.<sup>73</sup> Head Start's mission is "to promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development."<sup>74</sup> It seeks to achieve this goal through two distinct types of services:

- (1) a learning environment that supports children's growth in language, literacy, mathematics, science, social and emotional functioning, creative arts, physical skills, and approaches to learning; and
- (2) the provision to low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.<sup>75</sup>

In this way it may be considered somewhat of a hybrid between Part B and Part C services under the IDEA.

<sup>70</sup> NAT'L EARLY CHILDHOOD TECHNICAL ASSISTANCE CTR., SECTION 619 PROFILE 66 (2011).

<sup>71</sup> *Id.* at 70.

<sup>72</sup> Office of Head Start, *History of Head Start*, ADMIN. FOR CHILDREN AND FAMILIES, <http://transition.acf.hhs.gov/programs/ohs/about/history-of-head-start> (last visited Mar. 12, 2013).

<sup>73</sup> *Id.*

<sup>74</sup> 42 U.S.C. § 9831 (2006 & Supp. I 2007).

<sup>75</sup> *Id.*

Not surprisingly given its origins, eligibility for Head Start is primarily driven by income. Children from families with income under the poverty line are categorically eligible.<sup>76</sup> In addition, Head Start is statutorily permitted to enroll “children in the area served who would benefit from such programs but who are not eligible [based on income]” (not to exceed 10% of participants),<sup>77</sup> and in some cases children whose family income is below 130% of the federal poverty line (not to exceed 35% of participants).<sup>78</sup> Head Start programs must also assure:

not less than 10 percent of the total number of children actually enrolled by each Head Start agency and each delegate agency will be children with disabilities who are determined to be eligible for special education and related services, or early intervention services, as appropriate, as determined under the [IDEA].<sup>79</sup>

All Head Start programs are required to implement curricula that is “based on scientifically valid research, and [age] and developmentally appropriate.”<sup>80</sup> The curricula must also comply with the Head Start Child Outcomes Framework.<sup>81</sup> The newly revised Framework includes eleven domains which collectively address each of Head Start’s program goals.<sup>82</sup> The eleven domains are: Physical Development & Health; Social & Emotional Development; Approaches to Learning; Language Development; Literacy Knowledge & Skills; Mathematics Knowledge & Skills; Science Knowledge & Skills; Creative Arts Expression; Logic & Reasoning; Social Studies Knowledge & Skills; and English Language Development.<sup>83</sup>

#### *D. Title I Preschool*

Title I Preschool refers to “a preschool program for which an LEA or school uses Title I funds, in whole or in part, to improve cognitive, health, and social-emotional outcomes for eligible children below the grade at which an LEA provides a free public elementary education.”<sup>84</sup> Title I encompasses a range of strategies approved to help “ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic

<sup>76</sup> *Id.* § 9840(a)(1)(B)(i).

<sup>77</sup> *Id.* § 9840(a)(1)(B)(iii)(I).

<sup>78</sup> *Id.* § 9840(a)(1)(B)(iii)(II).

<sup>79</sup> *Id.* § 9835(d)(1).

<sup>80</sup> *Id.* § 9835(o).

<sup>81</sup> *Id.*

<sup>82</sup> OFFICE OF HEAD START, U.S. DEP’T OF HEALTH AND HUMAN SERVS., THE HEAD START CHILD DEVELOPMENT AND EARLY LEARNING FRAMEWORK 6 (2011).

<sup>83</sup> *Id.*

<sup>84</sup> U.S. DEP’T OF EDUC., SERVING PRESCHOOL CHILDREN THROUGH TITLE I, PART A OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED 3 (2012), available at <http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf>.

achievement standards and state academic assessments.”<sup>85</sup> The U.S. Department of Education periodically issues non-regulatory guidance for serving preschool children under Title I.<sup>86</sup> The current guidance document makes the case for using Title I funds for preschool by focusing on the achievement gap that can form before children enter kindergarten and emphasizing that “high-quality preschool programs supported with Title I funds can help ensure that children have the foundation they need to meet early learning and development standards and experience success throughout elementary and secondary school, and beyond.”<sup>87</sup>

