

May 21, 2004

Ordered to be printed as passed

In the Senate of the United States,

May 13, 2004.

Resolved, That the bill from the House of Representatives (H.R. 1350) entitled “An Act to reauthorize the Individuals with Disabilities Education Act, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Individuals with Dis-*
3 *abilities Education Improvement Act of 2004”.*

1 **SEC. 2. ORGANIZATION OF THE ACT.**

2 *This Act is organized into the following titles:*

*TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES
EDUCATION ACT*

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

*TITLE III—NATIONAL CENTER FOR SPECIAL EDUCATION
RESEARCH*

*TITLE IV—COMMISSION ON UNIVERSAL DESIGN AND THE
ACCESSIBILITY OF CURRICULUM AND INSTRUCTIONAL MATERIALS*

TITLE V—MISCELLANEOUS

3 **TITLE I—AMENDMENTS TO THE**
4 **INDIVIDUALS WITH DISABIL-**
5 **ITIES EDUCATION ACT**

6 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
7 **ABILITIES EDUCATION ACT.**

8 *Parts A through D of the Individuals with Disabilities*
9 *Education Act (20 U.S.C. 1400 et seq.) are amended to read*
10 *as follows:*

11 **“PART A—GENERAL PROVISIONS**

12 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**
13 **PURPOSES.**

14 *“(a) SHORT TITLE.—This Act may be cited as the ‘In-*
15 *dividuals with Disabilities Education Act’.*

16 *“(b) TABLE OF CONTENTS.—The table of contents for*
17 *this Act is as follows:*

“PART A—GENERAL PROVISIONS

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

- “Sec. 605. Acquisition of equipment; construction or alteration of facilities.*
- “Sec. 606. Employment of individuals with disabilities.*
- “Sec. 607. Requirements for prescribing regulations.*
- “Sec. 608. State administration.*
- “Sec. 609. Paperwork reduction.*
- “Sec. 610. Freely associated States.*

*“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH
DISABILITIES*

- “Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.*
- “Sec. 612. State eligibility.*
- “Sec. 613. Local educational agency eligibility.*
- “Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.*
- “Sec. 615. Procedural safeguards.*
- “Sec. 616. Monitoring, technical assistance, and enforcement.*
- “Sec. 617. Administration.*
- “Sec. 618. Program information.*
- “Sec. 619. Preschool grants.*

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

- “Sec. 631. Findings and policy.*
- “Sec. 632. Definitions.*
- “Sec. 633. General authority.*
- “Sec. 634. Eligibility.*
- “Sec. 635. Requirements for statewide system.*
- “Sec. 636. Individualized family service plan.*
- “Sec. 637. State application and assurances.*
- “Sec. 638. Uses of funds.*
- “Sec. 639. Procedural safeguards.*
- “Sec. 640. Payor of last resort.*
- “Sec. 641. State Interagency Coordinating Council.*
- “Sec. 642. Federal administration.*
- “Sec. 643. Allocation of funds.*
- “Sec. 644. Authorization of appropriations.*

*“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH
DISABILITIES*

- “Sec. 650. Findings.*

*“SUBPART 1—STATE PERSONNEL PREPARATION AND PROFESSIONAL
DEVELOPMENT GRANTS*

- “Sec. 651. Purpose; definition; program authority.*
- “Sec. 652. Eligibility and collaborative process.*
- “Sec. 653. Applications.*
- “Sec. 654. Use of funds.*
- “Sec. 655. Authorization of appropriations.*

*“SUBPART 2—SCIENTIFICALLY BASED RESEARCH, TECHNICAL ASSISTANCE,
MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION*

- “Sec. 660. Purpose.*

“Sec. 661. *Administrative provisions.*

“Sec. 662. *Research coordination to improve results for children with disabilities.*

“Sec. 663. *Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.*

“Sec. 664. *Personnel development to improve services and results for children with disabilities.*

“Sec. 665. *Studies and evaluations.*

“SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH
DISABILITIES

“Sec. 670. *Purposes.*

“Sec. 671. *Parent training and information centers.*

“Sec. 672. *Community parent resource centers.*

“Sec. 673. *Technical assistance for parent training and information centers.*

“Sec. 674. *Technology development, demonstration, and utilization; and media services.*

“Sec. 675. *Accessibility of instructional materials.*

“Sec. 676. *Authorization of appropriations.*

“SUBPART 4—INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL
SUPPORTS, AND WHOLE SCHOOL INTERVENTIONS

“Sec. 681. *Purpose.*

“Sec. 682. *Definition of eligible entity.*

“Sec. 683. *Program authorized.*

“Sec. 684. *Program evaluations.*

“Sec. 685. *Authorization of appropriations.*

1 “(c) *FINDINGS.—Congress finds the following:*

2 “(1) *Disability is a natural part of the human*
3 *experience and in no way diminishes the right of in-*
4 *dividuals to participate in or contribute to society.*
5 *Improving educational results for children with dis-*
6 *abilities is an essential element of our national policy*
7 *of ensuring equality of opportunity, full participa-*
8 *tion, independent living, and economic self-sufficiency*
9 *for individuals with disabilities.*

10 “(2) *Before the date of the enactment of the Edu-*
11 *cation for All Handicapped Children Act of 1975*
12 *(Public Law 94–142), the educational needs of mil-*

1 *lions of children with disabilities were not being fully*
2 *met because—*

3 *“(A) the children did not receive appro-*
4 *priate educational services;*

5 *“(B) the children were excluded entirely*
6 *from the public school system and from being*
7 *educated with their peers;*

8 *“(C) undiagnosed disabilities prevented the*
9 *children from having a successful educational ex-*
10 *perience; or*

11 *“(D) a lack of adequate resources within the*
12 *public school system forced families to find serv-*
13 *ices outside the public school system.*

14 *“(3) Since the enactment and implementation of*
15 *the Education for All Handicapped Children Act of*
16 *1975, this Act has been successful in ensuring chil-*
17 *dren with disabilities and the families of such chil-*
18 *dren access to a free appropriate public education*
19 *and in improving educational results for children*
20 *with disabilities.*

21 *“(4) However, the implementation of this Act*
22 *has been impeded by low expectations, and an insuffi-*
23 *cient focus on applying replicable research on proven*
24 *methods of teaching and learning for children with*
25 *disabilities.*

1 “(5) Over 25 years of research and experience
2 has demonstrated that the education of children with
3 disabilities can be made more effective by—

4 “(A) having high expectations for such chil-
5 dren and ensuring their access to the general
6 education curriculum in the regular classroom to
7 the maximum extent possible in order to—

8 “(i) meet developmental goals and, to
9 the maximum extent possible, the chal-
10 lenging expectations that have been estab-
11 lished for all children; and

12 “(ii) be prepared to lead productive
13 and independent adult lives, to the max-
14 imum extent possible;

15 “(B) strengthening the role and responsi-
16 bility of parents and ensuring that families of
17 such children have meaningful opportunities to
18 participate in the education of their children at
19 school and at home;

20 “(C) coordinating this Act with other local,
21 educational service agency, State, and Federal
22 school improvement efforts, including improve-
23 ment efforts under the Elementary and Sec-
24 ondary Education Act of 1965, in order to en-
25 sure that such children benefit from such efforts

1 *and that special education can become a service*
2 *for such children rather than a place where they*
3 *are sent;*

4 “(D) *providing appropriate special edu-*
5 *cation and related services, and aids and sup-*
6 *ports in the regular classroom, to such children,*
7 *whenever appropriate;*

8 “(E) *supporting high-quality, intensive*
9 *preservice preparation and professional develop-*
10 *ment for all personnel who work with children*
11 *with disabilities in order to ensure that such per-*
12 *sonnel have the skills and knowledge necessary to*
13 *improve the academic achievement and func-*
14 *tional performance of children with disabilities,*
15 *including the use of scientifically based instruc-*
16 *tional practices, to the maximum extent possible;*

17 “(F) *providing incentives for whole-school*
18 *approaches, scientifically based early reading*
19 *programs, positive behavioral interventions and*
20 *supports, and prereferral interventions to reduce*
21 *the need to label children as disabled in order to*
22 *address their learning and behavioral needs;*

23 “(G) *focusing resources on teaching and*
24 *learning while reducing paperwork and require-*

1 *ments that do not assist in improving edu-*
2 *cational results; and*

3 *“(H) supporting the development and use of*
4 *technology, including assistive technology devices*
5 *and assistive technology services, to maximize*
6 *accessibility for children with disabilities.*

7 *“(6) While States, local educational agencies,*
8 *and educational service agencies are primarily re-*
9 *sponsible for providing an education for all children*
10 *with disabilities, it is in the national interest that the*
11 *Federal Government have a supporting role in assist-*
12 *ing State and local efforts to educate children with*
13 *disabilities in order to improve results for such chil-*
14 *dren and to ensure equal protection of the law.*

15 *“(7) A more equitable allocation of resources is*
16 *essential for the Federal Government to meet its re-*
17 *sponsibility to provide an equal educational oppor-*
18 *tunity for all individuals.*

19 *“(8) Parents and schools should be given ex-*
20 *panded opportunities to resolve their disagreements in*
21 *positive and constructive ways.*

22 *“(9) Teachers, schools, local educational agencies,*
23 *and States should be relieved of irrelevant and unnec-*
24 *essary paperwork burdens that do not lead to im-*
25 *proved educational outcomes.*

1 “(10)(A) *The Federal Government must be re-*
2 *sponsive to the growing needs of an increasingly more*
3 *diverse society.*

4 “(B) *America’s ethnic profile is rapidly chang-*
5 *ing. In the year 2000, 1 of every 3 persons in the*
6 *United States was a member of a minority group or*
7 *was limited English proficient.*

8 “(C) *Minority children comprise an increasing*
9 *percentage of public school students.*

10 “(D) *With such changing demographics, recruit-*
11 *ment efforts for special education personnel should*
12 *focus on increasing the participation of minorities in*
13 *the teaching profession.*

14 “(11)(A) *The limited English proficient popu-*
15 *lation is the fastest growing in our Nation, and the*
16 *growth is occurring in many parts of our Nation.*

17 “(B) *Studies have documented apparent discrep-*
18 *ancies in the levels of referral and placement of lim-*
19 *ited English proficient children in special education.*

20 “(C) *This poses a special challenge for special*
21 *education in the referral of, assessment of, and serv-*
22 *ices for, our Nation’s students from non-English lan-*
23 *guage backgrounds.*

24 “(12)(A) *Greater efforts are needed to prevent the*
25 *intensification of problems connected with mislabeling*

1 *and high dropout rates among minority children with*
2 *disabilities.*

3 “(B) *More minority children continue to be*
4 *served in special education than would be expected*
5 *from the percentage of minority students in the gen-*
6 *eral school population.*

7 “(C) *African-American children are identified as*
8 *having mental retardation and emotional disturbance*
9 *at rates greater than their white counterparts.*

10 “(D) *In the 1998–1999 school year, African-*
11 *American children represented just 14.8 percent of the*
12 *population aged 6 through 21, but comprised 20.2*
13 *percent of all children with disabilities.*

14 “(E) *Studies have found that schools with pre-*
15 *dominately Caucasian students and teachers have*
16 *placed disproportionately high numbers of their mi-*
17 *nority students into special education.*

18 “(13)(A) *As the number of minority students in*
19 *special education increases, the number of minority*
20 *teachers and related services personnel produced in*
21 *colleges and universities continues to decrease.*

22 “(B) *The opportunity for minority individuals,*
23 *organizations, and Historically Black Colleges and*
24 *Universities to participate fully in awards for grants*
25 *and contracts, boards of organizations receiving funds*

1 *under this Act, and peer review panels, and in the*
2 *training of professionals in the area of special edu-*
3 *cation is essential if we are to obtain greater success*
4 *in the education of minority children with disabili-*
5 *ties.*

6 *“(14) As the graduation rates for children with*
7 *disabilities continue to climb, providing effective*
8 *transition services to promote successful post-school*
9 *employment or education is an important measure of*
10 *accountability for children with disabilities.*

11 *“(d) PURPOSES.—The purposes of this title are—*

12 *“(1)(A) to ensure that all children with disabili-*
13 *ties have available to them a free appropriate public*
14 *education that emphasizes special education and re-*
15 *lated services designed to meet their unique needs and*
16 *prepare them for employment, further education, and*
17 *independent living;*

18 *“(B) to ensure that the rights of children with*
19 *disabilities and parents of such children are protected;*
20 *and*

21 *“(C) to assist States, localities, educational serv-*
22 *ice agencies, and Federal agencies to provide for the*
23 *education of all children with disabilities;*

24 *“(2) to assist States in the implementation of a*
25 *Statewide, coordinated, multidisciplinary, inter-*

1 *agency system of early intervention services for in-*
2 *fants and toddlers with disabilities and their families;*

3 *“(3) to ensure that educators and parents have*
4 *the necessary tools to improve educational results for*
5 *children with disabilities by supporting systemic-*
6 *change activities; coordinated research and personnel*
7 *preparation; coordinated technical assistance, dis-*
8 *semination, and support; and technology development*
9 *and media services; and*

10 *“(4) to assess, and ensure the effectiveness of, ef-*
11 *forts to educate children with disabilities.*

12 **“SEC. 602. DEFINITIONS.**

13 *“Except as otherwise provided, as used in this Act:*

14 *“(1) ASSISTIVE TECHNOLOGY DEVICE.—The term*
15 *‘assistive technology device’ means any item, piece of*
16 *equipment, or product system, whether acquired com-*
17 *mercially off the shelf, modified, or customized, that*
18 *is used to increase, maintain, or improve functional*
19 *capabilities of a child with a disability. The term*
20 *does not include a medical device that is surgically*
21 *implanted, or the replacement of such device.*

22 *“(2) ASSISTIVE TECHNOLOGY SERVICE.—The*
23 *term ‘assistive technology service’ means any service*
24 *that directly assists a child with a disability in the*

1 *selection, acquisition, or use of an assistive technology*
2 *device. Such term includes—*

3 “(A) *the evaluation of the needs of such*
4 *child, including a functional evaluation of the*
5 *child in the child’s customary environment;*

6 “(B) *purchasing, leasing, or otherwise pro-*
7 *viding for the acquisition of assistive technology*
8 *devices by such child;*

9 “(C) *selecting, designing, fitting, custom-*
10 *izing, adapting, applying, maintaining, repair-*
11 *ing, or replacing of assistive technology devices;*

12 “(D) *coordinating and using other thera-*
13 *pies, interventions, or services with assistive*
14 *technology devices, such as those associated with*
15 *existing education and rehabilitation plans and*
16 *programs;*

17 “(E) *training or technical assistance for*
18 *such child, or, where appropriate, the family of*
19 *such child; and*

20 “(F) *training or technical assistance for*
21 *professionals (including individuals providing*
22 *education and rehabilitation services), employ-*
23 *ers, or other individuals who provide services to,*
24 *employ, or are otherwise substantially involved*
25 *in the major life functions of such child.*

1 “(3) *CHILD WITH A DISABILITY.*—

2 “(A) *IN GENERAL.*—*The term ‘child with a*
3 *disability’ means a child—*

4 “(i) *with mental retardation, hearing*
5 *impairments (including deafness), speech or*
6 *language impairments, visual impairments*
7 *(including blindness), serious emotional dis-*
8 *turbance (hereinafter referred to as ‘emo-*
9 *tional disturbance’), orthopedic impair-*
10 *ments, autism, traumatic brain injury,*
11 *other health impairments, or specific learn-*
12 *ing disabilities; and*

13 “(ii) *who, by reason thereof, needs spe-*
14 *cial education and related services.*

15 “(B) *CHILD AGED 3 THROUGH 9.*—*The term*
16 *‘child with a disability’ for a child aged 3*
17 *through 9 (or any subset of that age range, in-*
18 *cluding ages 3 through 5), may, at the discretion*
19 *of the State and the local educational agency, in-*
20 *clude a child—*

21 “(i) *experiencing developmental delays,*
22 *as defined by the State and as measured by*
23 *appropriate diagnostic instruments and*
24 *procedures, in 1 or more of the following*
25 *areas: physical development, cognitive devel-*

1 *opment, communication development, social*
2 *or emotional development, or adaptive de-*
3 *velopment; and*

4 *“(ii) who, by reason thereof, needs spe-*
5 *cial education and related services.*

6 *“(4) CORE ACADEMIC SUBJECT.—The term ‘core*
7 *academic subject’ has the meaning given the term in*
8 *section 9101(11) of the Elementary and Secondary*
9 *Education Act of 1965.*

10 *“(5) EDUCATIONAL SERVICE AGENCY.—The term*
11 *‘educational service agency’—*

12 *“(A) means a regional public multiservice*
13 *agency—*

14 *“(i) authorized by State law to de-*
15 *velop, manage, and provide services or pro-*
16 *grams to local educational agencies; and*

17 *“(ii) recognized as an administrative*
18 *agency for purposes of the provision of spe-*
19 *cial education and related services provided*
20 *within public elementary schools and sec-*
21 *ondary schools of the State; and*

22 *“(B) includes any other public institution*
23 *or agency having administrative control and di-*
24 *rection over a public elementary school or sec-*
25 *ondary school.*

1 “(6) *ELEMENTARY SCHOOL*.—The term ‘*elemen-*
2 *tary school*’ means a nonprofit institutional day or
3 *residential school that provides elementary education,*
4 *as determined under State law.*

5 “(7) *EQUIPMENT*.—The term ‘*equipment*’ in-
6 *cludes—*

7 “(A) *machinery, utilities, and built-in*
8 *equipment, and any necessary enclosures or*
9 *structures to house such machinery, utilities, or*
10 *equipment; and*

11 “(B) *all other items necessary for the func-*
12 *tioning of a particular facility as a facility for*
13 *the provision of educational services, including*
14 *items such as instructional equipment and nec-*
15 *essary furniture; printed, published, and audio-*
16 *visual instructional materials; telecommuni-*
17 *cations, sensory, and other technological aids*
18 *and devices; and books, periodicals, documents,*
19 *and other related materials.*

20 “(8) *EXCESS COSTS*.—The term ‘*excess costs*’
21 *means those costs that are in excess of the average an-*
22 *nuual per-student expenditure in a local educational*
23 *agency during the preceding school year for an ele-*
24 *mentary school or secondary school student, as may*

1 *be appropriate, and which shall be computed after de-*
2 *ducting—*

3 *“(A) amounts received—*

4 *“(i) under part B of this title;*

5 *“(ii) under part A of title I of the Ele-*
6 *mentary and Secondary Education Act of*
7 *1965; and*

8 *“(iii) under parts A and B of title III*
9 *of that Act; and*

10 *“(B) any State or local funds expended for*
11 *programs that would qualify for assistance under*
12 *any of those parts.*

13 *“(9) FREE APPROPRIATE PUBLIC EDUCATION.—*
14 *The term ‘free appropriate public education’ means*
15 *special education and related services that—*

16 *“(A) have been provided at public expense,*
17 *under public supervision and direction, and*
18 *without charge;*

19 *“(B) meet the standards of the State edu-*
20 *cational agency;*

21 *“(C) include an appropriate preschool, ele-*
22 *mentary school, or secondary school education in*
23 *the State involved; and*

1 “(D) are provided in conformity with the
2 individualized education program required
3 under section 614(d).

4 “(10) *HIGHLY QUALIFIED*.—The term ‘highly
5 qualified’ means the following:

6 “(A) *ALL SPECIAL EDUCATION TEACH-*
7 *ERS*.—When used with respect to any public ele-
8 mentary school or secondary school special edu-
9 cation teacher teaching in a State, means that
10 the teacher holds at least a bachelor’s degree and
11 that—

12 “(i) the teacher has obtained full State
13 certification as a special education teacher
14 through a State-approved special education
15 teacher preparation program (including
16 certification obtained through alternative
17 routes to certification) or other comparably
18 rigorous methods, or passed the State teach-
19 er special education licensing examination,
20 and holds a license to teach in the State as
21 a special education teacher, except that
22 when used with respect to any teacher
23 teaching in a public charter school, the term
24 means that the teacher meets the require-

1 ments set forth in the State’s public charter
2 school law;

3 “(ii) the teacher has not had certifi-
4 cation or licensure requirements waived on
5 an emergency, temporary, or provisional
6 basis; and

7 “(iii) the teacher demonstrates knowl-
8 edge of special education and the teaching
9 skills necessary to teach children with dis-
10 abilities.

11 “(B) NEW ELEMENTARY SCHOOL SPECIAL
12 EDUCATION TEACHERS.—When used with respect
13 to a special education elementary school teacher
14 who is new to the profession, means that the
15 teacher demonstrated, by passing a rigorous
16 State test, subject knowledge and teaching skills
17 in reading, writing, mathematics, and other
18 areas of the basic elementary school curriculum
19 (which may consist of passing a State-required
20 certification or licensing test or tests in reading,
21 writing, mathematics, and other areas of the
22 basic elementary school curriculum).

23 “(C) NEW MIDDLE SCHOOL AND SECONDARY
24 SCHOOL SPECIAL EDUCATION TEACHERS.—When
25 used with respect to a special education middle

1 *school or secondary school teacher who is new to*
2 *the profession, means that the teacher has dem-*
3 *onstrated a high level of competency in each of*
4 *the academic subjects in which the teacher teach-*
5 *es by—*

6 *“(i) passing a rigorous State academic*
7 *subject test in each of the academic subjects*
8 *in which the teacher teaches (which may*
9 *consist of a passing level of performance on*
10 *a State-required certification or licensing*
11 *test or tests in each of the academic subjects*
12 *in which the teacher teaches); or*

13 *“(ii) successful completion, in each of*
14 *the academic subjects in which the teacher*
15 *teaches, of an academic major, graduate de-*
16 *gree, coursework equivalent to an under-*
17 *graduate academic major, or advanced cer-*
18 *tification or credentialing.*

19 *“(D) VETERAN SPECIAL EDUCATION TEACH-*
20 *ERS.—When used with respect to an elementary*
21 *school, middle school, or secondary school special*
22 *education teacher who is not new to the profes-*
23 *sion, means that the teacher has—*

1 “(i) met the applicable standard in
2 subparagraph (B) or (C), which includes an
3 option for a test; or

4 “(ii) has demonstrated competence in
5 all the academic subjects in which the teach-
6 er teaches based on a high objective uniform
7 State standard of evaluation for special
8 education teachers that—

9 “(I) is set by the State for both
10 grade-appropriate academic subject
11 matter knowledge and special edu-
12 cation teaching skills;

13 “(II) is aligned with challenging
14 State academic content and student
15 academic achievement standards and
16 developed in consultation with special
17 education teachers, core content spe-
18 cialists, teachers, principals, and
19 school administrators;

20 “(III) provides objective, coherent
21 information about the teachers’ attain-
22 ment of knowledge of core content
23 knowledge in the academic subjects in
24 which a teacher teaches;

1 “(IV) is applied uniformly to all
2 special education teachers who teach in
3 the same academic subject and the
4 same grade level throughout the State;

5 “(V) takes into consideration, but
6 is not based primarily on, the time the
7 teacher has been teaching in the aca-
8 demic subject;

9 “(VI) is made available to the
10 public on request; and

11 “(VII) may involve multiple objec-
12 tive measures of teacher competency.

13 “(E) *TEACHERS PROVIDING CONSULTATIVE*
14 *SERVICES.—*

15 “(i) *IN GENERAL.—Notwithstanding*
16 *subparagraphs (B) through (D), when used*
17 *with respect to a special education teacher*
18 *who provides only consultative services to a*
19 *highly qualified regular education teacher*
20 *(as the term highly qualified is defined in*
21 *section 9101(23) of the Elementary and*
22 *Secondary Education Act of 1965), means*
23 *that the teacher meets the requirements of*
24 *subparagraph (A).*

1 “(i) *CONSULTATIVE SERVICES.*—As
2 used in clause (i), the term ‘consultative
3 services’ means services that adjust the
4 learning environment, modify instructional
5 methods, adapt curricula, use positive be-
6 havior supports and interventions, and se-
7 lect and implement appropriate accom-
8 modations to meet the needs of individual
9 children.

10 “(F) *EXCEPTION.*—Notwithstanding sub-
11 paragraphs (B) through (D), when used with re-
12 spect to a special education teacher who teaches
13 more than 1 subject, primarily to middle school
14 and secondary school-aged children with signifi-
15 cant cognitive disabilities, means that the teach-
16 er has demonstrated subject knowledge and teach-
17 ing skills in reading, mathematics, and other
18 areas of the basic elementary school curriculum
19 by—

20 “(i) passing a rigorous State test
21 (which may consist of passing a State-re-
22 quired certification or licensing test or tests
23 in those areas); or

24 “(ii) demonstrating competency in all
25 the academic subjects in which the teacher

1 *teaches, based on a high objective uniform*
2 *State standard as described in subpara-*
3 *graph (D)(ii).*

4 “(11) *INDIAN.*—*The term ‘Indian’ means an in-*
5 *dividual who is a member of an Indian tribe.*

6 “(12) *INDIAN TRIBE.*—*The term ‘Indian tribe’*
7 *means any Federal or State Indian tribe, band,*
8 *rancheria, pueblo, colony, or community, including*
9 *any Alaska Native village or regional village corpora-*
10 *tion (as defined in or established under the Alaska*
11 *Native Claims Settlement Act).*

12 “(13) *INDIVIDUALIZED EDUCATION PROGRAM.*—
13 *The term ‘individualized education program’ or ‘IEP’*
14 *means a written statement for each child with a dis-*
15 *ability that is developed, reviewed, and revised in ac-*
16 *cordance with section 614(d).*

17 “(14) *INDIVIDUALIZED FAMILY SERVICE PLAN.*—
18 *The term ‘individualized family service plan’ has the*
19 *meaning given such term in section 636.*

20 “(15) *INFANT OR TODDLER WITH A DIS-*
21 *ABILITY.*—*The term ‘infant or toddler with a dis-*
22 *ability’ has the meaning given such term in section*
23 *632.*

24 “(16) *INSTITUTION OF HIGHER EDUCATION.*—
25 *The term ‘institution of higher education’—*

1 “(A) has the meaning given such term in
2 section 101 (a) and (b) of the Higher Education
3 Act of 1965; and

4 “(B) also includes any community college
5 receiving funding from the Secretary of the Inte-
6 rior under the Tribally Controlled College or
7 University Assistance Act of 1978.

8 “(17) LIMITED ENGLISH PROFICIENT.—The term
9 ‘limited English proficient’ has the meaning given the
10 term in section 9101(25) of the Elementary and Sec-
11 ondary Education Act of 1965.

12 “(18) LOCAL EDUCATIONAL AGENCY.—

13 “(A) The term ‘local educational agency’
14 means a public board of education or other pub-
15 lic authority legally constituted within a State
16 for either administrative control or direction of,
17 or to perform a service function for, public ele-
18 mentary schools or secondary schools in a city,
19 county, township, school district, or other polit-
20 ical subdivision of a State, or for such combina-
21 tion of school districts or counties as are recog-
22 nized in a State as an administrative agency for
23 its public elementary schools or secondary
24 schools.

25 “(B) The term includes—

1 “(i) an educational service agency, as
2 defined in paragraph (5); and

3 “(ii) any other public institution or
4 agency having administrative control and
5 direction of a public elementary school or
6 secondary school.

7 “(C) The term includes an elementary
8 school or secondary school funded by the Bureau
9 of Indian Affairs, but only to the extent that
10 such inclusion makes the school eligible for pro-
11 grams for which specific eligibility is not pro-
12 vided to the school in another provision of law
13 and the school does not have a student popu-
14 lation that is smaller than the student popu-
15 lation of the local educational agency receiving
16 assistance under this Act with the smallest stu-
17 dent population, except that the school shall not
18 be subject to the jurisdiction of any State edu-
19 cational agency other than the Bureau of Indian
20 Affairs.

21 “(19) NATIVE LANGUAGE.—The term ‘native lan-
22 guage’, when used with respect to an individual of
23 limited English proficiency, means the language nor-
24 mally used by the individual, or in the case of a

1 *child, the language normally used by the parents of*
2 *the child.*

3 “(20) *NONPROFIT.*—*The term ‘nonprofit’, as ap-*
4 *plied to a school, agency, organization, or institution,*
5 *means a school, agency, organization, or institution*
6 *owned and operated by 1 or more nonprofit corpora-*
7 *tions or associations no part of the net earnings of*
8 *which inures, or may lawfully inure, to the benefit of*
9 *any private shareholder or individual.*

10 “(21) *OUTLYING AREA.*—*The term ‘outlying*
11 *area’ means the United States Virgin Islands, Guam,*
12 *American Samoa, and the Commonwealth of the*
13 *Northern Mariana Islands.*

14 “(22) *PARENT.*—

15 “(A) *IN GENERAL.*—*The term ‘parent’—*

16 “(i) *means—*

17 “(I) *a natural or adoptive parent*
18 *of a child;*

19 “(II) *a guardian (but not the*
20 *State if the child is a ward of the*
21 *State);*

22 “(III) *an individual acting in the*
23 *place of a natural or adoptive parent,*
24 *including a grandparent, stepparent,*
25 *or other relative with whom the child*

1 *lives or an individual who is legally*
2 *responsible for the child’s welfare; or*

3 *“(IV) except as used in sections*
4 *615(b)(2) and 639(a)(5), an individual*
5 *assigned under either of those sections*
6 *to be a surrogate parent; and*

7 *“(ii) in the case of a homeless child*
8 *who is not in the physical custody of a par-*
9 *ent or guardian, includes a related or unre-*
10 *lated adult with whom the child is living or*
11 *other adult jointly designated by the child*
12 *and the local educational agency liaison for*
13 *homeless children and youths (designated*
14 *pursuant to section 722(g)(1)(J)(ii) of the*
15 *McKinney-Vento Homeless Assistance Act),*
16 *in addition to other individuals permitted*
17 *by law.*

18 *“(B) FOSTER PARENT.—Unless State law*
19 *prohibits a foster parent from acting as a par-*
20 *ent, the term ‘parent’ includes a foster parent*
21 *if—*

22 *“(i) the natural or adoptive parents’*
23 *authority to make educational decisions on*
24 *the child’s behalf has been extinguished*
25 *under State law; and*

1 “(ii) the foster parent—

2 “(I) has an ongoing, long-term
3 parental relationship with the child;

4 “(II) is willing to make the edu-
5 cational decisions required of parents
6 under this Act; and

7 “(III) has no interest that would
8 conflict with the interests of the child.

9 “(23) PARENT ORGANIZATION.—The term ‘par-
10 ent organization’ has the meaning given such term in
11 section 671(g).

12 “(24) PARENT TRAINING AND INFORMATION CEN-
13 TER.—The term ‘parent training and information
14 center’ means a center assisted under section 671 or
15 672.

16 “(25) RELATED SERVICES.—The term ‘related
17 services’ means transportation, and such develop-
18 mental, corrective, and other supportive services (in-
19 cluding speech-language pathology and audiology
20 services, interpreting services, psychological services,
21 physical and occupational therapy, recreation, in-
22 cluding therapeutic recreation, social work services,
23 school health services, counseling services, including
24 rehabilitation counseling, orientation and mobility
25 services, travel training instruction, and medical

1 *services, except that such medical services shall be for*
2 *diagnostic and evaluation purposes only) as may be*
3 *required to assist a child with a disability to benefit*
4 *from special education, and includes the early identi-*
5 *fication and assessment of disabling conditions in*
6 *children. The term does not include a medical device*
7 *that is surgically implanted, or the replacement of*
8 *such device.*

9 “(26) *SECONDARY SCHOOL.*—*The term ‘sec-*
10 *ondary school’ means a nonprofit institutional day or*
11 *residential school that provides secondary education,*
12 *as determined under State law, except that it does not*
13 *include any education beyond grade 12.*

14 “(27) *SECRETARY.*—*The term ‘Secretary’ means*
15 *the Secretary of Education.*

16 “(28) *SPECIAL EDUCATION.*—*The term ‘special*
17 *education’ means specially designed instruction, at no*
18 *cost to parents, to meet the unique needs of a child*
19 *with a disability, including—*

20 “(A) *instruction conducted in the classroom,*
21 *in the home, in hospitals and institutions, and*
22 *in other settings; and*

23 “(B) *instruction in physical education.*

24 “(29) *SPECIFIC LEARNING DISABILITY.*—

1 “(A) *IN GENERAL.*—*The term ‘specific*
2 *learning disability’ means a disorder in 1 or*
3 *more of the basic psychological processes involved*
4 *in understanding or in using language, spoken*
5 *or written, which disorder may manifest itself in*
6 *the imperfect ability to listen, think, speak, read,*
7 *write, spell, or do mathematical calculations.*

8 “(B) *DISORDERS INCLUDED.*—*Such term*
9 *includes such conditions as perceptual disabili-*
10 *ties, brain injury, minimal brain dysfunction,*
11 *dyslexia, and developmental aphasia.*

12 “(C) *DISORDERS NOT INCLUDED.*—*Such*
13 *term does not include a learning problem that is*
14 *primarily the result of visual, hearing, or motor*
15 *disabilities, of mental retardation, of emotional*
16 *disturbance, or of environmental, cultural, or*
17 *economic disadvantage.*

18 “(30) *STATE.*—*The term ‘State’ means each of*
19 *the 50 States, the District of Columbia, the Common-*
20 *wealth of Puerto Rico, and each of the outlying areas.*

21 “(31) *STATE EDUCATIONAL AGENCY.*—*The term*
22 *‘State educational agency’ means the State board of*
23 *education or other agency or officer primarily respon-*
24 *sible for the State supervision of public elementary*
25 *schools and secondary schools, or, if there is no such*

1 *officer or agency, an officer or agency designated by*
2 *the Governor or by State law.*

3 “(32) *SUPPLEMENTARY AIDS AND SERVICES.—*
4 *The term ‘supplementary aids and services’ means*
5 *aids, services, and other supports that are provided in*
6 *regular education classes or other education-related*
7 *settings to enable children with disabilities to be edu-*
8 *cated with nondisabled children to the maximum ex-*
9 *tent appropriate in accordance with section*
10 *612(a)(5).*

11 “(33) *TRANSITION SERVICES.—The term ‘transi-*
12 *tion services’ means a coordinated set of activities for*
13 *a child with a disability (as defined in paragraph*
14 *(3)(A)) that—*

15 “(A) *is designed to be within a results-ori-*
16 *ented process, that is focused on improving the*
17 *academic and functional achievement of the child*
18 *with a disability to facilitate the child’s move-*
19 *ment from school to post-school activities, includ-*
20 *ing post-secondary education, vocational train-*
21 *ing, integrated employment (including supported*
22 *employment), continuing and adult education,*
23 *adult services, independent living, or community*
24 *participation;*

1 “(B) is based on the individual child’s
2 needs, taking into account the child’s strengths,
3 preferences, and interests; and

4 “(C) includes instruction, related services,
5 community experiences, the development of em-
6 ployment and other post-school adult living ob-
7 jectives, and, when appropriate, acquisition of
8 daily living skills and functional vocational
9 evaluation.

10 “(34) *CHILD WITH A DISABILITY IN A MILITARY*
11 *FAMILY.*—The term ‘child with a disability in a mili-
12 tary family’ means a child with a disability who has
13 a parent who is a member of the Armed Forces, in-
14 cluding a member of the National Guard or Reserves.

15 “(35) *HOMELESS CHILDREN.*—The term ‘home-
16 less children’ has the meaning given the term ‘home-
17 less children and youths’ in section 725 of the *McKin-*
18 *ney-Vento Homeless Assistance Act.*

19 “(36) *WARD OF THE STATE.*—The term ‘ward of
20 the State’ means a child who, as defined by the State
21 where the child resides, is a foster child, a ward of the
22 State or is in the custody of a public child welfare
23 agency.

1 **“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

2 “(a) *ESTABLISHMENT.*—*There shall be, within the Of-*
3 *fice of Special Education and Rehabilitative Services in the*
4 *Department of Education, an Office of Special Education*
5 *Programs, which shall be the principal agency in such De-*
6 *partment for administering and carrying out this Act and*
7 *other programs and activities concerning the education of*
8 *children with disabilities.*

9 “(b) *DIRECTOR.*—*The Office established under sub-*
10 *section (a) shall be headed by a Director who shall be se-*
11 *lected by the Secretary and shall report directly to the As-*
12 *sistant Secretary for Special Education and Rehabilitative*
13 *Services.*

14 “(c) *VOLUNTARY AND UNCOMPENSATED SERVICES.*—
15 *Notwithstanding section 1342 of title 31, United States*
16 *Code, the Secretary is authorized to accept voluntary and*
17 *uncompensated services in furtherance of the purposes of*
18 *this Act.*

19 **“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

20 “(a) *IN GENERAL.*—*A State shall not be immune*
21 *under the 11th amendment to the Constitution of the United*
22 *States from suit in Federal court for a violation of this*
23 *Act.*

24 “(b) *REMEDIES.*—*In a suit against a State for a viola-*
25 *tion of this Act, remedies (including remedies both at law*
26 *and in equity) are available for such a violation to the same*

1 *extent as those remedies are available for such a violation*
2 *in the suit against any public entity other than a State.*

3 “(c) *EFFECTIVE DATE.*—*Subsections (a) and (b) apply*
4 *with respect to violations that occur in whole or part after*
5 *the date of enactment of the Education of the Handicapped*
6 *Act Amendments of 1990.*

7 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**
8 **OR ALTERATION OF FACILITIES.**

9 “(a) *IN GENERAL.*—*If the Secretary determines that*
10 *a program authorized under this Act will be improved by*
11 *permitting program funds to be used to acquire appropriate*
12 *equipment, or to construct new facilities or alter existing*
13 *facilities, the Secretary is authorized to allow the use of*
14 *those funds for those purposes.*

15 “(b) *COMPLIANCE WITH CERTAIN REGULATIONS.*—
16 *Any construction of new facilities or alteration of existing*
17 *facilities under subsection (a) shall comply with the require-*
18 *ments of—*

19 “(1) *appendix A of part 36 of title 28, Code of*
20 *Federal Regulations (commonly known as the ‘Ameri-*
21 *cans with Disabilities Accessibility Guidelines for*
22 *Buildings and Facilities’); or*

23 “(2) *appendix A of subpart 101–19.6 of title 41,*
24 *Code of Federal Regulations (commonly known as the*
25 *‘Uniform Federal Accessibility Standards’).*

1 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**
2 **ITIES.**

3 *“The Secretary shall ensure that each recipient of as-*
4 *sistance under this Act makes positive efforts to employ and*
5 *advance in employment qualified individuals with disabil-*
6 *ities in programs assisted under this Act.*

7 **“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULA-**
8 **TIONS.**

9 *“(a) IN GENERAL.—In carrying out the provisions of*
10 *this Act, the Secretary shall issue regulations under this*
11 *Act only to the extent that such regulations are necessary*
12 *to ensure that there is compliance with the specific require-*
13 *ments of this Act.*

14 *“(b) PROTECTIONS PROVIDED TO CHILDREN.—The*
15 *Secretary may not implement, or publish in final form, any*
16 *regulation prescribed pursuant to this Act that—*

17 *“(1) violates or contradicts any provision of this*
18 *Act; and*

19 *“(2) procedurally or substantively lessens the*
20 *protections provided to children with disabilities*
21 *under this Act, as embodied in regulations in effect*
22 *on July 20, 1983 (particularly as such protections re-*
23 *lated to parental consent to initial evaluation or ini-*
24 *tial placement in special education, least restrictive*
25 *environment, related services, timelines, attendance of*
26 *evaluation personnel at individualized education pro-*

1 *gram meetings, or qualifications of personnel), except*
2 *to the extent that such regulation reflects the clear*
3 *and unequivocal intent of the Congress in legislation.*

4 *“(c) PUBLIC COMMENT PERIOD.—The Secretary shall*
5 *provide a public comment period of not more than 90 days*
6 *on any regulation proposed under part B or part C of this*
7 *Act on which an opportunity for public comment is other-*
8 *wise required by law.*

9 *“(d) POLICY LETTERS AND STATEMENTS.—The Sec-*
10 *retary may not issue policy letters or other statements (in-*
11 *cluding letters or statements regarding issues of national*
12 *significance) that—*

13 *“(1) violate or contradict any provision of this*
14 *Act; or*

15 *“(2) establish a rule that is required for compli-*
16 *ance with, and eligibility under, this Act without fol-*
17 *lowing the requirements of section 553 of title 5,*
18 *United States Code.*

19 *“(e) EXPLANATION AND ASSURANCES.—Any written*
20 *response by the Secretary under subsection (d) regarding*
21 *a policy, question, or interpretation under part B of this*
22 *Act shall include an explanation in the written response*
23 *that—*

24 *“(1) such response is provided as informal guid-*
25 *ance and is not legally binding;*

1 “(2) when required, such response is issued in
2 compliance with the requirements of section 553 of
3 title 5, United States Code; and

4 “(3) such response represents the interpretation
5 by the Department of Education of the applicable
6 statutory or regulatory requirements in the context of
7 the specific facts presented.

8 “(f) CORRESPONDENCE FROM DEPARTMENT OF EDU-
9 CATION DESCRIBING INTERPRETATIONS OF THIS ACT.—

10 “(1) IN GENERAL.—The Secretary shall, on a
11 quarterly basis, publish in the Federal Register, and
12 widely disseminate to interested entities through var-
13 ious additional forms of communication, a list of cor-
14 respondence from the Department of Education re-
15 ceived by individuals during the previous quarter
16 that describes the interpretations of the Department of
17 Education of this Act or the regulations implemented
18 pursuant to this Act.

19 “(2) ADDITIONAL INFORMATION.—For each item
20 of correspondence published in a list under paragraph
21 (1), the Secretary shall—

22 “(A) identify the topic addressed by the cor-
23 respondence and shall include such other sum-
24 mary information as the Secretary determines to
25 be appropriate; and

1 “(B) ensure that all such correspondence is
2 issued, where applicable, in compliance with the
3 requirements of section 553 of title 5, United
4 States Code.

5 **“SEC. 608. STATE ADMINISTRATION.**

6 “(a) *RULEMAKING.*—Each State that receives funds
7 under this Act shall—

8 “(1) ensure that any State rules, regulations,
9 and policies relating to this Act conform to the pur-
10 poses of this Act; and

11 “(2) identify in writing to its local educational
12 agencies and the Secretary any such rule, regulation,
13 or policy as a State-imposed requirement that is not
14 required by this Act and Federal regulations.

15 “(b) *SUPPORT AND FACILITATION.*—State rules, regu-
16 lations, and policies under this Act shall support and facili-
17 tate local educational agency and school-level systemic re-
18 form designed to enable children with disabilities to meet
19 the challenging State student academic achievement stand-
20 ards.

21 **“SEC. 609. PAPERWORK REDUCTION.**

22 “(a) *REPORT TO CONGRESS.*—The Comptroller Gen-
23 eral shall conduct a review of Federal, State, and local re-
24 quirements relating to the education of children with dis-
25 abilities to determine which requirements result in excessive

1 *paperwork completion burdens for teachers, related services*
2 *providers, and school administrators, and shall report to*
3 *Congress not later than 18 months after the date of enact-*
4 *ment of the Individuals with Disabilities Education Im-*
5 *provement Act of 2003 regarding such review along with*
6 *strategic proposals for reducing the paperwork burdens on*
7 *teachers.*

8 “(b) *PAPERWORK REDUCTION DEMONSTRATION.*—

9 “(1) *PILOT PROGRAM.*—

10 “(A) *PURPOSE.*—*The purpose of this sub-*
11 *section is to provide an opportunity for States to*
12 *identify ways to reduce paperwork burdens and*
13 *other administrative duties that are directly as-*
14 *sociated with the requirements of this Act, in*
15 *order to increase the time and resources available*
16 *for instruction and other activities aimed at im-*
17 *proving educational and functional results for*
18 *children with disabilities.*

19 “(B) *AUTHORIZATION.*—

20 “(i) *IN GENERAL.*—*In order to carry*
21 *out the purpose of this subsection, the Sec-*
22 *retary is authorized to grant waivers of*
23 *statutory requirements of, or regulatory re-*
24 *quirements relating to, this part for a pe-*
25 *riod of time not to exceed 4 years with re-*

1 *spect to not more than 15 States based on*
2 *proposals submitted by States to reduce ex-*
3 *cessive paperwork and noninstructional*
4 *time burdens that do not assist in improv-*
5 *ing educational and functional results for*
6 *children with disabilities.*

7 “(ii) *EXCEPTION.—The Secretary shall*
8 *not waive any statutory requirements of, or*
9 *regulatory requirements relating to, appli-*
10 *cable civil rights requirements.*

11 “(iii) *RULE OF CONSTRUCTION.—Noth-*
12 *ing in this subsection shall be construed*
13 *to—*

14 “(I) *affect the right of a child*
15 *with a disability to receive a free ap-*
16 *propriate public education under this*
17 *part; and*

18 “(II) *permit a State or local edu-*
19 *cational agency to waive procedural*
20 *safeguards under section 615.*

21 “(C) *PROPOSAL.—*

22 “(i) *IN GENERAL.—A State desiring to*
23 *participate in the program under this sub-*
24 *section shall submit a proposal to the Sec-*

1 retary at such time and in such manner as
2 the Secretary may reasonably require.

3 “(ii) *CONTENT.*—The proposal shall
4 include—

5 “(I) a list of any statutory re-
6 quirements of, or regulatory require-
7 ments relating to, this part that the
8 State desires the Secretary to waive or
9 change, in whole or in part; and

10 “(II) a list of any State require-
11 ments that the State proposes to waive
12 or change, in whole or in part, to
13 carry out a waiver granted to the State
14 by the Secretary.

15 “(D) *TERMINATION OF WAIVER.*—The Sec-
16 retary shall terminate a State’s waiver under
17 this subsection if the Secretary determines that
18 the State—

19 “(i) has failed to make satisfactory
20 progress in meeting the indicators described
21 in section 616; or

22 “(ii) has failed to appropriately imple-
23 ment its waiver.

24 “(2) *REPORT.*—Beginning 2 years after the date
25 of enactment of the *Individuals with Disabilities*

1 *Education Improvement Act of 2003, the Secretary*
2 *shall include in the annual report to Congress sub-*
3 *mitted pursuant to section 426 of the Department of*
4 *Education Organization Act information related to*
5 *the effectiveness of waivers granted under paragraph*
6 *(1), including any specific recommendations for*
7 *broader implementation of such waivers, in—*

8 *“(A) reducing—*

9 *“(i) the paperwork burden on teachers,*
10 *principals, administrators, and related*
11 *service providers; and*

12 *“(ii) noninstructional time spent by*
13 *teachers in complying with this part;*

14 *“(B) enhancing longer-term educational*
15 *planning;*

16 *“(C) improving positive outcomes for chil-*
17 *dren with disabilities;*

18 *“(D) promoting collaboration between IEP*
19 *Team members; and*

20 *“(E) ensuring satisfaction of family mem-*
21 *bers.*

22 **“SEC. 610. FREELY ASSOCIATED STATES.**

23 *“The Republic of the Marshall Islands, the Federated*
24 *States of Micronesia, and the Republic of Palau shall con-*
25 *tinue to be eligible for competitive grants administered by*

1 *the Secretary under this Act to the extent that such grants*
2 *continue to be available to States and local educational*
3 *agencies under this Act.*

4 **“PART B—ASSISTANCE FOR EDUCATION OF ALL**
5 **CHILDREN WITH DISABILITIES**

6 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
7 **AUTHORIZATION OF APPROPRIATIONS.**

8 *“(a) GRANTS TO STATES.—*

9 *“(1) PURPOSE OF GRANTS.—The Secretary shall*
10 *make grants to States and the outlying areas, and*
11 *provide funds to the Secretary of the Interior, to as-*
12 *sist them to provide special education and related*
13 *services to children with disabilities in accordance*
14 *with this part.*

15 *“(2) MAXIMUM AMOUNT.—The maximum*
16 *amount available for awarding grants under this sec-*
17 *tion for any fiscal year is—*

18 *“(A) the total number of children with dis-*
19 *abilities in the 2002–2003 school year in the*
20 *States who received special education and related*
21 *services and who were—*

22 *“(i) aged 3 through 5, if the State was*
23 *eligible for a grant under section 619; and*

24 *“(ii) aged 6 through 21; multiplied by*

1 “(B) 40 percent of the average per-pupil ex-
 2 penditure in public elementary schools and sec-
 3 ondary schools in the United States; adjusted by;

4 “(C) the rate of change in the sum of—

5 “(i) 85 percent of the change in the na-
 6 tionwide total of the population described in
 7 subsection (d)(3)(A)(i)(II); and

8 “(ii) 15 percent of the change in the
 9 nationwide total of the population described
 10 in subsection (d)(3)(A)(i)(III).

11 “(b) *OUTLYING AREAS AND FREELY ASSOCIATED*
 12 *STATES.*—

13 “(1) *FUNDS RESERVED.*—From the amount ap-
 14 propriated for any fiscal year under subsection (i),
 15 the Secretary shall reserve not more than 1 percent,
 16 which shall be used—

17 “(A) to provide assistance to the outlying
 18 areas in accordance with their respective popu-
 19 lations of individuals aged 3 through 21; and

20 “(B) to provide each freely associated State
 21 a grant in the amount that such freely associated
 22 State received for fiscal year 2003 under this
 23 part, but only if the freely associated State meets
 24 the applicable requirements of this part, as well
 25 as the requirements of section 611(b)(2)(C) as

1 *such section was in effect on the day before the*
2 *date of enactment of the Individuals with Dis-*
3 *abilities Education Improvement Act of 2004.*

4 “(2) *SPECIAL RULE.*—*The provisions of Public*
5 *Law 95–134, permitting the consolidation of grants*
6 *by the outlying areas, shall not apply to funds pro-*
7 *vided to the outlying areas or the freely associated*
8 *States under this section.*

9 “(3) *DEFINITION.*—*As used in this subsection,*
10 *the term ‘freely associated States’ means the Republic*
11 *of the Marshall Islands, the Federated States of Mi-*
12 *cronesia, and the Republic of Palau.*

13 “(c) *SECRETARY OF THE INTERIOR.*—*From the*
14 *amount appropriated for any fiscal year under subsection*
15 *(i), the Secretary shall reserve 1.226 percent to provide as-*
16 *sistance to the Secretary of the Interior in accordance with*
17 *subsection (i).*

18 “(d) *ALLOCATIONS TO STATES.*—

19 “(1) *IN GENERAL.*—*After reserving funds for*
20 *studies and evaluations under section 665, and for*
21 *payments to the outlying areas, the freely associated*
22 *States, and the Secretary of the Interior under sub-*
23 *sections (b) and (c) for a fiscal year, the Secretary*
24 *shall allocate the remaining amount among the States*
25 *in accordance with this subsection.*

1 “(2) *SPECIAL RULE FOR USE OF FISCAL YEAR*
2 *1999 AMOUNT.*—*If a State received any funds under*
3 *this section for fiscal year 1999 on the basis of chil-*
4 *dren aged 3 through 5, but does not make a free ap-*
5 *propriate public education available to all children*
6 *with disabilities aged 3 through 5 in the State in any*
7 *subsequent fiscal year, the Secretary shall compute the*
8 *State’s amount for fiscal year 1999, solely for the*
9 *purpose of calculating the State’s allocation in that*
10 *subsequent year under paragraph (3) or (4), by sub-*
11 *tracting the amount allocated to the State for fiscal*
12 *year 1999 on the basis of those children.*

13 “(3) *INCREASE IN FUNDS.*—*If the amount avail-*
14 *able for allocations to States under paragraph (1) for*
15 *a fiscal year is equal to or greater than the amount*
16 *allocated to the States under this paragraph for the*
17 *preceding fiscal year, those allocations shall be cal-*
18 *culated as follows:*

19 “(A) *ALLOCATION OF INCREASE.*—

20 “(i) *IN GENERAL.*—*Except as provided*
21 *in subparagraph (B), the Secretary shall al-*
22 *locate for the fiscal year—*

23 “(I) *to each State the amount the*
24 *State received under this section for*
25 *fiscal year 1999;*

1 “(II) 85 percent of any remaining
2 funds to States on the basis of the
3 States’ relative populations of children
4 aged 3 through 21 who are of the same
5 age as children with disabilities for
6 whom the State ensures the avail-
7 ability of a free appropriate public
8 education under this part; and

9 “(III) 15 percent of those remain-
10 ing funds to States on the basis of the
11 States’ relative populations of children
12 described in subclause (II) who are liv-
13 ing in poverty.

14 “(ii) DATA.—For the purpose of mak-
15 ing grants under this paragraph, the Sec-
16 retary shall use the most recent population
17 data, including data on children living in
18 poverty, that are available and satisfactory
19 to the Secretary.

20 “(B) LIMITATIONS.—Notwithstanding sub-
21 paragraph (A), allocations under this paragraph
22 shall be subject to the following:

23 “(i) PRECEDING YEAR ALLOCATION.—
24 No State’s allocation shall be less than its

1 *allocation under this section for the pre-*
2 *ceding fiscal year.*

3 “(ii) *MINIMUM.—No State’s allocation*
4 *shall be less than the greatest of—*

5 “(I) *the sum of—*

6 “(aa) *the amount the State*
7 *received under this section for fis-*
8 *cal year 1999; and*

9 “(bb) *1/3 of 1 percent of the*
10 *amount by which the amount ap-*
11 *propriated under subsection (i)*
12 *for the fiscal year exceeds the*
13 *amount appropriated for this sec-*
14 *tion for fiscal year 1999;*

15 “(II) *the sum of—*

16 “(aa) *the amount the State*
17 *received under this section for the*
18 *preceding fiscal year; and*

19 “(bb) *that amount multiplied*
20 *by the percentage by which the in-*
21 *crease in the funds appropriated*
22 *for this section from the preceding*
23 *fiscal year exceeds 1.5 percent; or*

24 “(III) *the sum of—*

1 “(aa) the amount the State
2 received under this section for the
3 preceding fiscal year; and

4 “(bb) that amount multiplied
5 by 90 percent of the percentage
6 increase in the amount appro-
7 priated for this section from the
8 preceding fiscal year.

9 “(iii) **MAXIMUM.**—Notwithstanding
10 clause (ii), no State’s allocation under this
11 paragraph shall exceed the sum of—

12 “(I) the amount the State received
13 under this section for the preceding fis-
14 cal year; and

15 “(II) that amount multiplied by
16 the sum of 1.5 percent and the percent-
17 age increase in the amount appro-
18 priated under this section from the
19 preceding fiscal year.

20 “(C) **RATABLE REDUCTION.**—If the amount
21 available for allocations under this paragraph is
22 insufficient to pay those allocations in full, those
23 allocations shall be ratably reduced, subject to
24 subparagraph (B)(i).

1 “(4) *DECREASE IN FUNDS.*—*If the amount avail-*
2 *able for allocations to States under paragraph (1) for*
3 *a fiscal year is less than the amount allocated to the*
4 *States under this section for the preceding fiscal year,*
5 *those allocations shall be calculated as follows:*

6 “(A) *AMOUNTS GREATER THAN FISCAL*
7 *YEAR 1999 ALLOCATIONS.*—*If the amount avail-*
8 *able for allocations is greater than the amount*
9 *allocated to the States for fiscal year 1999, each*
10 *State shall be allocated the sum of—*

11 “(i) *the amount the State received*
12 *under this section for fiscal year 1999; and*

13 “(ii) *an amount that bears the same*
14 *relation to any remaining funds as the in-*
15 *crease the State received under this section*
16 *for the preceding fiscal year over fiscal year*
17 *1999 bears to the total of all such increases*
18 *for all States.*

19 “(B) *AMOUNTS EQUAL TO OR LESS THAN*
20 *FISCAL YEAR 1999 ALLOCATIONS.*—

21 “(i) *IN GENERAL.*—*If the amount*
22 *available for allocations under this para-*
23 *graph is equal to or less than the amount*
24 *allocated to the States for fiscal year 1999,*

1 *each State shall be allocated the amount the*
2 *State received for fiscal year 1999.*

3 “(ii) *RATABLE REDUCTION.*—*If the*
4 *amount available for allocations under this*
5 *paragraph is insufficient to make the allo-*
6 *cations described in clause (i), those alloca-*
7 *tions shall be ratably reduced.*

8 “(e) *STATE-LEVEL ACTIVITIES.*—

9 “(1) *STATE ADMINISTRATION.*—

10 “(A) *IN GENERAL.*—*For the purpose of ad-*
11 *ministering this part, including paragraph (3),*
12 *section 619, and the coordination of activities*
13 *under this part with, and providing technical*
14 *assistance to, other programs that provide serv-*
15 *ices to children with disabilities—*

16 “(i) *each State may reserve not more*
17 *than the maximum amount the State was*
18 *eligible to reserve for State administration*
19 *for fiscal year 2003 or \$800,000 (adjusted*
20 *by the cumulative rate of inflation since fis-*
21 *cal year 2003 as measured by the percent-*
22 *age increase, if any, in the Consumer Price*
23 *Index For All Urban Consumers, published*
24 *by the Bureau of Labor Statistics of the De-*

1 *partment of Labor), whichever is greater;*
2 *and*

3 *“(ii) each outlying area may reserve*
4 *not more than 5 percent of the amount the*
5 *outlying area receives under subsection (b)*
6 *for any fiscal year or \$35,000, whichever is*
7 *greater.*

8 *“(B) PART C.—Funds reserved under sub-*
9 *paragraph (A) may be used for the administra-*
10 *tion of part C, if the State educational agency*
11 *is the lead agency for the State under that part.*

12 *“(C) CERTIFICATION.—Prior to expenditure*
13 *of funds under this paragraph, the State shall*
14 *certify to the Secretary that the arrangements to*
15 *establish responsibility for services pursuant to*
16 *section 612(a)(12)(A) are current as of the date*
17 *of submission of the certification.*

18 *“(2) OTHER STATE-LEVEL ACTIVITIES.—*

19 *“(A) STATE-LEVEL ACTIVITIES.—*

20 *“(i) IN GENERAL.—For the purpose of*
21 *carrying out State-level activities, each*
22 *State may reserve for each of the fiscal*
23 *years 2004 and 2005, not more than 10 per-*
24 *cent of the amount that remains after sub-*
25 *tracting the amount reserved under para-*

1 *graph (1) from the amount of the State's al-*
2 *location under subsection (d) for fiscal years*
3 *2004 and 2005, respectively. For fiscal*
4 *years 2006, 2007, 2008, and 2009, the State*
5 *may reserve the maximum amount the*
6 *State was eligible to reserve under the pre-*
7 *ceding sentence for fiscal year 2005 (ad-*
8 *justed by the cumulative rate of inflation*
9 *since fiscal year 2005 as measured by the*
10 *percentage increase, if any, in the Con-*
11 *sumer Price Index for All Urban Con-*
12 *sumers, published by the Bureau of Labor*
13 *Statistics of the Department of Labor).*

14 *“(i) SMALL STATE ADJUSTMENT.—*
15 *Notwithstanding clause (i), in the case of a*
16 *State for which the maximum amount re-*
17 *served for State administration under para-*
18 *graph (1) is not greater than \$800,000 (as*
19 *adjusted pursuant to paragraph (1)(A)(i)),*
20 *the State may reserve for the purpose of*
21 *carrying out State-level activities for each*
22 *of the fiscal years 2004 and 2005, not more*
23 *than 12 percent of the amount that remains*
24 *after subtracting the amount reserved under*
25 *paragraph (1) from the amount of the*

1 *State’s allocation under subsection (d) for*
2 *fiscal years 2004 and 2005, respectively.*
3 *For each of the fiscal years 2006, 2007,*
4 *2008, and 2009, each such State may re-*
5 *serve for such purpose the maximum*
6 *amount the State was eligible to reserve*
7 *under the preceding sentence for fiscal year*
8 *2005 (adjusted by the cumulative rate of in-*
9 *flation since fiscal year 2005 as measured*
10 *by the percentage increase, if any, in the*
11 *Consumer Price Index For All Urban Con-*
12 *sumers, published by the Bureau of Labor*
13 *Statistics of the Department of Labor).*

14 “(B) *REQUIRED ACTIVITIES.—Funds re-*
15 *served under subparagraph (A) shall be used to*
16 *carry out the following activities:*

17 “(i) *For monitoring, enforcement and*
18 *complaint investigation.*

19 “(ii) *To establish and implement the*
20 *mediation, processes required by section*
21 *615(e)(1), including providing for the costs*
22 *of mediators and support personnel;*

23 “(iii) *To support the State protection*
24 *and advocacy system to advise and assist*
25 *parents in the areas of—*

1 “(I) *dispute resolution and due*
2 *process;*

3 “(II) *voluntary mediation; and*

4 “(III) *the opportunity to resolve*
5 *complaints.*

6 “(C) *AUTHORIZED ACTIVITIES.—Funds re-*
7 *served under subparagraph (A) may be used to*
8 *carry out the following activities:*

9 “(i) *For support and direct services,*
10 *including technical assistance, personnel*
11 *preparation, and professional development*
12 *and training.*

13 “(ii) *To support paperwork reduction*
14 *activities, including expanding the use of*
15 *technology in the IEP process.*

16 “(iii) *To assist local educational agen-*
17 *cies in providing positive behavioral inter-*
18 *ventions and supports and mental health*
19 *services for children with disabilities.*

20 “(iv) *To improve the use of technology*
21 *in the classroom by children with disabil-*
22 *ities to enhance learning.*

23 “(v) *To support the development and*
24 *use of technology, including universally de-*
25 *signed technologies and assistive technology*

1 *devices, to maximize accessibility to the gen-*
2 *eral curriculum for children with disabil-*
3 *ities.*

4 “(vi) *Development and implementation*
5 *of transition programs, including coordina-*
6 *tion of services with agencies involved in*
7 *supporting the transition of students with*
8 *disabilities to post-secondary activities.*

9 “(vii) *To assist local educational agen-*
10 *cies in meeting personnel shortages.*

11 “(viii) *To support capacity building*
12 *activities and improve the delivery of serv-*
13 *ices by local educational agencies to im-*
14 *prove results for children with disabilities.*

15 “(ix) *Alternative programming for*
16 *children who have been expelled from school,*
17 *and services for children in correctional fa-*
18 *cilities, children enrolled in State-operated*
19 *or State-supported schools, and children in*
20 *charter schools.*

21 “(x) *To support the development and*
22 *provision of appropriate accommodations*
23 *for children with disabilities, or the develop-*
24 *ment and provision of alternate assessments*
25 *that are valid and reliable for assessing the*

1 *performance of children with disabilities, in*
2 *accordance with sections 1111(b) and 6111*
3 *of the Elementary and Secondary Edu-*
4 *cation Act of 1965.*

5 “(3) *LOCAL EDUCATIONAL AGENCY RISK POOL.—*

6 “(A) *IN GENERAL.—For the purpose of as-*
7 *sisting local educational agencies (and charter*
8 *schools that are local educational agencies) in*
9 *addressing the needs of high-need children and*
10 *the unanticipated enrollment of other children el-*
11 *igible for services under this part, each State*
12 *shall reserve for each of the fiscal years 2004*
13 *through 2009, 2 percent of the amount that re-*
14 *mains after subtracting the amount reserved*
15 *under paragraph (1) from the amount of the*
16 *State’s allocation under subsection (d) for each of*
17 *the fiscal years 2004 through 2009, respectively,*
18 *to—*

19 “(i) *establish a high-cost fund; and*

20 “(ii) *make disbursements from the*
21 *high-cost fund to local educational agencies*
22 *in accordance with this paragraph.*

23 “(B) *REQUIRED DISBURSEMENTS FROM*
24 *THE FUND.—*

1 “(i) *IN GENERAL.*—*Each State edu-*
2 *cational agency shall make disbursements*
3 *from the fund established under subpara-*
4 *graph (A) to local educational agencies to*
5 *pay the percentage, described in subpara-*
6 *graph (D), of the costs of providing a free*
7 *appropriate public education to high-need*
8 *children.*

9 “(ii) *SPECIAL RULE.*—*If funds re-*
10 *served for a fiscal year under subparagraph*
11 *(A) are insufficient to pay the percentage*
12 *described in subparagraph (D) to assist all*
13 *the local educational agencies having appli-*
14 *cations approved under subparagraph (C),*
15 *then the State educational agency shall rat-*
16 *ably reduce the amount paid to each local*
17 *educational agency that receives a disburse-*
18 *ment for that fiscal year.*

19 “(C) *APPLICATION.*—*A local educational*
20 *agency that desires a disbursement under this*
21 *subsection shall submit an application to the*
22 *State educational agency at such time, in such*
23 *manner, and containing such information as the*
24 *State educational agency may require. Such ap-*
25 *plication shall include assurances that funds*

1 *provided under this paragraph shall not be used*
2 *to pay costs that otherwise would be reimburs-*
3 *able as medical assistance for a child with a dis-*
4 *ability under the State medicaid program under*
5 *title XIX of the Social Security Act.*

6 “(D) *DISBURSEMENTS.*—

7 “(i) *IN GENERAL.*—A State edu-
8 *cational agency shall make a disbursement*
9 *to a local educational agency that submits*
10 *an application under subparagraph (C) in*
11 *an amount that is equal to 75 percent of the*
12 *costs that are in excess of 4 times the aver-*
13 *age per-pupil expenditure in the United*
14 *States or in the State where the child re-*
15 *sides (whichever average per-pupil expendi-*
16 *ture is lower) associated with educating*
17 *each high need child served by such local*
18 *educational agency in a fiscal year for*
19 *whom such agency desires a disbursement.*

20 “(ii) *APPROPRIATE COSTS.*—The costs
21 *associated with educating a high need child*
22 *under clause (i) are only those costs associ-*
23 *ated with providing direct special education*
24 *and related services to such child that are*

1 *identified in such child's appropriately de-*
2 *veloped IEP.*

3 “(E) *LEGAL FEES.*—*The disbursements*
4 *under subparagraph (D) shall not support legal*
5 *fees, court costs, or other costs associated with a*
6 *cause of action brought on behalf of such child to*
7 *ensure a free appropriate public education for*
8 *such child.*

9 “(F) *PERMISSIBLE DISBURSEMENTS FROM*
10 *REMAINING FUNDS.*—*A State educational agency*
11 *may make disbursements to local educational*
12 *agencies from any funds that are remaining in*
13 *the high cost fund after making the required dis-*
14 *bursements under subparagraph (D) for a fiscal*
15 *year for the following purposes:*

16 “(i) *To pay the costs associated with*
17 *servicing children with disabilities who*
18 *moved into the areas served by such local*
19 *agencies after the budget for the following*
20 *school year had been finalized to assist the*
21 *local educational agencies in providing a*
22 *free appropriate public education for such*
23 *children in such year.*

24 “(ii) *To compensate local educational*
25 *agencies for extraordinary costs, as deter-*

1 *mined by the State, of any children eligible*
2 *for services under this part due to—*

3 *“(I) unexpected enrollment or*
4 *placement of children eligible for serv-*
5 *ices under this part; or*

6 *“(II) a significant underestimate*
7 *of the average cost of providing services*
8 *to children eligible for services under*
9 *this part.*

10 *“(G) REMAINING FUNDS.—Funds reserved*
11 *under subparagraph (A) in any fiscal year but*
12 *not expended in that fiscal year pursuant to sub-*
13 *paragraph (D) or subparagraph (F) shall—*

14 *“(i) be allocated to local educational*
15 *agencies pursuant to subparagraphs (D) or*
16 *(F) for the next fiscal year; or*

17 *“(ii) be allocated to local educational*
18 *agencies in the same manner as funds are*
19 *allocated to local educational agencies under*
20 *subsection (f).*

21 *“(H) ASSURANCE OF A FREE APPROPRIATE*
22 *PUBLIC EDUCATION.—Nothing in this section*
23 *shall be construed—*

24 *“(i) to limit or condition the right of*
25 *a child with a disability who is assisted*

1 *under this part to receive a free appropriate*
2 *public education pursuant to section*
3 *612(a)(1) in a least restrictive environment*
4 *pursuant to section 612(a)(5); or*

5 “(ii) *to authorize a State educational*
6 *agency or local educational agency to indi-*
7 *cate a limit on what is expected to be spent*
8 *on the education of a child with a dis-*
9 *ability.*

10 “(I) *MEDICAID SERVICES NOT AFFECTED.—*
11 *Disbursements provided under this subsection*
12 *shall not be used to pay costs that otherwise*
13 *would be reimbursable as medical assistance for*
14 *a child with a disability under the State med-*
15 *icaid program under title XIX of the Social Se-*
16 *curity Act.*

17 “(J) *DEFINITIONS.—In this paragraph:*

18 “(i) *AVERAGE PER-PUPIL EXPENDI-*
19 *TURE.—The term ‘average per-pupil ex-*
20 *penditure’ has the meaning given the term*
21 *in section 9101 of the Elementary and Sec-*
22 *ondary Education Act of 1965.*

23 “(ii) *HIGH-NEED CHILD.—The term*
24 *‘high-need’, when used with respect to a*
25 *child with a disability, means a child with*

1 *a disability for whom a free appropriate*
2 *public education in a fiscal year costs more*
3 *than 4 times the average per-pupil expendi-*
4 *ture for such fiscal year.*

5 “(K) *SPECIAL RULE FOR RISK POOL AND*
6 *HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT*
7 *AS OF JANUARY 1, 2003.—Notwithstanding the*
8 *provisions of subparagraphs (A) through (J), a*
9 *State may use funds reserved pursuant to this*
10 *paragraph for administering and implementing*
11 *a placement-neutral cost-sharing and reimburse-*
12 *ment program of high-need, low-incidence, emer-*
13 *gency, catastrophic, or extraordinary aid to local*
14 *educational agencies that provides services to*
15 *students eligible under this part based on eligi-*
16 *bility criteria for such programs that were oper-*
17 *ative on January 1, 2003.*

18 “(4) *INAPPLICABILITY OF CERTAIN PROHIBI-*
19 *TIONS.—A State may use funds the State reserves*
20 *under paragraphs (1), (2), and (3) without regard*
21 *to—*

22 “(A) *the prohibition on commingling of*
23 *funds in section 612(a)(17)(B); and*

24 “(B) *the prohibition on supplanting other*
25 *funds in section 612(a)(17)(C).*

1 “(5) *REPORT ON USE OF FUNDS.*—As part of the
2 information required to be submitted to the Secretary
3 under section 612, each State shall annually describe
4 how amounts under this section—

5 “(A) will be used to meet the requirements
6 of this Act; and

7 “(B) will be allocated among the activities
8 described in this section to meet State priorities
9 based on input from local educational agencies.

10 “(6) *FLEXIBILITY IN USING FUNDS FOR PART*
11 *C.*—Any State eligible to receive a grant under sec-
12 tion 619 may use funds made available under para-
13 graph (1)(A), subsection (f)(3), or section 619(f)(5) to
14 develop and implement a State policy jointly with the
15 lead agency under part C and the State educational
16 agency to provide early intervention services (which
17 shall include an educational component that promotes
18 school readiness and incorporates pre-literacy, lan-
19 guage, and numeracy skills) in accordance with part
20 C to children with disabilities who are eligible for
21 services under section 619 and who previously re-
22 ceived services under part C until such children enter,
23 or are eligible under State law to enter, kindergarten.

24 “(f) *SUBGRANTS TO LOCAL EDUCATIONAL AGEN-*
25 *CIES.*—

1 “(1) *SUBGRANTS REQUIRED.*—*Each State that*
2 *receives a grant under this section for any fiscal year*
3 *shall distribute any funds the State does not reserve*
4 *under subsection (e) to local educational agencies (in-*
5 *cluding public charter schools that operate as local*
6 *educational agencies) in the State that have estab-*
7 *lished their eligibility under section 613 for use in ac-*
8 *cordance with this part.*

9 “(2) *PROCEDURE FOR ALLOCATIONS TO LOCAL*
10 *EDUCATIONAL AGENCIES.*—

11 “(A) *PROCEDURE.*—*For each fiscal year for*
12 *which funds are allocated to States under sub-*
13 *section (d), each State shall allocate funds under*
14 *paragraph (1) as follows:*

15 “(i) *BASE PAYMENTS.*—*The State shall*
16 *first award each local educational agency*
17 *described in paragraph (1) the amount the*
18 *local educational agency would have re-*
19 *ceived under this section for fiscal year*
20 *1999, if the State had distributed 75 per-*
21 *cent of its grant for that year under section*
22 *611(d) as section 611(d) was then in effect.*

23 “(ii) *ALLOCATION OF REMAINING*
24 *FUNDS.*—*After making allocations under*
25 *clause (i), the State shall—*

1 “(I) allocate 85 percent of any re-
2 remaining funds to those local edu-
3 cational agencies on the basis of the
4 relative numbers of children enrolled in
5 public and private elementary schools
6 and secondary schools within the local
7 educational agency’s jurisdiction; and

8 “(II) allocate 15 percent of those
9 remaining funds to those local edu-
10 cational agencies in accordance with
11 their relative numbers of children liv-
12 ing in poverty, as determined by the
13 State educational agency.

14 “(3) *REALLOCATION OF FUNDS.*—If a State edu-
15 cational agency determines that a local educational
16 agency is adequately providing a free appropriate
17 public education to all children with disabilities re-
18 siding in the area served by that local educational
19 agency with State and local funds, the State edu-
20 cational agency may reallocate any portion of the
21 funds under this part that are not needed by that
22 local educational agency to provide a free appropriate
23 public education to other local educational agencies in
24 the State that are not adequately providing special
25 education and related services to all children with

1 *disabilities residing in the areas served by those other*
2 *local educational agencies.*

3 “(g) *DEFINITIONS.—For the purpose of this section—*

4 “(1) *the term ‘average per-pupil expenditure in*
5 *public elementary schools and secondary schools in*
6 *the United States’ means—*

7 “(A) *without regard to the source of*
8 *funds—*

9 “(i) *the aggregate current expenditures,*
10 *during the second fiscal year preceding the*
11 *fiscal year for which the determination is*
12 *made (or, if satisfactory data for that year*
13 *are not available, during the most recent*
14 *preceding fiscal year for which satisfactory*
15 *data are available) of all local educational*
16 *agencies in the 50 States and the District of*
17 *Columbia; plus*

18 “(ii) *any direct expenditures by the*
19 *State for the operation of those local edu-*
20 *cational agencies; divided by*

21 “(B) *the aggregate number of children in*
22 *average daily attendance to whom those local*
23 *educational agencies provided free public edu-*
24 *cation during that preceding year; and*

1 “(2) the term ‘State’ means each of the 50 States,
2 the District of Columbia, and the Commonwealth of
3 Puerto Rico.

4 “(h) *USE OF AMOUNTS BY SECRETARY OF THE INTE-*
5 *RIOR.—*

6 “(1) *PROVISION OF AMOUNTS FOR ASSIST-*
7 *ANCE.—*

8 “(A) *IN GENERAL.—The Secretary of Edu-*
9 *cation shall provide amounts to the Secretary of*
10 *the Interior to meet the need for assistance for*
11 *the education of children with disabilities on res-*
12 *ervations aged 5 through 21 who are enrolled in*
13 *elementary schools and secondary schools for In-*
14 *Indian children operated or funded by the Sec-*
15 *retary of the Interior. The amount of such pay-*
16 *ment for any fiscal year shall be equal to 80 per-*
17 *cent of the amount allotted under subsection (c)*
18 *for that fiscal year.*

19 “(B) *CALCULATION OF NUMBER OF CHIL-*
20 *DREN.—In the case of Indian students aged 3*
21 *through 5 who are enrolled in programs affili-*
22 *ated with the Bureau of Indian Affairs (hereafter*
23 *in this subsection referred to as ‘BIA’) schools,*
24 *and that are required by the States in which*
25 *such schools are located to attain or maintain*

1 *State accreditation, and which schools had such*
2 *accreditation prior to the date of enactment of*
3 *the Individuals with Disabilities Education Act*
4 *Amendments of 1991, the school shall be allowed*
5 *to count those children for the purpose of dis-*
6 *tribution of the funds provided under this para-*
7 *graph to the Secretary of the Interior. The Sec-*
8 *retary of the Interior shall be responsible for*
9 *meeting all of the requirements of this part for*
10 *these children, in accordance with paragraph*
11 *(2).*

12 “(C) *ADDITIONAL REQUIREMENT.*—*With re-*
13 *spect to all other children aged 3 through 21 on*
14 *reservations, the State educational agency shall*
15 *be responsible for ensuring that all of the re-*
16 *quirements of this part are implemented.*

17 “(2) *SUBMISSION OF INFORMATION.*—*The Sec-*
18 *retary of Education may provide the Secretary of the*
19 *Interior amounts under paragraph (1) for a fiscal*
20 *year only if the Secretary of the Interior submits to*
21 *the Secretary of Education information that—*

22 “(A) *demonstrates that the Department of*
23 *the Interior meets the appropriate requirements,*
24 *as determined by the Secretary of Education, of*

1 sections 612 (including monitoring and evalua-
2 tion activities) and 613;

3 “(B) includes a description of how the Sec-
4 retary of the Interior will coordinate the provi-
5 sion of services under this part with local edu-
6 cational agencies, tribes and tribal organiza-
7 tions, and other private and Federal service pro-
8 viders;

9 “(C) includes an assurance that there are
10 public hearings, adequate notice of such hear-
11 ings, and an opportunity for comment afforded
12 to members of tribes, tribal governing bodies, and
13 affected local school boards before the adoption of
14 the policies, programs, and procedures described
15 in subparagraph (A);

16 “(D) includes an assurance that the Sec-
17 retary of the Interior will provide such informa-
18 tion as the Secretary of Education may require
19 to comply with section 618;

20 “(E) includes an assurance that the Sec-
21 retary of the Interior and the Secretary of
22 Health and Human Services have entered into a
23 memorandum of agreement, to be provided to the
24 Secretary of Education, for the coordination of
25 services, resources, and personnel between their

1 *respective Federal, State, and local offices and*
2 *with State and local educational agencies and*
3 *other entities to facilitate the provision of serv-*
4 *ices to Indian children with disabilities residing*
5 *on or near reservations (such agreement shall*
6 *provide for the apportionment of responsibilities*
7 *and costs including, but not limited to, child*
8 *find, evaluation, diagnosis, remediation or thera-*
9 *peutic measures, and (where appropriate) equip-*
10 *ment and medical or personal supplies as needed*
11 *for a child to remain in school or a program);*
12 *and*

13 *“(F) includes an assurance that the Depart-*
14 *ment of the Interior will cooperate with the De-*
15 *partment of Education in its exercise of moni-*
16 *toring and oversight of this application, and any*
17 *agreements entered into between the Secretary of*
18 *the Interior and other entities under this part,*
19 *and will fulfill its duties under this part.*

20 *“(3) APPLICABILITY.—Section 616(a) shall*
21 *apply to the information described in this paragraph.*

22 *“(4) PAYMENTS FOR EDUCATION AND SERVICES*
23 *FOR INDIAN CHILDREN WITH DISABILITIES AGED 3*
24 *THROUGH 5.—*

1 “(A) *IN GENERAL.*—With funds appro-
2 priated under subsection (i), the Secretary of
3 Education shall make payments to the Secretary
4 of the Interior to be distributed to tribes or tribal
5 organizations (as defined under section 4 of the
6 Indian Self-Determination and Education As-
7 sistance Act) or consortia of the above to provide
8 for the coordination of assistance for special edu-
9 cation and related services for children with dis-
10 abilities aged 3 through 5 on reservations served
11 by elementary schools and secondary schools for
12 Indian children operated or funded by the De-
13 partment of the Interior. The amount of such
14 payments under subparagraph (B) for any fiscal
15 year shall be equal to 20 percent of the amount
16 allotted under subsection (c).

17 “(B) *DISTRIBUTION OF FUNDS.*—The Sec-
18 retary of the Interior shall distribute the total
19 amount of the payment under subparagraph (A)
20 by allocating to each tribe or tribal organization
21 an amount based on the number of children with
22 disabilities ages 3 through 5 residing on reserva-
23 tions as reported annually, divided by the total
24 of those children served by all tribes or tribal or-
25 ganizations.

1 “(C) *SUBMISSION OF INFORMATION.*—*To re-*
2 *ceive a payment under this paragraph, the tribe*
3 *or tribal organization shall submit such figures*
4 *to the Secretary of the Interior as required to de-*
5 *termine the amounts to be allocated under sub-*
6 *paragraph (B). This information shall be com-*
7 *puted and submitted to the Secretary of Edu-*
8 *cation.*

9 “(D) *USE OF FUNDS.*—*The funds received*
10 *by a tribe or tribal organization shall be used to*
11 *assist in child find, screening, and other proce-*
12 *dures for the early identification of children aged*
13 *3 through 5, parent training, and the provision*
14 *of direct services. These activities may be carried*
15 *out directly or through contracts or cooperative*
16 *agreements with the BIA, local educational agen-*
17 *cies, and other public or private nonprofit orga-*
18 *nizations. The tribe or tribal organization is en-*
19 *couraged to involve Indian parents in the devel-*
20 *opment and implementation of these activities.*
21 *The above entities shall, as appropriate, make re-*
22 *ferences to local, State, or Federal entities for the*
23 *provision of services or further diagnosis.*

24 “(E) *BIENNIAL REPORT.*—*To be eligible to*
25 *receive a grant pursuant to subparagraph (A),*

1 *the tribe or tribal organization shall provide to*
2 *the Secretary of the Interior a biennial report of*
3 *activities undertaken under this paragraph, in-*
4 *cluding the number of contracts and cooperative*
5 *agreements entered into, the number of children*
6 *contacted and receiving services for each year,*
7 *and the estimated number of children needing*
8 *services during the 2 years following the year in*
9 *which the report is made. The Secretary of the*
10 *Interior shall include a summary of this infor-*
11 *mation on a biennial basis in the report to the*
12 *Secretary of Education required under this sub-*
13 *section. The Secretary of Education may require*
14 *any additional information from the Secretary*
15 *of the Interior.*

16 “(F) *PROHIBITIONS.—None of the funds al-*
17 *located under this paragraph may be used by the*
18 *Secretary of the Interior for administrative pur-*
19 *poses, including child count and the provision of*
20 *technical assistance.*

21 “(5) *PLAN FOR COORDINATION OF SERVICES.—*
22 *The Secretary of the Interior shall develop and imple-*
23 *ment a plan for the coordination of services for all*
24 *Indian children with disabilities residing on reserva-*
25 *tions covered under this Act. Such plan shall provide*

1 *for the coordination of services benefiting these chil-*
2 *dren from whatever source, including tribes, the In-*
3 *Indian Health Service, other BIA divisions, and other*
4 *Federal agencies. In developing the plan, the Sec-*
5 *retary of the Interior shall consult with all interested*
6 *and involved parties. The plan shall be based on the*
7 *needs of the children and the system best suited for*
8 *meeting those needs, and may involve the establish-*
9 *ment of cooperative agreements between the BIA,*
10 *other Federal agencies, and other entities. The plan*
11 *shall also be distributed upon request to States, State*
12 *and local educational agencies, and other agencies*
13 *providing services to infants, toddlers, and children*
14 *with disabilities, to tribes, and to other interested*
15 *parties.*

16 “(6) *ESTABLISHMENT OF ADVISORY BOARD.—To*
17 *meet the requirements of section 612(a)(20), the Sec-*
18 *retary of the Interior shall establish, under the BIA,*
19 *an advisory board composed of individuals involved*
20 *in or concerned with the education and provision of*
21 *services to Indian infants, toddlers, children, and*
22 *youth with disabilities, including Indians with dis-*
23 *abilities, Indian parents or guardians of such chil-*
24 *dren, teachers, service providers, State and local edu-*
25 *cational officials, representatives of tribes or tribal or-*

1 *ganizations, representatives from State Interagency*
2 *Coordinating Councils under section 641 in States*
3 *having reservations, and other members representing*
4 *the various divisions and entities of the BIA. The*
5 *chairperson shall be selected by the Secretary of the*
6 *Interior. The advisory board shall—*

7 *“(A) assist in the coordination of services*
8 *within the BIA and with other local, State, and*
9 *Federal agencies in the provision of education*
10 *for infants, toddlers, and children with disabili-*
11 *ties;*

12 *“(B) advise and assist the Secretary of the*
13 *Interior in the performance of the Secretary’s re-*
14 *sponsibilities described in this subsection;*

15 *“(C) develop and recommend policies con-*
16 *cerning effective inter- and intra-agency collabo-*
17 *ration, including modifications to regulations,*
18 *and the elimination of barriers to inter- and*
19 *intra-agency programs and activities;*

20 *“(D) provide assistance and disseminate in-*
21 *formation on best practices, effective program co-*
22 *ordination strategies, and recommendations for*
23 *improved educational programming for Indian*
24 *infants, toddlers, and children with disabilities;*
25 *and*

1 “(E) provide assistance in the preparation
2 of information required under paragraph (2)(D).

3 “(7) ANNUAL REPORTS.—

4 “(A) IN GENERAL.—The advisory board es-
5 tablished under paragraph (6) shall prepare and
6 submit to the Secretary of the Interior and to
7 Congress an annual report containing a descrip-
8 tion of the activities of the advisory board for the
9 preceding year.

10 “(B) AVAILABILITY.—The Secretary of the
11 Interior shall make available to the Secretary of
12 Education the report described in subparagraph
13 (A).

14 “(i) AUTHORIZATION OF APPROPRIATIONS.—For the
15 purpose of carrying out this part, other than section 619,
16 there are authorized to be appropriated—

17 “(1) \$12,358,376,571 for fiscal year 2005;

18 “(2) \$14,648,647,143 for fiscal year 2006;

19 “(3) \$16,938,917,714 for fiscal year 2007;

20 “(4) \$19,229,188,286 for fiscal year 2008;

21 “(5) \$21,519,458,857 for fiscal year 2009;

22 “(6) \$23,809,729,429 for fiscal year 2010;

23 “(7) \$26,100,000,000 for fiscal year 2011; and

24 “(8) such sums as may be necessary for fiscal
25 year 2012 and each succeeding fiscal year.

1 **“SEC. 612. STATE ELIGIBILITY.**

2 “(a) *IN GENERAL.*—A State is eligible for assistance
3 under this part for a fiscal year if the State submits a plan
4 that provides assurances to the Secretary that the State has
5 in effect policies and procedures to ensure that the State
6 meets each of the following conditions:

7 “(1) *FREE APPROPRIATE PUBLIC EDUCATION.*—

8 “(A) *IN GENERAL.*—A free appropriate pub-
9 lic education is available to all children with
10 disabilities residing in the State between the ages
11 of 3 and 21, inclusive, including children with
12 disabilities who have been suspended or expelled
13 from school.

14 “(B) *LIMITATION.*—The obligation to make
15 a free appropriate public education available to
16 all children with disabilities does not apply with
17 respect to children—

18 “(i) aged 3 through 5 and 18 through
19 21 in a State to the extent that its applica-
20 tion to those children would be inconsistent
21 with State law or practice, or the order of
22 any court, respecting the provision of public
23 education to children in those age ranges;
24 and

25 “(ii) aged 18 through 21 to the extent
26 that State law does not require that special

1 *education and related services under this*
2 *part be provided to children with disabil-*
3 *ities who, in the educational placement*
4 *prior to their incarceration in an adult cor-*
5 *rectional facility—*

6 *“(I) were not actually identified*
7 *as being a child with a disability*
8 *under section 602(3); or*

9 *“(II) did not have an individual-*
10 *ized education program under this*
11 *part.*

12 *“(C) STATE FLEXIBILITY.—A State that*
13 *provides early intervention services in accord-*
14 *ance with part C to a child who is eligible for*
15 *services under section 619, is not required to*
16 *provide such child with a free appropriate public*
17 *education.*

18 *“(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—*
19 *The State has established a goal of providing full edu-*
20 *cational opportunity to all children with disabilities*
21 *and a detailed timetable for accomplishing that goal.*

22 *“(3) CHILD FIND.—*

23 *“(A) IN GENERAL.—All children with dis-*
24 *abilities residing in the State, including children*
25 *with disabilities who are homeless children or*

1 are wards of the State and children with disabili-
2 ties attending private schools, regardless of the
3 severity of their disabilities, and who are in need
4 of special education and related services, are
5 identified, located, and evaluated and a practical
6 method is developed and implemented to deter-
7 mine which children with disabilities are cur-
8 rently receiving needed special education and re-
9 lated services.

10 “(B) CONSTRUCTION.—Nothing in this Act
11 requires that children be classified by their dis-
12 ability so long as each child who has a disability
13 listed in section 602 and who, by reason of that
14 disability, needs special education and related
15 services is regarded as a child with a disability
16 under this part.

17 “(4) INDIVIDUALIZED EDUCATION PROGRAM.—
18 An individualized education program, or an individ-
19 ualized family service plan that meets the require-
20 ments of section 636(d), is developed, reviewed, and
21 revised for each child with a disability in accordance
22 with section 614(d).

23 “(5) LEAST RESTRICTIVE ENVIRONMENT.—

24 “(A) IN GENERAL.—To the maximum ex-
25 tent appropriate, children with disabilities, in-

1 cluding children in public or private institutions
2 or other care facilities, are educated with chil-
3 dren who are not disabled, and special classes,
4 separate schooling, or other removal of children
5 with disabilities from the regular educational en-
6 vironment occurs only when the nature or sever-
7 ity of the disability of a child is such that edu-
8 cation in regular classes with the use of supple-
9 mentary aids and services cannot be achieved
10 satisfactorily.

11 “(B) *ADDITIONAL REQUIREMENT.*—

12 “(i) *IN GENERAL.*—A State funding
13 mechanism shall not result in placements
14 that violate the requirements of subpara-
15 graph (A), and a State shall not use a
16 funding mechanism by which the State dis-
17 tributes funds on the basis of the type of set-
18 ting in which a child is served that will re-
19 sult in the failure to provide a child with
20 a disability a free appropriate public edu-
21 cation according to the unique needs of the
22 child as described in the child’s IEP.

23 “(ii) *ASSURANCE.*—If the State does
24 not have policies and procedures to ensure
25 compliance with clause (i), the State shall

1 *provide the Secretary an assurance that the*
2 *State will revise the funding mechanism as*
3 *soon as feasible to ensure that such mecha-*
4 *nism does not result in such placements.*

5 “(6) *PROCEDURAL SAFEGUARDS.*—

6 “(A) *IN GENERAL.*—*Children with disabili-*
7 *ties and their parents are afforded the proce-*
8 *dural safeguards required by section 615.*

9 “(B) *ADDITIONAL PROCEDURAL SAFE-*
10 *GUARDS.*—*Procedures to ensure that testing and*
11 *evaluation materials and procedures utilized for*
12 *the purposes of evaluation and placement of chil-*
13 *dren with disabilities will be selected and admin-*
14 *istered so as not to be racially or culturally dis-*
15 *criminatory. Such materials or procedures shall*
16 *be provided and administered in the child’s na-*
17 *tive language or mode of communication, unless*
18 *it clearly is not feasible to do so, and no single*
19 *procedure shall be the sole criterion for deter-*
20 *mining an appropriate educational program for*
21 *a child.*

22 “(7) *EVALUATION.*—*Children with disabilities*
23 *are evaluated in accordance with subsections (a) and*
24 *(b) of section 614.*

1 “(8) *CONFIDENTIALITY.*—*Agencies in the State*
2 *comply with section 617(c) (relating to the confiden-*
3 *tiality of records and information).*

4 “(9) *TRANSITION FROM PART C TO PRESCHOOL*
5 *PROGRAMS.*—*Children participating in early-inter-*
6 *vention programs assisted under part C, and who will*
7 *participate in preschool programs assisted under this*
8 *part, experience a smooth and effective transition to*
9 *those preschool programs in a manner consistent with*
10 *section 637(a)(8). By the third birthday of such a*
11 *child, an individualized education program or, if con-*
12 *sistent with sections 614(d)(2)(B) and 636(d), an in-*
13 *dividualized family service plan, has been developed*
14 *and is being implemented for the child. The local edu-*
15 *cational agency will participate in transition plan-*
16 *ning conferences arranged by the designated lead*
17 *agency under section 635(a)(10).*

18 “(10) *CHILDREN IN PRIVATE SCHOOLS.*—

19 “(A) *CHILDREN ENROLLED IN PRIVATE*
20 *SCHOOLS BY THEIR PARENTS.*—

21 “(i) *IN GENERAL.*—*To the extent con-*
22 *sistent with the number and location of*
23 *children with disabilities in the State who*
24 *are enrolled by their parents in private ele-*
25 *mentary schools and secondary schools in*

1 *the school district served by a local edu-*
2 *catinal agency, provision is made for the*
3 *participation of those children in the pro-*
4 *gram assisted or carried out under this part*
5 *by providing for such children special edu-*
6 *cation and related services in accordance*
7 *with the following requirements, unless the*
8 *Secretary has arranged for services to those*
9 *children under subsection (f):*

10 *“(I) Amounts to be expended for*
11 *the provision of those services (includ-*
12 *ing direct services to parentally placed*
13 *children) by the local educational agen-*
14 *cy shall be equal to a proportionate*
15 *amount of Federal funds made avail-*
16 *able under this part.*

17 *“(II) Such services may be pro-*
18 *vided to children with disabilities on*
19 *the premises of private, including reli-*
20 *gious, schools, to the extent consistent*
21 *with law.*

22 *“(III) Each local educational*
23 *agency shall maintain in its records*
24 *and provide to the State educational*
25 *agency the number of children evalu-*

1 *ated under this paragraph, the number*
2 *of children determined to be children*
3 *with disabilities, and the number of*
4 *children served under this subsection.*

5 *“(ii) CHILD-FIND REQUIREMENT.—*

6 *“(I) IN GENERAL.—The require-*
7 *ments of paragraph (3) of this sub-*
8 *section (relating to child find) shall*
9 *apply with respect to children with*
10 *disabilities in the State who are en-*
11 *rolled in private, including religious,*
12 *elementary schools and secondary*
13 *schools. Such child find process shall be*
14 *conducted in a comparable time period*
15 *as for other students attending public*
16 *schools in the local educational agency.*

17 *“(II) EQUITABLE PARTICIPA-*
18 *TION.—The child find process shall be*
19 *designed to ensure the equitable par-*
20 *ticipation of parentally placed private*
21 *school children and an accurate count*
22 *of such children.*

23 *“(III) ACTIVITIES.—In carrying*
24 *out this clause, the local educational*
25 *agency, or where applicable, the State*

1 *educational agency, shall undertake ac-*
2 *tivities similar to those activities un-*
3 *dertaken for its public school children.*

4 *“(IV) COST.—The cost of carrying*
5 *out this clause, including individual*
6 *evaluations, may not be considered in*
7 *determining whether a local education*
8 *agency has met its obligations under*
9 *clause (i).*

10 *“(iii) CONSULTATION.—To ensure*
11 *timely and meaningful consultation, a local*
12 *educational agency, or where appropriate, a*
13 *State educational agency, shall consult with*
14 *representatives of children with disabilities*
15 *who are parentally placed in private*
16 *schools, during the design and development*
17 *of special education and related services for*
18 *these children, including consultation re-*
19 *garding—*

20 *“(I) the child find process and*
21 *how parentally placed private school*
22 *children suspected of having a dis-*
23 *ability can participate equitably, in-*
24 *cluding how parents, teachers, and pri-*

1 *vate school officials will be informed of*
2 *the process;*

3 *“(II) the determination of the pro-*
4 *portionate share of Federal funds*
5 *available to serve parentally placed*
6 *private school children with disabilities*
7 *under this paragraph, including the*
8 *determination of how the proportionate*
9 *share of those funds were calculated;*

10 *“(III) the consultation process*
11 *among the school district, private*
12 *school officials, and parents of paren-*
13 *tally placed private school children*
14 *with disabilities, including how such*
15 *process will operate throughout the*
16 *school year to ensure that parentally*
17 *placed children with disabilities identi-*
18 *fied through the child find process can*
19 *meaningfully participate in special*
20 *education and related services;*

21 *“(IV) how, where, and by whom*
22 *special education and related services*
23 *will be provided for parentally placed*
24 *private school children, including a*
25 *discussion of alternate service delivery*

1 *mechanisms, how such services will be*
2 *apportioned if funds are insufficient to*
3 *serve all children, and how and when*
4 *these decisions will be made; and*

5 *“(V) how, if the local educational*
6 *agency disagrees with the views of the*
7 *private school officials on the provision*
8 *of services through a contract, the local*
9 *educational agency shall provide to the*
10 *private school officials a written expla-*
11 *nation of the reasons why the local*
12 *educational agency chose not to pro-*
13 *vide services through a contract.*

14 *“(iv) WRITTEN AFFIRMATION.—When*
15 *timely and meaningful consultation as re-*
16 *quired by this section has occurred, the local*
17 *educational agency shall obtain a written*
18 *affirmation signed by the representatives of*
19 *participating private schools, and if such*
20 *officials do not provide such affirmation*
21 *within a reasonable period of time, the local*
22 *educational agency shall forward the docu-*
23 *mentation of the consultation process to the*
24 *State educational agency.*

25 *“(v) COMPLIANCE.—*

1 “(I) *IN GENERAL.*—A private
2 school official shall have the right to
3 complain to the State educational
4 agency that the local educational agen-
5 cy did not engage in consultation that
6 was meaningful and timely, or did not
7 give due consideration to the views of
8 the private school official.