Eligibility requirements for Title I preschool depend on the type of program being operated. If the program is a targeted assistance program, children will be eligible if they are “identified as most at risk of failing to meet the State’s academic achievement standards.”<sup>88</sup> Family income may be one factor in determining eligibility, but it should not be the sole factor.<sup>89</sup> If the preschool is part of a school-wide Title I program, all children in the attendance area are eligible; if the program cannot serve all eligible children, priority will be determined based on the eligibility criteria for the targeted assistance program.<sup>90</sup> Children with disabilities are eligible to participate in a Title I preschool program on the same basis as other children, but a school district may not use Title I dollars to fulfill any obligation it may have to provide services under IDEA.<sup>91</sup>

Since 2001, services provided in Title I preschool programs must comply with the Head Start performance standards.<sup>92</sup>

### E. Child Care

Child care slots are funded by the federal government through the Child Care Development Fund (“CCDF”).<sup>93</sup> Unlike the programs that this Note has described so far, child care is primarily considered a work support for parents and guardians, not a development program for children. The goals of the program are:

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<sup>85</sup> 20 U.S.C. § 6301 (2006).

<sup>86</sup> U.S. DEP’T OF EDUC., SERVING PRESCHOOL CHILDREN UNDER TITLE I, *supra* note 84, at 1.

<sup>87</sup> *Id.* at iv.

<sup>88</sup> *Id.* at 6.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 7.

<sup>91</sup> *Id.* at 8.

<sup>92</sup> No Child Left Behind Act of 2001, Pub. L. No. 107–110 § 1112(c)(1)(G), 115 Stat. 1425, 1465 (codified at 20 U.S.C. § 6312(c)(1)(g) (2006)). For a discussion of the Head Start performance standards, see *supra* notes 80–83 and accompanying text. For the full list of Head Start performance standards, see 42 U.S.C. § 9836a(a)(1) (2006 & Supp. I 2007).

<sup>93</sup> 45 C.F.R. § 98.1 (2007).

- (1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;
- (2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;
- (3) Encourage States to provide consumer education information to help parents make informed choices about child care;
- (4) Assist States to provide child care to parents trying to achieve independence from public assistance; and
- (5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.<sup>94</sup>

Children eligible for child care through CCDF are children who:

- (A) [are] less than 13 years of age; (B) whose family income does not exceed 85 percent of the State median income for a family of the same size; and (C) who- (i) reside[ ] with a parent or parents who are working or attending a job training or educational program; or (ii) [are] receiving, or need[ ] to receive, protective services and reside[ ] with a parent or parents not described in clause (i).<sup>95</sup>

The services provided are subject only to state licensing requirements.<sup>96</sup> Child care is probably the least likely destination for children exiting Part C, both because the eligibility criteria is the most divergent and because these programs have the least stringent quality requirements, which means their quality can vary wildly.

#### *F. State-Funded Preschool*

In Massachusetts, the state-funded preschool program, Universal Pre-Kindergarten (“UPK”), is supervised by the Department of Early Education and Care.<sup>97</sup> The purpose of the program is “to promote school readiness and positive outcomes for participating children and to inform the longer-term implementation of universally accessible, affordable, high quality early education.”<sup>98</sup> Eligibility is determined at the program level.<sup>99</sup> A program may apply for the grant if they:

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<sup>94</sup> *Id.*

<sup>95</sup> 42 U.S.C. § 9858n(4) (2006).

<sup>96</sup> 45 C.F.R. § 98.1 (2007).

<sup>97</sup> See MA DEP’T OF EARLY EDUC. AND CARE, UNIVERSAL PRE-KINDERGARTEN (UPK) FACT SHEET 1 (2009), available at <http://www.mass.gov/edu/docs/eec/programs-licensing/20091217-upk-factsheet.pdf>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* This is similar in some ways to Title I preschool where the existence of Title I funding is determined by school characteristics; however this analogy does not quite hold

[are] EEC Licensed or License Exempt; Use an EEC-approved child assessment tool to measure children's progress and inform program practice; Use Early Childhood Program Standards for Three and Four Year Olds (does not apply to family child care providers) and Guidelines for Preschool Learning Experiences based on the MA K-12 Curriculum Frameworks; Provide access to full-day full-year services for working families; and [are] nationally accredited.<sup>100</sup>

UPK quality enhancement grants may be used for a list of approved purposes, which include using the grant to:

Increase teacher salaries and benefits; Strengthen teaching practice and improve teacher skills; Help programs better understand and communicate children's progress; Support accreditation activities; Provide additional services to meet children's physical, social, and emotional needs; Provide or facilitate access to full-day, full-year services for working families; Improve the classroom environment through new educational materials and information technology equipment; Help facilitate smooth transitions to kindergarten for children; and Support the engagement of children's families.<sup>101</sup>

The primary difference between this program and the other programs described is that the other programs fund specific children, while the UPK program seeks to increase program quality for children already in care.<sup>102</sup>

#### IV. A PROPOSAL TO TRANSITION MORE CHILDREN FROM PART C INTO NON-IDEA EARLY LEARNING PROGRAMS

##### A. *Recommendation for Reauthorization*

This Note proposes the creation of a separate program, apart from the IDEA, entitled something along the lines of "Enhancing School Readiness." The program would seek to promote high-quality early learning opportunities for children eligible for Early Intervention but not 619 preschool. Early learning centers that serve children in the target population could pull down federal money to partially or fully subsidize the expense of providing high-quality early childhood education to those children. Students eligible under Part C but not Part B could then have priority for state preschool programs without displacing other children who would have received a slot under cur-

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because Title I preschool programs still determine child eligibility, whereas anyone enrolled in a UPK classroom receives the benefit of the grant.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 2.

<sup>102</sup> It is important to note that Massachusetts is largely atypical in this regard. Most state preschool programs operate under a slot funding model. See generally BARNETT ET AL., *supra* note 38.



rent eligibility rules. This directly addresses any concern that due to funding constraints these newly eligible children would meaningfully reduce access to preschool programs for children with a range of other risk factors. Once this program is in place, eligibility criteria under Part C and Part B could be adjusted to better align with the goals of each program without the distorting influence of a continuity presumption. The increase in program fragmentation caused by creating yet another program for young children is admittedly less than ideal; however, it may be the best available intermediary step until the alternative early childhood programs described throughout this Note can be fully funded, thereby guaranteeing children transitioning out of Part C a slot.

President Obama's recent proposal could be such a path to full funding.<sup>103</sup> Assuming a broad early learning program is enacted along the lines of what has been proposed, all children, including those exiting Part C, would be able to access a spot in a high-quality preschool program funded through some combination of state, federal, and parent contributions. As a result, there would be no need for a separate program to fund spots for children transitioning out of Early Intervention. If, based on the exact terms of the enacted program, there remains concern that some children exiting Part C may not be eligible for a preschool spot due to their family income, the program could be changed to explicitly include participation in Early Intervention as an eligibility factor in addition to the income-based factors currently identified by the Administration. Since the President's proposal is likely to be taken up by Congress (or rejected) ahead of any reauthorization of the IDEA, this background should be established before it is time to make a specific determination regarding the best strategy for transitions out of Early Intervention.

#### A. *Arguments in Support of Diversifying Transitions*

There are many reasons why, all else equal, it may be better for some children to attend one of the early childhood programs described above instead of a 619 preschool program. This section enumerates some of the reasons, but should not be considered exhaustive.

##### 1. *Over-Identification*

One reason to hesitate before strengthening the continuity between Part C and Part B is concerns about the over-identification of children with disabilities. These concerns have been expressed in both scientific and political contexts. Researchers warned in a 1992 article, "[a] label can be a lasting stigma that, in many cases, follows students throughout their school careers. It behooves us, as professionals, to move forward very cautiously when con-

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<sup>103</sup> See *supra* part II.E.

sidering labeling young preschoolers.”<sup>104</sup> Undoubtedly, we have learned a substantial amount about child development since 1992.<sup>105</sup> Nevertheless, during the 2003 IDEA amendment process, one of the main goals remained “reducing the over-identification or misidentification of nondisabled children.”<sup>106</sup> Representative Chaka Fattah (D-PA) testified before the Education and Workforce Committee that “the misplacement of students in special education stigmatizes and denies students the opportunity of a high quality education.”<sup>107</sup> Particularly in light of ongoing concerns about the correlation between race and special education identification,<sup>108</sup> the risks of mislabeling may be sufficient to tip the balance in favor of waiting to give children on the margins an IEP until kindergarten.