9 “(II) *PROCEDURE.*—If the private
10 school official wishes to complain, the
11 official shall provide the basis of the
12 noncompliance with this section by the
13 local educational agency to the State
14 educational agency, and the local edu-
15 cational agency shall forward the ap-
16 propriate documentation to the State
17 educational agency. If the private
18 school official is dissatisfied with the
19 decision of the State educational agen-
20 cy, such official may complain to the
21 Secretary by providing the basis of the
22 noncompliance with this section by the
23 local educational agency to the Sec-
24 retary, and the State educational agen-

1 *cy shall forward the appropriate docu-*
2 *mentation to the Secretary.*

3 “(vi) *PROVISION OF EQUITABLE SERV-*
4 *ICES.—*

5 “(I) *DIRECT SERVICES.—To the*
6 *extent practicable, the local educational*
7 *agency shall provide direct services to*
8 *children with disabilities parentally*
9 *placed in private schools.*

10 “(II) *DIRECTLY OR THROUGH*
11 *CONTRACTS.—A public agency may*
12 *provide special education and related*
13 *services directly or through contracts*
14 *with public and private agencies, orga-*
15 *nizations, and institutions.*

16 “(III) *SECULAR, NEUTRAL, NON-*
17 *IDEOLOGICAL.—Special education and*
18 *related services provided to children*
19 *with disabilities attending private*
20 *schools, including materials and equip-*
21 *ment, shall be secular, neutral, and*
22 *nonideological.*

23 “(vii) *PUBLIC CONTROL OF FUNDS.—*
24 *The control of funds used to provide special*
25 *education and related services under this*

1 *section, and title to materials, equipment,*
2 *and property purchased with those funds,*
3 *shall be in a public agency for the uses and*
4 *purposes provided in this Act, and a public*
5 *agency shall administer the funds and*
6 *property.*

7 “(B) *CHILDREN PLACED IN, OR REFERRED*
8 *TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—*

9 “(i) *IN GENERAL.—Children with dis-*
10 *abilities in private schools and facilities are*
11 *provided special education and related serv-*
12 *ices, in accordance with an individualized*
13 *education program, at no cost to their par-*
14 *ents, if such children are placed in, or re-*
15 *ferred to, such schools or facilities by the*
16 *State or appropriate local educational agen-*
17 *cy as the means of carrying out the require-*
18 *ments of this part or any other applicable*
19 *law requiring the provision of special edu-*
20 *cation and related services to all children*
21 *with disabilities within such State.*

22 “(ii) *STANDARDS.—In all cases de-*
23 *scribed in clause (i), the State educational*
24 *agency shall determine whether such schools*
25 *and facilities meet standards that apply to*

1 *State and local educational agencies and*
2 *that children so served have all the rights*
3 *the children would have if served by such*
4 *agencies.*

5 “(C) *PAYMENT FOR EDUCATION OF CHIL-*
6 *DREN ENROLLED IN PRIVATE SCHOOLS WITHOUT*
7 *CONSENT OF OR REFERRAL BY THE PUBLIC*
8 *AGENCY.—*

9 “(i) *IN GENERAL.—Subject to subpara-*
10 *graph (A), this part does not require a local*
11 *educational agency to pay for the cost of*
12 *education, including special education and*
13 *related services, of a child with a disability*
14 *at a private school or facility if that agency*
15 *made a free appropriate public education*
16 *available to the child and the parents elect-*
17 *ed to place the child in such private school*
18 *or facility.*

19 “(ii) *REIMBURSEMENT FOR PRIVATE*
20 *SCHOOL PLACEMENT.—If the parents of a*
21 *child with a disability, who previously re-*
22 *ceived special education and related services*
23 *under the authority of a public agency, en-*
24 *roll the child in a private elementary school*
25 *or secondary school without the consent of*

1 or referral by the public agency, a court or
2 a hearing officer may require the agency to
3 reimburse the parents for the cost of that en-
4 rollment if the court or hearing officer finds
5 that the agency had not made a free appro-
6 priate public education available to the
7 child in a timely manner prior to that en-
8 rollment.

9 “(iii) *LIMITATION ON REIMBURSE-*
10 *MENT.—The cost of reimbursement described*
11 *in clause (ii) may be reduced or denied—*

12 “(I) *if—*

13 “(aa) *at the most recent IEP*
14 *meeting that the parents attended*
15 *prior to removal of the child from*
16 *the public school, the parents did*
17 *not inform the IEP Team that*
18 *they were rejecting the placement*
19 *proposed by the public agency to*
20 *provide a free appropriate public*
21 *education to their child, including*
22 *stating their concerns and their*
23 *intent to enroll their child in a*
24 *private school at public expense;*
25 *or*

1 “(bb) 10 business days (in-
2 cluding any holidays that occur
3 on a business day) prior to the re-
4 moval of the child from the public
5 school, the parents did not give
6 written notice to the public agen-
7 cy of the information described in
8 division (aa);

9 “(II) if, prior to the parents’ re-
10 moval of the child from the public
11 school, the public agency informed the
12 parents, through the notice require-
13 ments described in section 615(b)(3), of
14 its intent to evaluate the child (includ-
15 ing a statement of the purpose of the
16 evaluation that was appropriate and
17 reasonable), but the parents did not
18 make the child available for such eval-
19 uation; or

20 “(III) upon a judicial finding of
21 unreasonableness with respect to ac-
22 tions taken by the parents.

23 “(iv) *EXCEPTION.*—Notwithstanding
24 the notice requirement in clause (iii)(I), the
25 cost of reimbursement—

1 “(I) shall not be reduced or denied
2 for failure to provide such notice if—

3 “(aa) the school prevented the
4 parent from providing such no-
5 tice; or

6 “(bb) the parents had not re-
7 ceived notice, pursuant to section
8 615, of the notice requirement in
9 clause (iii)(I); and

10 “(II) may, in the discretion of a
11 court or a hearing officer, not be re-
12 duced or denied for failure to provide
13 such notice if—

14 “(aa) the parent is illiterate
15 and cannot write in English; or

16 “(bb) compliance with clause
17 (iii)(I) would likely have resulted
18 in physical or serious emotional
19 harm to the child.

20 “(11) STATE EDUCATIONAL AGENCY RESPON-
21 SIBLE FOR GENERAL SUPERVISION.—

22 “(A) IN GENERAL.—The State educational
23 agency is responsible for ensuring that—

24 “(i) the requirements of this part are
25 met; and

1 “(ii) all educational programs for chil-
2 dren with disabilities in the State, includ-
3 ing all such programs administered by any
4 other State or local agency—

5 “(I) are under the general super-
6 vision of individuals in the State who
7 are responsible for educational pro-
8 grams for children with disabilities;
9 and

10 “(II) meet the educational stand-
11 ards of the State educational agency.

12 “(B) *LIMITATION.*—Subparagraph (A) shall
13 not limit the responsibility of agencies in the
14 State other than the State educational agency to
15 provide, or pay for some or all of the costs of, a
16 free appropriate public education for any child
17 with a disability in the State.

18 “(C) *EXCEPTION.*—Notwithstanding sub-
19 paragraphs (A) and (B), the Governor (or an-
20 other individual pursuant to State law), con-
21 sistent with State law, may assign to any public
22 agency in the State the responsibility of ensuring
23 that the requirements of this part are met with
24 respect to children with disabilities who are con-

1 *victed as adults under State law and incarcerated*
2 *ated in adult prisons.*

3 “(12) *OBLIGATIONS RELATED TO AND METHODS*
4 *OF ENSURING SERVICES.—*

5 “(A) *ESTABLISHING RESPONSIBILITY FOR*
6 *SERVICES.—The Chief Executive Officer of a*
7 *State or designee of the officer shall ensure that*
8 *an interagency agreement or other mechanism*
9 *for interagency coordination is in effect between*
10 *each public agency described in subparagraph*
11 *(B) and the State educational agency, in order*
12 *to ensure that all services described in subpara-*
13 *graph (B)(i) that are needed to ensure a free ap-*
14 *propriate public education are provided, includ-*
15 *ing the provision of such services during the*
16 *pendency of any dispute under clause (iii). Such*
17 *agreement or mechanism shall include the fol-*
18 *lowing:*

19 “(i) *AGENCY FINANCIAL RESPONSIBI-*
20 *LITY.—An identification of, or a method*
21 *for defining, the financial responsibility of*
22 *each agency for providing services described*
23 *in subparagraph (B)(i) to ensure a free ap-*
24 *propriate public education to children with*
25 *disabilities, provided that the financial re-*

1 *sponsibility of each public agency described*
2 *in subparagraph (B), including the State*
3 *Medicaid agency and other public insurers*
4 *of children with disabilities, shall precede*
5 *the financial responsibility of the local edu-*
6 *cational agency (or the State agency re-*
7 *sponsible for developing the child's IEP).*

8 “(ii) *CONDITIONS AND TERMS OF RE-*
9 *IMBURSEMENT.—The conditions, terms, and*
10 *procedures under which a local educational*
11 *agency shall be reimbursed by other agen-*
12 *cies.*

13 “(iii) *INTERAGENCY DISPUTES.—Pro-*
14 *cedures for resolving interagency disputes*
15 *(including procedures under which local*
16 *educational agencies may initiate pro-*
17 *ceedings) under the agreement or other*
18 *mechanism to secure reimbursement from*
19 *other agencies or otherwise implement the*
20 *provisions of the agreement or mechanism.*

21 “(iv) *COORDINATION OF SERVICES*
22 *PROCEDURES.—Policies and procedures for*
23 *agencies to determine and identify the*
24 *interagency coordination responsibilities of*
25 *each agency to promote the coordination*

1 *and timely and appropriate delivery of*
2 *services described in subparagraph (B)(i).*

3 “(B) *OBLIGATION OF PUBLIC AGENCY.—*

4 “(i) *IN GENERAL.—If any public agen-*
5 *cy other than an educational agency is oth-*
6 *erwise obligated under Federal or State law,*
7 *or assigned responsibility under State pol-*
8 *icy pursuant to subparagraph (A), to pro-*
9 *vide or pay for any services that are also*
10 *considered special education or related serv-*
11 *ices (such as, but not limited to, services de-*
12 *scribed in section 602(1) relating to assist-*
13 *ive technology devices, 602(2) relating to as-*
14 *istive technology services, 602(25) relating*
15 *to related services, 602(32) relating to sup-*
16 *plementary aids and services, and 602(33)*
17 *relating to transition services) that are nec-*
18 *essary for ensuring a free appropriate pub-*
19 *lic education to children with disabilities*
20 *within the State, such public agency shall*
21 *fulfill that obligation or responsibility, ei-*
22 *ther directly or through contract or other*
23 *arrangement pursuant to subparagraph (A)*
24 *or an agreement pursuant to subparagraph*
25 *(C).*

1 “(i) *REIMBURSEMENT FOR SERVICES*
2 *BY PUBLIC AGENCY.*—If a public agency
3 other than an educational agency fails to
4 provide or pay for the special education and
5 related services described in clause (i), the
6 local educational agency (or State agency
7 responsible for developing the child’s IEP)
8 shall provide or pay for such services to the
9 child. Such local educational agency or
10 State agency is authorized to claim reim-
11 bursement for the services from the public
12 agency that failed to provide or pay for
13 such services and such public agency shall
14 reimburse the local educational agency or
15 State agency pursuant to the terms of the
16 interagency agreement or other mechanism
17 described in subparagraph (A)(i) according
18 to the procedures established in such agree-
19 ment pursuant to subparagraph (A)(ii).

20 “(C) *SPECIAL RULE.*—The requirements of
21 subparagraph (A) may be met through—

22 “(i) State statute or regulation;

23 “(ii) signed agreements between respec-
24 tive agency officials that clearly identify the

1 *responsibilities of each agency relating to*
2 *the provision of services; or*

3 *“(iii) other appropriate written meth-*
4 *ods as determined by the Chief Executive*
5 *Officer of the State or designee of the officer*
6 *and approved by the Secretary.*

7 *“(13) PROCEDURAL REQUIREMENTS RELATING*
8 *TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The*
9 *State educational agency will not make a final deter-*
10 *mination that a local educational agency is not eligi-*
11 *ble for assistance under this part without first afford-*
12 *ing that agency reasonable notice and an opportunity*
13 *for a hearing.*

14 *“(14) PERSONNEL STANDARDS.—*

15 *“(A) IN GENERAL.—The State educational*
16 *agency has established and maintains standards*
17 *to ensure that personnel necessary to carry out*
18 *this part are appropriately and adequately pre-*
19 *pared and trained, including that those per-*
20 *sonnel have the content knowledge and skills to*
21 *serve children with disabilities.*

22 *“(B) RELATED SERVICES PERSONNEL AND*
23 *PARAPROFESSIONALS.—The standards under*
24 *subparagraph (A) include standards for related*
25 *services personnel and paraprofessionals that—*

1 “(i) are consistent with any State-ap-
2 proved or State-recognized certification, li-
3 censing, registration, or other comparable
4 requirements that apply to the professional
5 discipline in which those personnel are pro-
6 viding special education or related services;

7 “(ii) ensure that related services per-
8 sonnel who deliver services in their dis-
9 cipline or profession meet the requirements
10 of clause (i) and have not had certification
11 or licensure requirements waived on an
12 emergency, temporary, or provisional basis;
13 and

14 “(iii) allow paraprofessionals and as-
15 sistants who are appropriately trained and
16 supervised, in accordance with State law,
17 regulation, or written policy, in meeting the
18 requirements of this part to be used to assist
19 in the provision of special education and re-
20 lated services under this part to children
21 with disabilities.

22 “(C) *STANDARDS FOR SPECIAL EDUCATION*
23 *TEACHERS.*—

24 “(i) *IN GENERAL.*—*The standards de-*
25 *scribed in subparagraph (A) shall ensure*

1 that each person employed as a special edu-
2 cation teacher in the State who teaches in
3 an elementary, middle, or secondary school
4 is highly qualified not later than the end of
5 the 2006–2007 school year.

6 “(ii) COMPLIANCE.—Notwithstanding
7 paragraphs (2) and (3) of section 1119(a) of
8 the Elementary and Secondary Education
9 Act of 1965, for purposes of determining
10 compliance with such paragraphs—

11 “(I) the Secretary, the State edu-
12 cational agency, and local educational
13 agencies shall apply the definition of
14 highly qualified in section 602(10) to
15 special education teachers; and

16 “(II) the State shall ensure that
17 all special education teachers teaching
18 in core academic subjects within the
19 State are highly qualified (as defined
20 in section 602(10)) not later than the
21 end of the 2006–2007 school year.

22 “(iii) PARENTS’ RIGHT TO KNOW.—In
23 carrying out section 1111(h)(6) of the Ele-
24 mentary and Secondary Education Act of

1 1965 with respect to special education
2 teachers, a local educational agency shall—

3 “(I) include in a response to a re-
4 quest under such section any addi-
5 tional information needed to dem-
6 onstrate that the teacher meets the ap-
7 plicable requirements of section
8 602(10) relating to certification or li-
9 censure as a special education teacher;
10 and

11 “(II) apply the definition of high-
12 ly qualified in section 602(10) in car-
13 rying out section 1111(h)(6)(B)(vi).

14 “(D) *POLICY.*—In implementing this sec-
15 tion, a State shall adopt a policy that includes
16 a requirement that local educational agencies in
17 the State take measurable steps to recruit, hire,
18 train, and retain highly qualified personnel to
19 provide special education and related services
20 under this part to children with disabilities.

21 “(E) *RULE OF CONSTRUCTION.*—Notwith-
22 standing any other individual right of action
23 that a parent or student may maintain under
24 this part, nothing in this subsection shall be con-
25 strued to create a right of action on behalf of an

1 *individual student for the failure of a particular*
2 *State educational agency or local educational*
3 *agency staff person to be highly qualified, or to*
4 *prevent a parent from filing a complaint about*
5 *staff qualifications with the State educational*
6 *agency as provided for under this part.*

7 “(15) *PERFORMANCE GOALS AND INDICATORS.*—

8 *The State—*

9 “(A) *has established goals for the perform-*
10 *ance of children with disabilities in the State*
11 *that—*

12 “(i) *promote the purposes of this Act,*
13 *as stated in section 601(d);*

14 “(ii) *are the same as the State’s defini-*
15 *tion of adequate yearly progress, including*
16 *the State’s objectives for progress by chil-*
17 *dren with disabilities, under section*
18 *1111(b)(2)(C) of the Elementary and Sec-*
19 *ondary Education Act of 1965;*

20 “(iii) *address graduation rates and*
21 *drop out rates, as well as such other factors*
22 *as the State may determine; and*

23 “(iv) *are consistent, to the extent ap-*
24 *propriate, with any other goals and stand-*
25 *ards for children established by the State;*

1 “(B) has established performance indicators
2 the State will use to assess progress toward
3 achieving the goals described in subparagraph
4 (A), including measurable annual objectives for
5 progress by children with disabilities under sec-
6 tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary
7 and Secondary Education Act of 1965; and

8 “(C) will annually report to the Secretary
9 and the public on the progress of the State, and
10 of children with disabilities in the State, toward
11 meeting the goals established under subpara-
12 graph (A).

13 “(16) PARTICIPATION IN ASSESSMENTS.—

14 “(A) IN GENERAL.— All children with dis-
15 abilities are included in all general State and
16 districtwide assessment programs and account-
17 ability systems, including assessments and ac-
18 countability systems described under section
19 1111 of the Elementary and Secondary Edu-
20 cation Act of 1965, with appropriate accom-
21 modations, alternate assessments where nec-
22 essary, and as indicated in their respective indi-
23 vidualized education programs.

24 “(B) ACCOMMODATION GUIDELINES.—The
25 State (or, in the case of a districtwide assess-

1 *ment, the local educational agency) has devel-*
2 *oped guidelines for the provision of appropriate*
3 *accommodations.*

4 “(C) *ALTERNATE ASSESSMENTS.—*

5 “(i) *IN GENERAL.—The State (or, in*
6 *the case of a districtwide assessment, the*
7 *local educational agency) has developed and*
8 *implemented guidelines for the participa-*
9 *tion of children with disabilities in alter-*
10 *nate assessments for those children who can-*
11 *not participate in regular assessments*
12 *under subparagraph (B) as indicated in*
13 *their respective individualized education*
14 *programs.*

15 “(ii) *REQUIREMENTS FOR ALTERNATE*
16 *ASSESSMENTS.—The guidelines under*
17 *clause (i) shall provide for alternate assess-*
18 *ments that—*

19 “(I) *are aligned with the State’s*
20 *challenging academic content and aca-*
21 *ademic achievement standards; and*

22 “(II) *if the State has adopted al-*
23 *ternate academic achievement stand-*
24 *ards permitted under section*
25 *1111(b)(1) of the Elementary and Sec-*

1 *ondary Education Act of 1965, meas-*
2 *ure the achievement of children with*
3 *disabilities against those standards.*

4 “(iii) *CONDUCT OF ALTERNATIVE AS-*
5 *SESSMENTS.—The State conducts the alter-*
6 *nate assessments described in this subpara-*
7 *graph.*

8 “(D) *REPORTS.—The State educational*
9 *agency (or, in the case of a districtwide assess-*
10 *ment, the local educational agency) makes avail-*
11 *able to the public, and reports to the public with*
12 *the same frequency and in the same detail as it*
13 *reports on the assessment of nondisabled chil-*
14 *dren, the following:*

15 “(i) *The number of children with dis-*
16 *abilities participating in regular assess-*
17 *ments, and the number of those children*
18 *who were provided accommodations in*
19 *order to participate in those assessments.*

20 “(ii) *The number of children with dis-*
21 *abilities participating in alternate assess-*
22 *ments described in subparagraph (C)(ii)(I).*

23 “(iii) *The number of children with dis-*
24 *abilities participating in alternate assess-*

1 ments described in subparagraph
2 (C)(ii)(II).

3 “(iv) *The performance of children with*
4 *disabilities on regular assessments and on*
5 *alternate assessments (if the number of chil-*
6 *dren with disabilities participating in those*
7 *assessments is sufficient to yield statis-*
8 *tically reliable information and reporting*
9 *that information will not reveal personally*
10 *identifiable information about an indi-*
11 *vidual student), compared with the achieve-*
12 *ment of all children, including children*
13 *with disabilities, on those assessments.*

14 “(E) *UNIVERSAL DESIGN.—The State edu-*
15 *cational agency (or, in the case of a districtwide*
16 *assessment, the local educational agency) shall,*
17 *to the extent feasible, use universal design prin-*
18 *ciples in developing and administering any as-*
19 *sessments under this paragraph.*

20 “(17) *SUPPLEMENTATION OF STATE, LOCAL, AND*
21 *OTHER FEDERAL FUNDS.—*

22 “(A) *EXPENDITURES.—Funds paid to a*
23 *State under this part will be expended in accord-*
24 *ance with all the provisions of this part.*

1 “(B) *PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part*
2 *will not be commingled with State funds.*

3
4 “(C) *PROHIBITION AGAINST SUPPLANTATION*
5 *AND CONDITIONS FOR WAIVER BY SECRETARY.—*
6 *Except as provided in section 613, funds paid to*
7 *a State under this part will be used to supple-*
8 *ment the level of Federal, State, and local funds*
9 *(including funds that are not under the direct*
10 *control of State or local educational agencies) ex-*
11 *pended for special education and related services*
12 *provided to children with disabilities under this*
13 *part and in no case to supplant such Federal,*
14 *State, and local funds, except that, where the*
15 *State provides clear and convincing evidence*
16 *that all children with disabilities have available*
17 *to them a free appropriate public education, the*
18 *Secretary may waive, in whole or in part, the*
19 *requirements of this subparagraph if the Sec-*
20 *retary concurs with the evidence provided by the*
21 *State.*

22 “(18) *MAINTENANCE OF STATE FINANCIAL SUP-*
23 *PORT.—*

24 “(A) *IN GENERAL.—The State does not re-*
25 *duce the amount of State financial support for*

1 *special education and related services for chil-*
2 *dren with disabilities, or otherwise made avail-*
3 *able because of the excess costs of educating those*
4 *children, below the amount of that support for*
5 *the preceding fiscal year.*

6 “(B) *REDUCTION OF FUNDS FOR FAILURE*
7 *TO MAINTAIN SUPPORT.—The Secretary shall re-*
8 *duce the allocation of funds under section 611 for*
9 *any fiscal year following the fiscal year in which*
10 *the State fails to comply with the requirement of*
11 *subparagraph (A) by the same amount by which*
12 *the State fails to meet the requirement.*

13 “(C) *WAIVERS FOR EXCEPTIONAL OR UN-*
14 *CONTROLLABLE CIRCUMSTANCES.—The Secretary*
15 *may waive the requirement of subparagraph (A)*
16 *for a State, for 1 fiscal year at a time, if the*
17 *Secretary determines that—*

18 “(i) *granting a waiver would be equi-*
19 *table due to exceptional or uncontrollable*
20 *circumstances such as a natural disaster or*
21 *a precipitous and unforeseen decline in the*
22 *financial resources of the State; or*

23 “(ii) *the State meets the standard in*
24 *paragraph (17)(C) for a waiver of the re-*

1 *quirement to supplement, and not to sup-*
2 *plant, funds received under this part.*

3 *“(D) SUBSEQUENT YEARS.—If, for any*
4 *year, a State fails to meet the requirement of*
5 *subparagraph (A), including any year for which*
6 *the State is granted a waiver under subpara-*
7 *graph (C), the financial support required of the*
8 *State in future years under subparagraph (A)*
9 *shall be the amount that would have been re-*
10 *quired in the absence of that failure and not the*
11 *reduced level of the State’s support.*

12 *“(19) PUBLIC PARTICIPATION.—Prior to the*
13 *adoption of any policies and procedures needed to*
14 *comply with this section (including any amendments*
15 *to such policies and procedures), the State ensures*
16 *that there are public hearings, adequate notice of the*
17 *hearings, and an opportunity for comment available*
18 *to the general public, including individuals with dis-*
19 *abilities and parents of children with disabilities.*

20 *“(20) STATE ADVISORY PANEL.—*

21 *“(A) IN GENERAL.—The State has estab-*
22 *lished and maintains an advisory panel for the*
23 *purpose of providing policy guidance with re-*
24 *spect to special education and related services for*
25 *children with disabilities in the State.*

1 “(B) *MEMBERSHIP.*—Such advisory panel
2 shall consist of members appointed by the Gov-
3 ernor, or any other official authorized under
4 State law to make such appointments, that is
5 representative of the State population and that
6 is composed of individuals involved in, or con-
7 cerned with, the education of children with dis-
8 abilities, including—

9 “(i) parents of children with disabil-
10 ities ages birth through 26, including not
11 less than 1 foster parent of a child with dis-
12 abilities who is a ward of the State, not less
13 than 1 grandparent or other relative who is
14 acting in the place of a natural or adoptive
15 parent, and not less than 1 representative of
16 children with disabilities in military fami-
17 lies;

18 “(ii) individuals with disabilities;

19 “(iii) teachers;

20 “(iv) representatives of institutions of
21 higher education that prepare special edu-
22 cation and related services personnel;

23 “(v) State and local education officials,
24 including officials who carry out activities

1 *under subtitle B of title VII of the McKin-*
2 *ney-Vento Homeless Assistance Act;*

3 “*(vi) administrators of programs for*
4 *children with disabilities;*

5 “*(vii) representatives of other State*
6 *agencies involved in the financing or deliv-*
7 *ery of related services to children with dis-*
8 *abilities;*

9 “*(viii) representatives of private*
10 *schools and public charter schools;*

11 “*(ix) at least 1 representative of a vo-*
12 *cational, community, or business organiza-*
13 *tion concerned with the provision of transi-*
14 *tion services to children with disabilities;*
15 *and*

16 “*(x) representatives from the State ju-*
17 *venile and adult corrections agencies.*

18 “*(xi) representatives from the State*
19 *child welfare agency; and*

20 “*(xii) a representative of wards of the*
21 *State who are in foster care, such as an at-*
22 *torney for children in foster care, a guard-*
23 *ian ad litem, a court appointed special ad-*
24 *vocate, or a judge.*

1 “(C) *SPECIAL RULE.*—A majority of the
2 members of the panel shall be individuals with
3 disabilities ages birth through 26 or parents of
4 such individuals.

5 “(D) *DUTIES.*—The advisory panel shall—

6 “(i) advise the State educational agen-
7 cy of unmet needs within the State in the
8 education of children with disabilities;

9 “(ii) comment publicly on any rules or
10 regulations proposed by the State regarding
11 the education of children with disabilities;

12 “(iii) advise the State educational
13 agency in developing evaluations and re-
14 porting on data to the Secretary under sec-
15 tion 618;

16 “(iv) advise the State educational
17 agency in developing corrective action plans
18 to address findings identified in Federal
19 monitoring reports under this part; and

20 “(v) advise the State educational agen-
21 cy in developing and implementing policies
22 relating to the coordination of services for
23 children with disabilities.

24 “(21) *SUSPENSION AND EXPULSION RATES.*—

1 “(A) *IN GENERAL.*—*The State educational*
2 *agency examines data to determine if significant*
3 *discrepancies are occurring in the rate of long-*
4 *term suspensions and expulsions of children with*
5 *disabilities—*

6 “(i) *among local educational agencies*
7 *in the State; or*

8 “(ii) *compared to such rates for non-*
9 *disabled children within such agencies.*

10 “(B) *REVIEW AND REVISION OF POLICIES.*—
11 *If such discrepancies are occurring, the State*
12 *educational agency reviews and, if appropriate,*
13 *revises (or requires the affected State or local*
14 *educational agency to revise) its policies, proce-*
15 *dures, and practices relating to the development*
16 *and implementation of IEPs, the use of behav-*
17 *ioral interventions, and procedural safeguards,*
18 *to ensure that such policies, procedures, and*
19 *practices comply with this Act.*

20 “(22) *ACCESS TO INSTRUCTIONAL MATERIALS.*—

21 “(A) *IN GENERAL.*—*The State adopts the*
22 *national Instructional Materials Accessibility*
23 *Standard described in section 675(a) for the pur-*
24 *poses of providing instructional materials to*
25 *blind persons or other persons with print disabil-*

1 *ities in a timely manner after the publication of*
2 *the standard in the Federal Register.*

3 “(B) *PREPARATION AND DELIVERY OF*
4 *FILES.—Not later than 2 years after the date of*
5 *enactment of the Individuals with Disabilities*
6 *Education Improvement Act of 2004, a State*
7 *educational agency, as part of any print instruc-*
8 *tional materials adoption process, procurement*
9 *contract, or other practice or instrument used for*
10 *purchase of print instructional materials, enters*
11 *into a written contract with the publisher of the*
12 *print instructional materials to—*

13 “(i) *prepare, and on or before delivery*
14 *of the print instructional materials, provide*
15 *to the National Instructional Materials Ac-*
16 *cess Center, established pursuant to section*
17 *675(b), electronic files containing the con-*
18 *tents of the print instructional materials*
19 *using the Instructional Materials Accessi-*
20 *bility Standard; or*

21 “(ii) *purchase instructional materials*
22 *from a publisher that are produced in or*
23 *may be rendered in the specialized formats*
24 *described in section 675(a)(4)(C).*

1 “(C) *ASSISTIVE TECHNOLOGY.*—*In carrying*
2 *out subparagraph (B), the State educational*
3 *agency, to the maximum extent possible, shall*
4 *work collaboratively with the State agency re-*
5 *sponsible for assistive technology programs.*

6 “(b) *STATE EDUCATIONAL AGENCY AS PROVIDER OF*
7 *FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERV-*
8 *ICES.*—*If the State educational agency provides free appro-*
9 *priate public education to children with disabilities, or pro-*
10 *vides direct services to such children, such agency—*

11 “(1) *shall comply with any additional require-*
12 *ments of section 613(a), as if such agency were a local*
13 *educational agency; and*

14 “(2) *may use amounts that are otherwise avail-*
15 *able to such agency under this part to serve those chil-*
16 *dren without regard to section 613(a)(2)(A)(i) (relat-*
17 *ing to excess costs).*

18 “(c) *EXCEPTION FOR PRIOR STATE PLANS.*—

19 “(1) *IN GENERAL.*—*If a State has on file with*
20 *the Secretary policies and procedures that dem-*
21 *onstrate that such State meets any requirement of*
22 *subsection (a), including any policies and procedures*
23 *filed under this part as in effect before the effective*
24 *date of the Individuals with Disabilities Education*
25 *Improvement Act of 2004, the Secretary shall consider*

1 *such State to have met such requirement for purposes*
2 *of receiving a grant under this part.*

3 “(2) *MODIFICATIONS MADE BY STATE.*—Subject
4 *to paragraph (3), an application submitted by a*
5 *State in accordance with this section shall remain in*
6 *effect until the State submits to the Secretary such*
7 *modifications as the State determines necessary. This*
8 *section shall apply to a modification to an applica-*
9 *tion to the same extent and in the same manner as*
10 *this section applies to the original plan.*

11 “(3) *MODIFICATIONS REQUIRED BY THE SEC-*
12 *RETARY.*—If, after the effective date of the *Individuals*
13 *with Disabilities Education Improvement Act of*
14 *2004, the provisions of this Act are amended (or the*
15 *regulations developed to carry out this Act are*
16 *amended), there is a new interpretation of this Act by*
17 *a Federal court or a State’s highest court, or there is*
18 *an official finding of noncompliance with Federal law*
19 *or regulations, then the Secretary may require a*
20 *State to modify its application only to the extent nec-*
21 *essary to ensure the State’s compliance with this part.*

22 “(d) *APPROVAL BY THE SECRETARY.*—

23 “(1) *IN GENERAL.*—If the Secretary determines
24 *that a State is eligible to receive a grant under this*

1 *part, the Secretary shall notify the State of that deter-*
2 *mination.*

3 “(2) *NOTICE AND HEARING.*—*The Secretary shall*
4 *not make a final determination that a State is not*
5 *eligible to receive a grant under this part until after*
6 *providing the State—*

7 “(A) *with reasonable notice; and*

8 “(B) *with an opportunity for a hearing.*

9 “(e) *ASSISTANCE UNDER OTHER FEDERAL PRO-*
10 *GRAMS.*—*Nothing in this title permits a State to reduce*
11 *medical and other assistance available, or to alter eligi-*
12 *bility, under titles V and XIX of the Social Security Act*
13 *with respect to the provision of a free appropriate public*
14 *education for children with disabilities in the State.*

15 “(f) *BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.*—

16 “(1) *IN GENERAL.*—*If, on the date of enactment*
17 *of the Education of the Handicapped Act Amend-*
18 *ments of 1983, a State educational agency was pro-*
19 *hibited by law from providing for the equitable par-*
20 *ticipation in special programs of children with dis-*
21 *abilities enrolled in private elementary schools and*
22 *secondary schools as required by subsection*
23 *(a)(10)(A), or if the Secretary determines that a State*
24 *educational agency, local educational agency, or other*
25 *entity has substantially failed or is unwilling to pro-*

1 *vide for such equitable participation, then the Sec-*
2 *retary shall, notwithstanding such provision of law,*
3 *arrange for the provision of services to such children*
4 *through arrangements which shall be subject to the re-*
5 *quirements of such subsection.*

6 “(2) *PAYMENTS.*—

7 “(A) *DETERMINATION OF AMOUNTS.*—*If the*
8 *Secretary arranges for services pursuant to this*
9 *subsection, the Secretary, after consultation with*
10 *the appropriate public and private school offi-*
11 *cial, shall pay to the provider of such services*
12 *for a fiscal year an amount per child that does*
13 *not exceed the amount determined by dividing—*

14 “(i) *the total amount received by the*
15 *State under this part for such fiscal year;*
16 *by*

17 “(ii) *the number of children with dis-*
18 *abilities served in the prior year, as re-*
19 *ported to the Secretary by the State under*
20 *section 618.*

21 “(B) *WITHHOLDING OF CERTAIN*
22 *AMOUNTS.*—*Pending final resolution of any in-*
23 *vestigation or complaint that may result in a de-*
24 *termination under this subsection, the Secretary*
25 *may withhold from the allocation of the affected*

1 *State educational agency the amount the Sec-*
2 *retary estimates will be necessary to pay the cost*
3 *of services described in subparagraph (A).*

4 “(C) *PERIOD OF PAYMENTS.*—*The period*
5 *under which payments are made under subpara-*
6 *graph (A) shall continue until the Secretary de-*
7 *termines that there will no longer be any failure*
8 *or inability on the part of the State educational*
9 *agency to meet the requirements of subsection*
10 *(a)(10)(A).*

11 “(3) *NOTICE AND HEARING.*—

12 “(A) *IN GENERAL.*—*The Secretary shall not*
13 *take any final action under this subsection until*
14 *the State educational agency affected by such ac-*
15 *tion has had an opportunity, for at least 45 days*
16 *after receiving written notice thereof, to submit*
17 *written objections and to appear before the Sec-*
18 *retary or the Secretary’s designee to show cause*
19 *why such action should not be taken.*

20 “(B) *REVIEW OF ACTION.*—*If a State edu-*
21 *cational agency is dissatisfied with the Sec-*
22 *retary’s final action after a proceeding under*
23 *subparagraph (A), such agency may, not later*
24 *than 60 days after notice of such action, file with*
25 *the United States court of appeals for the circuit*

1 *in which such State is located a petition for re-*
2 *view of that action. A copy of the petition shall*
3 *be forthwith transmitted by the clerk of the court*
4 *to the Secretary. The Secretary thereupon shall*
5 *file in the court the record of the proceedings on*
6 *which the Secretary based the Secretary's action,*
7 *as provided in section 2112 of title 28, United*
8 *States Code.*

9 “(C) *REVIEW OF FINDINGS OF FACT.—The*
10 *findings of fact by the Secretary, if supported by*
11 *substantial evidence, shall be conclusive, but the*
12 *court, for good cause shown, may remand the*
13 *case to the Secretary to take further evidence,*
14 *and the Secretary may thereupon make new or*
15 *modified findings of fact and may modify the*
16 *Secretary's previous action, and shall file in the*
17 *court the record of the further proceedings. Such*
18 *new or modified findings of fact shall likewise be*
19 *conclusive if supported by substantial evidence.*

20 “(D) *JURISDICTION OF COURT OF APPEALS;*
21 *REVIEW BY UNITED STATES SUPREME COURT.—*
22 *Upon the filing of a petition under subpara-*
23 *graph (B), the United States court of appeals*
24 *shall have jurisdiction to affirm the action of the*
25 *Secretary or to set it aside, in whole or in part.*

1 *The judgment of the court shall be subject to re-*
2 *view by the Supreme Court of the United States*
3 *upon certiorari or certification as provided in*
4 *section 1254 of title 28, United States Code.*

5 **“SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

6 “(a) *IN GENERAL.*—*A local educational agency is eli-*
7 *gible for assistance under this part for a fiscal year if such*
8 *agency submits a plan that provides assurances to the State*
9 *educational agency that the local educational agency meets*
10 *each of the following conditions:*

11 “(1) *CONSISTENCY WITH STATE POLICIES.*—*The*
12 *local educational agency, in providing for the edu-*
13 *cation of children with disabilities within its jurisdic-*
14 *tion, has in effect policies, procedures, and programs*
15 *that are consistent with the State policies and proce-*
16 *dures established under section 612.*

17 “(2) *USE OF AMOUNTS.*—

18 “(A) *IN GENERAL.*—*Amounts provided to*
19 *the local educational agency under this part*
20 *shall be expended in accordance with the appli-*
21 *cable provisions of this part and—*

22 “(i) *shall be used only to pay the excess*
23 *costs of providing special education and re-*
24 *lated services to children with disabilities;*

1 “(ii) shall be used to supplement State,
2 local, and other Federal funds and not to
3 supplant such funds; and

4 “(iii) shall not be used, except as pro-
5 vided in subparagraphs (B) and (C), to re-
6 duce the level of expenditures for the edu-
7 cation of children with disabilities made by
8 the local educational agency from local
9 funds below the level of those expenditures
10 for the preceding fiscal year.

11 “(B) EXCEPTION.—Notwithstanding the re-
12 striction in subparagraph (A)(iii), a local edu-
13 cational agency may reduce the level of expendi-
14 tures where such reduction is attributable to—

15 “(i) the voluntary departure, by retire-
16 ment or otherwise, or departure for just
17 cause, of special education personnel;

18 “(ii) a decrease in the enrollment of
19 children with disabilities;

20 “(iii) the termination of the obligation
21 of the agency, consistent with this part, to
22 provide a program of special education to a
23 particular child with a disability that is an
24 exceptionally costly program, as determined

1 by the State educational agency, because the
2 child—

3 “(I) has left the jurisdiction of the
4 agency;

5 “(II) has reached the age at which
6 the obligation of the agency to provide
7 a free appropriate public education to
8 the child has terminated; or

9 “(III) no longer needs such pro-
10 gram of special education; or

11 “(iv) the termination of costly expendi-
12 tures for long-term purchases, such as the
13 acquisition of equipment or the construction
14 of school facilities.

15 “(C) TREATMENT OF FEDERAL FUNDS IN
16 CERTAIN FISCAL YEARS.—

17 “(i) 8 PERCENT RULE.—Notwith-
18 standing clauses (ii) and (iii) of subpara-
19 graph (A), a local educational agency may
20 treat as local funds, for the purposes of such
21 clauses, not more than 8 percent of the
22 amount of funds the local educational agen-
23 cy receives under this part.

24 “(ii) 40 PERCENT RULE.—Notwith-
25 standing clauses (ii) and (iii) of subpara-

1 *graph (A), for any fiscal year for which*
2 *States are allocated the maximum amount*
3 *of grants pursuant to section 611(a)(2), a*
4 *local educational agency may treat as local*
5 *funds, for the purposes of such clauses, not*
6 *more than 40 percent of the amount of*
7 *funds the local educational agency receives*
8 *under this part, subject to clause (iv).*

9 *“(iii) EARLY INTERVENING SERV-*
10 *ICES.—*

11 *“(I) 8 PERCENT RULE.—If a local*
12 *educational agency exercises authority*
13 *pursuant to clause (i), the 8 percent*
14 *funds shall be counted toward the per-*
15 *centage and amount of funds that may*
16 *be used to provide early intervening*
17 *educational services pursuant to sub-*
18 *section (f).*

19 *“(II) 40 PERCENT RULE.—If a*
20 *local educational agency exercises au-*
21 *thority pursuant to clause (ii), the*
22 *local educational agency shall use an*
23 *amount of the 40 percent funds from*
24 *clause (ii) that represents 15 percent of*
25 *the total amount of funds the local edu-*

1 *cational agency receives under this*
2 *part, to provide early intervening edu-*
3 *cational services pursuant to subsection*
4 *(f).*

5 “(iv) *SPECIAL RULE.—Funds treated*
6 *as local funds pursuant to clause (i) or (ii)*
7 *may be considered non-Federal or local*
8 *funds for the purposes of—*

9 “(I) *clauses (ii) and (iii) of sub-*
10 *paragraph (A); and*

11 “(II) *the provision of the local*
12 *share of costs for title XIX of the Social*
13 *Security Act.*

14 “(v) *REPORT.—For each fiscal year in*
15 *which a local educational agency exercises*
16 *its authority pursuant to this subparagraph*
17 *and treats Federal funds as local funds, the*
18 *local educational agency shall report to the*
19 *State educational agency the amount of*
20 *funds so treated and the activities that were*
21 *funded with such funds.*

22 “(D) *SCHOOLWIDE PROGRAMS UNDER TITLE*
23 *I OF THE ESEA.—Notwithstanding subparagraph*
24 *(A) or any other provision of this part, a local*
25 *educational agency may use funds received under*

1 *this part for any fiscal year to carry out a*
2 *schoolwide program under section 1114 of the*
3 *Elementary and Secondary Education Act of*
4 *1965, except that the amount so used in any*
5 *such program shall not exceed—*

6 *“(i) the number of children with dis-*
7 *abilities participating in the schoolwide*
8 *program; multiplied by*

9 *“(ii)(I) the amount received by the*
10 *local educational agency under this part for*
11 *that fiscal year; divided by*

12 *“(II) the number of children with dis-*
13 *abilities in the jurisdiction of that agency.*

14 *“(3) PERSONNEL DEVELOPMENT.—The local edu-*
15 *cational agency shall ensure that all personnel nec-*
16 *essary to carry out this part are appropriately and*
17 *adequately prepared, consistent with the requirements*
18 *of section 612(a)(14) of this Act and section 2122 of*
19 *the Elementary and Secondary Education Act of*
20 *1965.*

21 *“(4) PERMISSIVE USE OF FUNDS.—*

22 *“(A) USES.—Notwithstanding paragraph*
23 *(2)(A) or section 612(a)(17)(B) (relating to com-*
24 *mingled funds), funds provided to the local edu-*

1 *cational agency under this part may be used for*
2 *the following activities:*

3 “(i) *SERVICES AND AIDS THAT ALSO*
4 *BENEFIT NONDISABLED CHILDREN.—For*
5 *the costs of special education and related*
6 *services, and supplementary aids and serv-*
7 *ices, provided in a regular class or other*
8 *education-related setting to a child with a*
9 *disability in accordance with the individ-*
10 *ualized education program of the child, even*
11 *if 1 or more nondisabled children benefit*
12 *from such services.*

13 “(ii) *EARLY INTERVENING SERVICES.—*
14 *To develop and implement coordinated,*
15 *early intervening educational services in ac-*
16 *cordance with subsection (f).*

17 “(B) *ADMINISTRATIVE CASE MANAGE-*
18 *MENT.—A local educational agency may use*
19 *funds received under this part to purchase ap-*
20 *propriate technology for recordkeeping, data col-*
21 *lection, and related case management activities*
22 *of teachers and related services personnel pro-*
23 *viding services described in the individualized*
24 *education program of children with disabilities,*

1 *that is needed for the implementation of such*
2 *case management activities.*

3 “(5) *TREATMENT OF CHARTER SCHOOLS AND*
4 *THEIR STUDENTS.—In carrying out this part with re-*
5 *spect to charter schools that are public schools of the*
6 *local educational agency, the local educational agen-*
7 *cy—*

8 “(A) *serves children with disabilities at-*
9 *tending those charter schools in the same manner*
10 *as the local educational agency serves children*
11 *with disabilities in its other schools, including*
12 *providing supplementary and related services on*
13 *site at the charter school to the same extent to*
14 *which the local educational agency has a policy*
15 *or practice of providing such services on the site*
16 *to its other public schools; and*

17 “(B) *provides funds under this part to those*
18 *charter schools on the same basis, including pro-*
19 *portional distribution based on relative enroll-*
20 *ment of children with disabilities, and at the*
21 *same time, as the local educational agency dis-*
22 *tributes State, local, or a combination of State*
23 *and local, funds to those charter schools under*
24 *the State’s charter school law.*

1 “(6) *PURCHASE OF INSTRUCTIONAL MATE-*
2 *RIALS.—Not later than 2 years after the date of en-*
3 *actment of the Individuals with Disabilities Edu-*
4 *cation Improvement Act of 2004, a local educational*
5 *agency, when purchasing print instructional mate-*
6 *rials, acquires these instructional materials in the*
7 *same manner as a State educational agency described*
8 *in section 612(a)(22).*

9 “(7) *INFORMATION FOR STATE EDUCATIONAL*
10 *AGENCY.—The local educational agency shall provide*
11 *the State educational agency with information nec-*
12 *essary to enable the State educational agency to carry*
13 *out its duties under this part, including, with respect*
14 *to paragraphs (15) and (16) of section 612(a), infor-*
15 *mation relating to the performance of children with*
16 *disabilities participating in programs carried out*
17 *under this part.*

18 “(8) *PUBLIC INFORMATION.—The local edu-*
19 *cational agency shall make available to parents of*
20 *children with disabilities and to the general public all*
21 *documents relating to the eligibility of such agency*
22 *under this part.*

23 “(9) *RECORDS REGARDING MIGRATORY CHIL-*
24 *DREN WITH DISABILITIES.—The local educational*
25 *agency shall cooperate in the Secretary’s efforts under*

1 *section 1308 of the Elementary and Secondary Edu-*
2 *cation Act of 1965 (20 U.S.C. 6398) to ensure the*
3 *linkage of records pertaining to migratory children*
4 *with a disability for the purpose of electronically ex-*
5 *changing, among the States, health and educational*
6 *information regarding such children.*

7 *“(b) EXCEPTION FOR PRIOR LOCAL PLANS.—*

8 *“(1) IN GENERAL.—If a local educational agency*
9 *or State agency has on file with the State educational*
10 *agency policies and procedures that demonstrate that*
11 *such local educational agency, or such State agency,*
12 *as the case may be, meets any requirement of sub-*
13 *section (a), including any policies and procedures*
14 *filed under this part as in effect before the effective*
15 *date of the Individuals with Disabilities Education*
16 *Improvement Act of 2004, the State educational agen-*
17 *cy shall consider such local educational agency or*
18 *State agency, as the case may be, to have met such*
19 *requirement for purposes of receiving assistance under*
20 *this part.*

21 *“(2) MODIFICATION MADE BY LOCAL EDU-*
22 *CATIONAL AGENCY.—Subject to paragraph (3), an ap-*
23 *plication submitted by a local educational agency in*
24 *accordance with this section shall remain in effect*
25 *until the local educational agency submits to the*

1 *State educational agency such modifications as the*
2 *local educational agency determines necessary.*

3 “(3) *MODIFICATIONS REQUIRED BY STATE EDU-*
4 *CATIONAL AGENCY.—If, after the effective date of the*
5 *Individuals with Disabilities Education Improvement*
6 *Act of 2004, the provisions of this Act are amended*
7 *(or the regulations developed to carry out this Act are*
8 *amended), there is a new interpretation of this Act by*
9 *Federal or State courts, or there is an official finding*
10 *of noncompliance with Federal or State law or regu-*
11 *lations, then the State educational agency may re-*
12 *quire a local educational agency to modify its appli-*
13 *cation only to the extent necessary to ensure the local*
14 *educational agency’s compliance with this part or*
15 *State law.*