## 2. Inclusion

Non-619 early education programs are inherently inclusive environments. In 619 preschool, the least restrictive environment is described as “to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled.”<sup>109</sup> Programs like Head Start, Title I preschool, or state-funded preschool each have existing eligibility criteria which include non-disabled children with a range of characteristics. This is a particular benefit given the current shortage of inclusive preschool environments within 619 preschool programs.<sup>110</sup>

619 preschool could be made more inclusive if the grant program itself was amended. Instead of giving sub-grants to local education agencies as is currently required by the statute,<sup>111</sup> states could be required to sub-grant their 619 funds to existing early learning providers who would then be required to enroll children eligible for 619 preschool in addition to their existing student populations. Challenges with such an approach include: determining which children with disabilities (as defined by the statute) could be better served by alternative early learning programs and which children are best served through the existing dedicated 619 program; and adding additional complexity to the sub-grant award process. Additionally, this alternative fails to ad-

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<sup>104</sup> Kathryn Haring et al., *Labeling Preschoolers as Learning Disabled: A Cautionary Position*, 12 TOPICS IN EARLY CHILDHOOD EDUC. 151, 164 (1992).

<sup>105</sup> See generally BD. ON CHILDREN, YOUTH & FAMILIES, NAT’L RESEARCH COUNCIL & INST. OF MED., FROM NEURONS TO NEIGHBORHOODS (Jack Shonkoff & Deborah Phillips, eds., 2000).

<sup>106</sup> H.R. REP. NO. 108-77, at 84 (2003).

<sup>107</sup> *Id.* at 98.

<sup>108</sup> *Id.*

<sup>109</sup> Susan Etscheidt, *Least Restrictive and Natural Environments for Young Children with Disabilities*, 26 TOPICS IN EARLY CHILDHOOD EDUC. 167, 167 (2006) (quoting 20 U.S.C. § 1412(a)(5)(A) (2006)).

<sup>110</sup> EDUC. LAW CTR., *supra* note 33, at 6.

<sup>111</sup> 42 U.S.C. § 1419 (2006).

dress the dilution of mission concerns raised by the emphasis on seamless transition as described above.

### 3. *Definitions of Quality*

There is no inherent risk of a decrease in service quality; quality does not mean something different for children on the Part B margin and children without a developmental delay.<sup>112</sup> It must be acknowledged that not all early childhood programs are high-quality programs.<sup>113</sup> Efforts to transition more children into alternatives to 619 preschool should be accompanied by a focus on the quality of the early childhood sector as a whole in a community and nationally. The Obama Administration's proposal for early learning, if enacted, has the potential to rapidly increase program quality across the country.<sup>114</sup> In its absence, quality may remain a lingering challenge.

#### *B. Reasons to preserve a robust transition pipeline even in light of the available alternatives (and rebuttals to them)*

##### *1. Access*

Access to high-quality early childhood opportunities remains a substantial hurdle across the sector. Few if any of the programs described above have enough funding to serve all eligible children.<sup>115</sup> However, Congress is not fully funding the IDEA either.<sup>116</sup> The statutory ceiling on funding under the IDEA is 40 percent of the estimated additional cost of educating children with disabilities.<sup>117</sup> In FY 2009 federal funding only accounted for 16.9 percent of additional costs, a decrease from FY 2008.<sup>118</sup> Some American Recovery and Reinvestment Act money was allocated to IDEA Part B, but this expired at the end of 2011.<sup>119</sup> Adequate funding and access for both IDEA

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<sup>112</sup> ALBERT WAT, PRE-K NOW, THE PRE-K PINCH: EARLY EDUCATION AND THE MIDDLE CLASS 2 (2008) ("The most rigorous study to date of a state pre-k program that includes a substantial number of middle-income children shows that high-quality pre-k increases *all* children's school readiness skills, as measured by early literacy, language, and math assessments, regardless of income level."), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Pre-k\\_education/pre-kpinch\\_Nov2008\\_report.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Pre-k_education/pre-kpinch_Nov2008_report.pdf); EDUC. LAW CTR., *supra* note 33, at 11–12 ("A vast body of research has demonstrated that high quality pre-k programs are very effective at improving the school readiness of three- and four-year-old children, particularly those at risk of school failure due to poverty or other disadvantages.").

<sup>113</sup> BARNETT ET AL., *supra* note 38, at 10.

<sup>114</sup> See *supra* note 55 and accompanying text.

<sup>115</sup> See generally BARNETT ET AL., *supra* note 38.

<sup>116</sup> *Individuals with Disabilities Education Act—Funding Distribution*, NEW AM. FOUND. FED. EDUC. BUDGET PROJECT (Sept. 12, 2012), <http://febp.newamerica.net/background-analysis/individuals-disabilities-education-act-overview>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> JASON DELISLE & JENNIFER COHEN, NEW AM. FOUND. FED. EDUC. BUDGET PROJECT, 2012 EDUCATION APPROPRIATIONS GUIDE 6 (2012), available at <http://>

and other early learning alternatives needs to be addressed regardless of whether more children are transitioning from Early Intervention to alternative programs.

## 2. Curriculum

There may be some benefits of getting children in the Part B system as early as possible. These benefits include early development of IEPs that enumerates goals and services and greater certainty the children will be in developmentally appropriate classrooms. However, there is reason to believe that Part B's competitive advantage regarding children on the margins may be decreasing. As researchers and educators learn more about child development, catering to diverse learners is becoming a growing component of high-quality teaching practice. Response to Intervention ("RTI") has emerged as a leading model for rigorous instruction, assessment and intervention.<sup>120</sup> "[RTI] is a multi-step approach to providing services and interventions to struggling learners at increasing levels of intensity. RTI allows for early intervention by providing academic and behavioral supports rather than waiting for a child to fail before offering help."<sup>121</sup> This emphasis on tailoring instruction and supports to individual abilities can serve as an informal and dynamic substitute for the IEP process for some children who are experiencing development delays in addition to children who may be at risk.

## 3. Transition Planning

A lot of work has been done to smooth the transition from Part C to Part B including transition meetings, overlapping eligibility, and relationship building. By the mid-1990's there were "more state policies relevant to the age-3 transition between early intervention and preschool than to any other transition."<sup>122</sup> IDEA currently requires specific transition benchmarks.<sup>123</sup> The

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edmoney.newamerica.net/sites/newamerica.net/files/policydocs/2012%20Education%20Appropriations%20Guide\_1.pdf.

<sup>120</sup> Mary Beth Bruder, *Early Childhood Intervention: A Promise to Children and Families for Their Future*, 76 EXCEPTIONAL CHILD. 339, 350–51 (2010); see also H.R. REP. NO. 108-77, at 107–08 (2003).

Given the converging evidence and agreement in the field that we must do something better for our children, the following model is recommended as the basis to improve how we provide early intervention and identification: Response to Intervention Model (RTI). A RTI model would be designed to ensure that children who are indicating a likelihood of failing in the early grades receive scientifically based instruction as soon as possible.

*Id.*

<sup>121</sup> Mary Beth Klotz & Andrea Canter, NAT'L ASS'N OF SCHOOL PSYCHOLOGISTS, RESPONSE TO INTERVENTION (RTI): A PRIMER FOR PARENTS 1 (2007), available at <http://www.nasponline.org/resources/handouts/revisedPDFs/rtiprimer.pdf>.

<sup>122</sup> Sharon Rosenkoetter et al., *The Evolution of Transition Policy for Young Children with Special Needs and Their Families*, 21 TOPICS IN EARLY CHILDHOOD SPECIAL EDUC. 3, 4 (2001).

2004 amendments also extended Part C eligibility up to school entry to “allow parents to determine when their child is ready to transition to the Part B pre-school program, rather than having that determination made for them by the Act.”<sup>124</sup> By contrast, the proposal to keep more children out of Part C would force a transition for some children that might otherwise avoid it.

While this may be the most substantial justification for the status quo, it is not insurmountable. Relationships would need to develop between Early Intervention and receiving programs to ease the transition for these children, but this may not be that difficult to achieve. Early Intervention programs already have an obligation to engage in transition planning for children who will not be eligible for Part B services.<sup>125</sup> States also already provide in their Part C grant applications “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.”<sup>126</sup> Put another way, this transition work must be done anyway; even if Part B eligibility continues to expand, it is unlikely to ever include all children receiving Part C services.

## V. CONCLUSION

The history of early childhood transitions under the IDEA contains compelling reasons why lawmakers and advocates have prioritized continuity between Part C and Part B. With IDEA reauthorization once again on the horizon, the time has come, however, to re-evaluate the presumption of continuity in light of the growing strength of the broader early education sector. This Note recommends an alternative to 619 preschool for some children exiting Early Intervention. Even if the specific terms of the proposal to transition fewer children into Part B services are not adopted, its underlying message of critical reflection may give rise to other innovative solutions for best serving the needs of young children with and without disabilities.

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<sup>123</sup> 20 U.S.C. § 1437 (2006). Early Intervention service providers must “review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and . . . establish a transition plan, including, as appropriate, steps to exit from the program.” *Id.*

<sup>124</sup> H.R. REP. NO. 108-77, at 124 (2003).

<sup>125</sup> 20 U.S.C. § 1437 (2006). Early intervention programs must:

in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive.

*Id.*

<sup>126</sup> *Id.*

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