16 “(c) *NOTIFICATION OF LOCAL EDUCATIONAL AGENCY*
17 *OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the*
18 *State educational agency determines that a local edu-*
19 *cational agency or State agency is not eligible under this*
20 *section, then the State educational agency shall notify the*
21 *local educational agency or State agency, as the case may*
22 *be, of that determination and shall provide such local edu-*
23 *cational agency or State agency with reasonable notice and*
24 *an opportunity for a hearing.*

25 “(d) *LOCAL EDUCATIONAL AGENCY COMPLIANCE.—*

1 “(1) *IN GENERAL.*—*If the State educational*
2 *agency, after reasonable notice and an opportunity*
3 *for a hearing, finds that a local educational agency*
4 *or State agency that has been determined to be eligi-*
5 *ble under this section is failing to comply with any*
6 *requirement described in subsection (a), the State*
7 *educational agency shall reduce or shall not provide*
8 *any further payments to the local educational agency*
9 *or State agency until the State educational agency is*
10 *satisfied that the local educational agency or State*
11 *agency, as the case may be, is complying with that*
12 *requirement.*

13 “(2) *ADDITIONAL REQUIREMENT.*—*Any State*
14 *agency or local educational agency in receipt of a no-*
15 *tice described in paragraph (1) shall, by means of*
16 *public notice, take such measures as may be necessary*
17 *to bring the pendency of an action pursuant to this*
18 *subsection to the attention of the public within the ju-*
19 *risdiction of such agency.*

20 “(3) *CONSIDERATION.*—*In carrying out its re-*
21 *sponsibilities under paragraph (1), the State edu-*
22 *cational agency shall consider any decision made in*
23 *a hearing held under section 615 that is adverse to*
24 *the local educational agency or State agency involved*
25 *in that decision.*

1 “(e) *JOINT ESTABLISHMENT OF ELIGIBILITY.*—

2 “(1) *JOINT ESTABLISHMENT.*—

3 “(A) *IN GENERAL.*—*A State educational*
4 *agency may require a local educational agency*
5 *to establish its eligibility jointly with another*
6 *local educational agency if the State educational*
7 *agency determines that the local educational*
8 *agency will be ineligible under this section be-*
9 *cause the local educational agency will not be*
10 *able to establish and maintain programs of suffi-*
11 *cient size and scope to effectively meet the needs*
12 *of children with disabilities.*

13 “(B) *CHARTER SCHOOL EXCEPTION.*—*A*
14 *State educational agency may not require a*
15 *charter school that is a local educational agency*
16 *to jointly establish its eligibility under subpara-*
17 *graph (A) unless the charter school is explicitly*
18 *permitted to do so under the State’s charter*
19 *school law.*

20 “(2) *AMOUNT OF PAYMENTS.*—*If a State edu-*
21 *cational agency requires the joint establishment of eli-*
22 *gibility under paragraph (1), the total amount of*
23 *funds made available to the affected local educational*
24 *agencies shall be equal to the sum of the payments*
25 *that each such local educational agency would have*

1 *received under section 611(f) if such agencies were eli-*
2 *gible for such payments.*

3 “(3) *REQUIREMENTS.*—*Local educational agen-*
4 *cies that establish joint eligibility under this sub-*
5 *section shall—*

6 “(A) *adopt policies and procedures that are*
7 *consistent with the State’s policies and proce-*
8 *dures under section 612(a); and*

9 “(B) *be jointly responsible for implementing*
10 *programs that receive assistance under this part.*

11 “(4) *REQUIREMENTS FOR EDUCATIONAL SERVICE*
12 *AGENCIES.*—

13 “(A) *IN GENERAL.*—*If an educational serv-*
14 *ice agency is required by State law to carry out*
15 *programs under this part, the joint responsibil-*
16 *ities given to local educational agencies under*
17 *this subsection shall—*

18 “(i) *not apply to the administration*
19 *and disbursement of any payments received*
20 *by that educational service agency; and*

21 “(ii) *be carried out only by that edu-*
22 *cational service agency.*

23 “(B) *ADDITIONAL REQUIREMENT.*—*Not-*
24 *withstanding any other provision of this sub-*
25 *section, an educational service agency shall pro-*

1 *vide for the education of children with disabil-*
2 *ities in the least restrictive environment, as re-*
3 *quired by section 612(a)(5).*

4 “(f) *EARLY INTERVENING SERVICES.*—

5 “(1) *IN GENERAL.*—*A local educational agency*
6 *may not use more than 15 percent of the amount such*
7 *agency receives under this part for any fiscal year,*
8 *less any amount treated as local funds pursuant to*
9 *subsection (a)(2)(C), if any, in combination with*
10 *other amounts (which may include amounts other*
11 *than education funds), to develop and implement co-*
12 *ordinated, early intervening services, which may in-*
13 *clude interagency financing structures, for students in*
14 *kindergarten through grade 12 (with a particular em-*
15 *phasis on students in kindergarten through grade 3)*
16 *who do not meet the definition of a child with a dis-*
17 *ability under section 602(3) but who need additional*
18 *academic and behavioral support to succeed in a gen-*
19 *eral education environment.*

20 “(2) *ACTIVITIES.*—*In implementing coordinated,*
21 *early intervening services under this subsection, a*
22 *local educational agency may carry out activities that*
23 *include—*

24 “(A) *professional development (which may*
25 *be provided by entities other than local edu-*

1 *cational agencies) for teachers and other school*
2 *staff to enable such personnel to deliver scientif-*
3 *ically based academic and behavioral interven-*
4 *tions, including scientifically based literacy in-*
5 *struction, and, where appropriate, instruction on*
6 *the use of adaptive and instructional software;*

7 *“(B) providing educational and behavioral*
8 *evaluations, services, and supports, including*
9 *scientifically based literacy instruction; and*

10 *“(C) developing and implementing inter-*
11 *agency financing structures for the provision of*
12 *such services and supports.*

13 *“(3) CONSTRUCTION.—Nothing in this subsection*
14 *shall be construed to either limit or create a right to*
15 *a free appropriate public education under this part.*

16 *“(4) REPORTING.—Each local educational agen-*
17 *cy that develops and maintains coordinated, early in-*
18 *tervening services with funds made available for this*
19 *subsection, shall annually report to the State edu-*
20 *cational agency on—*

21 *“(A) the number of children served under*
22 *this subsection; and*

23 *“(B) the number of children served under*
24 *this subsection who are subsequently referred to*
25 *special education.*

1 “(5) *COORDINATION WITH CERTAIN PROJECTS*
2 *UNDER ELEMENTARY AND SECONDARY EDUCATION*
3 *ACT OF 1965.—Funds made available to carry out this*
4 *subsection may be used to carry out coordinated,*
5 *early intervening services aligned with activities*
6 *funded by, and carried out under, the Elementary*
7 *and Secondary Education Act of 1965 if such funds*
8 *are used to supplement, and not supplant, funds*
9 *made available under the Elementary and Secondary*
10 *Education Act of 1965 for the activities and services*
11 *assisted under this subsection.*

12 “(6) *REPORT TO CONGRESS.—Not later than 1*
13 *year after the date of enactment of the Individuals*
14 *with Disabilities Education Improvement Act of*
15 *2004, the Comptroller General shall conduct a study*
16 *on the types of services provided to children served*
17 *under this subsection, and shall submit a report to*
18 *Congress regarding the study.*

19 “(g) *DIRECT SERVICES BY THE STATE EDUCATIONAL*
20 *AGENCY.—*

21 “(1) *IN GENERAL.—A State educational agency*
22 *shall use the payments that would otherwise have been*
23 *available to a local educational agency or to a State*
24 *agency to provide special education and related serv-*
25 *ices directly to children with disabilities residing in*

1 *the area served by that local educational agency, or*
2 *for whom that State agency is responsible, if the State*
3 *educational agency determines that the local edu-*
4 *cational agency or State agency, as the case may be—*

5 *“(A) has not provided the information need-*
6 *ed to establish the eligibility of such agency*
7 *under this section;*

8 *“(B) is unable to establish and maintain*
9 *programs of free appropriate public education*
10 *that meet the requirements of subsection (a);*

11 *“(C) is unable or unwilling to be consoli-*
12 *dated with 1 or more local educational agencies*
13 *in order to establish and maintain such pro-*
14 *grams; or*

15 *“(D) has 1 or more children with disabil-*
16 *ities who can best be served by a regional or*
17 *State program or service delivery system de-*
18 *signed to meet the needs of such children.*

19 *“(2) MANNER AND LOCATION OF EDUCATION AND*
20 *SERVICES.—The State educational agency may pro-*
21 *vide special education and related services under*
22 *paragraph (1) in such manner and at such locations*
23 *(including regional or State centers) as the State*
24 *agency considers appropriate. Such education and*

1 *services shall be provided in accordance with this*
2 *part.*

3 “(h) *STATE AGENCY ELIGIBILITY.*—*Any State agency*
4 *that desires to receive a subgrant for any fiscal year under*
5 *section 611(f) shall demonstrate to the satisfaction of the*
6 *State educational agency that—*

7 “(1) *all children with disabilities who are par-*
8 *ticipating in programs and projects funded under this*
9 *part receive a free appropriate public education, and*
10 *that those children and their parents are provided all*
11 *the rights and procedural safeguards described in this*
12 *part; and*

13 “(2) *the agency meets such other conditions of*
14 *this section as the Secretary determines to be appro-*
15 *priate.*

16 “(i) *DISCIPLINARY INFORMATION.*—*The State may re-*
17 *quire that a local educational agency include in the records*
18 *of a child with a disability a statement of any current or*
19 *previous disciplinary action that has been taken against the*
20 *child and transmit such statement to the same extent that*
21 *such disciplinary information is included in, and trans-*
22 *mitted with, the student records of nondisabled children.*
23 *The statement may include a description of any behavior*
24 *engaged in by the child that required disciplinary action,*
25 *a description of the disciplinary action taken, and any*

1 *other information that is relevant to the safety of the child*
2 *and other individuals involved with the child. If the State*
3 *adopts such a policy, and the child transfers from 1 school*
4 *to another, the transmission of any of the child's records*
5 *shall include both the child's current individualized edu-*
6 *cation program and any such statement of current or pre-*
7 *vious disciplinary action that has been taken against the*
8 *child.*

9 “(j) *STATE AGENCY FLEXIBILITY.*—

10 “(1) *TREATMENT OF FEDERAL FUNDS IN CER-*
11 *TAIN FISCAL YEARS.*—*If a State educational agency*
12 *pays or reimburses local educational agencies within*
13 *the State for not less than 80 percent of the non-Fed-*
14 *eral share of the costs of special education and related*
15 *services, or the State is the sole provider of free ap-*
16 *propriate public education or direct services pursuant*
17 *to section 612(b), then the State educational agency,*
18 *notwithstanding sections 612(a) (17) and (18) and*
19 *612(b), may treat funds allocated pursuant to section*
20 *611 as general funds available to support the edu-*
21 *cational purposes described in paragraph (2) (A) and*
22 *(B).*

23 “(2) *CONDITIONS.*—*A State educational agency*
24 *may use funds in accordance with paragraph (1) sub-*
25 *ject to the following conditions:*

1 “(A) 8 PERCENT RULE.—A State edu-
2 cational agency may treat not more than 8 per-
3 cent of the funds the State educational agency re-
4 ceives under this part as general funds to sup-
5 port any educational purpose described in the
6 Elementary and Secondary Education Act of
7 1965, needs-based student or teacher higher edu-
8 cation programs, or the non-Federal share of
9 costs of title XIX of the Social Security Act.

10 “(B) 40 PERCENT RULE.—For any fiscal
11 year for which States are allocated the maximum
12 amount of grants pursuant to section 611(a)(2),
13 a State educational agency may treat not more
14 than 40 percent of the amount of funds the State
15 educational agency receives under this part as
16 general funds to support any educational pur-
17 pose described in the Elementary and Secondary
18 Education Act of 1965, needs-based student or
19 teacher higher education programs, or the non-
20 Federal share of costs of title XIX of the Social
21 Security Act, subject to subparagraph (C).

22 “(C) REQUIREMENT.—A State educational
23 agency may exercise its authority pursuant to
24 subparagraph (B) only if the State educational
25 agency uses an amount of the 40 percent funds

1 *from subparagraph (B) that represents 15 per-*
2 *cent of the total amount of funds the State edu-*
3 *cational agency receives under this part, to pro-*
4 *vide, or to pay or reimburse local educational*
5 *agencies for providing, early intervening services*
6 *pursuant to subsection (f).*

7 “(2) *PROHIBITION.*—*Notwithstanding subsection*
8 *(a), if the Secretary determines that a State edu-*
9 *cational agency is unable to establish, maintain, or*
10 *oversee programs of free appropriate public education*
11 *that meet the requirements of this part, then the Sec-*
12 *retary shall prohibit the State educational agency*
13 *from treating funds allocated under this part as gen-*
14 *eral funds pursuant to paragraph (1).*

15 “(3) *REPORT.*—*For each fiscal year for which a*
16 *State educational agency exercises its authority pur-*
17 *suant to paragraph (1) and treats Federal funds as*
18 *general funds, the State educational agency shall re-*
19 *port to the Secretary the amount of funds so treated*
20 *and the activities that were funded with such funds.*

21 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**
22 **INDIVIDUALIZED EDUCATION PROGRAMS,**
23 **AND EDUCATIONAL PLACEMENTS.**

24 “(a) *EVALUATIONS AND REEVALUATIONS.*—

25 “(1) *INITIAL EVALUATIONS.*—

1 “(A) *IN GENERAL.*—A State educational
2 agency, other State agency, or local educational
3 agency shall conduct a full and individual ini-
4 tial evaluation in accordance with this para-
5 graph and subsection (b), before the initial pro-
6 vision of special education and related services to
7 a child with a disability under this part.

8 “(B) *REQUEST FOR INITIAL EVALUATION.*—
9 Consistent with subparagraph (D), either a par-
10 ent of a child, or a State educational agency,
11 other State agency, or local educational agency
12 may initiate a request for an initial evaluation
13 to determine if the child is a child with a dis-
14 ability.

15 “(C) *PROCEDURES.*—Such initial evalua-
16 tion shall consist of procedures—

17 “(i) to determine whether a child is a
18 child with a disability (as defined in sec-
19 tion 602(3)) within 60 days of receiving pa-
20 rental consent for the evaluation, or, if the
21 State has established a timeframe within
22 which the evaluation must be conducted,
23 within such timeframe; and

24 “(ii) to determine the educational
25 needs of such child.

1 “(D) *PARENTAL CONSENT.*—

2 “(i) *IN GENERAL.*—*The agency pro-*
3 *posing to conduct an initial evaluation to*
4 *determine if the child qualifies as a child*
5 *with a disability as defined in section*
6 *602(3) (A) or (B) shall obtain an informed*
7 *consent from the parent of such child before*
8 *the evaluation is conducted. Parental con-*
9 *sent for evaluation shall not be construed as*
10 *consent for placement for receipt of special*
11 *education and related services.*

12 “(ii) *REFUSAL.*—*If the parents of such*
13 *child refuse consent for the evaluation, the*
14 *agency may continue to pursue an evalua-*
15 *tion by utilizing the mediation and due*
16 *process procedures under section 615, except*
17 *to the extent inconsistent with State law re-*
18 *lating to parental consent.*

19 “(iii) *REFUSAL OR FAILURE TO CON-*
20 *SENT.*—*If the parent of a child does not*
21 *provide informed consent to the receipt of*
22 *special education and related services, or*
23 *the parent fails to respond to a request to*
24 *provide the consent, the local educational*
25 *agency shall not be considered to be in vio-*

1 *lation of the requirement to make available*
2 *a free appropriate public education to the*
3 *child for the failure to provide the special*
4 *education and related services for which the*
5 *local educational agency requests such in-*
6 *formed consent.*

7 *“(iv) EXCEPTION FOR WARDS OF THE*
8 *STATE.—The agency shall not be required to*
9 *obtain an informed consent from the par-*
10 *ents of a child for an initial evaluation to*
11 *determine whether the child is a child with*
12 *a disability if such child is a ward of the*
13 *State and is not residing with the child’s*
14 *parent and consent has been given by an*
15 *individual who has appropriate knowledge*
16 *of the child’s educational needs, including*
17 *the judge appointed to the child’s case or the*
18 *child’s attorney, guardian ad litem, or court*
19 *appointed special advocate.*

20 *“(2) REEVALUATIONS.—*

21 *“(A) IN GENERAL.—A local educational*
22 *agency shall ensure that a reevaluation of each*
23 *child with a disability is conducted in accord-*
24 *ance with subsections (b) and (c)—*

1 “(i) if the local educational agency de-
2 termines that the educational or related
3 services needs, including improved academic
4 achievement and functional performance, of
5 the child warrant a reevaluation; or

6 “(ii) if the child’s parents or teacher
7 requests a reevaluation.

8 “(B) *LIMITATION.*—A reevaluation con-
9 ducted under subparagraph (A) shall occur—

10 “(i) not more than once a year, unless
11 the parent and the local educational agency
12 agree otherwise; and

13 “(ii) at least once every 3 years, unless
14 the parent and the local educational agency
15 agree that a reevaluation is unnecessary.

16 “(b) *EVALUATION PROCEDURES.*—

17 “(1) *NOTICE.*—The local educational agency
18 shall provide notice to the parents of a child with a
19 disability, in accordance with subsections (b)(3),
20 (b)(4), and (c) of section 615, that describes any eval-
21 uation procedures such agency proposes to conduct.

22 “(2) *CONDUCT OF EVALUATION.*—In conducting
23 the evaluation, the local educational agency shall—

24 “(A) use a variety of assessment tools and
25 strategies to gather relevant functional, develop-

1 *mental, and academic information, including in-*
2 *formation provided by the parent, that may as-*
3 *sist in determining—*

4 *“(i) whether the child is a child with*
5 *a disability; and*

6 *“(ii) the content of the child’s individ-*
7 *ualized education program, including infor-*
8 *mation related to enabling the child to be*
9 *involved in and progress in the general cur-*
10 *riculum, or for preschool children, to par-*
11 *ticipate in appropriate activities;*

12 *“(B) not use any single procedure, measure,*
13 *or assessment as the sole criterion for deter-*
14 *mining whether a child is a child with a dis-*
15 *ability or determining an appropriate edu-*
16 *cational program for the child; and*

17 *“(C) use technically sound instruments that*
18 *may assess the relative contribution of cognitive*
19 *and behavioral factors, in addition to physical*
20 *or developmental factors.*

21 *“(3) ADDITIONAL REQUIREMENTS.—Each local*
22 *educational agency shall ensure that—*

23 *“(A) tests and other evaluation materials*
24 *used to assess a child under this section—*

1 “(i) are selected and administered so
2 as not to be discriminatory on a racial or
3 cultural basis;

4 “(ii) are provided and administered in
5 the language and form most likely to yield
6 accurate information on what the child
7 knows and can do academically, develop-
8 mentally, and functionally, unless it is not
9 feasible to so provide or administer;”.

10 “(iii) are used for purposes for which
11 the assessments or measures are valid and
12 reliable;

13 “(iv) are administered by trained and
14 knowledgeable personnel; and

15 “(v) are administered in accordance
16 with any instructions provided by the pro-
17 ducer of such tests;

18 “(B) the child is assessed in all areas of sus-
19 pected disability; and

20 “(C) assessment tools and strategies that
21 provide relevant information that directly assists
22 persons in determining the educational needs of
23 the child are provided.

24 “(D) assessments of children with disabil-
25 ities, including homeless children with disabil-

1 *ities, children with disabilities who are wards of*
2 *the State, and children with disabilities in mili-*
3 *tary families, who transfer from 1 school district*
4 *to another school district in the same academic*
5 *year, are—*

6 *“(i) coordinated with such children’s*
7 *prior and subsequent schools as necessary to*
8 *ensure timely completion of full evaluations;*
9 *and*

10 *“(ii) completed within time limits—*

11 *“(I) established for all students by*
12 *Federal law or State plans; and*

13 *“(II) that computes the com-*
14 *mencement of time from the date on*
15 *which such children are first referred*
16 *for assessments in any local edu-*
17 *cational agency.*

18 *“(4) DETERMINATION OF ELIGIBILITY.—Upon*
19 *completion of administration of tests and other eval-*
20 *uation materials—*

21 *“(A) the determination of whether the child*
22 *is a child with a disability as defined in section*
23 *602(3) shall be made by a team of qualified pro-*
24 *fessionals and the parent of the child in accord-*
25 *ance with paragraph (5); and*

1 “(B) a copy of the evaluation report and the
2 documentation of determination of eligibility
3 shall be given to the parent.

4 “(5) *SPECIAL RULE FOR ELIGIBILITY DETER-*
5 *MINATION.*—*In making a determination of eligibility*
6 *under paragraph (4)(A), a child shall not be deter-*
7 *mined to be a child with a disability if the deter-*
8 *minant factor for such determination is—*

9 “(A) *lack of scientifically based instruction*
10 *in reading;*

11 “(B) *lack of instruction in mathematics; or*

12 “(C) *limited English proficiency.*

13 “(6) *SPECIFIC LEARNING DISABILITIES.*—

14 “(A) *IN GENERAL.*—*Notwithstanding sec-*
15 *tion 607(b), when determining whether a child*
16 *has a specific learning disability as defined in*
17 *section 602(29), a local educational agency shall*
18 *not be required to take into consideration wheth-*
19 *er a child has a severe discrepancy between*
20 *achievement and intellectual ability in oral ex-*
21 *pression, listening comprehension, written ex-*
22 *pression, basic reading skill, reading comprehen-*
23 *sion, mathematical calculation, or mathematical*
24 *reasoning.*

1 “(B) *ADDITIONAL AUTHORITY.*—*In deter-*
2 *mining whether a child has a specific learning*
3 *disability, a local educational agency may use a*
4 *process that determines if the child responds to*
5 *scientific, research-based intervention as a part*
6 *of the evaluation procedures described in para-*
7 *graphs (2) and (3).*

8 “(c) *ADDITIONAL REQUIREMENTS FOR EVALUATION*
9 *AND REEVALUATIONS.*—

10 “(1) *REVIEW OF EXISTING EVALUATION DATA.*—
11 *As part of an initial evaluation (if appropriate) and*
12 *as part of any reevaluation under this section, the*
13 *IEP Team described in subsection (d)(1)(B) and other*
14 *qualified professionals, as appropriate, shall—*

15 “(A) *review existing evaluation data on the*
16 *child, including evaluations and information*
17 *provided by the parents of the child, current*
18 *classroom-based assessments, and observations,*
19 *and teacher and related services providers obser-*
20 *vations; and*

21 “(B) *on the basis of that review, and input*
22 *from the child’s parents, identify what addi-*
23 *tional data, if any, are needed to determine—*

24 “(i) *whether the child has a particular*
25 *category of disability, as described in sec-*

1 *tion 602(3), or, in case of a reevaluation of*
2 *a child, whether the child continues to have*
3 *such a disability;*

4 *“(ii) the present levels of performance*
5 *and educational needs of the child;*

6 *“(iii) whether the child needs special*
7 *education and related services, or in the*
8 *case of a reevaluation of a child, whether*
9 *the child continues to need special education*
10 *and related services; and*

11 *“(iv) whether any additions or modi-*
12 *fications to the special education and re-*
13 *lated services are needed to enable the child*
14 *to meet the measurable annual goals set out*
15 *in the individualized education program of*
16 *the child and to participate, as appropriate,*
17 *in the general curriculum.*

18 *“(2) SOURCE OF DATA.—The local educational*
19 *agency shall administer such tests and other evalua-*
20 *tion materials and procedures as may be needed to*
21 *produce the data identified by the IEP Team under*
22 *paragraph (1)(B).*

23 *“(3) PARENTAL CONSENT.—Each local edu-*
24 *cational agency shall obtain informed parental con-*
25 *sent, in accordance with subsection (a)(1)(D), prior to*

1 *conducting any reevaluation of a child with a dis-*
2 *ability, except that such informed parental consent*
3 *need not be obtained if the local educational agency*
4 *can demonstrate that the local educational agency*
5 *had taken reasonable measures to obtain such consent*
6 *and the child’s parent has failed to respond.*

7 “(4) *REQUIREMENTS IF ADDITIONAL DATA ARE*
8 *NOT NEEDED.—If the IEP Team and other qualified*
9 *professionals, as appropriate, determine that no addi-*
10 *tional data are needed to determine whether the child*
11 *is or continues to be a child with a disability, the*
12 *local educational agency—*

13 “(A) *shall notify the child’s parents of—*

14 “(i) *that determination and the rea-*
15 *sons for the determination; and*

16 “(ii) *the right of such parents to re-*
17 *quest an assessment to determine whether*
18 *the child is or continues to be a child with*
19 *a disability; and*

20 “(B) *shall not be required to conduct such*
21 *an assessment unless requested by the child’s*
22 *parents.*

23 “(5) *EVALUATIONS BEFORE CHANGE IN ELIGI-*
24 *BILITY.—*

1 “(A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (B), a local educational agency*
3 *shall evaluate a child with a disability in ac-*
4 *cordance with this section before determining*
5 *that the child is no longer a child with a dis-*
6 *ability.*

7 “(B) *EXCEPTION.*—

8 “(i) *IN GENERAL.*—*The evaluation de-*
9 *scribed in subparagraph (A) shall not be re-*
10 *quired before the termination of a child’s*
11 *eligibility under this part due to graduation*
12 *from secondary school with a regular di-*
13 *ploma, or to exceeding the age eligibility for*
14 *a free appropriate public education under*
15 *State law.*

16 “(ii) *SUMMARY OF PERFORMANCE.*—
17 *For a child whose eligibility under this part*
18 *terminates under circumstances described in*
19 *clause (i), a local educational agency shall*
20 *provide the child with a summary of the*
21 *child’s academic achievement and func-*
22 *tional performance, which shall include rec-*
23 *ommendations on how to assist the child in*
24 *meeting the child’s postsecondary goals.*

25 “(d) *INDIVIDUALIZED EDUCATION PROGRAMS.*—

1 “(1) *DEFINITIONS.—As used in this title:*

2 “(A) *INDIVIDUALIZED EDUCATION PRO-*
3 *GRAM.—*

4 “(i) *IN GENERAL.—The term ‘individ-*
5 *ualized education program’ or ‘IEP’ means*
6 *a written statement for each child with a*
7 *disability that is developed, reviewed, and*
8 *revised in accordance with this section and*
9 *that includes—*

10 “(I) *a statement of the child’s*
11 *present levels of academic achievement*
12 *and functional performance, includ-*
13 *ing—*

14 “(aa) *how the child’s dis-*
15 *ability affects the child’s involve-*
16 *ment and progress in the general*
17 *curriculum; or*

18 “(bb) *for preschool children,*
19 *as appropriate, how the disability*
20 *affects the child’s participation in*
21 *appropriate activities;*

22 “(II) *a statement of measurable*
23 *annual goals, including academic and*
24 *functional goals, designed to—*

1 “(aa) meet the child’s needs
2 that result from the child’s dis-
3 ability to enable the child to be
4 involved in and make progress in
5 the general curriculum; and

6 “(bb) meet each of the child’s
7 other educational needs that result
8 from the child’s disability;

9 “(III) a description of how the
10 child’s progress toward meeting the an-
11 nual goals described in subclause (II)
12 will be measured and when periodic re-
13 ports on the progress the child is mak-
14 ing toward meeting the annual goals
15 (such as through the use of quarterly or
16 other periodic reports, concurrent with
17 the issuance of report cards) will be
18 provided;

19 “(IV) a statement of the special
20 education and related services, and
21 supplementary aids and services, to be
22 provided to the child, or on behalf of
23 the child, and a statement of the pro-
24 gram modifications or supports for

1 school personnel that will be provided
2 for the child—

3 “(aa) to advance appro-
4 priately toward attaining the an-
5 nual goals;

6 “(bb) to be involved in and
7 make progress in the general cur-
8 rriculum in accordance with sub-
9 clause (I) and to participate in
10 extracurricular and other nonaca-
11 demic activities; and

12 “(cc) to be educated and par-
13 ticipate with other children with
14 disabilities and nondisabled chil-
15 dren in the activities described in
16 this paragraph;

17 “(V) an explanation of the extent,
18 if any, to which the child will not par-
19 ticipate with nondisabled children in
20 the regular class and in the activities
21 described in subclause (IV)(cc);

22 “(VI)(aa) a statement of any in-
23 dividual appropriate accommodations
24 that are necessary to measure the aca-
25 demic achievement and functional per-

1 *formance of the child on State and dis-*
2 *trictwide assessments consistent with*
3 *section 612(a)(16)(A); and*

4 *“(bb) if the IEP Team determines*
5 *that the child shall take an alternate*
6 *assessment on a particular State or*
7 *districtwide assessment of student*
8 *achievement, a statement of why—*

9 *“(AA) the child cannot par-*
10 *ticipate in the regular assessment;*
11 *and*

12 *“(BB) the particular alter-*
13 *nate assessment selected is appro-*
14 *priate for the child;*

15 *“(VII) the projected date for the*
16 *beginning of the services and modifica-*
17 *tions described in subclause (IV), and*
18 *the anticipated frequency, location,*
19 *and duration of those services and*
20 *modifications; and*

21 *“(VIII) beginning not later than*
22 *the first IEP to be in effect when the*
23 *child is 14, and updated annually*
24 *thereafter—*

1 “(aa) *appropriate measurable*
2 *postsecondary goals based*
3 *upon age appropriate transition*
4 *assessments related to training,*
5 *education, employment, and,*
6 *where appropriate, independent*
7 *living skills;*

8 “(bb) *the transition services*
9 *(including courses of study) need-*
10 *ed by the child to reach those*
11 *goals, including services to be pro-*
12 *vided by other agencies when*
13 *needed; and*

14 “(cc) *beginning at least 1*
15 *year before the child reaches the*
16 *age of majority under State law,*
17 *a statement that the child has*
18 *been informed of the child’s rights*
19 *under this title, if any, that will*
20 *transfer to the child on reaching*
21 *the age of majority under section*
22 *615(m).*

23 “(ii) *RULE OF CONSTRUCTION.—Noth-*
24 *ing in this section shall be construed to re-*
25 *quire—*

1 “(I) that additional information
2 be included in a child’s IEP beyond
3 what is explicitly required in this sec-
4 tion; and

5 “(II) the IEP Team to include in-
6 formation under 1 component of a
7 child’s IEP that is already contained
8 under another component of such IEP.

9 “(B) *INDIVIDUALIZED EDUCATION PROGRAM*
10 *TEAM.*—The term ‘individualized education pro-
11 gram team’ or ‘IEP Team’ means a group of in-
12 dividuals composed of—

13 “(i) the parents of a child with a dis-
14 ability;

15 “(ii) at least 1 regular education
16 teacher of such child (if the child is, or may
17 be, participating in the regular education
18 environment);

19 “(iii) at least 1 special education
20 teacher, or where appropriate, at least 1
21 special education provider of such child;

22 “(iv) a representative of the local edu-
23 cational agency who—

24 “(I) is qualified to provide, or su-
25 pervise the provision of, specially de-

1 *signed instruction to meet the unique*
2 *needs of children with disabilities;*

3 *“(II) is knowledgeable about the*
4 *general curriculum; and*

5 *“(III) is knowledgeable about the*
6 *availability of resources of the local*
7 *educational agency;*

8 *“(v) an individual who can interpret*
9 *the instructional implications of evaluation*
10 *results, who may be a member of the team*
11 *described in clauses (i) through (vi);*

12 *“(vi) at the discretion of the parent or*
13 *the agency, other individuals who have*
14 *knowledge or special expertise regarding the*
15 *child, including related services personnel as*
16 *appropriate; and*

17 *“(vii) whenever appropriate, the child*
18 *with a disability.*

19 *“(viii) if the child is a ward of the*
20 *State, another individual with appropriate*
21 *knowledge of the child’s educational needs,*
22 *such as a foster parent, a relative with*
23 *whom the child lives who acts as a parent*
24 *to the child, an attorney for the child, a*
25 *guardian ad litem, a court appointed spe-*

1 *cial advocate, a judge, or an education sur-*
2 *rogate.*

3 “(C) *IEP TEAM ATTENDANCE.*—

4 “(i) *ATTENDANCE NOT NECESSARY.*—A
5 *member of the IEP Team shall not be re-*
6 *quired to attend an IEP meeting, in whole*
7 *or in part, if that member, the parent of a*
8 *child with a disability, and the local edu-*
9 *cational agency agree that the attendance of*
10 *such member is not necessary because no*
11 *modification to the member’s area of the*
12 *curriculum or related services is being*
13 *modified or discussed in the meeting.*

14 “(ii) *EXCUSAL.*—A member of the *IEP*
15 *Team may be excused from attending an*
16 *IEP meeting, in whole or in part, when the*
17 *meeting involves a modification to or dis-*
18 *ussion of the member’s area of the cur-*
19 *riculum or related services, if—*

20 “(I) *that member, the parent, and*
21 *the local educational agency consent to*
22 *the excusal; and*

23 “(II) *the member submits input*
24 *into the development of the IEP prior*
25 *to the meeting.*

1 “(iii) *WRITTEN AGREEMENT AND CON-*
2 *SENT REQUIRED.—A parent’s agreement*
3 *under clause (i) and consent under clause*
4 *(ii) shall be in writing.*

5 “(2) *REQUIREMENT THAT PROGRAM BE IN EF-*
6 *FECT.—*

7 “(A) *IN GENERAL.—At the beginning of*
8 *each school year, each local educational agency,*
9 *State educational agency, or other State agency,*
10 *as the case may be, shall have in effect, for each*
11 *child with a disability in its jurisdiction, an in-*
12 *dividualized education program, as defined in*
13 *paragraph (1)(A).*

14 “(B) *PROGRAM FOR CHILD AGED 3*
15 *THROUGH 5.—In the case of a child with a dis-*
16 *ability aged 3 through 5 (or, at the discretion of*
17 *the State educational agency, a 2-year-old child*
18 *with a disability who will turn age 3 during the*
19 *school year), an individualized family service*
20 *plan that contains the material described in sec-*
21 *tion 636, and that is developed in accordance*
22 *with this section, may serve as the IEP of the*
23 *child if using that plan as the IEP is—*

24 “(i) *consistent with State policy; and*

1 “(ii) agreed to by the agency and the
2 child’s parents.

3 “(C) *PROGRAM FOR CHILDREN WHO TRANS-*
4 *FER SCHOOL DISTRICTS.—*

5 “(i) *IN GENERAL.—In the case of a*
6 *child with a disability, including a home-*
7 *less child with a disability, a child with a*
8 *disability who is a ward of the State, or a*
9 *child with a disability in a military fam-*
10 *ily, who transfers school districts within the*
11 *same academic year, who enrolls in a new*
12 *school and who had an IEP that was in ef-*
13 *fect in the same or another State, the local*
14 *educational agency, State educational agen-*
15 *cy, or other State agency, as the case may*
16 *be, shall immediately provide such child*
17 *with a free appropriate public education,*
18 *including comparable services identified in*
19 *the previously held IEP and in consultation*
20 *with the parents until such time as the local*
21 *educational agency, State educational agen-*
22 *cy, or other State agency, as the case may*
23 *be, adopts the previously held IEP or devel-*
24 *ops, adopts, and implements a new IEP*

1 *that is consistent with Federal and State*
2 *law.*

3 “(ii) *TRANSMITTAL OF RECORDS.—To*
4 *facilitate the transition for a child described*
5 *in clause (i), the new school in which the*
6 *child enrolls shall immediately request the*
7 *child’s records from the previous schools in*
8 *which the child was enrolled and the pre-*
9 *vious schools in which the child was en-*
10 *rolled shall immediately transmit to the*
11 *new school, upon such request, the IEP and*
12 *supporting documents and any other*
13 *records relating to the provision of special*
14 *education or related services to the child.*

15 “(3) *DEVELOPMENT OF IEP.—*

16 “(A) *IN GENERAL.—In developing each*
17 *child’s IEP, the IEP Team, subject to subpara-*
18 *graph (C), shall consider—*

19 “(i) *the strengths of the child;*

20 “(ii) *the concerns of the parents for en-*
21 *hancing the education of their child;*

22 “(iii) *the results of the initial evalua-*
23 *tion or most recent evaluation of the child;*
24 *and*

1 “(iv) the academic, developmental, and
2 functional needs of the child.

3 “(B) CONSIDERATION OF SPECIAL FAC-
4 TORS.—The IEP Team shall—

5 “(i) in the case of a child whose behav-
6 ior impedes the child’s learning or that of
7 others, provide for positive behavioral inter-
8 ventions and supports, and other strategies
9 to address that behavior;

10 “(ii) in the case of a child with limited
11 English proficiency, consider the language
12 needs of the child as such needs relate to the
13 child’s IEP;

14 “(iii) in the case of a child who is
15 blind or visually impaired—

16 “(I) provide for instruction in
17 Braille and the use of Braille unless
18 the IEP Team determines, after an
19 evaluation of the child’s reading and
20 writing skills, needs, and appropriate
21 reading and writing media (including
22 an evaluation of the child’s future
23 needs for instruction in Braille or the
24 use of Braille), that instruction in

1 *Braille or the use of Braille is not ap-*
2 *propriate for the child; and*

3 *“(II) consider, when appropriate,*
4 *instructional services related to func-*
5 *tional performance skills, orientation*
6 *and mobility, and skills in the use of*
7 *assistive technology devices, including*
8 *low vision devices;*

9 *“(iv) consider the communication*
10 *needs of the child, and in the case of a child*
11 *who is deaf or hard of hearing, consider the*
12 *child’s language and communication needs,*
13 *opportunities for direct communications*
14 *with peers and professional personnel in the*
15 *child’s language and communication mode,*
16 *academic level, and full range of needs, in-*
17 *cluding opportunities for direct instruction*
18 *in the child’s language and communication*
19 *mode; and*

20 *“(v) consider whether the child requires*
21 *assistive technology devices and services.*

22 *“(C) REQUIREMENT WITH RESPECT TO*
23 *REGULAR EDUCATION TEACHER.—A regular edu-*
24 *cation teacher of the child, as a member of the*
25 *IEP Team shall, to the extent appropriate, par-*

1 *ticipate in the development of the IEP of the*
2 *child, including the determination of appro-*
3 *priate positive behavioral interventions and sup-*
4 *ports, and other strategies, and the determina-*
5 *tion of supplementary aids and services, pro-*
6 *gram modifications, and support for school per-*
7 *sonnel consistent with paragraph (1)(A)(i)(IV).*

8 “(D) *AGREEMENT.*—*In making changes to*
9 *a child’s IEP after the annual IEP meeting for*
10 *a school year, the parent of a child with a dis-*
11 *ability and the local educational agency may*
12 *agree not to convene an IEP meeting for the pur-*
13 *poses of making such changes, and instead may*
14 *develop a written document to amend or modify*
15 *the child’s current IEP.*

16 “(E) *CONSOLIDATION OF IEP TEAM MEET-*
17 *INGS.*—*To the extent possible, the local edu-*
18 *cational agency shall encourage the consolidation*
19 *of reevaluations of a child with IEP Team meet-*
20 *ings for the child.*

21 “(4) *REVIEW AND REVISION OF IEP.*—

22 “(A) *IN GENERAL.*—*The local educational*
23 *agency shall ensure that, subject to subparagraph*
24 *(B), the IEP Team—*

1 “(i) reviews the child’s IEP periodi-
2 cally, but not less than annually, to deter-
3 mine whether the annual goals for the child
4 are being achieved; and

5 “(ii) revise the IEP as appropriate to
6 address—

7 “(I) any lack of expected progress
8 toward the annual goals and in the
9 general curriculum, where appropriate;

10 “(II) the results of any reevalua-
11 tion conducted under this section;

12 “(III) information about the child
13 provided to, or by, the parents, as de-
14 scribed in subsection (c)(1)(B);

15 “(IV) the child’s anticipated
16 needs; or

17 “(V) other matters.

18 “(B) REQUIREMENT WITH RESPECT TO
19 REGULAR EDUCATION TEACHER.—A regular edu-
20 cation teacher of the child, as a member of the
21 IEP Team, shall, consistent with paragraph
22 (1)(C), participate in the review and revision of
23 the IEP of the child.

24 “(5) THREE-YEAR IEP.—

1 “(A) *DEVELOPMENT OF 3-YEAR IEP.*—The
2 *local educational agency may offer a child with*
3 *a disability who has reached the age of 18, the*
4 *option of developing a comprehensive 3-year*
5 *IEP. With the consent of the parent, when ap-*
6 *propriate, the IEP Team shall develop an IEP,*
7 *as described in paragraphs (1) and (3), that is*
8 *designed to serve the child for the final 3-year*
9 *transition period, which includes a statement*
10 *of—*

11 “(i) *measurable goals that will enable*
12 *the child to be involved in and make*
13 *progress in the general education cur-*
14 *riculum and that will meet the child’s tran-*
15 *sitional and postsecondary needs that result*
16 *from the child’s disability; and*

17 “(ii) *measurable annual goals for*
18 *measuring progress toward meeting the*
19 *postsecondary goals described in clause (i).*

20 “(B) *REVIEW AND REVISION OF 3-YEAR*
21 *IEP.*—

22 “(i) *REQUIREMENT.*—Each year the
23 *local educational agency shall ensure that*
24 *the IEP Team—*

1 “(I) provides an annual review of
2 the child’s IEP to determine the child’s
3 current levels of progress and deter-
4 mine whether the annual goals for the
5 child are being achieved; and

6 “(II) revises the IEP, as appro-
7 priate, to enable the child to continue
8 to meet the measurable transition goals
9 set out in the IEP.

10 “(ii) *COMPREHENSIVE REVIEW.*—If the
11 review under clause (i) determines that the
12 child is not making sufficient progress to-
13 ward the goals described in subparagraph
14 (A), the local educational agency shall en-
15 sure that the IEP Team provides a review,
16 within 30 calendar days, of the IEP under
17 paragraph (4).

18 “(iii) *PREFERENCE.*—At the request of
19 the child, or when appropriate, the parent,
20 the IEP Team shall conduct a review of the
21 child’s 3-year IEP under paragraph (4)
22 rather than an annual review under sub-
23 paragraph (B)(i).

24 “(6) *FAILURE TO MEET TRANSITION OBJEC-*
25 *TIVES.*—If a participating agency, other than the

1 *local educational agency, fails to provide the transi-*
2 *tion services described in the IEP in accordance with*
3 *paragraph (1)(A)(i)(VIII), the local educational agen-*
4 *cy shall reconvene the IEP Team to identify alter-*
5 *native strategies to meet the transition objectives for*
6 *the child set out in that program.*

7 “(7) *CHILDREN WITH DISABILITIES IN ADULT*
8 *PRISONS.—*

9 “(A) *IN GENERAL.—The following require-*
10 *ments shall not apply to children with disabil-*
11 *ities who are convicted as adults under State law*
12 *and incarcerated in adult prisons:*

13 “(i) *The requirements contained in sec-*
14 *tion 612(a)(16) and paragraph (1)(A)(i)(V)*
15 *(relating to participation of children with*
16 *disabilities in general assessments).*

17 “(ii) *The requirements of items (aa)*
18 *and (bb) of paragraph (1)(A)(i)(VIII) (re-*
19 *lating to transition planning and transi-*
20 *tion services), do not apply with respect to*
21 *such children whose eligibility under this*
22 *part will end, because of their age, before*
23 *they will be released from prison.*

24 “(B) *ADDITIONAL REQUIREMENT.—If a*
25 *child with a disability is convicted as an adult*

1 *under State law and incarcerated in an adult*
2 *prison, the child’s IEP Team may modify the*
3 *child’s IEP or placement notwithstanding the re-*
4 *quirements of sections 612(a)(5)(A) and*
5 *614(d)(1)(A) if the State has demonstrated a*
6 *bona fide security or compelling penological in-*
7 *terest that cannot otherwise be accommodated.*

8 “(e) **EDUCATIONAL PLACEMENTS.**—*Each local edu-*
9 *cational agency or State educational agency shall ensure*
10 *that the parents of each child with a disability are members*
11 *of any group that makes decisions on the educational place-*
12 *ment of their child. Decisions regarding the educational*
13 *placement of a child with a disability who is a homeless*
14 *child shall comply with the requirements described under*
15 *section 722(g)(3) of the McKinney-Vento Homeless Assist-*
16 *ance Act.*

17 “(f) **ALTERNATIVE MEANS OF MEETING PARTICIPA-**
18 **TION.**—*When conducting IEP Team meetings and place-*
19 *ment meetings pursuant to this section, the parent of a child*
20 *with a disability and a local educational agency may agree*
21 *to use alternative means of meeting participation, such as*
22 *video conferences and conference calls.*

23 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

24 “(a) **ESTABLISHMENT OF PROCEDURES.**—*Any State*
25 *educational agency, State agency, or local educational*

1 *agency that receives assistance under this part shall estab-*
2 *lish and maintain procedures in accordance with this sec-*
3 *tion to ensure that children with disabilities, including chil-*
4 *dren with disabilities who are wards of the State, and their*
5 *parents are guaranteed procedural safeguards with respect*
6 *to the provision of free appropriate public education by*
7 *such agencies.*

8 “(b) *TYPES OF PROCEDURES.*—*The procedures re-*
9 *quired by this section shall include—*

10 “(1) *an opportunity for the parents of a child*
11 *with a disability to examine all records relating to*
12 *such child and to participate in meetings with respect*
13 *to the identification, evaluation, and educational*
14 *placement of the child, and the provision of a free ap-*
15 *propriate public education to such child, and to ob-*
16 *tain an independent educational evaluation of the*
17 *child;*

18 “(2) *procedures to protect the rights of the child*
19 *whenever the parents of the child are not known, the*
20 *agency cannot, after reasonable efforts, locate the par-*
21 *ents, the child is a ward of the State, or the child is*
22 *a homeless child who is not in the physical custody*
23 *of a parent or guardian including the assignment of*
24 *an individual (who shall not be an employee of the*
25 *State educational agency, the local educational agen-*

1 *cy, or any other agency that is involved in the edu-*
2 *cation or care of the child) to act as a surrogate for*
3 *the parents in accordance with subsection (o);*

4 *“(3) written prior notice to the parents of the*
5 *child, in accordance with subsection (c)(1), whenever*
6 *the local educational agency—*

7 *“(A) proposes to initiate or change; or*

8 *“(B) refuses to initiate or change,*
9 *the identification, evaluation, or educational place-*
10 *ment of the child, or the provision of a free appro-*
11 *priate public education to the child;*

12 *“(4) procedures designed to ensure that the notice*
13 *required by paragraph (3) is in the native language*
14 *of the parents, unless it clearly is not feasible to do*
15 *so;*

16 *“(5) an opportunity for mediation in accordance*
17 *with subsection (e);*

18 *“(6) an opportunity for either party to present*
19 *complaints with respect to any matter relating to the*
20 *identification, evaluation, or educational placement of*
21 *the child, or the provision of a free appropriate public*
22 *education to such child;*

23 *“(7)(A) procedures that require either party, or*
24 *the attorney representing a party, to provide due*

1 *process complaint notice in accordance with sub-*
2 *section (c)(2) (which shall remain confidential)—*

3 *“(i) to the other party, in the complaint*
4 *filed under paragraph (6), and forward a copy*
5 *of such notice to the State educational agency;*
6 *and*

7 *“(ii) that shall include—*

8 *“(I) the name of the child, the address*
9 *of the residence of the child (or available*
10 *contact information in the case of a home-*
11 *less child), and the name of the school the*
12 *child is attending;*

13 *“(II) in the case of a homeless child or*
14 *youth (within the meaning of section 725(2)*
15 *of the McKinney-Vento Homeless Assistance*
16 *Act (42 U.S.C. 11434a(2)), available con-*
17 *tact information for the child and the name*
18 *of the school the child is attending;*

19 *“(III) a description of the nature of the*
20 *problem of the child relating to such pro-*
21 *posed initiation or change, including facts*
22 *relating to such problem; and*

23 *“(IV) a proposed resolution of the*
24 *problem to the extent known and available*
25 *to the party at the time; and*

1 “(B) a requirement that a party may not have
2 a due process hearing until the party, or the attorney
3 representing the party, files a notice that meets the
4 requirements of subparagraph (A)(ii);

5 “(8) a requirement that the local educational
6 agency shall send a prior written notice pursuant to
7 subsection (c)(1) in response to a parent’s due process
8 complaint notice under paragraph (7) if the local
9 educational agency has not sent such a prior written
10 notice to the parent regarding the subject matter con-
11 tained in the parent’s due process complaint notice;
12 and

13 “(9) procedures that require the State edu-
14 cational agency to develop a model form to assist par-
15 ents in filing a complaint and due process complaint
16 notice in accordance with paragraphs (6) and (7), re-
17 spectively.

18 “(10) procedures to protect the rights of the child
19 whenever the child is a ward of the State, including
20 procedures that preserve the rights of the natural or
21 adoptive parent to make the decisions required of par-
22 ents under this Act (unless such rights have been ex-
23 tinguished under State law) but that permit a child
24 who is represented in juvenile court by an attorney,
25 guardian ad litem, or another individual, to have

1 *such attorney, guardian ad litem, or other individual*
2 *present in any meetings, mediation proceedings, or*
3 *hearings provided under this Act.*

4 *“(c) NOTIFICATION REQUIREMENTS.—*

5 *“(1) CONTENT OF PRIOR WRITTEN NOTICE.—The*
6 *prior written notice of the local educational agency*
7 *required by subsection (b)(3) shall include—*

8 *“(A) a description of the action proposed or*
9 *refused by the agency;*

10 *“(B) an explanation of why the agency pro-*
11 *poses or refuses to take the action;*

12 *“(C) a description of any other options that*
13 *the agency considered and the reasons why those*
14 *options were rejected;*

15 *“(D) a description of each evaluation proce-*
16 *dure, test, record, or report the agency used as a*
17 *basis for the proposed or refused action;*

18 *“(E) a description of any other factors that*
19 *are relevant to the agency’s proposal or refusal;*

20 *“(F) a statement that the parents of a child*
21 *with a disability have protection under the pro-*
22 *cedural safeguards of this part and, if this notice*
23 *is not an initial referral for evaluation, the*
24 *means by which a copy of a description of the*
25 *procedural safeguards can be obtained; and*

1 “(G) sources for parents to contact to obtain
2 assistance in understanding the provisions of
3 this part.

4 “(2) DUE PROCESS COMPLAINT NOTICE.—

5 “(A) IN GENERAL.—The due process com-
6 plaint notice required under subsection (b)(7)(A)
7 shall be deemed to be sufficient unless the party
8 receiving the notice notifies the hearing officer
9 and the other party in writing that the receiving
10 party believes the notice has not met the require-
11 ments of that subsection.

12 “(B) TIMING.—The party sending a hearing
13 officer notification under subparagraph (A) shall
14 send the notification within 20 days of receiving
15 the complaint.

16 “(C) DETERMINATION.—Within 5 days of
17 receipt of the notification provided under sub-
18 paragraph (B), the hearing officer shall make a
19 determination on the face of the notice of whether
20 the notification meets the requirements of sub-
21 section (b)(7)(A), and shall immediately notify
22 both parties in writing of such determination.

23 “(D) PARENT’S AMENDED NOTICE OF COM-
24 PLAINT.—

1 “(i) *IN GENERAL.*—A parent may
2 amend the parent’s due process complaint
3 notice only if—

4 “(I) the public agency consents in
5 writing to such amendment and is
6 given the opportunity to resolve the
7 complaint through a meeting held pur-
8 suant to subsection (f)(1)(B); or

9 “(II) the hearing officer grants
10 permission, but may do so only before
11 a due process hearing occurs.

12 “(ii) *APPLICABLE TIMELINE.*—The ap-
13 plicable timeline for a due process hearing
14 under this part shall recommence at the
15 time the party files an amended notice.

16 “(d) *PROCEDURAL SAFEGUARDS NOTICE.*—

17 “(1) *IN GENERAL.*—A copy of the procedural
18 safeguards available to the parents of a child with a
19 disability shall be given to the parents only 1 time a
20 year, except that a copy also shall be given to the par-
21 ents—

22 “(A) upon initial referral or parental re-
23 quest for evaluation;

24 “(B) upon registration of a complaint
25 under subsection (b)(6); and

1 “(C) upon request by a parent.

2 “(2) CONTENTS.—The procedural safeguards no-
3 tice shall include a full explanation of the procedural
4 safeguards, written in the native language of the par-
5 ents, unless it clearly is not feasible to do so, and
6 written in an easily understandable manner, avail-
7 able under this section and under regulations promul-
8 gated by the Secretary relating to—

9 “(A) independent educational evaluation;

10 “(B) prior written notice;

11 “(C) parental consent;

12 “(D) access to educational records;

13 “(E) the opportunity to present and resolve
14 complaints, including—

15 “(i) the time period in which to make
16 a complaint;

17 “(ii) the opportunity for the agency to
18 resolve the complaint; and

19 “(iii) the availability of mediation;

20 “(F) the child’s placement during pendency
21 of due process proceedings;

22 “(G) procedures for students who are subject
23 to placement in an interim alternative edu-
24 cational setting;

1 “(H) requirements for unilateral placement
2 by parents of children in private schools at pub-
3 lic expense;

4 “(I) due process hearings, including re-
5 quirements for disclosure of evaluation results
6 and recommendations;

7 “(J) State-level appeals (if applicable in
8 that State);

9 “(K) civil actions, including the time period
10 in which to file such actions; and

11 “(L) attorney’s fees.

12 “(e) *MEDIATION*.—

13 “(1) *IN GENERAL*.—Any State educational agen-
14 cy or local educational agency that receives assistance
15 under this part shall ensure that procedures are estab-
16 lished and implemented to allow parties to disputes
17 involving any matter, including matters arising prior
18 to the filing of a complaint pursuant to subsection
19 (b)(6), to resolve such disputes through a mediation
20 process.

21 “(2) *REQUIREMENTS*.—Such procedures shall
22 meet the following requirements:

23 “(A) The procedures shall ensure that the
24 mediation process—

1 “(i) is voluntary on the part of the
2 parties;

3 “(ii) is not used to deny or delay a
4 parent’s right to a due process hearing
5 under subsection (f), or to deny any other
6 rights afforded under this part; and

7 “(iii) is conducted by a qualified and
8 impartial mediator who is trained in effec-
9 tive mediation techniques.

10 “(B) *OPPORTUNITY TO MEET WITH A DISIN-*
11 *TERESTED PARTY.*—A local educational agency
12 or a State agency may establish procedures to
13 offer to parents and schools who choose not to use
14 the mediation process, an opportunity to meet,
15 at a time and location convenient to the parents,
16 with a disinterested party who is under contract
17 with—

18 “(i) a parent training and informa-
19 tion center or community parent resource
20 center in the State established under section
21 671 or 672; or

22 “(ii) an appropriate alternative dis-
23 pute resolution entity,
24 to encourage the use, and explain the benefits, of
25 the mediation process to the parents.

1 “(C) *LIST OF QUALIFIED MEDIATORS.*—*The*
2 *State shall maintain a list of individuals who*
3 *are qualified mediators and knowledgeable in*
4 *laws and regulations relating to the provision of*
5 *special education and related services.*

6 “(D) *COSTS.*—*The State shall bear the cost*
7 *of the mediation process, including the costs of*
8 *meetings described in subparagraph (B).*

9 “(E) *SCHEDULING AND LOCATION.*—*Each*
10 *session in the mediation process shall be sched-*
11 *uled in a timely manner and shall be held in a*
12 *location that is convenient to the parties to the*
13 *dispute.*

14 “(F) *WRITTEN MEDIATION AGREEMENT.*—
15 *An agreement reached by the parties to the dis-*
16 *pute in the mediation process shall be set forth*
17 *in a written mediation agreement that is en-*
18 *forceable in any State court of competent juris-*
19 *isdiction or in a district court of the United*
20 *States.*

21 “(G) *MEDIATION DISCUSSIONS.*—*Discus-*
22 *sions that occur during the mediation process*
23 *shall be confidential and may not be used as evi-*
24 *dence in any subsequent due process hearings or*
25 *civil proceedings, and the parties to the medi-*

1 *ation process may be required to sign a confiden-*
2 *tiality pledge prior to the commencement of such*
3 *process.*

4 “(f) *IMPARTIAL DUE PROCESS HEARING.*—

5 “(1) *IN GENERAL.*—

6 “(A) *HEARING.*—*Whenever a complaint has*
7 *been received under subsection (b)(6) or (k), the*
8 *parents or the local educational agency involved*
9 *in such complaint shall have an opportunity for*
10 *an impartial due process hearing, which shall be*
11 *conducted by the State educational agency or by*
12 *the local educational agency, as determined by*
13 *State law or by the State educational agency.*

14 “(B) *OPPORTUNITY TO RESOLVE COM-*
15 *PLAINT.*—

16 “(i) *PRELIMINARY MEETING.*—*Prior to*
17 *the opportunity for an impartial due proc-*
18 *ess hearing under subparagraph (A), the*
19 *local educational agency shall convene a*
20 *meeting with the parents and the IEP*
21 *Team—*

22 “(I) *within 15 days of receiving*
23 *notice of the parents’ complaint;*

24 “(II) *which shall include a rep-*
25 *resentative of the public agency who*

1 *has decisionmaking authority on behalf*
2 *of such agency;*

3 *“(III) which may not include an*
4 *attorney of the local educational agen-*
5 *cy unless the parent is accompanied by*
6 *an attorney; and*

7 *“(IV) where the parents of the*
8 *child discuss their complaint, and the*
9 *specific issues that form the basis of the*
10 *complaint, and the local educational*
11 *agency is provided the opportunity to*
12 *resolve the complaint,*

13 *unless the parents and the local educational*
14 *agency agree in writing to waive such meet-*
15 *ing, or agree to use the mediation process*
16 *described in subsection (e).*

17 *“(ii) HEARING.—If the local edu-*
18 *cational agency has not resolved the com-*
19 *plaint to the satisfaction of the parents*
20 *within 15 days of the receipt of the com-*
21 *plaint, the due process hearing may occur,*
22 *and all of the applicable timelines for a due*
23 *process hearing under this part shall com-*
24 *mence.*

1 “(iii) *WRITTEN SETTLEMENT AGREEMENT.—In the case that an agreement is*
2 *reached to resolve the complaint at such*
3 *meeting, the agreement shall be set forth in*
4 *a written settlement agreement that is—*

5 “(I) *signed by both the parent and*
6 *a representative of the public agency*
7 *who has decisionmaking authority on*
8 *behalf of such agency; and*

9 “(II) *enforceable in any State*
10 *court of competent jurisdiction or in a*
11 *district court of the United States.*

12 “(2) *DISCLOSURE OF EVALUATIONS AND REC-*
13 *COMMENDATIONS.—*

14 “(A) *IN GENERAL.—Not less than 5 business*
15 *days prior to a hearing conducted pursuant to*
16 *paragraph (1), each party shall disclose to all*
17 *other parties all evaluations completed by that*
18 *date, and recommendations based on the offering*
19 *party’s evaluations, that the party intends to use*
20 *at the hearing.*

21 “(B) *FAILURE TO DISCLOSE.—A hearing of-*
22 *ficer may bar any party that fails to comply*
23 *with subparagraph (A) from introducing the rel-*
24

1 *evant evaluation or recommendation at the hear-*
2 *ing without the consent of the other party.*

3 “(3) *LIMITATIONS ON HEARING.—*

4 “(A) *PERSON CONDUCTING HEARING.—A*
5 *hearing officer conducting a hearing pursuant to*
6 *paragraph (1)(A) shall, at a minimum—*

7 “(i) *not be—*

8 “(I) *an employee of the State edu-*
9 *catational agency or the local edu-*
10 *catational agency involved in the edu-*
11 *cation or care of the child; or*

12 “(II) *a person having a personal*
13 *or professional interest that conflicts*
14 *with the person’s objectivity in the*
15 *hearing;*

16 “(ii) *possess a fundamental under-*
17 *standing of this Act, Federal and State reg-*
18 *ulations pertaining to this Act, and inter-*
19 *pretations of this Act by State and Federal*
20 *courts;*

21 “(iii) *possess the knowledge and ability*
22 *to conduct hearings in accordance with ap-*
23 *propriate, standard legal practice; and*

1 “(iv) possess the knowledge and ability
2 to render and write decisions in accordance
3 with appropriate, standard legal practice.

4 “(B) *SUBJECT MATTER OF HEARING.*—The
5 party requesting the due process hearing shall
6 not be allowed to raise issues at the due process
7 hearing that were not raised in the notice filed
8 under subsection (b)(7), unless the other party
9 agrees otherwise.

10 “(C) *RULE OF CONSTRUCTION.*—Nothing in
11 this section shall be construed to preclude a par-
12 ent from filing a separate due process complaint
13 on an issue separate from a due process com-
14 plaint already filed.

15 “(D) *TIMELINE FOR REQUESTING HEAR-*
16 *ING.*—A parent or public agency shall request an
17 impartial due process hearing within 2 years of
18 the date the parent or public agency knew or
19 should have known about the alleged action that
20 forms the basis of the complaint, or, if the State
21 has an explicit time limitation for requesting
22 such a hearing under this part, in such time as
23 the State law allows.

24 “(E) *EXCEPTION TO THE TIMELINE.*—The
25 timeline described in subparagraph (D) shall not

1 *apply if the parent was prevented from request-*
2 *ing the hearing due to—*

3 “(i) *failure of the local educational*
4 *agency to provide prior written or proce-*
5 *dural safeguards notices;*

6 “(ii) *false representations that the local*
7 *educational agency was attempting to re-*
8 *solve the problem forming the basis of the*
9 *complaint; or*

10 “(iii) *the local educational agency’s*
11 *withholding of information from parents.*

12 “(F) *DECISION OF HEARING OFFICER.—*

13 “(i) *IN GENERAL.—Subject to clause*
14 *(ii), a decision made by a hearing officer*
15 *shall be made on substantive grounds based*
16 *on a determination of whether the child re-*
17 *ceived a free appropriate public education.*

18 “(ii) *PROCEDURAL ISSUES.—In mat-*
19 *ters alleging a procedural violation, a hear-*
20 *ing officer may find that a child did not re-*
21 *ceive a free appropriate public education*
22 *only if the procedural inadequacies—*

23 “(I) *compromised the child’s right*
24 *to an appropriate public education;*

1 “(II) seriously hampered the par-
2 ents’ opportunity to participate in the
3 process; or

4 “(III) caused a deprivation of
5 educational benefits.

6 “(iii) *RULE OF CONSTRUCTION.*—*Noth-*
7 *ing in this paragraph shall be construed to*
8 *preclude a hearing officer from ordering a*
9 *local educational agency to comply with*
10 *procedural requirements under this section.*

11 “(G) *RULE OF CONSTRUCTION.*—*Nothing in*
12 *this section shall be construed to affect the right*
13 *of a parent to file a complaint with the State*
14 *educational agency.*

15 “(g) *APPEAL.*—*If the hearing required by subsection*
16 *(f) is conducted by a local educational agency, any party*
17 *aggrieved by the findings and decision rendered in such a*
18 *hearing may appeal such findings and decision to the State*
19 *educational agency. Such State educational agency shall*
20 *conduct an impartial review of such decision. The officer*
21 *conducting such review shall make an independent decision*
22 *upon completion of such review.*

23 “(h) *SAFEGUARDS.*—*Any party to a hearing conducted*
24 *pursuant to subsection (f) or (k), or an appeal conducted*
25 *pursuant to subsection (g), shall be accorded—*

1 “(1) the right to be accompanied and advised by
2 counsel and by individuals with special knowledge or
3 training with respect to the problems of children with
4 disabilities;

5 “(2) the right to present evidence and confront,
6 cross-examine, and compel the attendance of wit-
7 nesses;

8 “(3) the right to a written, or, at the option of
9 the parents, electronic verbatim record of such hear-
10 ing; and

11 “(4) the right to a written, or, at the option of
12 the parents, electronic findings of fact and decisions,
13 which findings and decisions—

14 “(A) shall be made available to the public
15 consistent with the requirements of section 617(b)
16 (relating to the confidentiality of data, informa-
17 tion, and records); and

18 “(B) shall be transmitted to the advisory
19 panel established pursuant to section 612(a)(20).

20 “(i) ADMINISTRATIVE PROCEDURES.—

21 “(1) IN GENERAL.—

22 “(A) DECISION MADE IN HEARING.—A deci-
23 sion made in a hearing conducted pursuant to
24 subsection (f) or (k) shall be final, except that
25 any party involved in such hearing may appeal

1 *such decision under the provisions of subsection*
2 *(g) and paragraph (2).*

3 “(B) *DECISION MADE AT APPEAL.*—*A deci-*
4 *sion made under subsection (g) shall be final, ex-*
5 *cept that any party may bring an action under*
6 *paragraph (2).*

7 “(2) *RIGHT TO BRING CIVIL ACTION.*—

8 “(A) *IN GENERAL.*—*Any party aggrieved by*
9 *the findings and decision made under subsection*
10 *(f) or (k) who does not have the right to an ap-*
11 *peal under subsection (g), and any party ag-*
12 *grieved by the findings and decision under this*
13 *subsection, shall have the right to bring a civil*
14 *action with respect to the complaint presented*
15 *pursuant to this section, which action may be*
16 *brought in any State court of competent jurisdic-*
17 *tion or in a district court of the United States,*
18 *without regard to the amount in controversy.*

19 “(B) *LIMITATION.*—*The party bringing the*
20 *action shall have 90 days from the date of the de-*
21 *cision of the hearing officer to bring such an ac-*
22 *tion, or, if the State has an explicit time limita-*
23 *tion for bringing such action under this part, in*
24 *such time as the State law allows.*

1 “(C) *ADDITIONAL REQUIREMENTS.*—*In any*
2 *action brought under this paragraph, the court—*

3 “(i) *shall receive the records of the ad-*
4 *ministrative proceedings;*

5 “(ii) *shall hear additional evidence at*
6 *the request of a party; and*

7 “(iii) *basing its decision on the pre-*
8 *ponderance of the evidence, shall grant such*
9 *relief as the court determines is appro-*
10 *priate.*

11 “(3) *JURISDICTION OF DISTRICT COURTS; ATTOR-*
12 *NEYS’ FEES.*—

13 “(A) *IN GENERAL.*—*The district courts of*
14 *the United States shall have jurisdiction of ac-*
15 *tions brought under this section without regard*
16 *to the amount in controversy.*

17 “(B) *AWARD OF ATTORNEYS’ FEES.*—

18 “(i) *IN GENERAL.*—*In any action or*
19 *proceeding brought under this section, the*
20 *court, in its discretion, may award reason-*
21 *able attorneys’ fees as part of the costs—*

22 “(I) *to a prevailing party who is*
23 *the parent of a child with a disability;*

24 “(II) *to a prevailing party who is*
25 *a State educational agency or local*

1 *educational agency against the attor-*
2 *ney of a parent who files a complaint*
3 *or subsequent cause of action that is*
4 *frivolous, unreasonable, or without*
5 *foundation, or against the attorney of*
6 *a parent who continued to litigate*
7 *after the litigation clearly became friv-*
8 *olous, unreasonable, or without founda-*
9 *tion; or*

10 *“(III) to a State educational*
11 *agency or local educational agency*
12 *against the attorney of a parent, or*
13 *against the parent, if the parent’s com-*
14 *plaint or subsequent cause of action*
15 *was presented for any improper pur-*
16 *pose, such as to harass or to cause un-*
17 *necessary delay or needless increase in*
18 *the cost of litigation.*

19 *“(ii) RULE OF CONSTRUCTION.—Not-*
20 *ing in this subparagraph shall be construed*
21 *to affect section 432 of the District of Co-*
22 *lumbia Appropriations Act, 2004.*

23 *“(C) DETERMINATION OF AMOUNT OF AT-*
24 *TORNEYS’ FEES.—Fees awarded under this para-*
25 *graph shall be based on rates prevailing in the*

1 *community in which the action or proceeding*
2 *arose for the kind and quality of services fur-*
3 *nished. No bonus or multiplier may be used in*
4 *calculating the fees awarded under this sub-*
5 *section.*

6 “(D) *PROHIBITION OF ATTORNEYS’ FEES*
7 *AND RELATED COSTS FOR CERTAIN SERVICES.—*

8 “(i) *IN GENERAL.—Attorneys’ fees may*
9 *not be awarded and related costs may not*
10 *be reimbursed in any action or proceeding*
11 *under this section for services performed*
12 *subsequent to the time of a written offer of*
13 *settlement to a parent if—*

14 “(I) *the offer is made within the*
15 *time prescribed by Rule 68 of the Fed-*
16 *eral Rules of Civil Procedure or, in the*
17 *case of an administrative proceeding,*
18 *at any time more than 10 days before*
19 *the proceeding begins;*

20 “(II) *the offer is not accepted*
21 *within 10 days; and*

22 “(III) *the court or administrative*
23 *hearing officer finds that the relief fi-*
24 *nally obtained by the parents is not*

1 *more favorable to the parents than the*
2 *offer of settlement.*

3 “(ii) *IEP TEAM MEETINGS.*—Attor-
4 *neys’ fees may not be awarded relating to*
5 *any meeting of the IEP Team unless such*
6 *meeting is convened as a result of an ad-*
7 *ministrative proceeding or judicial action,*
8 *or, at the discretion of the State, for a medi-*
9 *ation described in subsection (e).*

10 “(iii) *OPPORTUNITY TO RESOLVE COM-*
11 *PLAINTS.*—*A meeting conducted pursuant to*
12 *subsection (f)(1)(B)(i) shall not be consid-*
13 *ered—*

14 “(I) *a meeting convened as a re-*
15 *sult of an administrative hearing or*
16 *judicial action; or*

17 “(II) *an administrative hearing*
18 *or judicial action for purposes of this*
19 *paragraph.*

20 “(E) *EXCEPTION TO PROHIBITION ON AT-*
21 *TORNEYS’ FEES AND RELATED COSTS.*—*Notwith-*
22 *standing subparagraph (D), an award of attor-*
23 *neys’ fees and related costs may be made to a*
24 *parent who is the prevailing party and who was*

1 *substantially justified in rejecting the settlement*
2 *offer.*

3 “(F) *REDUCTION IN AMOUNT OF ATTOR-*
4 *NEYS’ FEES.—Except as provided in subpara-*
5 *graph (G), whenever the court finds that—*

6 “(i) *the parent, or the parent’s attor-*
7 *ney, during the course of the action or pro-*
8 *ceeding, unreasonably protracted the final*
9 *resolution of the controversy;*

10 “(ii) *the amount of the attorneys’ fees*
11 *otherwise authorized to be awarded unrea-*
12 *sonably exceeds the hourly rate prevailing*
13 *in the community for similar services by at-*
14 *torneys of reasonably comparable skill, rep-*
15 *utation, and experience;*

16 “(iii) *the time spent and legal services*
17 *furnished were excessive considering the na-*
18 *ture of the action or proceeding; or*

19 “(iv) *the attorney representing the par-*
20 *ent did not provide to the local educational*
21 *agency the appropriate information in the*
22 *notice of the complaint described in sub-*
23 *section (b)(7)(A),*

24 *the court shall reduce, accordingly, the amount of*
25 *the attorneys’ fees awarded under this section.*

1 “(G) *EXCEPTION TO REDUCTION IN AMOUNT*
2 *OF ATTORNEYS’ FEES.*—*The provisions of sub-*
3 *paragraph (F) shall not apply in any action or*
4 *proceeding if the court finds that the State or*
5 *local educational agency unreasonably protracted*
6 *the final resolution of the action or proceeding or*
7 *there was a violation of this section.*

8 “(4) *PARENTS REPRESENTING THEIR CHILDREN*
9 *IN COURT.*—*Subject to subsection (m), and notwith-*
10 *standing any other provision of Federal law regard-*
11 *ing attorney representation (including the Federal*
12 *Rules of Civil Procedure), a parent of a child with a*
13 *disability may represent the child in any action*
14 *under this part in Federal or State court, without the*
15 *assistance of an attorney.*

16 “(j) *MAINTENANCE OF CURRENT EDUCATIONAL*
17 *PLACEMENT.*—*Except as provided in subsection (k)(4), dur-*
18 *ing the pendency of any proceedings conducted pursuant*
19 *to this section, unless the State or local educational agency*
20 *and the parents otherwise agree, the child shall remain in*
21 *the then-current educational placement of such child, or, if*
22 *applying for initial admission to a public school, shall,*
23 *with the consent of the parents, be placed in the public*
24 *school program until all such proceedings have been com-*
25 *pleted.*

1 “(k) *PLACEMENT IN ALTERNATIVE EDUCATIONAL SET-*
2 *TING.—*

3 “(1) *AUTHORITY OF SCHOOL PERSONNEL.—*

4 “(A) *IN GENERAL.—School personnel under*
5 *this section may order a change in the placement*
6 *of a child with a disability who violates a code*
7 *of student conduct to an appropriate interim al-*
8 *ternative educational setting, another setting, or*
9 *suspension, for not more than 10 school days (to*
10 *the extent such alternatives are applied to chil-*
11 *dren without disabilities).*

12 “(B) *ADDITIONAL AUTHORITY.—If school*
13 *personnel seek to order a change in placement*
14 *that would exceed 10 school days and the behav-*
15 *ior that gave rise to the violation of the school*
16 *code is determined not to be a manifestation of*
17 *the child’s disability pursuant to subparagraph*
18 *(C), the relevant disciplinary procedures appli-*
19 *cable to children without disabilities may be ap-*
20 *plied to the child in the same manner in which*
21 *the procedures would be applied to children with-*
22 *out disabilities, except as provided in section*
23 *612(a)(1).*

24 “(C) *MANIFESTATION DETERMINATION.—*

1 “(i) *IN GENERAL.*—*Except as provided*
2 *in subparagraphs (A) and (D), within 10*
3 *school days of any decision to change the*
4 *placement of a child with a disability be-*
5 *cause of a violation of a code of student con-*
6 *duct, the IEP Team shall review all rel-*
7 *evant information in the student’s file, any*
8 *information provided by the parents, and*
9 *teacher observations, to determine—*

10 “(I) *if the conduct in question*
11 *was the result of the child’s disability;*
12 *or*

13 “(II) *if the conduct in question*
14 *resulted from the failure to implement*
15 *the IEP or to implement behavioral*
16 *interventions as required by section*
17 *614(d)(3)(B)(i).*

18 “(ii) *MANIFESTATION.*—*If the IEP*
19 *Team determines that either subclause (I)*
20 *or (II) of clause (i) is applicable for the*
21 *child, the conduct shall be determined to be*
22 *a manifestation of the child’s disability.*

23 “(D) *SPECIAL CIRCUMSTANCES.*—*In cases*
24 *where a child—*

1 “(i) carries or possesses a weapon to or
2 at school, on school premises, or to or at a
3 school function under the jurisdiction of a
4 State or local educational agency; or

5 “(ii) knowingly possesses or uses illegal
6 drugs, or sells or solicits the sale of a con-
7 trolled substance, while at school or a school
8 function under the jurisdiction of a State or
9 local educational agency; or

10 “(iii) has committed serious bodily in-
11 jury upon another person while at school or
12 at a school function under the jurisdiction
13 of a State or local educational agency,
14 school personnel may remove a student to an in-
15 terim alternative educational setting for not
16 more than 45 school days, without regard to
17 whether the behavior is determined to be a mani-
18 festation of the child’s disability.

19 “(E) NOTIFICATION.—Not later than the
20 date on which the decision to take disciplinary
21 action is made, the local educational agency
22 shall notify the parents of that decision, and of
23 all procedural safeguards accorded under this
24 section.

1 “(F) *SERVICES.*—A child with a disability
2 who is removed from the child’s current place-
3 ment under subparagraph (B) or (D) shall—

4 “(i) continue to receive educational
5 services pursuant to section 612(a)(1), so as
6 to enable the child to continue to partici-
7 pate in the general education curriculum,
8 although in another setting, and to progress
9 toward meeting the goals set out in the
10 child’s IEP; and

11 “(ii) receive behavioral intervention
12 services as described in section
13 614(d)(3)(B)(i), and a functional behavioral
14 assessment (but only if the local educational
15 agency did not conduct such an assessment
16 before the violation occurred), designed to
17 address the behavior violation so that the
18 violation does not recur.

19 “(2) *DETERMINATION OF SETTING.*—The alter-
20 native educational setting shall be determined by the
21 IEP Team.

22 “(3) *APPEAL.*—

23 “(A) *IN GENERAL.*—The parent of a child
24 with a disability who disagrees with any deci-
25 sion regarding disciplinary action, placement, or

1 *the manifestation determination under this sub-*
2 *section, or a local educational agency that be-*
3 *lieves that maintaining the current placement of*
4 *the child is substantially likely to result in in-*
5 *jury to the child or to others, may request a*
6 *hearing.*

7 “(B) *AUTHORITY OF HEARING OFFICER.—*

8 “(i) *IN GENERAL.—If a parent of a*
9 *child with a disability disagrees with a de-*
10 *cision as described in subparagraph (A), the*
11 *hearing officer may determine whether the*
12 *decision regarding such action was appro-*
13 *priate.*

14 “(ii) *CHANGE OF PLACEMENT*
15 *ORDER.—A hearing officer under this sec-*
16 *tion may order a change in placement of a*
17 *child with a disability to an appropriate*
18 *interim alternative educational setting for*
19 *not more than 45 school days if the hearing*
20 *officer determines that maintaining the cur-*
21 *rent placement of such child is substantially*
22 *likely to result in injury to the child or to*
23 *others.*

24 “(4) *PLACEMENT DURING APPEALS.—When a*
25 *parent requests a hearing regarding a disciplinary*

1 *procedure described in paragraph (1)(B) or challenges*
2 *the interim alternative educational setting or mani-*
3 *festation determination—*

4 “(A) *the child shall remain in the interim*
5 *alternative educational setting pending the deci-*
6 *sion of the hearing officer or until the expiration*
7 *of the time period provided for in paragraph*
8 *(1)(B), whichever occurs first, unless the parent*
9 *and the State or local educational agency agree*
10 *otherwise; and*

11 “(B) *the State or local educational agency*
12 *shall arrange for an expedited hearing, which*
13 *shall occur within 20 school days of the date the*
14 *hearing is requested.*

15 “(5) *PROTECTIONS FOR CHILDREN NOT YET ELI-*
16 *GIBLE FOR SPECIAL EDUCATION AND RELATED SERV-*
17 *ICES.—*

18 “(A) *IN GENERAL.—A child who has not*
19 *been determined to be eligible for special edu-*
20 *cation and related services under this part and*
21 *who has engaged in behavior that violates a code*
22 *of student conduct, may assert any of the protec-*
23 *tions provided for in this part if the local edu-*
24 *cational agency had knowledge (as determined in*
25 *accordance with this paragraph) that the child*

1 *was a child with a disability before the behavior*
2 *that precipitated the disciplinary action oc-*
3 *curred.*

4 “(B) *BASIS OF KNOWLEDGE.*—*A local edu-*
5 *cational agency shall be deemed to have knowl-*
6 *edge that a child is a child with a disability if,*
7 *before the behavior that precipitated the discipli-*
8 *nary action occurred—*

9 “(i) *the parent of the child has ex-*
10 *pressed concern in writing (unless the par-*
11 *ent is illiterate or has a disability that pre-*
12 *vents compliance with the requirements con-*
13 *tained in this clause) to personnel of the ap-*
14 *propriate educational agency that the child*
15 *is in need of special education and related*
16 *services;*

17 “(ii) *the parent of the child has re-*
18 *quested an evaluation of the child pursuant*
19 *to section 614;*

20 “(iii) *the teacher of the child, or other*
21 *personnel of the local educational agency,*
22 *has expressed concern about a pattern of be-*
23 *havior demonstrated by the child, to the di-*
24 *rector of special education of such agency or*

1 to other administrative personnel of the
2 agency; or

3 “(iv) the child has engaged in a pat-
4 tern of behavior that should have alerted
5 personnel of the local educational agency
6 that the child may be in need of special
7 education and related services.

8 “(C) *EXCEPTION.*—A local educational
9 agency shall not be deemed to have knowledge
10 that the child has a disability if the parent of the
11 child has not agreed to allow an evaluation of
12 the child pursuant to section 614.

13 “(D) *CONDITIONS THAT APPLY IF NO BASIS*
14 *OF KNOWLEDGE.*—

15 “(i) *IN GENERAL.*—If a local edu-
16 cational agency does not have knowledge
17 that a child is a child with a disability (in
18 accordance with subparagraph (B) or (C))
19 prior to taking disciplinary measures
20 against the child, the child may be subjected
21 to disciplinary measures applied to children
22 without disabilities who engaged in com-
23 parable behaviors consistent with clause
24 (ii).

1 “(ii) *LIMITATIONS.*—If a request is
2 made for an evaluation of a child during
3 the time period in which the child is sub-
4 jected to disciplinary measures under para-
5 graph (1), the evaluation shall be conducted
6 in an expedited manner. If the child is de-
7 termined to be a child with a disability,
8 taking into consideration information from
9 the evaluation conducted by the agency and
10 information provided by the parents, the
11 agency shall provide special education and
12 related services in accordance with this
13 part, except that, pending the results of the
14 evaluation, the child shall remain in the
15 educational placement determined by school
16 authorities.

17 “(6) *REFERRAL TO AND ACTION BY LAW EN-*
18 *FORCEMENT AND JUDICIAL AUTHORITIES.*—

19 “(A) *CONSTRUCTION.*—Nothing in this part
20 shall be construed to prohibit an agency from re-
21 porting a crime committed by a child with a dis-
22 ability to appropriate authorities or to prevent
23 State law enforcement and judicial authorities
24 from exercising their responsibilities with regard

1 to the application of Federal and State law to
2 crimes committed by a child with a disability.

3 “(B) *TRANSMITTAL OF RECORDS.*—An
4 agency reporting a crime committed by a child
5 with a disability shall ensure that copies of the
6 special education and disciplinary records of the
7 child are transmitted for consideration by the
8 appropriate authorities to whom the agency re-
9 ports the crime.

10 “(7) *DEFINITIONS.*—For purposes of this sub-
11 section, the following definitions apply:

12 “(A) *CONTROLLED SUBSTANCE.*—The term
13 ‘controlled substance’ means a drug or other sub-
14 stance identified under schedule I, II, III, IV, or
15 V in section 202(c) of the Controlled Substances
16 Act (21 U.S.C. 812(c)).

17 “(B) *ILLEGAL DRUG.*—The term ‘illegal
18 drug’ means a controlled substance but does not
19 include a controlled substance that is legally pos-
20 sessed or used under the supervision of a licensed
21 health-care professional or that is legally pos-
22 sessed or used under any other authority under
23 that Act or under any other provision of Federal
24 law.

1 “(C) *WEAPON*.—The term ‘*weapon*’ has the
2 meaning given the term ‘*dangerous weapon*’
3 under section 930(g)(2) of title 18, United States
4 Code.

5 “(D) *SERIOUS BODILY INJURY*.—The term
6 ‘*serious bodily injury*’ has the meaning given the
7 term ‘*serious bodily injury*’ under paragraph (3)
8 of subsection (h) of section 1365 of title 18,
9 United States Code.

10 “(l) *RULE OF CONSTRUCTION*.—Nothing in this title
11 shall be construed to restrict or limit the rights, procedures,
12 and remedies available under the Constitution, the Ameri-
13 cans with Disabilities Act of 1990, title V of the Rehabilita-
14 tion Act of 1973, or other Federal laws protecting the rights
15 of children with disabilities, or under subtitle B of title VII
16 of the McKinney-Vento Homeless Assistance Act or parts
17 B and E of title IV of the Social Security Act, except that
18 before the filing of a civil action under such laws seeking
19 relief that is also available under this part, the procedures
20 under subsections (f) and (g) shall be exhausted to the same
21 extent as would be required had the action been brought
22 under this part.

23 “(m) *TRANSFER OF PARENTAL RIGHTS AT AGE OF*
24 *MAJORITY*.—

1 “(1) *IN GENERAL.*—A State that receives
2 amounts from a grant under this part may provide
3 that, when a child with a disability reaches the age
4 of majority under State law (except for a child with
5 a disability who has been determined to be incom-
6 petent under State law)—

7 “(A) the public agency shall provide any
8 notice required by this section to both the indi-
9 vidual and the parents;

10 “(B) all other rights accorded to parents
11 under this part transfer to the child;

12 “(C) the agency shall notify the individual
13 and the parents of the transfer of rights; and

14 “(D) all rights accorded to parents under
15 this part transfer to children who are incarcer-
16 ated in an adult or juvenile Federal, State, or
17 local correctional institution.

18 “(2) *SPECIAL RULE.*—If, under State law, a
19 child with a disability who has reached the age of
20 majority under State law, who has not been deter-
21 mined to be incompetent, but who is determined not
22 to have the ability to provide informed consent with
23 respect to the educational program of the child, the
24 State shall establish procedures for appointing the
25 parent of the child, or if the parent is not available,

1 *another appropriate individual, to represent the edu-*
2 *catinal interests of the child throughout the period of*
3 *eligibility of the child under this part.*

4 *“(n) E-MAIL.—A parent of a child with a disability*
5 *may elect to receive notices required under this section by*
6 *e-mail communication, if the public agency makes such op-*
7 *tion available.*

8 *“(o) SURROGATE PARENT.—*

9 *“(1) ASSIGNMENT.—The assignment of a surro-*
10 *gate under subsection (b)(2) shall take place not more*
11 *than 30 days after either of the following takes place:*

12 *“(A) The child is referred to the local edu-*
13 *catinal agency for an initial evaluation to de-*
14 *termine if the child is a child with a disability.*

15 *“(B) There is a determination made by the*
16 *agency that the child needs a surrogate parent*
17 *because the child’s parent cannot be identified,*
18 *the child becomes a ward of the State, or, despite*
19 *reasonable efforts to do so, the agency cannot dis-*
20 *cover the whereabouts of the parent of the child.*

21 *“(2) REQUIREMENTS OF SURROGATE.—An indi-*
22 *vidual may not be assigned to act as a surrogate for*
23 *the parents under subsection (b)(2) unless the indi-*
24 *vidual—*

1 “(1) *IN GENERAL.*—*The Secretary shall—*

2 “(A) *monitor implementation of this Act*
3 *through—*

4 “(i) *oversight of the States’ exercise of*
5 *general supervision, as required in section*
6 *612(a)(11); and*

7 “(ii) *the system of indicators, described*
8 *in subsection (b)(2); and*

9 “(B) *enforce this Act in accordance with*
10 *subsection (c); and*

11 “(C) *require States to monitor implementa-*
12 *tion of this Act by local educational agencies and*
13 *enforce this Act in accordance with paragraph*
14 *(3) of this subsection and subsection (c).*

15 “(2) *FOCUSED MONITORING.*—*The primary focus*
16 *of Federal and State monitoring activities described*
17 *in paragraph (1) shall be on improving educational*
18 *results and functional outcomes for all children with*
19 *disabilities, while ensuring compliance with program*
20 *requirements, with a particular emphasis on those re-*
21 *quirements that are most closely related to improving*
22 *educational results for children with disabilities.*

23 “(3) *MONITORING PRIORITIES.*—*The Secretary*
24 *shall monitor, and shall require States to monitor, the*
25 *following priority areas:*

1 “(A) *Provision of a free appropriate public*
2 *education in the least restrictive environment.*

3 “(B) *Provision of transition services, as de-*
4 *defined in section 602(33).*

5 “(C) *State exercise of general supervisory*
6 *authority, including the effective use of com-*
7 *plaint resolution and mediation.*

8 “(D) *Overrepresentation of racial and eth-*
9 *nic groups in special education and related serv-*
10 *ices, to the extent the overrepresentation is the*
11 *result of inappropriate policies, procedures, and*
12 *practices.*

13 “(4) *PERMISSIVE AREAS OF REVIEW.—The Sec-*
14 *retary may examine other relevant information and*
15 *data, including data provided by States under section*
16 *618, and data from the State’s compliance plan under*
17 *subsection (b)(2)(C).*

18 “(b) *INDICATORS.—*

19 “(1) *SYSTEM.—The Secretary shall implement*
20 *and administer a system of required indicators as de-*
21 *scribed in paragraph (2) that measures the progress*
22 *of States in improving their performance under this*
23 *Act.*

24 “(2) *INDICATORS.—*

1 “(A) *IN GENERAL.*—Using the performance
2 indicators established by States under section
3 612(a)(15), the Secretary shall review—

4 “(i) the performance of children with
5 disabilities in the State on assessments, in-
6 cluding alternate assessments, dropout rates,
7 and graduation rates, which for purposes of
8 this paragraph means the number and per-
9 centage of students with disabilities who
10 graduate with a regular diploma within the
11 number of years specified in a student’s
12 IEP; and

13 “(ii) the performance of children with
14 disabilities in the State on assessments, in-
15 cluding alternate assessments, dropout rates,
16 and graduation rates, as compared to the
17 performance and rates for all children.

18 “(B) *SECRETARY’S ASSESSMENT.*—Based on
19 that review and a review of the State’s compli-
20 ance plan under subparagraph (C), the Secretary
21 shall assess the State’s progress in improving
22 educational results for children with disabilities.

23 “(C) *STATE COMPLIANCE PLAN.*—Not later
24 than 1 year after the date of the enactment of the
25 *Individuals with Disabilities Education Im-*

1 *provement Act of 2004, each State shall have in*
2 *place a compliance plan developed in collabora-*
3 *tion with the Secretary. Each State’s compliance*
4 *plan shall—*

5 *“(i) include benchmarks to measure*
6 *continuous progress on the priority areas*
7 *described in subsection (a)(3);*

8 *“(ii) describe strategies the State will*
9 *use to achieve the benchmarks; and*

10 *“(iii) be approved by the Secretary.*

11 *“(D) PUBLIC REPORTING AND PRIVACY.—*

12 *“(i) IN GENERAL.—After the Secretary*
13 *approves a State’s compliance plan under*
14 *subparagraph (C), the State shall use the*
15 *benchmarks in the plan and the indicators*
16 *described in this subsection to analyze the*
17 *progress of each local educational agency in*
18 *the State on those benchmarks and indica-*
19 *tors.*

20 *“(ii) REPORT.—The State shall report*
21 *annually to the public on each local edu-*
22 *cational agency’s progress under clause (i),*
23 *except where doing so would result in the*
24 *disclosure of personally identifiable infor-*
25 *mation about individual children or where*

1 *the available data is insufficient to yield*
2 *statistically reliable information.*

3 “(3) *DATA COLLECTION AND ANALYSIS.—The*
4 *Secretary shall—*

5 “(A) *review the data collection and analysis*
6 *capacity of States to ensure that data and infor-*
7 *mation determined necessary for implementation*
8 *of this subsection is collected, analyzed, and ac-*
9 *curately reported to the Secretary; and*

10 “(B) *provide technical assistance to improve*
11 *the capacity of States to meet these data collec-*
12 *tion requirements.*

13 “(c) *COMPLIANCE AND ENFORCEMENT.—*

14 “(1) *IN GENERAL.—The Secretary shall examine*
15 *relevant State information and data annually, to de-*
16 *termine whether the State is making satisfactory*
17 *progress toward improving educational results for*
18 *children with disabilities using the indicators de-*
19 *scribed in subsection (b)(2)(A) and the benchmarks es-*
20 *tablished in the State compliance plan under sub-*
21 *section (b)(2)(C), and is in compliance with the pro-*
22 *visions of this Act.*

23 “(2) *LACK OF SATISFACTORY PROGRESS BY A*
24 *STATE.—*

1 “(A) *IN GENERAL.*—*If after examining*
2 *data, as provided in subsection (b)(2) (A) and*
3 *(C), the Secretary determines that a State failed*
4 *to make satisfactory progress in meeting the in-*
5 *dicators described in subsection (b)(2)(A) or has*
6 *failed to meet the benchmarks described in sub-*
7 *section (b)(2)(C) for 2 consecutive years after the*
8 *State has developed its compliance plan, the Sec-*
9 *retary shall notify the State that the State has*
10 *failed to make satisfactory progress, and shall*
11 *take 1 or more of the following actions:*

12 “(i) *Direct the use of State level funds*
13 *for technical assistance, services, or other*
14 *expenditures to ensure that the State re-*
15 *solves the area or areas of unsatisfactory*
16 *progress.*

17 “(ii) *Withhold not less than 20, but not*
18 *more than 50, percent of the State’s funds*
19 *for State administration and activities for*
20 *the fiscal year under section 611(e), after*
21 *providing the State the opportunity to show*
22 *cause why the withholding should not occur,*
23 *until the Secretary determines that suffi-*
24 *cient progress has been made in improving*

1 *educational results for children with dis-*
2 *abilities.*

3 “(B) *ADDITIONAL SECRETARIAL ACTION.*—

4 *If, at the end of the 5th year after the Secretary*
5 *has approved the compliance plan that the State*
6 *has developed under subsection (b)(2)(C), the*
7 *Secretary determines that a State failed to meet*
8 *the benchmarks in the State compliance plan*
9 *and make satisfactory progress in improving*
10 *educational results for children with disabilities*
11 *pursuant to the indicators described in sub-*
12 *section (b)(2)(A), the Secretary shall take 1 or*
13 *more of the following actions:*

14 “(i) *Seek to recover funds under section*
15 *452 of the General Education Provisions*
16 *Act.*

17 “(ii) *After providing reasonable notice*
18 *and an opportunity for a hearing to the*
19 *State educational agency involved, with-*
20 *hold, in whole or in part, any further pay-*
21 *ments to the State under this part pursuant*
22 *to subsection (c)(5).*

23 “(iii) *After providing reasonable notice*
24 *and an opportunity for a hearing to the*
25 *State educational agency involved, refer the*

1 *matter for appropriate enforcement action,*
2 *which may include referral to the Depart-*
3 *ment of Justice.*

4 “(iv) *Pending the outcome of any hear-*
5 *ing to withhold payments under clause (ii),*
6 *the Secretary may suspend payments to a*
7 *recipient, suspend the authority of the re-*
8 *recipient to obligate Federal funds, or both,*
9 *after such recipient has been given reason-*
10 *able notice and an opportunity to show*
11 *cause why future payments or authority to*
12 *obligate Federal funds should not be sus-*
13 *pending.*

14 “(C) *SUBSTANTIAL NONCOMPLIANCE.—Not-*
15 *withstanding subparagraph (B), at any time*
16 *that the Secretary determines that a State is not*
17 *in substantial compliance with any provision of*
18 *this part or that there is a substantial failure to*
19 *comply with any condition of a local agency’s or*
20 *State agency’s eligibility under this part, the*
21 *Secretary shall take 1 or more of the following*
22 *actions:*

23 “(i) *Request that the State prepare a*
24 *corrective action plan or improvement plan*
25 *if the Secretary determines that the State*

1 *should be able to correct the problem within*
2 *1 year.*

3 “(ii) *Identify the State as a high-risk*
4 *grantee and impose special conditions on*
5 *the State’s grant under this part.*

6 “(iii) *Require the State to enter into a*
7 *compliance agreement under section 457 of*
8 *the General Education Provisions Act, if the*
9 *Secretary has reason to believe that the*
10 *State cannot correct the problem within 1*
11 *year.*

12 “(iv) *Recovery of funds under section*
13 *452 of the General Education Provisions*
14 *Act.*

15 “(v) *After providing reasonable notice*
16 *and an opportunity for a hearing to the*
17 *State educational agency involved, with-*
18 *hold, in whole or in part, any further pay-*
19 *ments to the State under this part.*

20 “(vi) *After providing reasonable notice*
21 *and an opportunity for a hearing to the*
22 *State educational agency involved, refer the*
23 *matter for appropriate enforcement action,*
24 *which may include referral to the Depart-*
25 *ment of Justice.*

1 “(vii) Pending the outcome of any
2 hearing to withhold payments under clause
3 (v), the Secretary may suspend payments to
4 a recipient, suspend the authority of the re-
5 cipient to obligate Federal funds, or both,
6 after such recipient has been given reason-
7 able notice and an opportunity to show
8 cause why future payments or authority to
9 obligate Federal funds should not be sus-
10 pended.

11 “(3) *EGREGIOUS NONCOMPLIANCE.*—At any time
12 that the Secretary determines that a State is in egre-
13 gious noncompliance or is willfully disregarding the
14 provisions of this Act, the Secretary shall take such
15 additional enforcement actions as the Secretary deter-
16 mines to be appropriate from among those actions
17 specified in paragraph (2)(C), and, additionally, may
18 impose 1 or more of the following sanctions upon that
19 State:

20 “(A) Institute a cease and desist action
21 under section 456 of the General Education Pro-
22 visions Act.

23 “(B) Refer the case to the Office of the In-
24 specter General.

1 “(4) *REPORT TO CONGRESS.*—*The Secretary*
2 *shall report to Congress within 30 days of taking en-*
3 *forcement action pursuant to paragraph (2) (B) or*
4 *(C), or (3), on the specific action taken and the rea-*
5 *sons why enforcement action was taken.*

6 “(5) *NATURE OF WITHHOLDING.*—*If the Sec-*
7 *retary withholds further payments under paragraphs*
8 *(2)(B)(ii) and (2)(C)(v), the Secretary may determine*
9 *that such withholding will be limited to programs or*
10 *projects, or portions thereof, affected by the failure, or*
11 *that the State educational agency shall not make fur-*
12 *ther payments under this part to specified local edu-*
13 *cational agencies or State agencies affected by the*
14 *failure. Until the Secretary is satisfied that there is*
15 *no longer any failure to make satisfactory progress as*
16 *specified in paragraph (2)(B), or to comply with the*
17 *provisions of this part, as specified in paragraph*
18 *(2)(C), payments to the State under this part shall be*
19 *withheld in whole or in part, or payments by the*
20 *State educational agency under this part shall be lim-*
21 *ited to local educational agencies and State agencies*
22 *whose actions did not cause or were not involved in*
23 *the failure, as the case may be. Any State educational*
24 *agency, State agency, or local educational agency that*
25 *has received notice under paragraph (2)(B) or (2)(C)*

1 shall, by means of a public notice, take such measures
2 as may be necessary to bring the pendency of an ac-
3 tion pursuant to this subsection to the attention of the
4 public within the jurisdiction of such agency.

5 “(6) JUDICIAL REVIEW.—

6 “(A) IN GENERAL.—If any State is dissatis-
7 fied with the Secretary’s final action with re-
8 spect to the eligibility of the State under section
9 612, such State may, not later than 60 days
10 after notice of such action, file with the United
11 States court of appeals for the circuit in which
12 such State is located a petition for review of that
13 action. A copy of the petition shall be forthwith
14 transmitted by the clerk of the court to the Sec-
15 retary. The Secretary thereupon shall file in the
16 court the record of the proceedings upon which
17 the Secretary’s action was based, as provided in
18 section 2112 of title 28, United States Code.

19 “(B) JURISDICTION; REVIEW BY UNITED
20 STATES SUPREME COURT.—Upon the filing of
21 such petition, the court shall have jurisdiction to
22 affirm the action of the Secretary or to set it
23 aside, in whole or in part. The judgment of the
24 court shall be subject to review by the Supreme
25 Court of the United States upon certiorari or

1 *certification as provided in section 1254 of title*
2 *28, United States Code.*

3 “(C) *STANDARD OF REVIEW.*—*The findings*
4 *of fact by the Secretary, if supported by substan-*
5 *tial evidence, shall be conclusive, but the court,*
6 *for good cause shown, may remand the case to*
7 *the Secretary to take further evidence, and the*
8 *Secretary may thereupon make new or modified*
9 *findings of fact and may modify the Secretary’s*
10 *previous action, and shall file in the court the*
11 *record of the further proceedings. Such new or*
12 *modified findings of fact shall likewise be conclu-*
13 *sive if supported by substantial evidence.*

14 “(d) *DIVIDED STATE AGENCY RESPONSIBILITY.*—*For*
15 *purposes of this section, where responsibility for ensuring*
16 *that the requirements of this part are met with respect to*
17 *children with disabilities who are convicted as adults under*
18 *State law and incarcerated in adult prisons is assigned to*
19 *a public agency other than the State educational agency*
20 *pursuant to section 612(a)(11)(C), the Secretary, in in-*
21 *stances where the Secretary finds that the failure to comply*
22 *substantially with the provisions of this part are related*
23 *to a failure by the public agency, shall take appropriate*
24 *corrective action to ensure compliance with this part, except*
25 *that—*

1 “(1) any reduction or withholding of payments
2 to the State shall be proportionate to the total funds
3 allotted under section 611 to the State as the number
4 of eligible children with disabilities in adult prisons
5 under the supervision of the other public agency is
6 proportionate to the number of eligible individuals
7 with disabilities in the State under the supervision of
8 the State educational agency; and

9 “(2) any withholding of funds under paragraph
10 (1) shall be limited to the specific agency responsible
11 for the failure to comply with this part.

12 “(e) STATE AND LOCAL MONITORING.—

13 “(1) IN GENERAL.—The State educational agen-
14 cy shall monitor and enforce implementation of this
15 Act, implement a system of monitoring the bench-
16 marks in the State’s compliance plan under sub-
17 section (b)(2)(C), and require local educational agen-
18 cies to monitor and enforce implementation of this
19 Act.

20 “(2) ADDITIONAL ENFORCEMENT OPTIONS.—If a
21 State educational agency determines that a local edu-
22 cational agency is not meeting the requirements of
23 this part, including the benchmarks in the State’s
24 compliance plan, the State educational agency shall
25 prohibit the local educational agency from treating

1 *funds received under this part as local funds under*
2 *section 613(a)(2)(C) for any fiscal year.*

3 **“SEC. 617. ADMINISTRATION.**

4 *“(a) RESPONSIBILITIES OF SECRETARY.—The Sec-*
5 *retary shall—*

6 *“(1) cooperate with, and (directly or by grant or*
7 *contract) furnish technical assistance necessary to, a*
8 *State in matters relating to—*

9 *“(A) the education of children with disabil-*
10 *ities; and*

11 *“(B) carrying out this part; and*

12 *“(2) provide short-term training programs and*
13 *institutes.*

14 *“(b) CONFIDENTIALITY.—The Secretary shall take ap-*
15 *propriate action, in accordance with section 444 of the Gen-*
16 *eral Education Provisions Act (20 U.S.C. 1232g), to assure*
17 *the protection of the confidentiality of any personally iden-*
18 *tifiable data, information, and records collected or main-*
19 *tained by the Secretary and by State and local educational*
20 *agencies pursuant to this part.*

21 *“(c) PERSONNEL.—The Secretary is authorized to hire*
22 *qualified personnel necessary to carry out the Secretary’s*
23 *duties under subsection (a) and under sections 618, 661,*
24 *and 664, without regard to the provisions of title 5, United*
25 *States Code, relating to appointments in the competitive*

1 *service and without regard to chapter 51 and subchapter*
2 *III of chapter 53 of such title relating to classification and*
3 *general schedule pay rates, except that not more than 20*
4 *such personnel shall be employed at any 1 time.*

5 “(d) *MODEL FORMS.*—*Not later than the date that the*
6 *Secretary publishes final regulations under this Act, to im-*
7 *plement amendments made by the Individuals with Disabil-*
8 *ities Education Improvement Act of 2004, the Secretary*
9 *shall publish and disseminate widely to States, local edu-*
10 *cational agencies, and parent and community training and*
11 *information centers—*

12 “(1) *a model IEP form;*

13 “(2) *a model individualized family service plan*
14 *(IFSP) form;*

15 “(3) *a model form of the notice of procedural*
16 *safeguards described in section 615(d); and*

17 “(4) *a model form of the prior written notice de-*
18 *scribed in section 615 (b)(3) and (c)(1) that is con-*
19 *sistent with the requirements of this part and is suffi-*
20 *cient to meet such requirements.*

21 **“SEC. 618. PROGRAM INFORMATION.**

22 “(a) *IN GENERAL.*—*Each State that receives assist-*
23 *ance under this part, and the Secretary of the Interior, shall*
24 *provide data each year to the Secretary of Education and*
25 *the public on—*

1 “(1)(A) the number and percentage of children
2 with disabilities, by race, ethnicity, limited English
3 proficiency status, gender, and disability category,
4 who are receiving a free appropriate public education;

5 “(B) the number and percentage of children with
6 disabilities, by race, gender, and ethnicity, who are
7 receiving early intervention services;

8 “(C) the number and percentage of children with
9 disabilities, by race, ethnicity, limited English pro-
10 ficiency status, gender, and disability category, who
11 are participating in regular education;

12 “(D) the number and percentage of children with
13 disabilities, by race, ethnicity, limited English pro-
14 ficiency status, gender, and disability category, who
15 are in separate classes, separate schools or facilities,
16 or public or private residential facilities;

17 “(E) the number and percentage of children with
18 disabilities, by race, ethnicity, limited English pro-
19 ficiency status, gender, and disability category, who,
20 for each year of age from age 14 through 21, stopped
21 receiving special education and related services be-
22 cause of program completion (including graduation
23 with a regular secondary school diploma), or other
24 reasons, and the reasons why those children stopped
25 receiving special education and related services;

1 “(F) the number and percentage of children with
2 disabilities, by race, gender, and ethnicity, who, from
3 birth through age 2, stopped receiving early interven-
4 tion services because of program completion or for
5 other reasons;

6 “(G)(i) the number and percentage of children
7 with disabilities, by race, ethnicity, limited English
8 proficiency status, gender, and disability category,
9 who are removed to an interim alternative edu-
10 cational setting under section 615(k)(1);

11 “(ii) the acts or items precipitating those remov-
12 als; and

13 “(iii) the number of children with disabilities
14 who are subject to long-term suspensions or expul-
15 sions;

16 “(H) the incidence and duration of disciplinary
17 actions by race, ethnicity, limited English proficiency
18 status, gender, and disability category, of children
19 with disabilities, including suspensions of 1 day or
20 more;

21 “(I) the number and percentage of children with
22 disabilities who are removed to alternative edu-
23 cational settings or expelled as compared to children
24 without disabilities who are removed to alternative
25 educational settings or expelled;

1 “(J) the number of due process complaints filed
2 under section 615 and the number of hearings con-
3 ducted;

4 “(K) the number of hearings requested under sec-
5 tion 615(k) and the number of changes in placements
6 ordered as a result of those hearings;

7 “(L) the number of hearings requested under sec-
8 tion 615(k)(3)(B)(ii) and the number of changes in
9 placements ordered as a result of those hearings; and

10 “(M) the number of mediations held and the
11 number of settlement agreements reached through such
12 mediations;

13 “(2) the number and percentage of infants and
14 toddlers, by race, and ethnicity, who are at risk of
15 having substantial developmental delays (as defined
16 in section 632), and who are receiving early interven-
17 tion services under part C; and

18 “(3) any other information that may be required
19 by the Secretary.

20 “(b) *DATA REPORTING.*—The data described in sub-
21 section (a) shall be reported by each State at the school dis-
22 trict and State level in a manner that does not result in
23 the disclosure of data identifiable to individual children.

24 “(c) *TECHNICAL ASSISTANCE.*—The Secretary may
25 provide technical assistance to States to ensure compliance

1 *with the data collection and reporting requirements under*
2 *this Act.*

3 “(d) *DISPROPORTIONALITY.*—

4 “(1) *IN GENERAL.*—*Each State that receives as-*
5 *sistance under this part, and the Secretary of the In-*
6 *terior, shall provide for the collection and examina-*
7 *tion of data to determine if significant*
8 *disproportionality based on race is occurring in the*
9 *State with respect to—*

10 “(A) *the identification of children as chil-*
11 *dren with disabilities, including the identifica-*
12 *tion of children as children with disabilities in*
13 *accordance with a particular impairment de-*
14 *scribed in section 602(3);*

15 “(B) *the placement in particular edu-*
16 *cational settings of such children; and*

17 “(C) *the incidence, duration, and type of*
18 *disciplinary actions, including suspensions and*
19 *expulsions.*

20 “(2) *REVIEW AND REVISION OF POLICIES, PRAC-*
21 *TICES, AND PROCEDURES.*—*In the case of a deter-*
22 *mination of significant disproportionality with re-*
23 *spect to the identification of children as children with*
24 *disabilities, or the placement in particular edu-*
25 *cational settings of such children, in accordance with*

1 *paragraph (1), the State or the Secretary of the Inte-*
2 *rior, as the case may be, shall provide for the review*
3 *and, if appropriate, revision of the policies, proce-*
4 *dures, and practices used in such identification or*
5 *placement to ensure that such policies, procedures,*
6 *and practices comply with the requirements of this*
7 *Act.*

8 **“SEC. 619. PRESCHOOL GRANTS.**

9 *“(a) IN GENERAL.—The Secretary shall provide grants*
10 *under this section to assist States to provide special edu-*
11 *cation and related services, in accordance with this part—*

12 *“(1) to children with disabilities aged 3 through*
13 *5, inclusive; and*

14 *“(2) at the State’s discretion, to 2-year-old chil-*
15 *dren with disabilities who will turn 3 during the*
16 *school year.*

17 *“(b) ELIGIBILITY.—A State shall be eligible for a grant*
18 *under this section if such State—*

19 *“(1) is eligible under section 612 to receive a*
20 *grant under this part; and*

21 *“(2) makes a free appropriate public education*
22 *available to all children with disabilities, aged 3*
23 *through 5, residing in the State.*

24 *“(c) ALLOCATIONS TO STATES.—*

1 “(1) *IN GENERAL.*—*The Secretary shall allocate*
2 *the amount made available to carry out this section*
3 *for a fiscal year among the States in accordance with*
4 *paragraph (2) or (3), as the case may be.*

5 “(2) *INCREASE IN FUNDS.*—*If the amount avail-*
6 *able for allocations to States under paragraph (1) is*
7 *equal to or greater than the amount allocated to the*
8 *States under this section for the preceding fiscal year,*
9 *those allocations shall be calculated as follows:*

10 “(A) *ALLOCATION.*—

11 “(i) *IN GENERAL.*—*Except as provided*
12 *in subparagraph (B), the Secretary shall—*

13 “(I) *allocate to each State the*
14 *amount the State received under this*
15 *section for fiscal year 1997;*

16 “(II) *allocate 85 percent of any*
17 *remaining funds to States on the basis*
18 *of the States’ relative populations of*
19 *children aged 3 through 5; and*

20 “(III) *allocate 15 percent of those*
21 *remaining funds to States on the basis*
22 *of the States’ relative populations of all*
23 *children aged 3 through 5 who are liv-*
24 *ing in poverty.*

1 “(ii) *DATA.*—*For the purpose of mak-*
2 *ing grants under this paragraph, the Sec-*
3 *retary shall use the most recent population*
4 *data, including data on children living in*
5 *poverty, that are available and satisfactory*
6 *to the Secretary.*

7 “(B) *LIMITATIONS.*—*Notwithstanding sub-*
8 *paragraph (A), allocations under this paragraph*
9 *shall be subject to the following:*

10 “(i) *PRECEDING YEARS.*—*No State’s*
11 *allocation shall be less than its allocation*
12 *under this section for the preceding fiscal*
13 *year.*

14 “(ii) *MINIMUM.*—*No State’s allocation*
15 *shall be less than the greatest of—*

16 “(I) *the sum of—*

17 “(aa) *the amount the State*
18 *received under this section for fis-*
19 *cal year 1997; and*

20 “(bb) *$\frac{1}{3}$ of 1 percent of the*
21 *amount by which the amount ap-*
22 *propriated under subsection (j) for*
23 *the fiscal year exceeds the amount*
24 *appropriated for this section for*
25 *fiscal year 1997;*

1 “(II) the sum of—

2 “(aa) the amount the State
3 received under this section for the
4 preceding fiscal year; and

5 “(bb) that amount multiplied
6 by the percentage by which the in-
7 crease in the funds appropriated
8 under this section from the pre-
9 ceding fiscal year exceeds 1.5 per-
10 cent; or

11 “(III) the sum of—

12 “(aa) the amount the State
13 received under this section for the
14 preceding fiscal year; and

15 “(bb) that amount multiplied
16 by 90 percent of the percentage
17 increase in the amount appro-
18 priated under this section from
19 the preceding fiscal year.

20 “(iii) *MAXIMUM.*—Notwithstanding
21 clause (ii), no State’s allocation under this
22 paragraph shall exceed the sum of—

23 “(I) the amount the State received
24 under this section for the preceding fis-
25 cal year; and

1 “(II) that amount multiplied by
2 the sum of 1.5 percent and the percent-
3 age increase in the amount appro-
4 priated under this section from the
5 preceding fiscal year.

6 “(C) RATABLE REDUCTIONS.—If the
7 amount available for allocations under this
8 paragraph is insufficient to pay those allocations
9 in full, those allocations shall be ratably reduced,
10 subject to subparagraph (B)(i).

11 “(3) DECREASE IN FUNDS.—If the amount avail-
12 able for allocations to States under paragraph (1) is
13 less than the amount allocated to the States under
14 this section for the preceding fiscal year, those alloca-
15 tions shall be calculated as follows:

16 “(A) ALLOCATIONS.—If the amount avail-
17 able for allocations is greater than the amount
18 allocated to the States for fiscal year 1997, each
19 State shall be allocated the sum of—

20 “(i) the amount the State received
21 under this section for fiscal year 1997; and

22 “(ii) an amount that bears the same
23 relation to any remaining funds as the in-
24 crease the State received under this section
25 for the preceding fiscal year over fiscal year

1 1997 bears to the total of all such increases
2 for all States.

3 “(B) If the amount available for allocations
4 under this paragraph is equal to or less than the
5 amount allocated under this section to the States
6 for fiscal year 1997, each State shall be allocated
7 the amount the State received for that year, rat-
8 ably reduced, if necessary.

9 “(d) RESERVATION FOR STATE ACTIVITIES.—

10 “(1) IN GENERAL.—Each State may reserve not
11 more than the amount described in paragraph (2) for
12 administration and other State-level activities in ac-
13 cordance with subsections (e) and (f).

14 “(2) AMOUNT DESCRIBED.—For each fiscal year,
15 the Secretary shall determine and report to the State
16 educational agency an amount that is 25 percent of
17 the amount the State received under this section for
18 fiscal year 1997, cumulatively adjusted by the Sec-
19 retary for each succeeding fiscal year by the lesser
20 of—

21 “(A) the percentage increase, if any, from
22 the preceding fiscal year in the State’s allocation
23 under this section; or

24 “(B) the percentage increase, if any, from
25 the preceding fiscal year in the Consumer Price

1 *Index For All Urban Consumers published by the*
2 *Bureau of Labor Statistics of the Department of*
3 *Labor.*

4 “(e) *STATE ADMINISTRATION.*—

5 “(1) *IN GENERAL.*—*For the purpose of admin-*
6 *istering this section (including the coordination of ac-*
7 *tivities under this part with, and providing technical*
8 *assistance to, other programs that provide services to*
9 *children with disabilities) a State may use not more*
10 *than 20 percent of the maximum amount the State*
11 *may reserve under subsection (d) for any fiscal year.*

12 “(2) *ADMINISTRATION OF PART C.*—*Funds de-*
13 *scribed in paragraph (1) may also be used for the ad-*
14 *ministration of part C of this Act, if the State edu-*
15 *cational agency is the lead agency for the State under*
16 *that part.*

17 “(f) *OTHER STATE-LEVEL ACTIVITIES.*—*Each State*
18 *shall use any funds the State reserves under subsection (d)*
19 *and does not use for administration under subsection (e)—*

20 “(1) *for support services (including establishing*
21 *and implementing the mediation process required by*
22 *section 615(e)), which may benefit children with dis-*
23 *abilities younger than 3 or older than 5 as long as*
24 *those services also benefit children with disabilities*
25 *aged 3 through 5;*

1 “(2) for direct services for children eligible for
2 services under this section;

3 “(3) for activities at the State and local levels to
4 meet the performance goals established by the State
5 under section 612(a)(15);

6 “(4) to supplement other funds used to develop
7 and implement a statewide coordinated services sys-
8 tem designed to improve results for children and fam-
9 ilies, including children with disabilities and their
10 families, but not more than 1 percent of the amount
11 received by the State under this section for a fiscal
12 year; or

13 “(5) to provide early intervention services (which
14 shall include an educational component that promotes
15 school readiness and incorporates pre-literacy, lan-
16 guage, and numeracy skills) in accordance with part
17 C to children with disabilities who are eligible for
18 services under this section and who previously re-
19 ceived services under part C until such children enter,
20 or are eligible under State law to enter, kindergarten.

21 “(g) *SUBGRANTS TO LOCAL EDUCATIONAL AGEN-*
22 *CIES.—*

23 “(1) *SUBGRANTS REQUIRED.—*Each State that
24 receives a grant under this section for any fiscal year
25 shall distribute all of the grant funds that the State

1 *does not reserve under subsection (d) to local edu-*
2 *cational agencies in the State that have established*
3 *their eligibility under section 613, as follows:*

4 *“(A) BASE PAYMENTS.—The State shall*
5 *first award each local educational agency de-*
6 *scribed in paragraph (1) the amount that agency*
7 *would have received under this section for fiscal*
8 *year 1997 if the State had distributed 75 percent*
9 *of its grant for that year under section 619(c)(3),*
10 *as such section was then in effect.*

11 *“(B) ALLOCATION OF REMAINING FUNDS.—*
12 *After making allocations under subparagraph*
13 *(A), the State shall—*

14 *“(i) allocate 85 percent of any remain-*
15 *ing funds to those local educational agencies*
16 *on the basis of the relative numbers of chil-*
17 *dren enrolled in public and private elemen-*
18 *tary schools and secondary schools within*
19 *the local educational agency’s jurisdiction;*
20 *and*

21 *“(ii) allocate 15 percent of those re-*
22 *maining funds to those local educational*
23 *agencies in accordance with their relative*
24 *numbers of children living in poverty, as*
25 *determined by the State educational agency.*

1 “(2) *REALLOCATION OF FUNDS.*—If a State edu-
2 *cat*ional agency determines that a local educational
3 agency is adequately providing a free appropriate
4 public education to all children with disabilities aged
5 3 through 5 residing in the area served by that agen-
6 cy with State and local funds, the State educational
7 agency may reallocate any portion of the funds under
8 this section that are not needed by that local edu-
9 cational agency to provide a free appropriate public
10 education to other local educational agencies in the
11 State that are not adequately providing special edu-
12 cation and related services to all children with dis-
13 abilities aged 3 through 5 residing in the areas the
14 other local educational agencies serve.

15 “(h) *PART C INAPPLICABLE.*—Part C of this Act does
16 not apply to any child with a disability receiving a free
17 appropriate public education, in accordance with this part,
18 with funds received under this section.

19 “(i) *DEFINITION.*—For the purpose of this section, the
20 term ‘State’ means each of the 50 States, the District of
21 Columbia, and the Commonwealth of Puerto Rico.

22 “(j) *AUTHORIZATION OF APPROPRIATIONS.*—For the
23 purpose of carrying out this section, there are authorized
24 to be appropriated such sums as may be necessary.

1 **“PART C—INFANTS AND TODDLERS WITH**
2 **DISABILITIES**

3 **“SEC. 631. FINDINGS AND POLICY.**

4 “(a) *FINDINGS.*—Congress finds that there is an ur-
5 *gent and substantial need—*

6 “(1) *to enhance the development of infants and*
7 *toddlers with disabilities, to minimize their potential*
8 *for developmental delay, and to recognize the signifi-*
9 *cant brain development which occurs during a child’s*
10 *first 3 years of life;*

11 “(2) *to reduce the educational costs to our soci-*
12 *ety, including our Nation’s schools, by minimizing*
13 *the need for special education and related services*
14 *after infants and toddlers with disabilities reach*
15 *school age;*

16 “(3) *to maximize the potential for individuals*
17 *with disabilities to live independently in society;*

18 “(4) *to enhance the capacity of families to meet*
19 *the special needs of their infants and toddlers with*
20 *disabilities; and*

21 “(5) *to enhance the capacity of State and local*
22 *agencies and service providers to identify, evaluate,*
23 *and meet the needs of all children, particularly mi-*
24 *nority, low-income, inner city, and rural children,*
25 *and infants and toddlers in foster care.*

1 “(b) *POLICY.*—*It is the policy of the United States to*
2 *provide financial assistance to States—*

3 “(1) *to develop and implement a statewide, com-*
4 *prehensive, coordinated, multidisciplinary, inter-*
5 *agency system that provides early intervention serv-*
6 *ices for infants and toddlers with disabilities and*
7 *their families;*

8 “(2) *to facilitate the coordination of payment for*
9 *early intervention services from Federal, State, local,*
10 *and private sources (including public and private in-*
11 *surance coverage);*

12 “(3) *to enhance State capacity to provide high*
13 *quality early intervention services and expand and*
14 *improve existing early intervention services being*
15 *provided to infants and toddlers with disabilities and*
16 *their families; and*

17 “(4) *to encourage States to expand opportunities*
18 *for children under 3 years of age who would be at risk*
19 *of having substantial developmental delay if they did*
20 *not receive early intervention services.*

21 **“SEC. 632. DEFINITIONS.**

22 *“As used in this part:*

23 “(1) *AT-RISK INFANT OR TODDLER.*—*The term*
24 *‘at-risk infant or toddler’ means an individual under*
25 *3 years of age who would be at risk of experiencing*

1 *a substantial developmental delay if early interven-*
2 *tion services were not provided to the individual.*

3 “(2) *COUNCIL.*—*The term ‘council’ means a*
4 *State interagency coordinating council established*
5 *under section 641.*

6 “(3) *DEVELOPMENTAL DELAY.*—*The term ‘devel-*
7 *opmental delay’, when used with respect to an indi-*
8 *vidual residing in a State, has the meaning given*
9 *such term by the State under section 635(a)(1).*

10 “(4) *EARLY INTERVENTION SERVICES.*—*The term*
11 *‘early intervention services’ means developmental*
12 *services that—*

13 “(A) *are provided under public supervision;*

14 “(B) *are provided at no cost except where*
15 *Federal or State law provides for a system of*
16 *payments by families, including a schedule of*
17 *sliding fees;*

18 “(C) *are designed to meet the developmental*
19 *needs of an infant or toddler with a disability*
20 *in any 1 or more of the following areas:*

21 “(i) *physical development;*

22 “(ii) *cognitive development;*

23 “(iii) *communication development;*

24 “(iv) *social or emotional development;*

25 *or*

- 1 “(v) adaptive development;
- 2 “(D) meet the standards of the State in
- 3 which the services are provided, including the re-
- 4 quirements of this part;
- 5 “(E) include—
- 6 “(i) family training, counseling, and
- 7 home visits;
- 8 “(ii) special instruction;
- 9 “(iii) speech-language pathology and
- 10 audiology services, and sign language and
- 11 cued language services;
- 12 “(iv) occupational therapy;
- 13 “(v) physical therapy;
- 14 “(vi) psychological services;
- 15 “(vii) service coordination services;
- 16 “(viii) medical services only for diag-
- 17 nostic or evaluation purposes;
- 18 “(ix) early identification, screening,
- 19 and assessment services;
- 20 “(x) health services necessary to enable
- 21 the infant or toddler to benefit from the
- 22 other early intervention services;
- 23 “(xi) social work services;
- 24 “(xii) vision services;

1 “(xiii) assistive technology devices and
2 assistive technology services; and

3 “(xiv) transportation and related costs
4 that are necessary to enable an infant or
5 toddler and the infant’s or toddler’s family
6 to receive another service described in this
7 paragraph;

8 “(F) are provided by qualified personnel,
9 including—

10 “(i) special educators;

11 “(ii) speech-language pathologists and
12 audiologists;

13 “(iii) teachers of the deaf;

14 “(iv) occupational therapists;

15 “(v) physical therapists;

16 “(vi) psychologists;

17 “(vii) social workers;

18 “(viii) nurses;

19 “(ix) nutritionists;

20 “(x) family therapists;

21 “(xi) orientation and mobility special-
22 ists;

23 “(xii) vision specialists, including
24 ophthamologists and optometrists; and

1 “(xiii) pediatricians and other physi-
2 cians;

3 “(G) to the maximum extent appropriate,
4 are provided in natural environments, including
5 the home, and community settings in which chil-
6 dren without disabilities participate; and

7 “(H) are provided in conformity with an
8 individualized family service plan adopted in
9 accordance with section 636.

10 “(5) INFANT OR TODDLER WITH A DISABILITY.—

11 The term ‘infant or toddler with a disability’—

12 “(A) means an individual under 3 years of
13 age who needs early intervention services because
14 the individual—

15 “(i) is experiencing developmental
16 delays, as measured by appropriate diag-
17 nostic instruments and procedures in 1 or
18 more of the areas of cognitive development,
19 physical development, communication devel-
20 opment, social or emotional development,
21 and adaptive development; or

22 “(ii) has a diagnosed physical or men-
23 tal condition which has a high probability
24 of resulting in developmental delay; and

1 “(B) may also include, at a State’s discre-
2 tion—

3 “(i) at-risk infants and toddlers; and

4 “(ii) children with disabilities who are
5 eligible for services under section 619 and
6 who previously received services under this
7 part until such children enter, or are eligi-
8 ble under State law to enter, kindergarten.

9 **“SEC. 633. GENERAL AUTHORITY.**

10 “The Secretary shall, in accordance with this part,
11 make grants to States (from their allotments under section
12 643) to assist each State to maintain and implement a
13 statewide, comprehensive, coordinated, multidisciplinary,
14 interagency system to provide early intervention services for
15 infants and toddlers with disabilities and their families.

16 **“SEC. 634. ELIGIBILITY.**

17 “In order to be eligible for a grant under section 633,
18 a State shall demonstrate to the Secretary that the State—

19 “(1) has adopted a policy that appropriate early
20 intervention services are available to all infants and
21 toddlers with disabilities in the State and their fami-
22 lies, including Indian infants and toddlers with dis-
23 abilities and their families residing on a reservation
24 geographically located in the State, infants or tod-
25 dlers with disabilities who are homeless children, in-

1 *infants or toddlers with disabilities who are wards of*
2 *the State, and infants or toddlers with disabilities*
3 *who have a parent who is a member of the Armed*
4 *Forces, including a member of the National Guard or*
5 *Reserves; and*

6 *“(2) has in effect a statewide system that meets*
7 *the requirements of section 635.*

8 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

9 *“(a) IN GENERAL.—A statewide system described in*
10 *section 633 shall include, at a minimum, the following com-*
11 *ponents:*

12 *“(1) A definition of the term ‘developmental*
13 *delay’ that—*

14 *“(A) will be used by the State in carrying*
15 *out programs under this part; and*

16 *“(B) covers, at a minimum, all infants and*
17 *toddlers with—*

18 *“(i) a developmental delay of 35 per-*
19 *cent or more in 1 of the developmental areas*
20 *described in section 632(5)(A)(i); or*

21 *“(ii) a developmental delay of 25 per-*
22 *cent or more in 2 or more of the develop-*
23 *mental areas described in section*
24 *632(5)(A)(i).*

1 “(2) A State policy that is in effect and that en-
2 sures that appropriate early intervention services are
3 available to all infants and toddlers with disabilities
4 and their families, including Indian infants and tod-
5 dlers and their families residing on a reservation geo-
6 graphically located in the State.

7 “(3) A timely, comprehensive, multidisciplinary
8 evaluation of the functioning of each infant or toddler
9 with a disability in the State, and a family-directed
10 identification of the needs of each family of such an
11 infant or toddler, to appropriately assist in the devel-
12 opment of the infant or toddler.

13 “(4) For each infant or toddler with a disability
14 in the State, an individualized family service plan in
15 accordance with section 636, including service coordi-
16 nation services in accordance with such service plan.

17 “(5) A comprehensive child find system, con-
18 sistent with part B, including a system for making
19 referrals to service providers that includes timelines
20 and provides for participation by primary referral
21 sources.

22 “(6) A public awareness program focusing on
23 early identification of infants and toddlers with dis-
24 abilities, including the preparation and dissemina-
25 tion by the lead agency designated or established

1 *under paragraph (10) to all primary referral sources,*
2 *especially hospitals, physicians, homeless family shel-*
3 *ters, medicaid and State child health insurance pro-*
4 *gram enrollment offices, health and mental health*
5 *clinics, public schools in low-income areas serving*
6 *low-income children, staff in State and local child*
7 *welfare agencies, judges, and base commanders or*
8 *their designees, of information for parents on the*
9 *availability of early intervention services, and proce-*
10 *dures for determining the extent to which such sources*
11 *disseminate such information to parents of infants*
12 *and toddlers.*

13 *“(7) A central directory that includes informa-*
14 *tion on early intervention services, resources, and ex-*
15 *ports available in the State and research and dem-*
16 *onstration projects being conducted in the State.*

17 *“(8) A comprehensive system of personnel devel-*
18 *opment, including the training of paraprofessionals*
19 *and the training of primary referral sources with re-*
20 *spect to the basic components of early intervention*
21 *services available in the State, which comprehensive*
22 *system may include—*

23 *“(A) implementing innovative strategies*
24 *and activities for the recruitment and retention*
25 *of early education service providers;*

1 “(B) promoting the preparation of early
2 intervention providers who are fully and appro-
3 priately qualified to provide early intervention
4 services under this part;

5 “(C) training personnel to work in rural
6 and inner-city areas; and

7 “(D) training personnel to coordinate tran-
8 sition services for infants and toddlers served
9 under this part from an early intervention pro-
10 gram under this part to preschool or other ap-
11 propriate services.

12 “(9) Policies and procedures relating to the es-
13 tablishment and maintenance of standards to ensure
14 that personnel necessary to carry out this part are
15 appropriately and adequately prepared and trained,
16 including the establishment and maintenance of
17 standards which are consistent with any State-ap-
18 proved or recognized certification, licensing, registra-
19 tion, or other comparable requirements which apply
20 to the area in which such personnel are providing
21 early intervention services, except that nothing in this
22 part (including this paragraph) shall be construed to
23 prohibit the use of paraprofessionals and assistants
24 who are appropriately trained and supervised in ac-
25 cordance with State law, regulation, or written pol-

1 *icy, to assist in the provision of early intervention*
2 *services under this part to infants and toddlers with*
3 *disabilities.*

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

7 *“(A) the general administration and super-*
8 *vision of programs and activities receiving as-*
9 *sistance under section 633, and the monitoring*
10 *of programs and activities used by the State to*
11 *carry out this part, whether or not such pro-*
12 *grams or activities are receiving assistance made*
13 *available under section 633, to ensure that the*
14 *State complies with this part;*

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

18 *“(C) the assignment of financial responsi-*
19 *bility in accordance with section 637(a)(2) to the*
20 *appropriate agencies;*

21 *“(D) the development of procedures to en-*
22 *sure that services are provided to infants and*
23 *toddlers with disabilities and their families*
24 *under this part in a timely manner pending the*

1 *resolution of any disputes among public agencies*
2 *or service providers;*

3 “(E) *the resolution of intra- and inter-*
4 *agency disputes; and*

5 “(F) *the entry into formal interagency*
6 *agreements that define the financial responsi-*
7 *bility of each agency for paying for early inter-*
8 *vention services (consistent with State law) and*
9 *procedures for resolving disputes and that in-*
10 *clude all additional components necessary to en-*
11 *sure meaningful cooperation and coordination.*

12 “(11) *A policy pertaining to the contracting or*
13 *making of other arrangements with service providers*
14 *to provide early intervention services in the State,*
15 *consistent with the provisions of this part, including*
16 *the contents of the application used and the condi-*
17 *tions of the contract or other arrangements.*

18 “(12) *A procedure for securing timely reimburse-*
19 *ments of funds used under this part in accordance*
20 *with section 640(a).*

21 “(13) *Procedural safeguards with respect to pro-*
22 *grams under this part, as required by section 639.*

23 “(14) *A system for compiling data requested by*
24 *the Secretary under section 618 that relates to this*
25 *part.*

1 “(15) *A State interagency coordinating council*
2 *that meets the requirements of section 641.*

3 “(16) *Policies and procedures to ensure that,*
4 *consistent with section 636(d)(5) to the maximum ex-*
5 *tent appropriate, early intervention services are pro-*
6 *vided in natural environments unless a specific out-*
7 *come cannot be met satisfactorily for the infant or*
8 *toddler in a natural environment.*

9 “(17) *A procedure to ensure that early interven-*
10 *tion services and evaluations are available to infants*
11 *or toddlers with disabilities who are—*

12 “(A) *homeless children; and*

13 “(B) *wards of the State or in foster care, or*
14 *both.*

15 “(b) *FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF*
16 *AGE TO UNDER 6 YEARS OF AGE.—*

17 “(1) *IN GENERAL.—A statewide system described*
18 *in section 633 may include a State policy, developed*
19 *and implemented jointly by the lead agency and the*
20 *State educational agency, under which parents of*
21 *children with disabilities who are eligible for services*
22 *under section 619 and previously received services*
23 *under this part, may choose the continuation of early*
24 *intervention services (which shall include an edu-*
25 *cational component that promotes school readiness*

1 and incorporates preliteracy, language, and
2 numeracy skills) for such children under this part
3 until such children enter, or are eligible under State
4 law to enter, kindergarten.

5 “(2) *REQUIREMENTS.*—If a statewide system in-
6 cludes a State policy described in paragraph (1), the
7 statewide system shall ensure—

8 “(A) that parents of infants or toddlers with
9 disabilities (as defined in section 632(5)(A)) pro-
10 vide informed written consent to the State, before
11 such infants and toddlers reach 3 years of age,
12 as to whether such parents intend to choose the
13 continuation of early intervention services pur-
14 suant to this subsection for such infants or tod-
15 dlers;

16 “(B) that the State policy will not affect the
17 right of any child served pursuant to this sub-
18 section to instead receive a free appropriate pub-
19 lic education under part B;

20 “(C) that parents of children served pursu-
21 ant to this subsection are provided with annual
22 notice—

23 “(i) of such parents’ right to elect serv-
24 ices pursuant to this subsection or under
25 part B; and

1 “(i) fully explaining the differences
2 between receiving services pursuant to this
3 subsection and receiving services under part
4 B, including—

5 “(I) the types of services available
6 under both provisions;

7 “(II) applicable procedural safe-
8 guards under both provisions, includ-
9 ing due-process protections and medi-
10 ation or other dispute resolution op-
11 tions; and

12 “(III) the possible costs, if any
13 (including any fees to be charged to
14 families as described in section
15 632(4)(B)) to parents under both pro-
16 visions;

17 “(D) that the conference under section
18 637(a)(9)(A)(i)(II), the review under section
19 637(a)(9)(B), and the establishment of a transi-
20 tion plan under section 637(a)(9)(C) occur not
21 less than 90 days (and at the discretion of the
22 parties to the conference, not more than 9
23 months) before each of the following:

1 “(i) the time the child will first be eli-
2 gible for services under part B, including
3 under section 619; and

4 “(ii) if the child is receiving services in
5 accordance with this subsection, the time the
6 child will no longer receive those services;

7 “(E) the continuance of all early interven-
8 tion services outlined in the child’s individual-
9 ized family service plan under section 636 while
10 any eligibility determination is being made for
11 services under this subsection;

12 “(F) that services provided pursuant to this
13 subsection include an educational component
14 that promotes school readiness and incorporates
15 preliteracy, language, and numeracy skills and
16 are provided in accordance with an individual-
17 ized family service plan under section 636; and

18 “(G) the referral for evaluation for early
19 intervention services of a child below the age of
20 3 who experiences a substantiated case of expo-
21 sure to violence or trauma.

22 “(3) REPORTING REQUIREMENT.—If a statewide
23 system includes a State policy described in paragraph
24 (1), the State shall submit to the Secretary, in the

1 *State’s report under section 637(b)(4)(A), a report*
2 *on—*

3 “(A) *the percentage of children with disabili-*
4 *ties who are eligible for services under section*
5 *619 but whose parents choose for such children to*
6 *continue to receive early intervention services*
7 *under this part; and*

8 “(B) *the number of children who are eligible*
9 *for services under section 619 who instead con-*
10 *tinue to receive early intervention services under*
11 *this part.*

12 “(4) *RULE OF CONSTRUCTION.—Nothing in this*
13 *subsection shall be construed to require a provider of*
14 *services under this part to provide a child served*
15 *under this part with a free appropriate public edu-*
16 *cation.*

17 “(5) *AVAILABLE FUNDS.—If a statewide system*
18 *includes a State policy described in paragraph (1),*
19 *the policy shall describe the funds (including an iden-*
20 *tification as Federal, State, or local funds) that will*
21 *be used to ensure that the option described in para-*
22 *graph (1) is available to eligible children and families*
23 *who provide the consent described in paragraph*
24 *(2)(A), including fees to be charged to families as de-*
25 *scribed in section 632(4)(B).*

1 “(c) *CONSTRUCTION.*—Nothing in subsection (a)(5)
2 shall be construed to alter the responsibility of a State
3 under title XIX of the Social Security Act with respect to
4 early and periodic screening, diagnostic, and treatment
5 services (as defined in section 1905(r) of such Act).

6 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

7 “(a) *ASSESSMENT AND PROGRAM DEVELOPMENT.*—A
8 statewide system described in section 633 shall provide, at
9 a minimum, for each infant or toddler with a disability,
10 and the infant’s or toddler’s family, to receive—

11 “(1) a multidisciplinary assessment of the
12 unique strengths and needs of the infant or toddler
13 and the identification of services appropriate to meet
14 such needs;

15 “(2) a family-directed assessment of the re-
16 sources, priorities, and concerns of the family and the
17 identification of the supports and services necessary
18 to enhance the family’s capacity to meet the develop-
19 mental needs of the infant or toddler; and

20 “(3) a written individualized family service plan
21 developed by a multidisciplinary team, including the
22 parents, as required by subsection (e), including a de-
23 scription of the appropriate transition services for the
24 child.

1 “(b) *PERIODIC REVIEW.*—*The individualized family*
2 *service plan shall be evaluated once a year and the family*
3 *shall be provided a review of the plan at 6-month intervals*
4 *(or more often where appropriate based on infant or toddler*
5 *and family needs).*

6 “(c) *PROMPTNESS AFTER ASSESSMENT.*—*The individ-*
7 *ualized family service plan shall be developed within a rea-*
8 *sonable time after the assessment required by subsection*
9 *(a)(1) is completed. With the parents’ consent, early inter-*
10 *vention services may commence prior to the completion of*
11 *the assessment.*

12 “(d) *CONTENT OF PLAN.*—*The individualized family*
13 *service plan shall be in writing and contain—*

14 “(1) *a statement of the infant’s or toddler’s*
15 *present levels of physical development, cognitive devel-*
16 *opment, communication development, social or emo-*
17 *tional development, and adaptive development, based*
18 *on objective criteria;*

19 “(2) *a statement of the family’s resources, prior-*
20 *ities, and concerns relating to enhancing the develop-*
21 *ment of the family’s infant or toddler with a dis-*
22 *ability;*

23 “(3) *a statement of the measurable outcomes ex-*
24 *pected to be achieved for the infant or toddler and the*
25 *family, including, as appropriate, preliteracy and*

1 *language skills, and the criteria, procedures, and*
2 *timelines used to determine the degree to which*
3 *progress toward achieving the outcomes is being made*
4 *and whether modifications or revisions of the out-*
5 *comes or services are necessary;*

6 *“(4) a statement of specific early intervention*
7 *services necessary to meet the unique needs of the in-*
8 *fant or toddler and the family, including the fre-*
9 *quency, intensity, and method of delivering services;*

10 *“(5) a statement of the natural environments in*
11 *which early intervention services will appropriately*
12 *be provided, including a justification of the extent, if*
13 *any, to which the services will not be provided in a*
14 *natural environment;*

15 *“(6) the projected dates for initiation of services*
16 *and the anticipated length, duration, and frequency*
17 *of the services;*

18 *“(7) the identification of the service coordinator*
19 *from the profession most immediately relevant to the*
20 *infant’s or toddler’s or family’s needs (or who is oth-*
21 *erwise qualified to carry out all applicable respon-*
22 *sibilities under this part) who will be responsible for*
23 *the implementation of the plan and coordination with*
24 *other agencies and persons, including transition serv-*
25 *ices; and*

1 “(8) *the steps to be taken to support the transi-*
2 *tion of the toddler with a disability to preschool or*
3 *other appropriate services.*

4 “(e) *PARENTAL CONSENT.—The contents of the indi-*
5 *vidualized family service plan shall be fully explained to*
6 *the parents and informed written consent from the parents*
7 *shall be obtained prior to the provision of early intervention*
8 *services described in such plan. If the parents do not pro-*
9 *vide consent with respect to a particular early intervention*
10 *service, then only the early intervention services to which*
11 *consent is obtained shall be provided.*

12 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

13 “(a) *APPLICATION.—A State desiring to receive a*
14 *grant under section 633 shall submit an application to the*
15 *Secretary at such time and in such manner as the Secretary*
16 *may reasonably require. The application shall contain—*

17 “(1) *a designation of the lead agency in the*
18 *State that will be responsible for the administration*
19 *of funds provided under section 633;*

20 “(2) *a certification to the Secretary that the ar-*
21 *rangements to establish financial responsibility for*
22 *services provided under this part pursuant to section*
23 *640(b) are current as of the date of submission of the*
24 *certification;*

1 “(3) information demonstrating eligibility of the
2 State under section 634, including—

3 “(A) information demonstrating to the Sec-
4 retary’s satisfaction that the State has in effect
5 the statewide system required by section 633;
6 and

7 “(B) a description of services to be provided
8 to infants and toddlers with disabilities and
9 their families through the system;

10 “(4) if the State provides services to at-risk in-
11 fants and toddlers through the system, a description
12 of such services;

13 “(5) a description of the uses for which funds
14 will be expended in accordance with this part;

15 “(6) a description of the State policies and pro-
16 cedures that require the referral for evaluation for
17 early intervention services of a child under the age of
18 3 who—

19 “(A) is involved in a substantiated case of
20 child abuse or neglect; or

21 “(B) is identified as affected by illegal sub-
22 stance abuse, or withdrawal symptoms resulting
23 from prenatal drug exposure;

1 “(7) a description of the procedure used to en-
2 sure that resources are made available under this part
3 for all geographic areas within the State;

4 “(8) a description of State policies and proce-
5 dures that ensure that, prior to the adoption by the
6 State of any other policy or procedure necessary to
7 meet the requirements of this part, there are public
8 hearings, adequate notice of the hearings, and an op-
9 portunity for comment available to the general public,
10 including individuals with disabilities and parents of
11 infants and toddlers with disabilities;

12 “(9) a description of the policies and procedures
13 to be used—

14 “(A) to ensure a smooth transition for tod-
15 dlers receiving early intervention services under
16 this part (and children receiving those services
17 under section 635(b)) to preschool, other appro-
18 priate services, or exiting the program, including
19 a description of how—

20 “(i) the families of such toddlers and
21 children will be included in the transition
22 plans required by subparagraph (C); and

23 “(ii) the lead agency designated or es-
24 tablished under section 635(a)(10) will—

1 “(I) notify the local educational
2 agency for the area in which such a
3 child resides that the child will shortly
4 reach the age of eligibility for preschool
5 services under part B, as determined
6 in accordance with State law;

7 “(II) in the case of a child who
8 may be eligible for such preschool serv-
9 ices, with the approval of the family of
10 the child, convene a conference among
11 the lead agency, the family, and the
12 local educational agency at least 90
13 days (and at the discretion of all such
14 parties, not more than 9 months) be-
15 fore the child is eligible for the pre-
16 school services, to discuss any such
17 services that the child may receive; and

18 “(III) in the case of a child who
19 may not be eligible for such preschool
20 services, with the approval of the fam-
21 ily, make reasonable efforts to convene
22 a conference among the lead agency,
23 the family, and providers of other ap-
24 propriate services for children who are
25 not eligible for preschool services under

1 *part B, to discuss the appropriate serv-*
2 *ices that the child may receive;*

3 *“(B) to review the child’s program options*
4 *for the period from the child’s third birthday*
5 *through the remainder of the school year; and*

6 *“(C) to establish a transition plan, includ-*
7 *ing, as appropriate, steps to exit from the pro-*
8 *gram; and*

9 *“(10) such other information and assurances as*
10 *the Secretary may reasonably require.*

11 *“(11) a description of policies and procedures to*
12 *ensure that infants or toddlers with disabilities who*
13 *are homeless children and their families and infants*
14 *or toddlers with disabilities who are wards of the*
15 *State have access to multidisciplinary evaluations*
16 *and early intervention services.*

17 *“(b) ASSURANCES.—The application described in sub-*
18 *section (a)—*

19 *“(1) shall provide satisfactory assurance that*
20 *Federal funds made available under section 643 to the*
21 *State will be expended in accordance with this part;*

22 *“(2) shall contain an assurance that the State*
23 *will comply with the requirements of section 640;*

24 *“(3) shall provide satisfactory assurance that the*
25 *control of funds provided under section 643, and title*

1 to property derived from those funds, will be in a
2 public agency for the uses and purposes provided in
3 this part and that a public agency will administer
4 such funds and property;

5 “(4) shall provide for—

6 “(A) making such reports in such form and
7 containing such information as the Secretary
8 may require to carry out the Secretary’s func-
9 tions under this part; and

10 “(B) keeping such reports and affording
11 such access to the reports as the Secretary may
12 find necessary to ensure the correctness and
13 verification of the reports and proper disburse-
14 ment of Federal funds under this part;

15 “(5) provide satisfactory assurance that Federal
16 funds made available under section 643 to the
17 State—

18 “(A) will not be commingled with State
19 funds; and

20 “(B) will be used so as to supplement the
21 level of State and local funds expended for in-
22 fants and toddlers with disabilities and their
23 families and in no case to supplant those State
24 and local funds;

1 “(6) shall provide satisfactory assurance that
2 such fiscal control and fund accounting procedures
3 will be adopted as may be necessary to ensure proper
4 disbursement of, and accounting for, Federal funds
5 paid under section 643 to the State;

6 “(7) shall provide satisfactory assurance that
7 policies and procedures have been adopted to ensure
8 meaningful involvement of underserved groups, in-
9 cluding minority, low-income, homeless, and rural
10 families and children with disabilities who are wards
11 of the State, in the planning and implementation of
12 all the requirements of this part; and

13 “(8) shall contain such other information and
14 assurances as the Secretary may reasonably require
15 by regulation.

16 “(c) *STANDARD FOR DISAPPROVAL OF APPLICATION.*—
17 The Secretary may not disapprove such an application un-
18 less the Secretary determines, after notice and opportunity
19 for a hearing, that the application fails to comply with the
20 requirements of this section.

21 “(d) *SUBSEQUENT STATE APPLICATION.*—If a State
22 has on file with the Secretary a policy, procedure, or assur-
23 ance that demonstrates that the State meets a requirement
24 of this section, including any policy or procedure filed
25 under part C, as in effect before the date of enactment of

1 *the Individuals with Disabilities Education Improvement*
2 *Act of 2004, the Secretary shall consider the State to have*
3 *met the requirement for purposes of receiving a grant under*
4 *this part.*

5 “(e) *MODIFICATION OF APPLICATION.*—*An application*
6 *submitted by a State in accordance with this section shall*
7 *remain in effect until the State submits to the Secretary*
8 *such modifications as the State determines necessary. This*
9 *section shall apply to a modification of an application to*
10 *the same extent and in the same manner as this section*
11 *applies to the original application.*

12 “(f) *MODIFICATIONS REQUIRED BY THE SEC-*
13 *RETARY.*—*The Secretary may require a State to modify its*
14 *application under this section, but only to the extent nec-*
15 *essary to ensure the State’s compliance with this part, if—*

16 “(1) *an amendment is made to this Act, or a*
17 *Federal regulation issued under this Act;*

18 “(2) *a new interpretation of this Act is made by*
19 *a Federal court or the State’s highest court; or*

20 “(3) *an official finding of noncompliance with*
21 *Federal law or regulations is made with respect to the*
22 *State.*

1 **“SEC. 638. USES OF FUNDS.**

2 *“In addition to using funds provided under section*
3 *633 to maintain and implement the statewide system re-*
4 *quired by such section, a State may use such funds—*

5 *“(1) for direct early intervention services for in-*
6 *fants and toddlers with disabilities, and their fami-*
7 *lies, under this part that are not otherwise funded*
8 *through other public or private sources;*

9 *“(2) to expand and improve on services for in-*
10 *fants and toddlers and their families under this part*
11 *that are otherwise available;*

12 *“(3) to provide a free appropriate public edu-*
13 *cation, in accordance with part B, to children with*
14 *disabilities from their third birthday to the beginning*
15 *of the following school year;*

16 *“(4) with the written consent of the parents, to*
17 *continue to provide early intervention services under*
18 *this part to children with disabilities from their 3rd*
19 *birthday to the beginning of the following school year,*
20 *in lieu of a free appropriate public education pro-*
21 *vided in accordance with part B; and*

22 *“(5) in any State that does not provide services*
23 *for at-risk infants and toddlers under section*
24 *637(a)(4), to strengthen the statewide system by initi-*
25 *ating, expanding, or improving collaborative efforts*
26 *related to at-risk infants and toddlers, including es-*

1 *tablishing linkages with appropriate public or private*
2 *community-based organizations, services, and per-*
3 *sonnel for the purposes of—*

4 *“(A) identifying and evaluating at-risk in-*
5 *fants and toddlers;*

6 *“(B) making referrals of the infants and*
7 *toddlers identified and evaluated under subpara-*
8 *graph (A); and*

9 *“(C) conducting periodic follow-up on each*
10 *such referral to determine if the status of the in-*
11 *fant or toddler involved has changed with respect*
12 *to the eligibility of the infant or toddler for serv-*
13 *ices under this part.*

14 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

15 *“(a) MINIMUM PROCEDURES.—The procedural safe-*
16 *guards required to be included in a statewide system under*
17 *section 635(a)(13) shall provide, at a minimum, the fol-*
18 *lowing:*

19 *“(1) The timely administrative resolution of*
20 *complaints by parents. Any party aggrieved by the*
21 *findings and decision regarding an administrative*
22 *complaint shall have the right to bring a civil action*
23 *with respect to the complaint in any State court of*
24 *competent jurisdiction or in a district court of the*
25 *United States without regard to the amount in con-*

1 *troversty. In any action brought under this paragraph,*
2 *the court shall receive the records of the administra-*
3 *tive proceedings, shall hear additional evidence at the*
4 *request of a party, and, basing its decision on the*
5 *preponderance of the evidence, shall grant such relief*
6 *as the court determines is appropriate.*

7 *“(2) The right to confidentiality of personally*
8 *identifiable information, including the right of par-*
9 *ents to written notice of and written consent to the*
10 *exchange of such information among agencies con-*
11 *sistent with Federal and State law.*

12 *“(3) The right of the parents to determine wheth-*
13 *er they, their infant or toddler, or other family mem-*
14 *bers will accept or decline any early intervention*
15 *service under this part in accordance with State law*
16 *without jeopardizing other early intervention services*
17 *under this part.*

18 *“(4) The opportunity for parents to examine*
19 *records relating to assessment, screening, eligibility*
20 *determinations, and the development and implemen-*
21 *tation of the individualized family service plan.*

22 *“(5) Procedures to protect the rights of the infant*
23 *or toddler whenever the parents of the infant or tod-*
24 *dlar are not known or cannot be found or the infant*
25 *or toddler is a ward of the State, including the as-*

1 *signment of an individual (who shall not be an em-*
2 *ployee of the State lead agency, or other State agency,*
3 *and who shall not be any person, or any employee of*
4 *a person, providing early intervention services to the*
5 *infant or toddler or any family member of the infant*
6 *or toddler) to act as a surrogate for the parents.*

7 *“(6) Written prior notice to the parents of the*
8 *infant or toddler with a disability whenever the State*
9 *agency or service provider proposes to initiate or*
10 *change, or refuses to initiate or change, the identifica-*
11 *tion, evaluation, or placement of the infant or toddler*
12 *with a disability, or the provision of appropriate*
13 *early intervention services to the infant or toddler.*

14 *“(7) Procedures designed to ensure that the no-*
15 *tice required by paragraph (6) fully informs the par-*
16 *ents, in the parents’ native language, unless it clearly*
17 *is not feasible to do so, of all procedures available*
18 *pursuant to this section.*

19 *“(8) The right of parents to use mediation in ac-*
20 *cordance with section 615, except that—*

21 *“(A) any reference in the section to a State*
22 *educational agency shall be considered to be a*
23 *reference to a State’s lead agency established or*
24 *designated under section 635(a)(10);*

1 “(B) any reference in the section to a local
2 educational agency shall be considered to be a
3 reference to a local service provider or the State’s
4 lead agency under this part, as the case may be;
5 and

6 “(C) any reference in the section to the pro-
7 vision of free appropriate public education to
8 children with disabilities shall be considered to
9 be a reference to the provision of appropriate
10 early intervention services to infants and tod-
11 dlers with disabilities.

12 “(b) *SERVICES DURING PENDENCY OF PRO-*
13 *CEEDINGS.—During the pendency of any proceeding or ac-*
14 *tion involving a complaint by the parents of an infant or*
15 *toddler with a disability, unless the State agency and the*
16 *parents otherwise agree, the infant or toddler shall continue*
17 *to receive the appropriate early intervention services cur-*
18 *rently being provided or, if applying for initial services,*
19 *shall receive the services not in dispute.*

20 “**SEC. 640. PAYOR OF LAST RESORT.**

21 “(a) *NONSUBSTITUTION.—Funds provided under sec-*
22 *tion 643 may not be used to satisfy a financial commitment*
23 *for services that would have been paid for from another pub-*
24 *lic or private source, including any medical program ad-*
25 *ministered by the Secretary of Defense, but for the enact-*

1 *ment of this part, except that whenever considered necessary*
2 *to prevent a delay in the receipt of appropriate early inter-*
3 *vention services by an infant, toddler, or family in a timely*
4 *fashion, funds provided under section 643 may be used to*
5 *pay the provider of services pending reimbursement from*
6 *the agency that has ultimate responsibility for the payment.*

7 “(b) *OBLIGATIONS RELATED TO AND METHODS OF*
8 *ENSURING SERVICES.—*

9 “(1) *ESTABLISHING FINANCIAL RESPONSIBILITY*
10 *FOR SERVICES.—*

11 “(A) *IN GENERAL.—The Chief Executive Of-*
12 *ficer of a State or designee of the officer shall en-*
13 *sure that an interagency agreement or other*
14 *mechanism for interagency coordination is in ef-*
15 *fect between each public agency and the State*
16 *educational agency, in order to ensure—*

17 “(i) *the provision of, and financial re-*
18 *sponsibility for, services provided under this*
19 *part; and*

20 “(ii) *such services are consistent with*
21 *the requirements of section 635 and the*
22 *State’s application pursuant to section 637,*
23 *including the provision of such services dur-*
24 *ing the pendency of any dispute.*

1 “(B) *CONSISTENCY BETWEEN AGREEMENTS*
2 *OR MECHANISMS UNDER PARTS B AND D.—The*
3 *Chief Executive Officer of a State or designee of*
4 *the officer shall ensure that the terms and condi-*
5 *tions of such agreement or mechanism are con-*
6 *sistent with the terms and conditions of the*
7 *State’s agreement or mechanism under section*
8 *612(a)(12).*

9 “(2) *REIMBURSEMENT FOR SERVICES BY PUBLIC*
10 *AGENCY.—*

11 “(A) *IN GENERAL.—If a public agency*
12 *other than an educational agency fails to provide*
13 *or pay for the services pursuant to an agreement*
14 *required under paragraph (1) the local edu-*
15 *cational agency or State agency (as determined*
16 *by the Chief Executive Officer or designee) shall*
17 *provide or pay for the provision of such services*
18 *to the child.*

19 “(B) *REIMBURSEMENT.—Such local edu-*
20 *cational agency or State agency is authorized to*
21 *claim reimbursement for the services from the*
22 *public agency that failed to provide or pay for*
23 *such services and such public agency shall reim-*
24 *burse the local educational agency or State agen-*
25 *cy pursuant to the terms of the interagency*

1 *agreement or other mechanism required under*
2 *paragraph (1).*

3 “(3) *SPECIAL RULE.*—*The requirements of para-*
4 *graph (1) may be met through—*

5 “(A) *State statute or regulation;*

6 “(B) *signed agreements between respective*
7 *agency officials that clearly identify the respon-*
8 *sibilities of each agency relating to the provision*
9 *of services; or*

10 “(C) *other appropriate written methods as*
11 *determined by the Chief Executive Officer of the*
12 *State or designee of the officer and approved by*
13 *the Secretary through the review and approval of*
14 *the State’s application pursuant to section 637.*

15 “(c) *REDUCTION OF OTHER BENEFITS.*—*Nothing in*
16 *this part shall be construed to permit the State to reduce*
17 *medical or other assistance available or to alter eligibility*
18 *under title V of the Social Security Act (relating to mater-*
19 *nal and child health) or title XIX of the Social Security*
20 *Act (relating to Medicaid for infants or toddlers with dis-*
21 *abilities) within the State.*

22 “**SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

23 “(a) *ESTABLISHMENT.*—

1 “(1) *IN GENERAL.*—A State that desires to re-
2 ceive financial assistance under this part shall estab-
3 lish a State interagency coordinating council.

4 “(2) *APPOINTMENT.*—The council shall be ap-
5 pointed by the Governor. In making appointments to
6 the council, the Governor shall ensure that the mem-
7 bership of the council reasonably represents the popu-
8 lation of the State.

9 “(3) *CHAIRPERSON.*—The Governor shall des-
10 ignate a member of the council to serve as the chair-
11 person of the council, or shall require the council to
12 so designate such a member. Any member of the coun-
13 cil who is a representative of the lead agency des-
14 ignated under section 635(a)(10) may not serve as the
15 chairperson of the council.

16 “(b) *COMPOSITION.*—

17 “(1) *IN GENERAL.*—The council shall be com-
18 posed as follows:

19 “(A) *PARENTS.*—At least 20 percent of the
20 members shall be parents of infants or toddlers
21 with disabilities or children with disabilities
22 aged 12 or younger, with knowledge of, or experi-
23 ence with, programs for infants and toddlers
24 with disabilities. At least 1 such member shall be
25 a parent of an infant or toddler with a dis-

1 *ability or a child with a disability aged 6 or*
2 *younger, not less than one other member shall be*
3 *a foster parent of a child with a disability, not*
4 *less than one other member shall be a grand-*
5 *parent or other relative acting in the place of a*
6 *natural or adoptive parent of a child with a dis-*
7 *ability, and not less than 1 other member shall*
8 *be a representative of children with disabilities*
9 *in military families.*

10 “(B) *SERVICE PROVIDERS.*—*At least 20*
11 *percent of the members shall be public or private*
12 *providers of early intervention services.*

13 “(C) *STATE LEGISLATURE.*—*At least 1*
14 *member shall be from the State legislature.*

15 “(D) *PERSONNEL PREPARATION.*—*At least*
16 *1 member shall be involved in personnel prepa-*
17 *ration.*

18 “(E) *AGENCY FOR EARLY INTERVENTION*
19 *SERVICES.*—*At least 1 member shall be from each*
20 *of the State agencies involved in the provision of,*
21 *or payment for, early intervention services to in-*
22 *fant and toddlers with disabilities and their*
23 *families and shall have sufficient authority to*
24 *engage in policy planning and implementation*
25 *on behalf of such agencies.*

1 “(F) *AGENCY FOR PRESCHOOL SERVICES.*—
2 *At least 1 member shall be from the State edu-*
3 *cational agency responsible for preschool services*
4 *to children with disabilities and shall have suffi-*
5 *cient authority to engage in policy planning and*
6 *implementation on behalf of such agency.*

7 “(G) *STATE MEDICAID AGENCY.*—*At least 1*
8 *member shall be from the agency responsible for*
9 *the State medicaid program.*

10 “(H) *HEAD START AGENCY.*—*At least 1*
11 *representative from a Head Start agency or pro-*
12 *gram in the State.*

13 “(I) *CHILD CARE AGENCY.*—*At least 1 rep-*
14 *resentative from a State agency responsible for*
15 *child care.*

16 “(J) *AGENCY FOR HEALTH INSURANCE.*—*At*
17 *least 1 member shall be from the agency respon-*
18 *sible for the State regulation of health insurance.*

19 “(K) *OFFICE OF THE COORDINATOR OF*
20 *EDUCATION OF HOMELESS CHILDREN AND*
21 *YOUTH.*—*Not less than 1 representative des-*
22 *ignated by the Office of Coordinator for Edu-*
23 *cation of Homeless Children and Youths.*

1 “(L) *STATE CHILD WELFARE AGENCY.*—Not
2 *less than 1 representative from the State child*
3 *welfare agency responsible for foster care.*

4 “(M) *REPRESENTATIVE OF FOSTER CHIL-*
5 *DREN.*—Not less than 1 individual who rep-
6 *resents the interests of children in foster care and*
7 *understands such children’s education needs,*
8 *such as an attorney for children in foster care,*
9 *a guardian ad litem, a court appointed special*
10 *advocate, a judge, or an education surrogate for*
11 *children in foster care.*

12 “(2) *OTHER MEMBERS.*—The council may in-
13 *clude other members selected by the Governor, includ-*
14 *ing a representative from the Bureau of Indian Af-*
15 *airs, or where there is no BIA-operated or BIA-fund-*
16 *ed school, from the Indian Health Service or the tribe*
17 *or tribal council.*

18 “(c) *MEETINGS.*—The council shall meet at least quar-
19 *terly and in such places as the council determines necessary.*
20 *The meetings shall be publicly announced, and, to the extent*
21 *appropriate, open and accessible to the general public.*

22 “(d) *MANAGEMENT AUTHORITY.*—Subject to the ap-
23 *proval of the Governor, the council may prepare and ap-*
24 *prove a budget using funds under this part to conduct hear-*
25 *ings and forums, to reimburse members of the council for*

1 *reasonable and necessary expenses for attending council*
2 *meetings and performing council duties (including child*
3 *care for parent representatives), to pay compensation to a*
4 *member of the council if the member is not employed or*
5 *must forfeit wages from other employment when performing*
6 *official council business, to hire staff, and to obtain the serv-*
7 *ices of such professional, technical, and clerical personnel*
8 *as may be necessary to carry out its functions under this*
9 *part.*

10 “(e) *FUNCTIONS OF COUNCIL.—*

11 “(1) *DUTIES.—The council shall—*

12 “(A) *advise and assist the lead agency des-*
13 *ignated or established under section 635(a)(10)*
14 *in the performance of the responsibilities set*
15 *forth in such section, particularly the identifica-*
16 *tion of the sources of fiscal and other support for*
17 *services for early intervention programs, assign-*
18 *ment of financial responsibility to the appro-*
19 *priate agency, and the promotion of the inter-*
20 *agency agreements;*

21 “(B) *advise and assist the lead agency in*
22 *the preparation of applications and amendments*
23 *thereto;*

24 “(C) *advise and assist the State educational*
25 *agency regarding the transition of toddlers with*

1 *disabilities to preschool and other appropriate*
2 *services; and*

3 “(D) *prepare and submit an annual report*
4 *to the Governor and to the Secretary on the sta-*
5 *tus of early intervention programs for infants*
6 *and toddlers with disabilities and their families*
7 *operated within the State.*

8 “(2) *AUTHORIZED ACTIVITY.—The council may*
9 *advise and assist the lead agency and the State edu-*
10 *cational agency regarding the provision of appro-*
11 *priate services for children from birth through age 5.*
12 *The council may advise appropriate agencies in the*
13 *State with respect to the integration of services for in-*
14 *fants and toddlers with disabilities and at-risk in-*
15 *fants and toddlers and their families, regardless of*
16 *whether at-risk infants and toddlers are eligible for*
17 *early intervention services in the State.*

18 “(f) *CONFLICT OF INTEREST.—No member of the coun-*
19 *cil shall cast a vote on any matter that is likely to provide*
20 *a direct financial benefit to that member or otherwise give*
21 *the appearance of a conflict of interest under State law.*

22 “**SEC. 642. FEDERAL ADMINISTRATION.**

23 “*Sections 616, 617, and 618 shall, to the extent not*
24 *inconsistent with this part, apply to the program author-*
25 *ized by this part, except that—*

1 “(1) any reference in such sections to a State
2 educational agency shall be considered to be a ref-
3 erence to a State’s lead agency established or des-
4 ignated under section 635(a)(10);

5 “(2) any reference in such sections to a local
6 educational agency, educational service agency, or a
7 State agency shall be considered to be a reference to
8 an early intervention service provider under this
9 part; and

10 “(3) any reference to the education of children
11 with disabilities or the education of all children with
12 disabilities shall be considered to be a reference to the
13 provision of appropriate early intervention services to
14 infants and toddlers with disabilities.

15 **“SEC. 643. ALLOCATION OF FUNDS.**

16 “(a) *RESERVATION OF FUNDS FOR OUTLYING*
17 *AREAS.—*

18 “(1) *IN GENERAL.—*From the sums appropriated
19 to carry out this part for any fiscal year, the Sec-
20 retary may reserve not more than 1 percent for pay-
21 ments to Guam, American Samoa, the United States
22 Virgin Islands, and the Commonwealth of the North-
23 ern Mariana Islands in accordance with their respec-
24 tive needs.

1 “(2) *CONSOLIDATION OF FUNDS.*—*The provisions*
2 *of Public Law 95–134, permitting the consolidation of*
3 *grants to the outlying areas, shall not apply to funds*
4 *those areas receive under this part.*

5 “(b) *PAYMENTS TO INDIANS.*—

6 “(1) *IN GENERAL.*—*The Secretary shall, subject*
7 *to this subsection, make payments to the Secretary of*
8 *the Interior to be distributed to tribes, tribal organi-*
9 *zations (as defined under section 4 of the Indian Self-*
10 *Determination and Education Assistance Act), or*
11 *consortia of the above entities for the coordination of*
12 *assistance in the provision of early intervention serv-*
13 *ices by the States to infants and toddlers with disabil-*
14 *ities and their families on reservations served by ele-*
15 *mentary schools and secondary schools for Indian*
16 *children operated or funded by the Department of the*
17 *Interior. The amount of such payment for any fiscal*
18 *year shall be 1.25 percent of the aggregate of the*
19 *amount available to all States under this part for*
20 *such fiscal year.*

21 “(2) *ALLOCATION.*—*For each fiscal year, the Sec-*
22 *retary of the Interior shall distribute the entire pay-*
23 *ment received under paragraph (1) by providing to*
24 *each tribe, tribal organization, or consortium an*
25 *amount based on the number of infants and toddlers*

1 *residing on the reservation, as determined annually,*
2 *divided by the total of such children served by all*
3 *tribes, tribal organizations, or consortia.*

4 *“(3) INFORMATION.—To receive a payment*
5 *under this subsection, the tribe, tribal organization,*
6 *or consortium shall submit such information to the*
7 *Secretary of the Interior as is needed to determine the*
8 *amounts to be distributed under paragraph (2).*

9 *“(4) USE OF FUNDS.—The funds received by a*
10 *tribe, tribal organization, or consortium shall be used*
11 *to assist States in child find, screening, and other*
12 *procedures for the early identification of Indian chil-*
13 *dren under 3 years of age and for parent training.*
14 *Such funds may also be used to provide early inter-*
15 *vention services in accordance with this part. Such*
16 *activities may be carried out directly or through con-*
17 *tracts or cooperative agreements with the BIA, local*
18 *educational agencies, and other public or private non-*
19 *profit organizations. The tribe, tribal organization, or*
20 *consortium is encouraged to involve Indian parents*
21 *in the development and implementation of these ac-*
22 *tivities. The above entities shall, as appropriate, make*
23 *referrals to local, State, or Federal entities for the*
24 *provision of services or further diagnosis.*

1 “(5) *REPORTS.*—*To be eligible to receive a grant*
2 *under paragraph (2), a tribe, tribal organization, or*
3 *consortium shall make a biennial report to the Sec-*
4 *retary of the Interior of activities undertaken under*
5 *this subsection, including the number of contracts and*
6 *cooperative agreements entered into, the number of*
7 *children contacted and receiving services for each*
8 *year, and the estimated number of children needing*
9 *services during the 2 years following the year in*
10 *which the report is made. The Secretary of the Inte-*
11 *rior shall include a summary of this information on*
12 *a biennial basis to the Secretary of Education along*
13 *with such other information as required under section*
14 *611(h)(3)(E). The Secretary of Education may re-*
15 *quire any additional information from the Secretary*
16 *of the Interior.*

17 “(6) *PROHIBITED USES OF FUNDS.*—*None of the*
18 *funds under this subsection may be used by the Sec-*
19 *retary of the Interior for administrative purposes, in-*
20 *cluding child count, and the provision of technical as-*
21 *sistance.*

22 “(c) *STATE ALLOTMENTS.*—

23 “(1) *IN GENERAL.*—*Except as provided in para-*
24 *graphs (2) and (3), from the funds remaining for each*
25 *fiscal year after the reservation and payments under*

1 *subsections (a), (b), and (e), the Secretary shall first*
2 *allot to each State an amount that bears the same*
3 *ratio to the amount of such remainder as the number*
4 *of infants and toddlers in the State bears to the num-*
5 *ber of infants and toddlers in all States.*

6 *“(2) MINIMUM ALLOTMENTS.—Except as pro-*
7 *vided in paragraph (3), no State shall receive an*
8 *amount under this section for any fiscal year that is*
9 *less than the greater of—*

10 *“(A) $\frac{1}{2}$ of 1 percent of the remaining*
11 *amount described in paragraph (1); or*

12 *“(B) \$500,000.*

13 *“(3) RATABLE REDUCTION.—*

14 *“(A) IN GENERAL.—If the sums made avail-*
15 *able under this part for any fiscal year are in-*
16 *sufficient to pay the full amounts that all States*
17 *are eligible to receive under this subsection for*
18 *such year, the Secretary shall ratably reduce the*
19 *allotments to such States for such year.*

20 *“(B) ADDITIONAL FUNDS.—If additional*
21 *funds become available for making payments*
22 *under this subsection for a fiscal year, allotments*
23 *that were reduced under subparagraph (A) shall*
24 *be increased on the same basis the allotments*
25 *were reduced.*

1 “(4) *DEFINITIONS.*—*For the purpose of this sub-*
2 *section—*

3 “(A) *the terms ‘infants’ and ‘toddlers’ mean*
4 *children under 3 years of age; and*

5 “(B) *the term ‘State’ means each of the 50*
6 *States, the District of Columbia, and the Com-*
7 *monwealth of Puerto Rico.*

8 “(d) *REALLOTMENT OF FUNDS.*—*If a State elects not*
9 *to receive its allotment under subsection (c), the Secretary*
10 *shall reallo, among the remaining States, amounts from*
11 *such State in accordance with such subsection.*

12 “(e) *RESERVATION FOR STATE BONUS GRANTS.*—*The*
13 *Secretary shall reserve 10 percent of the amount by which*
14 *the amount appropriated under section 644 for any fiscal*
15 *year exceeds \$434,159,000 to make allotments to States that*
16 *are carrying out the policy described in section 635(b), in*
17 *accordance with the formula described in subsection (c)(1)*
18 *without regard to subsections (c) (2) and (3).*

19 “**SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

20 “*For the purpose of carrying out this part, there are*
21 *authorized to be appropriated such sums as may be nec-*
22 *essary for each of the fiscal years 2004 through 2009.*

1 **“PART D—NATIONAL ACTIVITIES TO IMPROVE**
2 **EDUCATION OF CHILDREN WITH DISABILITIES**

3 **“SEC. 650. FINDINGS.**

4 *“Congress finds the following:*

5 *“(1) The Federal Government has an ongoing ob-*
6 *ligation to support activities that contribute to posi-*
7 *tive results for children with disabilities, enabling*
8 *them to lead productive and independent adult lives.*

9 *“(2) Systemic change benefiting all students, in-*
10 *cluding children with disabilities, requires the in-*
11 *volvement of States, local educational agencies, par-*
12 *ents, individuals with disabilities and their families,*
13 *teachers and other service providers, and other inter-*
14 *ested individuals and organizations to develop and*
15 *implement comprehensive strategies that improve edu-*
16 *cational results for children with disabilities.*

17 *“(3) State educational agencies, in partnership*
18 *with local educational agencies, parents of children*
19 *with disabilities, and other individuals and organiza-*
20 *tions, are in the best position to improve education*
21 *for children with disabilities and to address their spe-*
22 *cial needs.*

23 *“(4) An effective educational system serving stu-*
24 *dents with disabilities should—*

25 *“(A) maintain high academic achievement*
26 *standards and clear performance goals for chil-*

1 *dren with disabilities, consistent with the stand-*
2 *ards and expectations for all students in the edu-*
3 *cational system, and provide for appropriate*
4 *and effective strategies and methods to ensure*
5 *that all children with disabilities have the oppor-*
6 *tunity to achieve those standards and goals;*

7 *“(B) clearly define, in objective, measurable*
8 *terms, the school and post-school results that*
9 *children with disabilities are expected to achieve;*
10 *and*

11 *“(C) promote transition services and coordi-*
12 *nate State and local education, social, health,*
13 *mental health, and other services, in addressing*
14 *the full range of student needs, particularly the*
15 *needs of children with disabilities who need sig-*
16 *nificant levels of support to participate and*
17 *learn in school and the community.*

18 *“(5) The availability of an adequate number of*
19 *qualified personnel is critical to serve effectively chil-*
20 *dren with disabilities, to assume leadership positions*
21 *in administration and direct services, to provide*
22 *teacher training, and to conduct high quality research*
23 *to improve special education.*

24 *“(6) High quality, comprehensive professional*
25 *development programs are essential to ensure that the*

1 *persons responsible for the education or transition of*
2 *children with disabilities possess the skills and knowl-*
3 *edge necessary to address the educational and related*
4 *needs of those children.*

5 *“(7) Models of professional development should*
6 *be scientifically based and reflect successful practices,*
7 *including strategies for recruiting, preparing, and re-*
8 *taining personnel.*

9 *“(8) Continued support is essential for the devel-*
10 *opment and maintenance of a coordinated and high*
11 *quality program of research to inform successful*
12 *teaching practices and model curricula for educating*
13 *children with disabilities.*

14 *“(9) A comprehensive research agenda should be*
15 *established and pursued to promote the highest qual-*
16 *ity and rigor in special education research, and to*
17 *address the full range of issues facing children with*
18 *disabilities, parents of children with disabilities,*
19 *school personnel, and others.*

20 *“(10) Training, technical assistance, support,*
21 *and dissemination activities are necessary to ensure*
22 *that parts B and C are fully implemented and*
23 *achieve high quality early intervention, educational,*
24 *and transitional results for children with disabilities*
25 *and their families.*

1 “(11) Parents, teachers, administrators, and re-
2 lated services personnel need technical assistance and
3 information in a timely, coordinated, and accessible
4 manner in order to improve early intervention, edu-
5 cational, and transitional services and results at the
6 State and local levels for children with disabilities
7 and their families.

8 “(12) Parent training and information activities
9 assist parents of a child with a disability in dealing
10 with the multiple pressures of parenting such a child
11 and are of particular importance in—

12 “(A) playing a vital role in creating and
13 preserving constructive relationships between
14 parents of children with disabilities and schools
15 by facilitating open communication between the
16 parents and schools; encouraging dispute resolu-
17 tion at the earliest possible point in time; and
18 discouraging the escalation of an adversarial
19 process between the parents and schools;

20 “(B) ensuring the involvement of parents in
21 planning and decisionmaking with respect to
22 early intervention, educational, and transitional
23 services;

1 “(C) achieving high quality early interven-
2 tion, educational, and transitional results for
3 children with disabilities;

4 “(D) providing such parents information on
5 their rights, protections, and responsibilities
6 under this Act to ensure improved early inter-
7 vention, educational, and transitional results for
8 children with disabilities;

9 “(E) assisting such parents in the develop-
10 ment of skills to participate effectively in the
11 education and development of their children and
12 in the transitions described in section 673(b)(6);

13 “(F) supporting the roles of such parents as
14 participants within partnerships seeking to im-
15 prove early intervention, educational, and tran-
16 sitional services and results for children with
17 disabilities and their families; and

18 “(G) supporting such parents who may
19 have limited access to services and supports, due
20 to economic, cultural, or linguistic barriers.

21 “(13) Support is needed to improve technological
22 resources and integrate technology, including univer-
23 sally designed technologies, into the lives of children
24 with disabilities, parents of children with disabilities,

1 school personnel, and others through curricula, serv-
2 ices, and assistive technologies.

3 **“Subpart 1—State Personnel Preparation and**
4 **Professional Development Grants**

5 **“SEC. 651. PURPOSE; DEFINITION; PROGRAM AUTHORITY.**

6 “(a) *PURPOSE.*—The purpose of this subpart is to as-
7 sist State educational agencies in reforming and improving
8 their systems for personnel preparation and professional de-
9 velopment in early intervention, educational, and transi-
10 tion services in order to improve results for children with
11 disabilities.

12 “(b) *DEFINITION.*—In this subpart, the term ‘per-
13 sonnel’ means special education teachers, regular education
14 teachers, principals, administrators, related services per-
15 sonnel, paraprofessionals, and early intervention personnel
16 serving infants, toddlers, preschoolers, or children with dis-
17 abilities, except where a particular category of personnel,
18 such as related services personnel, is identified.

19 “(c) *COMPETITIVE GRANTS.*—

20 “(1) *IN GENERAL.*—Except as provided in sub-
21 section (d), for any fiscal year for which the amount
22 appropriated under section 655, that remains after
23 the Secretary reserves funds under subsection (e) for
24 the fiscal year, is less than \$100,000,000, the Sec-
25 retary shall award grants, on a competitive basis, to

1 *State educational agencies to carry out the activities*
2 *described in the State plan submitted under section*
3 *653.*

4 “(2) *PRIORITY.*—*In awarding grants under*
5 *paragraph (1), the Secretary may give priority to*
6 *State educational agencies that—*

7 “(A) *are in States with the greatest per-*
8 *sonnel shortages; or*

9 “(B) *demonstrate the greatest difficulty*
10 *meeting the requirements of section 612(a)(14).*

11 “(3) *MINIMUM.*—*The Secretary shall make a*
12 *grant to each State educational agency selected under*
13 *paragraph (1) in an amount for each fiscal year that*
14 *is—*

15 “(A) *not less than \$500,000, nor more than*
16 *\$4,000,000, in the case of the 50 States, the Dis-*
17 *trict of Columbia, and the Commonwealth of*
18 *Puerto Rico; and*

19 “(B) *not less than \$80,000 in the case of an*
20 *outlying area.*

21 “(4) *INCREASES.*—*The Secretary may increase*
22 *the amounts under in paragraph (3) to account for*
23 *inflation.*

1 “(5) *FACTORS.*—*The Secretary shall set the*
2 *amount of each grant under paragraph (1) after con-*
3 *sidering—*

4 “(A) *the amount of funds available for mak-*
5 *ing the grants;*

6 “(B) *the relative population of the State or*
7 *outlying area;*

8 “(C) *the types of activities proposed by the*
9 *State or outlying area;*

10 “(D) *the alignment of proposed activities*
11 *with section 612(a)(14);*

12 “(E) *the alignment of proposed activities*
13 *with the State plans and applications submitted*
14 *under sections 1111 and 2112, respectively, of*
15 *the Elementary and Secondary Education Act of*
16 *1965; and*

17 “(F) *the use, as appropriate, of scientif-*
18 *ically based activities.*

19 “(d) *FORMULA GRANTS.*—

20 “(1) *IN GENERAL.*—*Except as provided in para-*
21 *graphs (2) and (3), for the first fiscal year for which*
22 *the amount appropriated under section 655, that re-*
23 *mains after the Secretary reserves funds under sub-*
24 *section (e) for the fiscal year, is equal to or greater*
25 *than \$100,000,000, and for each fiscal year thereafter,*

1 *the Secretary shall allot to each State educational*
2 *agency, whose application meets the requirements of*
3 *this subpart, an amount that bears the same relation*
4 *to the amount appropriated as the amount the State*
5 *received under section 611(d) for that fiscal year*
6 *bears to the amount of funds received by all States*
7 *(whose applications meet the requirements of this sub-*
8 *part) under section 611(d) for that fiscal year.*

9 “(2) *MINIMUM ALLOTMENTS FOR STATES THAT*
10 *RECEIVED COMPETITIVE GRANTS.—*

11 “(A) *IN GENERAL.—The amount allotted*
12 *under this subsection to any State that received*
13 *a competitive multi-year grant under subsection*
14 *(c) for which the grant period has not expired*
15 *shall be at least the amount specified for that fis-*
16 *cal year in the State’s grant award document*
17 *under that subsection.*

18 “(B) *SPECIAL RULE.—Each such State*
19 *shall use the minimum amount described in sub-*
20 *paragraph (A) for the activities described in its*
21 *competitive grant award document for that year,*
22 *unless the Secretary approves a request from the*
23 *State to spend the funds on other activities.*

1 “(3) *MINIMUM ALLOTMENT.*—*The amount of any*
2 *State educational agency’s allotment under this sub-*
3 *section for any fiscal year shall not be less than—*

4 “(A) *the greater of \$500,000 or ½ of 1 per-*
5 *cent of the total amount available under this*
6 *subsection for that year, in the case of each of the*
7 *50 States, the District of Columbia, and the*
8 *Commonwealth of Puerto Rico; and*

9 “(B) *\$80,000, in the case of an outlying*
10 *area.*

11 “(e) *CONTINUATION AWARDS.*—

12 “(1) *IN GENERAL.*—*Notwithstanding any other*
13 *provision of this subpart, from funds appropriated*
14 *under section 655 for each fiscal year, the Secretary*
15 *shall reserve the amount that is necessary to make a*
16 *continuation award to any State (at the request of the*
17 *State) that received a multi-year award under this*
18 *part (as this part was in effect on the day before the*
19 *date of enactment of the Individuals with Disabilities*
20 *Education Improvement Act of 2004), to enable the*
21 *State to carry out activities in accordance with the*
22 *terms of the multi-year award.*

23 “(2) *PROHIBITION.*—*A State that receives a con-*
24 *tinuation award under paragraph (1) for any fiscal*

1 *year may not receive any other award under this sub-*
2 *part for that fiscal year.*

3 **“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

4 *“(a) ELIGIBLE APPLICANTS.—A State educational*
5 *agency may apply for a grant under this subpart for a*
6 *grant period of not less than 1 year and not more than*
7 *5 years.*

8 *“(b) PARTNERS.—*

9 *“(1) IN GENERAL.—In order to be considered for*
10 *a grant under this subpart, a State educational agen-*
11 *cy shall establish a partnership with local educational*
12 *agencies and other State agencies involved in, or con-*
13 *cerned with, the education of children with disabil-*
14 *ities, including institutions of higher education and*
15 *the State agencies responsible for administering part*
16 *C, child care, and vocational rehabilitation programs.*

17 *“(2) OTHER PARTNERS.—In order to be consid-*
18 *ered for a grant under this subpart, a State edu-*
19 *cational agency shall work in partnership with other*
20 *persons and organizations involved in, and concerned*
21 *with, the education of children with disabilities,*
22 *which may include—*

23 *“(A) the Governor;*

24 *“(B) parents of children with disabilities*
25 *ages birth through 26;*

1 “(C) parents of nondisabled children ages
2 birth through 26;

3 “(D) individuals with disabilities;

4 “(E) parent training and information cen-
5 ters or community parent resource centers fund-
6 ed under sections 671 and 672, respectively;

7 “(F) community based and other nonprofit
8 organizations involved in the education and em-
9 ployment of individuals with disabilities;

10 “(G) personnel as defined in section 651(b);

11 “(H) the State advisory panel established
12 under part B;

13 “(I) the State interagency coordinating
14 council established under part C;

15 “(J) individuals knowledgeable about voca-
16 tional education;

17 “(K) the State agency for higher education;

18 “(L) public agencies with jurisdiction in the
19 areas of health, mental health, social services,
20 and juvenile justice;

21 “(M) other providers of professional develop-
22 ment that work with infants, toddlers, pre-
23 schoolers, and children with disabilities; and

24 “(N) other individuals.

1 “(3) *REQUIRED PARTNER.*—*If State law assigns*
2 *responsibility for teacher preparation and certifi-*
3 *cation to an individual, entity, or agency other than*
4 *the State educational agency, the State educational*
5 *agency shall—*

6 “(A) *include that individual, entity, or*
7 *agency as a partner in the partnership under*
8 *this subsection; and*

9 “(B) *ensure that any activities the State*
10 *will carry out under this subpart that are within*
11 *that partner’s jurisdiction (which may include*
12 *activities described in section 654(b)) are carried*
13 *out by that partner.*

14 **“SEC. 653. APPLICATIONS.**

15 “(a) *IN GENERAL.*—

16 “(1) *SUBMISSION.*—*A State educational agency*
17 *that desires to receive a grant under this subpart*
18 *shall submit to the Secretary an application at such*
19 *time, in such manner, and including such informa-*
20 *tion as the Secretary may require.*

21 “(2) *STATE PLAN.*—*The application shall in-*
22 *clude a plan that identifies and addresses the State*
23 *and local needs for the personnel preparation and*
24 *professional development of personnel, as well as indi-*

1 *viduals who provide direct supplementary aids and*
2 *services to children with disabilities, and that—*

3 *“(A) is designed to enable the State to meet*
4 *the requirements of section 612(a)(14) and sec-*
5 *tion 635(a) (8) and (9);*

6 *“(B) is based on an assessment of State and*
7 *local needs that identifies critical aspects and*
8 *areas in need of improvement related to the*
9 *preparation, ongoing training, and professional*
10 *development of personnel that serve infants, tod-*
11 *dlers, preschoolers, and children with disabilities*
12 *within the State, including—*

13 *“(i) current and anticipated personnel*
14 *vacancies and shortages; and*

15 *“(ii) the number of preservice pro-*
16 *grams; and*

17 *“(C) is integrated and aligned, to the max-*
18 *imum extent possible, with State plans and ac-*
19 *tivities under the Elementary and Secondary*
20 *Education Act of 1965, the Rehabilitation Act of*
21 *1973, and the Higher Education Act of 1965.*

22 *“(3) REQUIREMENT.—The State application*
23 *shall contain an assurance that the State educational*
24 *agency will carry out each of the strategies described*
25 *in subsection (b)(4).*

1 “(b) *ELEMENTS OF STATE PERSONNEL PREPARATION*
2 *AND PROFESSIONAL DEVELOPMENT PLAN.*—Each profes-
3 sional development plan under subsection (a)(2) shall—

4 “(1) describe a partnership agreement that is in
5 effect for the period of the grant, which agreement
6 shall specify—

7 “(A) the nature and extent of the partner-
8 ship described in section 652(b) and the respec-
9 tive roles of each member of the partnership, in-
10 cluding the partner described in section
11 652(b)(3) if applicable; and

12 “(B) how the State will work with other
13 persons and organizations involved in, and con-
14 cerned with, the education of children with dis-
15 abilities, including the respective roles of each of
16 the persons and organizations;

17 “(2) describe how the strategies and activities de-
18 scribed in paragraph (4) will be coordinated with
19 other public resources (including part B and part C
20 funds retained for use at the State level for personnel
21 and professional development purposes) and private
22 resources;

23 “(3) describe how the State will align its profes-
24 sional development plan under this subpart with the
25 plan and application submitted under sections 1111

1 *and 2112, respectively, of the Elementary and Sec-*
2 *ondary Education Act of 1965;*

3 *“(4) describe what strategies the State will use to*
4 *address the professional development and personnel*
5 *needs identified under subsection (a)(2) and how those*
6 *strategies will be implemented, including—*

7 *“(A) a description of the preservice and in-*
8 *service programs and activities to be supported*
9 *under this subpart that will provide personnel*
10 *with the knowledge and skills to meet the needs*
11 *of, and improve the performance and achieve-*
12 *ment of, infants, toddlers, preschoolers, and chil-*
13 *dren with disabilities; and*

14 *“(B) how such strategies shall be integrated,*
15 *to the maximum extent possible, with other ac-*
16 *tivities supported by grants funded under this*
17 *part, including those under section 664;*

18 *“(5) provide an assurance that the State will*
19 *provide technical assistance to local educational agen-*
20 *cies to improve the quality of professional develop-*
21 *ment available to meet the needs of personnel who*
22 *serve children with disabilities;*

23 *“(6) provide an assurance that the State will*
24 *provide technical assistance to entities that provide*
25 *services to infants and toddlers with disabilities to*

1 *improve the quality of professional development avail-*
2 *able to meet the needs of personnel serving such chil-*
3 *dren;*

4 *“(7) describe how the State will recruit and re-*
5 *tain highly qualified teachers and other qualified per-*
6 *sonnel in geographic areas of greatest need;*

7 *“(8) describe the steps the State will take to en-*
8 *sure that poor and minority children are not taught*
9 *at higher rates by teachers who are not highly quali-*
10 *fied; and*

11 *“(9) describe how the State will assess, on a reg-*
12 *ular basis, the extent to which the strategies imple-*
13 *mented under this subpart have been effective in meet-*
14 *ing the performance goals described in section*
15 *612(a)(15).*

16 *“(c) PEER REVIEW.—*

17 *“(1) IN GENERAL.—The Secretary shall use a*
18 *panel of experts who are competent, by virtue of their*
19 *training, expertise, or experience, to evaluate applica-*
20 *tions for grants under section 651(c)(1).*

21 *“(2) COMPOSITION OF PANEL.—A majority of a*
22 *panel described in paragraph (1) shall be composed of*
23 *individuals who are not employees of the Federal*
24 *Government.*

1 “(3) *PAYMENT OF FEES AND EXPENSES OF CER-*
2 *TAIN MEMBERS.*—*The Secretary may use available*
3 *funds appropriated to carry out this subpart to pay*
4 *the expenses and fees of panel members who are not*
5 *employees of the Federal Government.*

6 “(d) *REPORTING PROCEDURES.*—*Each State edu-*
7 *cational agency that receives a grant under this subpart*
8 *shall submit annual performance reports to the Secretary.*
9 *The reports shall describe the progress of the State in imple-*
10 *menting its plan and analyze the effectiveness of the State’s*
11 *activities under this subpart.*

12 **“SEC. 654. USE OF FUNDS.**

13 “(a) *PROFESSIONAL DEVELOPMENT ACTIVITIES.*—*A*
14 *State educational agency that receives a grant under this*
15 *subpart shall use the grant funds to support activities in*
16 *accordance with the State’s plan described in section 653,*
17 *including 1 or more of the following:*

18 “(1) *Carrying out programs that provide sup-*
19 *port to both special education and regular education*
20 *teachers of children with disabilities and principals,*
21 *such as programs that—*

22 “(A) *provide teacher mentoring, team teach-*
23 *ing, reduced class schedules and case loads, and*
24 *intensive professional development;*

1 “(B) use standards or assessments for guid-
2 ing beginning teachers that are consistent with
3 challenging State student academic achievement
4 and functional standards and with the require-
5 ments for professional development as defined in
6 section 9101(34) of the Elementary and Sec-
7 ondary Education Act of 1965; and

8 “(C) encourage collaborative and consult-
9 ative models of providing early intervention, spe-
10 cial education, and related services.

11 “(2) Encouraging and supporting the training of
12 special education and regular education teachers and
13 administrators to effectively use and integrate tech-
14 nology—

15 “(A) into curricula and instruction, includ-
16 ing training to improve the ability to collect,
17 manage, and analyze data to improve teaching,
18 decisionmaking, school improvement efforts, and
19 accountability;

20 “(B) to enhance learning by children with
21 disabilities; and

22 “(C) to effectively communicate with par-
23 ents.

24 “(3) Providing professional development activi-
25 ties that—

1 “(A) improve the knowledge of special edu-
2 cation and regular education teachers con-
3 cerning—

4 “(i) the academic and developmental
5 or functional needs of students with disabil-
6 ities; or

7 “(ii) effective instructional strategies,
8 methods, and skills, and the use of State
9 academic content standards and student
10 academic achievement and functional
11 standards, and State assessments, to im-
12 prove teaching practices and student aca-
13 demic achievement;

14 “(B) improve the knowledge of special edu-
15 cation and regular education teachers and prin-
16 cipals and, in appropriate cases, paraprofes-
17 sionals, concerning effective instructional prac-
18 tices and that—

19 “(i) provide training in how to teach
20 and address the needs of children with dif-
21 ferent learning styles and children with
22 limited English proficiency;

23 “(ii) involve collaborative groups of
24 teachers, administrators, and, in appro-
25 priate cases, related services personnel;

1 “(iii) provide training in methods of—

2 “(I) positive behavioral interven-
3 tions and supports to improve student
4 behavior in the classroom;

5 “(II) scientifically based reading
6 instruction, including early literacy
7 instruction;

8 “(III) early and appropriate
9 interventions to identify and help chil-
10 dren with disabilities;

11 “(IV) effective instruction for chil-
12 dren with low incidence disabilities;

13 “(V) successful transitioning to
14 postsecondary opportunities; and

15 “(VI) using classroom-based tech-
16 niques to assist children prior to refer-
17 ral for special education;

18 “(iv) provide training to enable per-
19 sonnel to work with and involve parents in
20 their child’s education, including parents of
21 low income and limited English proficient
22 children with disabilities;

23 “(v) provide training for special edu-
24 cation personnel and regular education per-
25 sonnel in planning, developing, and imple-

1 *menting effective and appropriate IEPs;*
2 *and*

3 *“(vi) provide training to meet the*
4 *needs of students with significant health,*
5 *mobility, or behavioral needs prior to serv-*
6 *ing such students;*

7 *“(C) train administrators, principals, and*
8 *other relevant school personnel in conducting ef-*
9 *fective IEP meetings; and*

10 *“(D) Train early intervention, preschool,*
11 *and related services providers, and other relevant*
12 *school personnel, in conducting effective individ-*
13 *ualized family service plan (IFSP) meetings.*

14 *“(4) Developing and implementing initiatives to*
15 *promote the recruitment and retention of highly*
16 *qualified special education teachers, particularly ini-*
17 *tiatives that have been proven effective in recruitment*
18 *and retaining highly qualified teachers, including*
19 *programs that provide—*

20 *“(A) teacher mentoring from exemplary spe-*
21 *cial education teachers, principals, or super-*
22 *intendents;*

23 *“(B) induction and support for special edu-*
24 *cation teachers during their first 3 years of em-*
25 *ployment as teachers; or*

1 “(C) incentives, including financial incen-
2 tives, to retain special education teachers who
3 have a record of success in helping students with
4 disabilities.

5 “(5) Carrying out programs and activities that
6 are designed to improve the quality of personnel who
7 serve children with disabilities, such as—

8 “(A) innovative professional development
9 programs (which may be provided through part-
10 nerships that include institutions of higher edu-
11 cation), including programs that train teachers
12 and principals to integrate technology into cur-
13 ricula and instruction to improve teaching,
14 learning, and technology literacy, which profes-
15 sional development shall be consistent with the
16 definition of professional development in section
17 9101(34) of the *Elementary and Secondary Edu-
18 cation Act of 1965*; and

19 “(B) the development and use of proven,
20 cost effective strategies for the implementation of
21 professional development activities, such as
22 through the use of technology and distance learn-
23 ing.

24 “(6) Carrying out programs and activities that
25 are designed to improve the quality of early interven-

1 *tion personnel, including paraprofessionals and pri-*
2 *mary referral sources, such as—*

3 *“(A) professional development programs to*
4 *improve the delivery of early intervention serv-*
5 *ices;*

6 *“(B) initiatives to promote the recruitment*
7 *and retention of early intervention personnel;*
8 *and*

9 *“(C) interagency activities to ensure that*
10 *personnel are adequately prepared and trained.*

11 *“(b) OTHER ACTIVITIES.—A State educational agency*
12 *that receives a grant under this subpart shall use the grant*
13 *funds to support activities in accordance with the State’s*
14 *plan described in section 653, including 1 or more of the*
15 *following:*

16 *“(1) Reforming special education and regular*
17 *education teacher certification (including recertifi-*
18 *cation) or licensing requirements to ensure that—*

19 *“(A) special education and regular edu-*
20 *cation teachers have—*

21 *“(i) the training and information nec-*
22 *essary to address the full range of needs of*
23 *children with disabilities across disability*
24 *categories; and*

1 “(ii) the necessary subject matter
2 knowledge and teaching skills in the aca-
3 demic subjects that they teach;

4 “(B) special education and regular edu-
5 cation teacher certification (including recertifi-
6 cation) or licensing requirements are aligned
7 with challenging State academic content stand-
8 ards; and

9 “(C) special education and regular edu-
10 cation teachers have the subject matter knowledge
11 and teaching skills, including technology lit-
12 eracy, necessary to help students with disabilities
13 meet challenging State student academic achieve-
14 ment and functional standards.

15 “(2) Programs that establish, expand, or improve
16 alternative routes for State certification of special
17 education teachers for highly qualified individuals
18 with a baccalaureate or master’s degree, including
19 mid-career professionals from other occupations,
20 paraprofessionals, and recent college or university
21 graduates with records of academic distinction who
22 demonstrate the potential to become highly effective
23 special education teachers.

24 “(3) Teacher advancement initiatives for special
25 education teachers that promote professional growth

1 *and emphasize multiple career paths (such as paths*
2 *to becoming a career teacher, mentor teacher, or exem-*
3 *plary teacher) and pay differentiation.*

4 *“(4) Developing and implementing mechanisms*
5 *to assist local educational agencies and schools in ef-*
6 *fectively recruiting and retaining highly qualified*
7 *special education teachers.*

8 *“(5) Reforming tenure systems, implementing*
9 *teacher testing for subject matter knowledge, and im-*
10 *plementing teacher testing for State certification or*
11 *licensing, consistent with title II of the Higher Edu-*
12 *cation Act of 1965.*

13 *“(6) Funding projects to promote reciprocity of*
14 *teacher certification or licensing between or among*
15 *States for special education teachers, except that no*
16 *reciprocity agreement developed under this paragraph*
17 *or developed using funds provided under this subpart*
18 *may lead to the weakening of any State teaching cer-*
19 *tification or licensing requirement.*

20 *“(7) Developing or assisting local educational*
21 *agencies to serve children with disabilities through the*
22 *development and use of proven, innovative strategies*
23 *to deliver intensive professional development pro-*
24 *grams that are both cost effective and easily acces-*
25 *sible, such as strategies that involve delivery through*

1 *the use of technology, peer networks, and distance*
2 *learning.*

3 “(8) *Developing, or assisting local educational*
4 *agencies in developing, merit based performance sys-*
5 *tems, and strategies that provide differential and*
6 *bonus pay for special education teachers.*

7 “(9) *Supporting activities that ensure that*
8 *teachers are able to use challenging State academic*
9 *content standards and student academic and func-*
10 *tional achievement standards, and State assessments*
11 *for all children with disabilities, to improve instruc-*
12 *tional practices and improve the academic achieve-*
13 *ment of children with disabilities.*

14 “(10) *When applicable, coordinating with, and*
15 *expanding centers established under, section*
16 *2113(c)(18) of the Elementary and Secondary Edu-*
17 *cation Act of 1965 to benefit special education teach-*
18 *ers.*

19 “(c) *CONTRACTS AND SUBGRANTS.—Each such State*
20 *educational agency—*

21 “(1) *shall award contracts or subgrants to local*
22 *educational agencies, institutions of higher education,*
23 *parent training and information centers, or commu-*
24 *nity parent resource centers, as appropriate, to carry*
25 *out its State plan under this subpart; and*

1 “(2) may award contracts and subgrants to other
2 public and private entities, including the lead agency
3 under part C, to carry out such plan.

4 “(d) *USE OF FUNDS FOR PROFESSIONAL DEVELOP-*
5 *MENT.*—A State educational agency that receives a grant
6 under this subpart shall use—

7 “(1) not less than 75 percent of the funds the
8 State educational agency receives under the grant for
9 any fiscal year for activities under subsection (a);
10 and

11 “(2) not more than 25 percent of the funds the
12 State educational agency receives under the grant for
13 any fiscal year for activities under subsection (b).

14 “(e) *GRANTS TO OUTLYING AREAS.*—Public Law 95–
15 134, permitting the consolidation of grants to the outlying
16 areas, shall not apply to funds received under this subpart.

17 “**SEC. 655. AUTHORIZATION OF APPROPRIATIONS.**

18 “*There are authorized to be appropriated to carry out*
19 *this subpart such sums as may be necessary for each of the*
20 *fiscal years 2004 through 2009.*

21 “**Subpart 2—Scientifically Based Research, Technical**
22 **Assistance, Model Demonstration Projects, and**
23 **Dissemination of Information**

24 “**SEC. 660. PURPOSE.**

25 “*The purpose of this subpart is—*

1 “(1) to provide Federal funding for scientifically
2 based research, technical assistance, model demonstra-
3 tion projects, and information dissemination to im-
4 prove early intervention, educational, and transi-
5 tional results for children with disabilities; and

6 “(2) to assist State educational agencies and
7 local educational agencies in improving their edu-
8 cation systems.

9 **“SEC. 661. ADMINISTRATIVE PROVISIONS.**

10 “(a) *COMPREHENSIVE PLAN.*—

11 “(1) *IN GENERAL.*—After receiving input from
12 interested individuals with relevant expertise, the Sec-
13 retary shall develop and implement a comprehensive
14 plan for activities carried out under this subpart
15 (other than activities assisted under section 665 and
16 subpart 3) in order to enhance the provision of early
17 intervention, educational, related and transitional
18 services to children with disabilities under parts B
19 and C. The plan shall be coordinated with the plan
20 developed pursuant to section 177(c) of the Education
21 Sciences Reform Act of 2002 and shall include mecha-
22 nisms to address early intervention, educational, re-
23 lated service and transitional needs identified by
24 State educational agencies in applications submitted
25 for State Personnel and Professional Development

1 *grants under subpart 1 and for grants under this sub-*
2 *part.*

3 “(2) *PUBLIC COMMENT.*—*The Secretary shall*
4 *provide a public comment period of at least 60 days*
5 *on the plan.*

6 “(3) *DISTRIBUTION OF FUNDS.*—*In imple-*
7 *menting the plan, the Secretary shall, to the extent*
8 *appropriate, ensure that funds are awarded to recipi-*
9 *ents under this subpart, subpart 3, and subpart 4 to*
10 *carry out activities that benefit, directly or indirectly,*
11 *children with the full range of disabilities and of all*
12 *ages.*

13 “(4) *REPORTS TO CONGRESS.*—*The Secretary*
14 *shall annually report to Congress on the Secretary’s*
15 *activities under this subpart, subpart 3, and subpart*
16 *4, including an initial report not later than 12*
17 *months after the date of enactment of the Individuals*
18 *with Disabilities Education Improvement Act of*
19 *2004.*

20 “(b) *ELIGIBLE APPLICANTS.*—

21 “(1) *IN GENERAL.*—*Except as otherwise provided*
22 *in this subpart, the following entities are eligible to*
23 *apply for a grant, contract, or cooperative agreement*
24 *under this subpart:*

25 “(A) *A State educational agency.*

1 “(B) *A local educational agency.*

2 “(C) *A public charter school that is a local*
3 *educational agency under State law.*

4 “(D) *An institution of higher education.*

5 “(E) *Any other public agency.*

6 “(F) *A private nonprofit organization.*

7 “(G) *An outlying area.*

8 “(H) *An Indian tribe or a tribal organiza-*
9 *tion (as defined under section 4 of the Indian*
10 *Self-Determination and Education Assistance*
11 *Act).*

12 “(I) *A for-profit organization.*

13 “(2) *SPECIAL RULE.—The Secretary may limit*
14 *the entities eligible for an award of a grant, contract,*
15 *or cooperative agreement to 1 or more categories of el-*
16 *igible entities described in paragraph (1).*

17 “(c) *SPECIAL POPULATIONS.—*

18 “(1) *APPLICATION REQUIREMENT.—In making*
19 *an award of a grant, contract, or cooperative agree-*
20 *ment under this subpart, subpart 3, and subpart 4,*
21 *the Secretary shall, as appropriate, require an appli-*
22 *cant to meet the criteria set forth by the Secretary*
23 *under this subpart and demonstrate how the appli-*
24 *cant will address the needs of children with disabil-*
25 *ities from minority backgrounds.*

1 “(2) *OUTREACH AND TECHNICAL ASSISTANCE.*—
2 *Notwithstanding any other provision of this Act, the*
3 *Secretary shall reserve at least 1 percent of the total*
4 *amount of funds made available to carry out this sub-*
5 *part, subpart 3, or subpart 4 for 1 or both of the fol-*
6 *lowing activities:*

7 “(A) *To provide outreach and technical as-*
8 *istance to Historically Black Colleges and Uni-*
9 *versities, and to institutions of higher education*
10 *with minority enrollments of at least 25 percent,*
11 *to promote the participation of such colleges,*
12 *universities, and institutions in activities under*
13 *this subpart.*

14 “(B) *To enable Historically Black Colleges*
15 *and Universities, and the institutions described*
16 *in subparagraph (A), to assist other colleges,*
17 *universities, institutions, and agencies in im-*
18 *proving educational and transitional results for*
19 *children with disabilities.*

20 “(d) *PRIORITIES.*—*The Secretary, in making an*
21 *award of a grant, contract, or cooperative agreement under*
22 *this subpart, subpart 3, or subpart 4, may, without regard*
23 *to the rulemaking procedures under section 553(a) of title*
24 *5, United States Code, limit competitions to, or otherwise*
25 *give priority to—*

- 1 “(1) projects that address 1 or more—
- 2 “(A) age ranges;
- 3 “(B) disabilities;
- 4 “(C) school grades;
- 5 “(D) types of educational placements or
- 6 *early intervention environments;*
- 7 “(E) types of services;
- 8 “(F) content areas, such as reading; or
- 9 “(G) effective strategies for helping children
- 10 *with disabilities learn appropriate behavior in*
- 11 *the school and other community based edu-*
- 12 *cational settings;*
- 13 “(2) projects that address the needs of children
- 14 *based on the severity or incidence of their disability;*
- 15 “(3) projects that address the needs of—
- 16 “(A) low achieving students;
- 17 “(B) underserved populations;
- 18 “(C) children from low income families;
- 19 “(D) limited English proficient children;
- 20 “(E) unserved and underserved areas;
- 21 “(F) rural or urban areas;
- 22 “(G) children whose behavior interferes with
- 23 *their learning and socialization;*
- 24 “(H) children with reading difficulties;
- 25 “(I) children in charter schools; or

1 “(J) children who are gifted and talented;

2 “(K) children with disabilities served by
3 local educational agencies that receive payments
4 under title VIII of the Elementary and Sec-
5 ondary Education Act of 1965;

6 “(L) children with disabilities who are
7 homeless children or children with disabilities
8 who are wards of the State;

9 “(4) projects to reduce inappropriate identifica-
10 tion of children as children with disabilities, particu-
11 larly among minority children;

12 “(5) projects that are carried out in particular
13 areas of the country, to ensure broad geographic cov-
14 erage;

15 “(6) projects that promote the development and
16 use of universally designed technologies, assistive tech-
17 nology devices, and assistive technology services to
18 maximize children with disabilities’ access to and
19 participation in the general education curriculum;

20 “(7) any activity that is authorized in this sub-
21 part or subpart 3; and

22 “(8) projects that provide training in edu-
23 cational advocacy to individuals with responsibility
24 for the needs of wards of the State, including foster
25 parents, grandparents and other relatives acting in

1 *the place of a natural or adoptive parent, attorneys*
2 *for children in foster care, guardians ad litem, court*
3 *appointed special advocates, judges, education surro-*
4 *gates, and children’s caseworkers.*

5 “(e) *APPLICANT AND RECIPIENT RESPONSIBILITIES.—*

6 “(1) *DEVELOPMENT AND ASSESSMENT OF*
7 *PROJECTS.—The Secretary shall require that an ap-*
8 *plicant for, and a recipient of, a grant, contract, or*
9 *cooperative agreement for a project under this sub-*
10 *part, subpart 3, or subpart 4—*

11 “(A) *involve individuals with disabilities or*
12 *parents of individuals with disabilities ages*
13 *birth through 26 in planning, implementing,*
14 *and evaluating the project; and*

15 “(B) *where appropriate, determine whether*
16 *the project has any potential for replication and*
17 *adoption by other entities.*

18 “(2) *ADDITIONAL RESPONSIBILITIES.—The Sec-*
19 *retary may require a recipient of a grant, contract,*
20 *or cooperative agreement under this subpart, subpart*
21 *3, or subpart 4 to—*

22 “(A) *share in the cost of the project;*

23 “(B) *prepare any findings and products*
24 *from the project in formats that are useful for*
25 *specific audiences, including parents, adminis-*

1 *trators, teachers, early intervention personnel,*
2 *related services personnel, and individuals with*
3 *disabilities;*

4 “(C) *disseminate such findings and prod-*
5 *ucts; and*

6 “(D) *collaborate with other such recipients*
7 *in carrying out subparagraphs (B) and (C).*

8 “(f) *APPLICATION MANAGEMENT.—*

9 “(1) *STANDING PANEL.—*

10 “(A) *IN GENERAL.—The Secretary shall es-*
11 *tablish and use a standing panel of experts who*
12 *are competent, by virtue of their training, exper-*
13 *tise, or experience, to evaluate applications*
14 *under this subpart (other than applications for*
15 *assistance under section 665), subpart 3, and*
16 *subpart 4 that, individually, request more than*
17 *\$75,000 per year in Federal financial assistance.*

18 “(B) *MEMBERSHIP.—The standing panel*
19 *shall include, at a minimum—*

20 “(i) *individuals who are representa-*
21 *tives of institutions of higher education that*
22 *plan, develop, and carry out high quality*
23 *programs of personnel preparation;*

24 “(ii) *individuals who design and carry*
25 *out scientifically based research targeted to*

1 *the improvement of special education pro-*
2 *grams and services;*

3 “(iii) *individuals who have recognized*
4 *experience and knowledge necessary to inte-*
5 *grate and apply scientifically based re-*
6 *search findings to improve educational and*
7 *transitional results for children with dis-*
8 *abilities;*

9 “(iv) *individuals who administer pro-*
10 *grams at the State or local level in which*
11 *children with disabilities participate;*

12 “(v) *individuals who prepare parents*
13 *of children with disabilities to participate*
14 *in making decisions about the education of*
15 *their children;*

16 “(vi) *individuals who establish policies*
17 *that affect the delivery of services to chil-*
18 *dren with disabilities;*

19 “(vii) *parents of children with disabil-*
20 *ities ages birth through 26 who are bene-*
21 *fitting, or have benefited, from coordinated*
22 *research, personnel preparation, and tech-*
23 *nical assistance; and*

24 “(viii) *individuals with disabilities.*

1 “(C) *TERM.*—Unless approved by the Sec-
2 retary due to extenuating circumstances related
3 to shortages of experts in a particular area of ex-
4 pertise or for a specific competition, no indi-
5 vidual shall serve on the standing panel for more
6 than 3 consecutive years.

7 “(2) *PEER REVIEW PANELS FOR PARTICULAR*
8 *COMPETITIONS.*—

9 “(A) *COMPOSITION.*—The Secretary shall
10 ensure that each sub panel selected from the
11 standing panel that reviews applications under
12 this subpart (other than section 665), subpart 3,
13 and subpart 4 includes—

14 “(i) *individuals with knowledge and*
15 *expertise on the issues addressed by the ac-*
16 *tivities authorized by the relevant subpart;*
17 *and*

18 “(ii) *to the extent practicable, parents*
19 *of children with disabilities ages birth*
20 *through 26, individuals with disabilities,*
21 *and persons from diverse backgrounds.*

22 “(B) *FEDERAL EMPLOYMENT LIMITATION.*—
23 A majority of the individuals on each sub panel
24 that reviews an application under this subpart
25 (other than an application under section 665),

1 *subpart 3, and subpart 4 shall be individuals*
2 *who are not employees of the Federal Govern-*
3 *ment.*

4 “(3) *USE OF DISCRETIONARY FUNDS FOR ADMIN-*
5 *ISTRATIVE PURPOSES.—*

6 “(A) *EXPENSES AND FEES OF NON-FED-*
7 *ERAL PANEL MEMBERS.—The Secretary may use*
8 *funds made available under this subpart, sub-*
9 *part 3, and subpart 4 to pay the expenses and*
10 *fees of the panel members who are not officers or*
11 *employees of the Federal Government.*

12 “(B) *ADMINISTRATIVE SUPPORT.—The Sec-*
13 *retary may use not more than 1 percent of the*
14 *funds made available to carry out this subpart,*
15 *subpart 3, or subpart 4 to pay non-Federal enti-*
16 *ties for administrative support related to man-*
17 *agement of applications submitted under this*
18 *subpart.*

19 “(4) *AVAILABILITY OF CERTAIN PRODUCTS.—The*
20 *Secretary shall ensure that recipients of grants, coop-*
21 *erative agreements, or contracts under this subpart,*
22 *subpart 3, and subpart 4 make available in formats*
23 *that are accessible to individuals with disabilities any*
24 *products developed under such grants, cooperative*

1 *agreements, or contracts that the recipient is making*
2 *available to the public.*

3 “(g) *PROGRAM EVALUATION.*—*The Secretary may use*
4 *funds made available to carry out this subpart, subpart 3,*
5 *and subpart 4 to evaluate activities carried out under this*
6 *subpart.*

7 “(h) *MINIMUM FUNDING REQUIRED.*—

8 “(1) *IN GENERAL.*—*Subject to paragraph (2), the*
9 *Secretary shall ensure that, for each fiscal year, at*
10 *least the following amounts are provided under this*
11 *subpart and subpart 3 to address the following needs:*

12 “(A) *\$12,832,000 to address the edu-*
13 *cational, related services, transitional, and early*
14 *intervention needs of children with deaf-blind-*
15 *ness.*

16 “(B) *\$4,000,000 to address the postsec-*
17 *ondary, vocational, technical, continuing, and*
18 *adult education needs of individuals with deaf-*
19 *ness.*

20 “(C) *\$4,000,000 to address the educational,*
21 *related services, and transitional needs of chil-*
22 *dren with an emotional disturbance and those*
23 *who are at risk of developing an emotional dis-*
24 *turbance.*

1 *agreements with, eligible entities to provide technical assist-*
2 *ance, carry out model demonstration projects, disseminate*
3 *useful information, and implement activities that are sup-*
4 *ported by scientifically based research.*

5 “(b) *REQUIRED ACTIVITIES.*—*The Secretary shall sup-*
6 *port activities to improve services provided under this Act,*
7 *including the practices of professionals and others involved*
8 *in providing such services to children with disabilities, that*
9 *promote academic achievement and functional performance*
10 *to improve educational results and functional outcomes for*
11 *children with disabilities through—*

12 “(1) *implementing effective strategies that are*
13 *conducive to learning and for addressing inappro-*
14 *prate behavior of students with disabilities in*
15 *schools, including strategies to prevent children with*
16 *emotional and behavioral problems from developing*
17 *emotional disturbances that require the provision of*
18 *special education and related services;*

19 “(2) *improving the alignment, compatibility,*
20 *and development of valid and reliable assessment*
21 *methods, including alternate assessment methods and*
22 *evaluation methods, for assessing adequately yearly*
23 *progress as described in section 1111(b)(2) of the Ele-*
24 *mentary and Secondary Education Act of 1965;*

1 “(3) providing information to both regular edu-
2 cation teachers and special education teachers to ad-
3 dress the different learning styles and disabilities of
4 students;

5 “(4) disseminating information on innovative,
6 effective, and efficient curricula, materials (including
7 those that are universally designed), instructional ap-
8 proaches, and strategies that—

9 “(A) support effective transitions between
10 educational settings or from school to post-school
11 settings;

12 “(B) support effective inclusion of students
13 with disabilities in general education settings,
14 especially students with low-incidence disabili-
15 ties; and

16 “(C) improve educational and transitional
17 results at all levels of the educational system in
18 which the activities are carried out and, in par-
19 ticular, that improve the progress of children
20 with disabilities, as measured by assessments
21 within the general education curriculum in-
22 volved; and

23 “(5) demonstrating and applying scientifically-
24 based findings to facilitate systematic changes related

1 to the provision of services to children with disabili-
2 ties.

3 “(c) *AUTHORIZED ACTIVITIES.*—Activities that may
4 be carried out under this section include activities to im-
5 prove services provided under this Act, including the prac-
6 tices of professionals and others involved in providing such
7 services to children with disabilities, that promote increased
8 academic achievement and enhanced functional outcomes
9 for children with disabilities through—

10 “(1) supporting and promoting the coordination
11 of early intervention, education, and transitional
12 services for children with disabilities with services
13 provided by health, rehabilitation, and social service
14 agencies;

15 “(2) promoting improved alignment and com-
16 patibility of general and special education reforms
17 concerned with curriculum and instructional reform,
18 and evaluating of such reforms;

19 “(3) enabling professionals, parents of children
20 with disabilities, and other persons, to learn about,
21 and implement, the findings of scientifically based re-
22 search and effective practices relating to the provision
23 of services to children with disabilities;

24 “(4) disseminating information relating to suc-
25 cessful approaches to overcoming systemic barriers to

1 *the effective and efficient delivery of early interven-*
2 *tion, educational, and transitional services, to per-*
3 *sonnel who provide services to children with disabili-*
4 *ties;*

5 *“(5) assisting States and local educational agen-*
6 *cies with the process of planning systemic changes*
7 *that will promote improved early intervention, edu-*
8 *cational, and transitional results for children with*
9 *disabilities;*

10 *“(6) promoting change through a multi-State or*
11 *regional framework that benefits States, local edu-*
12 *cational agencies, and other participants in partner-*
13 *ships that are in the process of achieving systemic*
14 *change;*

15 *“(7) focusing on the needs and issues that are*
16 *specific to a population of children with disabilities,*
17 *such as providing single-State and multi-State tech-*
18 *nical assistance and in-service training—*

19 *“(A) to schools and agencies serving deaf-*
20 *blind children and their families;*

21 *“(B) to programs and agencies serving other*
22 *groups of children with low-incidence disabilities*
23 *and their families;*

1 “(C) to address the postsecondary education
2 needs of individuals who are deaf or hard-of-
3 hearing; and

4 “(D) to schools and personnel providing
5 special education and related services for chil-
6 dren with autism spectrum disorders;

7 “(8) demonstrating models of personnel prepara-
8 tion to ensure appropriate placements and services for
9 all students with disabilities and to reduce
10 disproportionality in eligibility, placement, and dis-
11 ciplinary actions for minority and limited English
12 proficient children: and

13 “(9) disseminating information on how to reduce
14 racial and ethnic disproportionalities.

15 “(d) *BALANCE AMONG DISABILITIES AND AGE*
16 *RANGES.*—*In carrying out this section, the Secretary shall*
17 *ensure that there is an appropriate balance across all age*
18 *ranges and disabilities.*

19 “(e) *LINKING STATES TO INFORMATION SOURCES.*—
20 *In carrying out this section, the Secretary may support*
21 *projects that link States to technical assistance resources,*
22 *including special education and general education re-*
23 *sources, and may make research and related products avail-*
24 *able through libraries, electronic networks, parent training*
25 *projects, and other information sources.*

1 “(f) *APPLICATIONS.*—

2 “(1) *IN GENERAL.*—*An eligible entity that de-*
3 *sires to receive a grant, or to enter into a contract or*
4 *cooperative agreement, under this section shall submit*
5 *an application to the Secretary at such time, in such*
6 *manner, and containing such information as the Sec-*
7 *retary may require.*

8 “(2) *CONTENTS.*—*The Secretary may, as appro-*
9 *priate, require eligible entities to demonstrate that the*
10 *projects described in their applications are supported*
11 *by scientifically based research that has been carried*
12 *out in conjunction with the standards for the conduct*
13 *and evaluation of all research and development estab-*
14 *lished by the National Center for Education Research*
15 *under sections 133 and 134 of the Education Sciences*
16 *Reform Act of 2002.*

17 “(3) *PRIORITY.*—*As appropriate, the Secretary*
18 *shall give priority to applications that propose to*
19 *serve teachers and school personnel directly in the*
20 *school environment or that strengthen State and local*
21 *agency capacity to improve instructional practices of*
22 *personnel to improve educational results for children*
23 *with disabilities in the school environment.*

1 **“SEC. 664. PERSONNEL DEVELOPMENT TO IMPROVE SERV-**
2 **ICES AND RESULTS FOR CHILDREN WITH DIS-**
3 **ABILITIES.**

4 *“(a) IN GENERAL.—The Secretary, on a competitive*
5 *basis, shall award grants to, or enter into contracts or coop-*
6 *erative agreements with, eligible entities for 1 or more of*
7 *the following:*

8 *“(1) To help address the needs identified in the*
9 *State plan described in section 653(a)(2) for highly*
10 *qualified personnel, as defined in section 651(b), to*
11 *work with infants, toddlers, or children with disabil-*
12 *ities, consistent with the standards described in sec-*
13 *tion 612(a)(14).*

14 *“(2) To ensure that those personnel have the nec-*
15 *essary skills and knowledge, derived from practices*
16 *that have been determined, through scientifically*
17 *based research, to be successful in serving those chil-*
18 *dren.*

19 *“(3) To encourage increased focus on academics*
20 *and core content areas in special education personnel*
21 *preparation programs.*

22 *“(4) To ensure that regular education teachers*
23 *have the necessary skills and knowledge to provide in-*
24 *struction to students with disabilities in the regular*
25 *education classroom.*

1 “(5) To ensure that all special education teachers
2 are highly qualified.

3 “(6) To ensure that preservice and in-service
4 personnel preparation programs include training
5 in—

6 “(A) the use of new technologies;

7 “(B) the area of early intervention, edu-
8 cational, and transition services;

9 “(C) effectively involving parents; and

10 “(D) positive behavioral supports.

11 “(7) To provide high-quality professional devel-
12 opment for principals, superintendents, and other ad-
13 ministrators, including training in—

14 “(A) instructional leadership;

15 “(B) behavioral supports in the school and
16 classroom;

17 “(C) paperwork reduction;

18 “(D) promoting improved collaboration be-
19 tween special education and general education
20 teachers;

21 “(E) assessment and accountability;

22 “(F) ensuring effective learning environ-
23 ments; and

24 “(G) fostering positive relationships with
25 parents.

1 “(b) *PERSONNEL DEVELOPMENT; AUTHORIZED AC-*
2 *TIVITIES.*—

3 “(1) *IN GENERAL.*—*In carrying out this section,*
4 *the Secretary shall support activities to prepare per-*
5 *sonnel, including activities for the preparation of per-*
6 *sonnel who will serve children with high-incidence*
7 *and low-incidence disabilities, consistent with the ob-*
8 *jectives described in subsection (a).*

9 “(2) *AUTHORIZED ACTIVITIES.*—*Activities that*
10 *may be carried out under this subsection include the*
11 *following:*

12 “(A) *Supporting collaborative personnel*
13 *preparation activities undertaken by institutions*
14 *of higher education, local educational agencies,*
15 *and other local entities—*

16 “(i) *to improve and reform their exist-*
17 *ing programs, to support effective existing*
18 *programs, to support the development of*
19 *new programs, and to prepare teachers,*
20 *principals, administrators, and related*
21 *services personnel—*

22 “(I) *to meet the diverse needs of*
23 *children with disabilities for early*
24 *intervention, educational, and transi-*
25 *tional services; and*

1 “(II) to work collaboratively in
2 regular classroom settings; and

3 “(ii) to incorporate best practices and
4 scientifically based research about pre-
5 paring personnel—

6 “(I) so the personnel will have the
7 knowledge and skills to improve edu-
8 cational results for children with dis-
9 abilities; and

10 “(II) to implement effective teach-
11 ing strategies and interventions to pre-
12 vent the misidentification, overidenti-
13 fication, or underidentification of chil-
14 dren as having a disability, especially
15 minority and limited English pro-
16 ficient children.

17 “(B) Developing, evaluating, and dissemi-
18 nating innovative models for the recruitment, in-
19 duction, retention, and assessment of highly
20 qualified teachers to reduce teachers shortages.

21 “(C) Providing continuous personnel prepa-
22 ration, training, and professional development
23 designed to provide support and ensure retention
24 of teachers and personnel who teach and provide
25 related services to children with disabilities.

1 “(D) *Developing and improving programs*
2 *for paraprofessionals to become special education*
3 *teachers, related services personnel, and early*
4 *intervention personnel, including interdiscipli-*
5 *nary training to enable the paraprofessionals to*
6 *improve early intervention, educational, and*
7 *transitional results for children with disabilities.*

8 “(E) *Demonstrating models for the prepara-*
9 *tion of, and interdisciplinary training of, early*
10 *intervention, special education, and general edu-*
11 *cation personnel, to enable the personnel to ac-*
12 *quire the collaboration skills necessary to work*
13 *within teams and to improve results for children*
14 *with disabilities, particularly within the general*
15 *education curriculum.*

16 “(F) *Promoting effective parental involve-*
17 *ment practices to enable the personnel to work*
18 *with parents and involve parents in the edu-*
19 *cation of such parents’ children.*

20 “(G) *Promoting the transferability, across*
21 *State and local jurisdictions, of licensure and*
22 *certification of teachers, principals, and admin-*
23 *istrators working with such children.*

24 “(H) *Developing and disseminating models*
25 *that prepare teachers with strategies, including*

1 *positive behavioral interventions, for addressing*
2 *the conduct of children with disabilities that im-*
3 *pedes their learning and that of others in the*
4 *classroom.*

5 “(I) *Developing and improving programs to*
6 *enhance the ability of early childhood providers,*
7 *general education teachers, principals, school ad-*
8 *ministrators, related services personnel, and*
9 *school board members to improve results for chil-*
10 *dren with disabilities.*

11 “(J) *Supporting institutions of higher edu-*
12 *cation with minority enrollments of at least 25*
13 *percent for the purpose of preparing personnel to*
14 *work with children with disabilities.*

15 “(K) *Preparing personnel to work in high*
16 *need elementary schools and secondary schools,*
17 *including urban schools, rural schools, and*
18 *schools operated by an entity described in section*
19 *7113(d)(1)(A)(ii) of the Elementary and Sec-*
20 *ondary Education Act of 1965, and schools that*
21 *serve high numbers or percentages of limited*
22 *English proficient children.*

23 “(L) *Developing, evaluating, and dissemi-*
24 *nating innovative models for the recruitment, in-*
25 *duction, retention, and assessment of new, highly*

1 *qualified teachers, especially from groups that*
2 *are underrepresented in the teaching profession,*
3 *including individuals with disabilities.*

4 “(M) *Developing and improving programs*
5 *to train special education teachers to develop an*
6 *expertise in autism spectrum disorders.*

7 “(c) *LOW INCIDENCE DISABILITIES; AUTHORIZED AC-*
8 *TIVITIES.—*

9 “(1) *IN GENERAL.—In carrying out this section,*
10 *the Secretary shall support activities, consistent with*
11 *the objectives described in subsection (a), that benefit*
12 *children with low incidence disabilities.*

13 “(2) *AUTHORIZED ACTIVITIES.—Activities that*
14 *may be carried out under this subsection include ac-*
15 *tivities such as the following:*

16 “(A) *Preparing persons who—*

17 “(i) *have prior training in educational*
18 *and other related service fields; and*

19 “(ii) *are studying to obtain degrees,*
20 *certificates, or licensure that will enable the*
21 *persons to assist children with low incidence*
22 *disabilities to achieve the objectives set out*
23 *in their individualized education programs*
24 *described in section 614(d), or to assist in-*
25 *fants and toddlers with low incidence dis-*

1 abilities to achieve the outcomes described
2 in their individualized family service plans
3 described in section 636.

4 “(B) Providing personnel from various dis-
5 ciplines with interdisciplinary training that will
6 contribute to improvement in early intervention,
7 educational, and transitional results for children
8 with low incidence disabilities.

9 “(C) Preparing personnel in the innovative
10 uses and application of technology, including
11 universally designed technologies, assistive tech-
12 nology devices, and assistive technology serv-
13 ices—

14 “(i) to enhance learning by children
15 with low incidence disabilities through early
16 intervention, educational, and transitional
17 services; and

18 “(ii) to improve communication with
19 parents.

20 “(D) Preparing personnel who provide serv-
21 ices to visually impaired or blind children to
22 teach and use Braille in the provision of services
23 to such children.

24 “(E) Preparing personnel to be qualified
25 educational interpreters, to assist children with

1 *low incidence disabilities, particularly deaf and*
2 *hard of hearing children in school and school re-*
3 *lated activities, and deaf and hard of hearing in-*
4 *fants and toddlers and preschool children in*
5 *early intervention and preschool programs.*

6 “(F) *Preparing personnel who provide serv-*
7 *ices to children with significant cognitive dis-*
8 *abilities and children with multiple disabilities.*

9 “(3) *DEFINITION.—As used in this section, the*
10 *term ‘low incidence disability’ means—*

11 “(A) *a visual or hearing impairment, or si-*
12 *multaneous visual and hearing impairments;*

13 “(B) *a significant cognitive impairment; or*

14 “(C) *any impairment for which a small*
15 *number of personnel with highly specialized*
16 *skills and knowledge are needed in order for chil-*
17 *dren with that impairment to receive early*
18 *intervention services or a free appropriate public*
19 *education.*

20 “(4) *SELECTION OF RECIPIENTS.—In selecting*
21 *recipients under this subsection, the Secretary may*
22 *give preference to eligible entities submitting applica-*
23 *tions that include 1 or more of the following:*

1 “(A) A proposal to prepare personnel in
2 more than 1 low incidence disability, such as
3 deafness and blindness.

4 “(B) A demonstration of an effective col-
5 laboration with an eligible entity and a local
6 educational agency that promotes recruitment
7 and subsequent retention of highly qualified per-
8 sonnel to serve children with disabilities.

9 “(5) PREPARATION IN USE OF BRAILLE.—The
10 Secretary shall ensure that all recipients of assistance
11 under this subsection who will use that assistance to
12 prepare personnel to provide services to visually im-
13 paired or blind children that can appropriately be
14 provided in Braille will prepare those individuals to
15 provide those services in Braille.

16 “(d) LEADERSHIP PREPARATION; AUTHORIZED AC-
17 TIVITIES.—

18 “(1) IN GENERAL.—In carrying out this section,
19 the Secretary shall support leadership preparation ac-
20 tivities that are consistent with the objectives de-
21 scribed in subsection (a).

22 “(2) AUTHORIZED ACTIVITIES.—Activities that
23 may be carried out under this subsection include ac-
24 tivities such as the following:

1 “(A) *Preparing personnel at the graduate,*
2 *doctoral, and postdoctoral levels of training to*
3 *administer, enhance, or provide services to im-*
4 *prove results for children with disabilities.*

5 “(B) *Providing interdisciplinary training*
6 *for various types of leadership personnel, includ-*
7 *ing teacher preparation faculty, administrators,*
8 *researchers, supervisors, principals, related serv-*
9 *ices personnel, and other persons whose work af-*
10 *fects early intervention, educational, and transi-*
11 *tional services for children with disabilities.*

12 “(e) *ENHANCED SUPPORT AND TRAINING FOR BEGIN-*
13 *NING SPECIAL EDUCATORS; AUTHORIZED ACTIVITIES.—*

14 “(1) *IN GENERAL.—In carrying out this section,*
15 *the Secretary shall support personnel preparation ac-*
16 *tivities that are consistent with the objectives de-*
17 *scribed in subsection (a).*

18 “(2) *AUTHORIZED ACTIVITIES.—Activities that*
19 *may be carried out under this subsection include—*

20 “(A) *enhancing and restructuring an exist-*
21 *ing program or developing a preservice teacher*
22 *education program, to prepare special education*
23 *teachers, at colleges or departments of education*
24 *within the institution of higher education, by in-*
25 *corporating an additional 5th year clinical*

1 *learning opportunity, field experience, or super-*
2 *vised practicum into a program of preparation*
3 *and coursework for special education teachers; or*

4 “(B) *Creating or supporting professional*
5 *development schools that provide—*

6 “(i) *high quality mentoring and induc-*
7 *tion opportunities with ongoing support for*
8 *beginning special education teachers; or*

9 “(ii) *inservice professional development*
10 *to veteran special education teachers*
11 *through the ongoing exchange of informa-*
12 *tion and instructional strategies.*

13 “(3) *ELIGIBLE PARTNERSHIPS.—Eligible recipi-*
14 *ents of assistance under this subsection are partner-*
15 *ships—*

16 “(A) *that shall consist of—*

17 “(i) *1 or more institutions of higher*
18 *education with special education personnel*
19 *preparation programs; and*

20 “(ii) *1 or more local educational agen-*
21 *cies; and*

22 “(iii) *in the case of activities assisted*
23 *under paragraph (2)(B), an elementary*
24 *school or secondary school; and*

1 “(B) that may include other entities eligible
2 for assistance under this part, such as a State
3 educational agency.

4 “(4) PRIORITY.—In awarding grants or entering
5 into contracts or cooperative agreements under this
6 subsection, the Secretary shall give priority to part-
7 nerships that include local educational agencies that
8 serve—

9 “(A) high numbers or percentages of low-in-
10 come students; or

11 “(B) schools that have failed to make ade-
12 quate yearly progress toward enabling children
13 with disabilities to meet academic achievement
14 standards.

15 “(f) TRAINING TO SUPPORT GENERAL EDUCATORS;
16 AUTHORIZED ACTIVITIES.—

17 “(1) IN GENERAL.—In carrying out this section,
18 the Secretary shall support personnel preparation ac-
19 tivities that are consistent with the objectives de-
20 scribed in subsection (a).

21 “(2) AUTHORIZED ACTIVITIES.—Activities that
22 may be carried out under this subsection include—

23 “(A) high quality professional development
24 for general educators that develops the knowledge

1 *and skills, and enhances the ability, of general*
2 *educators to—*

3 “(i) *use classroom-based techniques to*
4 *identify students who may be eligible for*
5 *special education services, and deliver in-*
6 *struction in a way that meets the individ-*
7 *ualized needs of children with disabilities*
8 *through appropriate supports, accommoda-*
9 *tions, and curriculum modifications;*

10 “(ii) *use classroom-based techniques,*
11 *such as scientifically based reading instruc-*
12 *tion;*

13 “(iii) *work collaboratively with special*
14 *education teachers and related services per-*
15 *sonnel;*

16 “(iv) *implement strategies, such as*
17 *positive behavioral interventions—*

18 “(I) *to address the behavior of*
19 *children with disabilities that impedes*
20 *the learning of such children and oth-*
21 *ers; or*

22 “(II) *to prevent children from*
23 *being misidentified as children with*
24 *disabilities;*

1 “(v) prepare children with disabilities
2 to participate in statewide assessments
3 (with or without accommodations) and al-
4 ternate assessments, as appropriate;

5 “(vi) develop effective practices for en-
6 suring that all children with disabilities are
7 a part of all accountability systems under
8 the Elementary and Secondary Education
9 Act of 1965;

10 “(vii) work with and involve parents of
11 children with disabilities in their child’s
12 education;

13 “(viii) understand how to effectively
14 construct IEPs, participate in IEP meet-
15 ings, and implement IEPs; and

16 “(ix) in the case of principals and su-
17 perintendents, be instructional leaders and
18 promote improved collaboration between
19 general educators, special education teach-
20 ers, and related services personnel; and

21 “(B) release and planning time for the ac-
22 tivities described in this subsection.

23 “(3) *ELIGIBLE PARTNERSHIPS*.—Eligible recipi-
24 ents of assistance under this subsection are partner-
25 ships—

1 “(A) that consist of—

2 “(i) 1 or more institutions of higher
3 education with special education personnel
4 preparation programs; and

5 “(ii) 1 or more local educational agen-
6 cies; and

7 “(B) that may include other entities eligible
8 for assistance under this part, such as a State
9 educational agency.

10 “(g) APPLICATIONS.—

11 “(1) IN GENERAL.—Any eligible entity that de-
12 sires to receive a grant, or enter into a contract or
13 cooperative agreement, under this section shall submit
14 an application to the Secretary at such time, in such
15 manner, and containing such information as the Sec-
16 retary may require.

17 “(2) IDENTIFIED STATE NEEDS.—

18 “(A) REQUIREMENT TO ADDRESS IDENTI-
19 FIED NEEDS.—Any application under subsection
20 (b), (c), (d), (e), or (f) shall include information
21 demonstrating to the satisfaction of the Secretary
22 that the activities described in the application
23 will address needs identified by the State or
24 States the applicant proposes to serve, consistent

1 *with the needs identified in the State plan de-*
2 *scribed in section 653(a)(2).*

3 “(B) *COOPERATION WITH STATE EDU-*
4 *CATIONAL AGENCIES.—Any applicant that is not*
5 *a local educational agency or a State edu-*
6 *cational agency shall include in the application*
7 *information demonstrating to the satisfaction of*
8 *the Secretary that the applicant and 1 or more*
9 *State educational agencies or local educational*
10 *agencies have engaged in a cooperative effort to*
11 *carry out and monitor the project to be assisted.*

12 “(3) *ACCEPTANCE BY STATES OF PERSONNEL*
13 *PREPARATION REQUIREMENTS.—The Secretary may*
14 *require applicants to provide assurances from 1 or*
15 *more States that such States intend to accept success-*
16 *ful completion of the proposed personnel preparation*
17 *program as meeting State personnel standards for*
18 *servicing children with disabilities or servicing infants*
19 *and toddlers with disabilities.*

20 “(h) *SELECTION OF RECIPIENTS.—*

21 “(1) *IMPACT OF PROJECT.—In selecting award*
22 *recipients under this section, the Secretary shall con-*
23 *sider the impact of the proposed project described in*
24 *the application in meeting the need for personnel*
25 *identified by the States.*

1 “(2) *REQUIREMENT FOR APPLICANTS TO MEET*
2 *STATE AND PROFESSIONAL STANDARDS.—The Sec-*
3 *retary shall make grants and enter into contracts and*
4 *cooperative agreements under this section only to eli-*
5 *gible applicants that meet State and professionally*
6 *recognized standards for the preparation of special*
7 *education and related services personnel, if the pur-*
8 *pose of the project is to assist personnel in obtaining*
9 *degrees.*

10 “(3) *PREFERENCES.—In selecting recipients*
11 *under this section, the Secretary may give preference*
12 *to institutions of higher education that are—*

13 “(A) *educating regular education personnel*
14 *to meet the needs of children with disabilities in*
15 *integrated settings;*

16 “(B) *educating special education personnel*
17 *to work in collaboration with regular educators*
18 *in integrated settings; and*

19 “(C) *successfully recruiting and preparing*
20 *individuals with disabilities and individuals*
21 *from groups that are underrepresented in the*
22 *profession for which the institution of higher*
23 *education is preparing individuals.*

24 “(i) *SERVICE OBLIGATION.—Each application for*
25 *funds under subsections (b), (c), (d), and (e) shall include*

1 *an assurance that the applicant will ensure that individ-*
2 *uals who receive assistance under the proposed project will*
3 *subsequently provide special education and related services*
4 *to children with disabilities for a period of 1 year for every*
5 *year for which assistance was received, or repay all or part*
6 *of the cost of that assistance, in accordance with regulations*
7 *issued by the Secretary.*

8 “(j) *SCHOLARSHIPS.—The Secretary may include*
9 *funds for scholarships, with necessary stipends and allow-*
10 *ances, in awards under subsections (b), (c), (d), and (e).*

11 “(k) *AUTHORIZATION OF APPROPRIATIONS.—There*
12 *are authorized to be appropriated to carry out this section*
13 *such sums as may be necessary for each of the fiscal years*
14 *2004 through 2009.*

15 **“SEC. 665. STUDIES AND EVALUATIONS.**

16 “(a) *STUDIES AND EVALUATIONS.—*

17 “(1) *DELEGATION.—The Secretary shall delegate*
18 *to the Director of the Institute for Education Sciences*
19 *responsibility to carry out this section, other than*
20 *subsections (d) and (f).*

21 “(2) *ASSESSMENT.—The Secretary shall, directly*
22 *or through grants, contracts, or cooperative agree-*
23 *ments awarded on a competitive basis, assess the*
24 *progress in the implementation of this Act, including*
25 *the effectiveness of State and local efforts to provide—*

1 “(A) a free appropriate public education to
2 children with disabilities; and

3 “(B) early intervention services to infants
4 and toddlers with disabilities, and infants and
5 toddlers who would be at risk of having substan-
6 tial developmental delays if early intervention
7 services were not provided to them.

8 “(b) NATIONAL ASSESSMENT.—

9 “(1) IN GENERAL.—The Secretary shall carry
10 out a national assessment of activities carried out
11 with Federal funds under this Act in order—

12 “(A) to determine the effectiveness of this
13 Act in achieving its purposes;

14 “(B) to provide timely information to the
15 President, Congress, the States, local educational
16 agencies, and the public on how to implement
17 this Act more effectively; and

18 “(C) to provide the President and Congress
19 with information that will be useful in devel-
20 oping legislation to achieve the purposes of this
21 Act more effectively.

22 “(2) CONSULTATION.—The Secretary shall plan,
23 review, and conduct the national assessment under
24 this subsection in consultation with researchers, State

1 *practitioners, local practitioners, parents of children*
2 *with disabilities, and other appropriate individuals.*

3 “(3) *SCOPE OF ASSESSMENT.*—*The national as-*
4 *essment shall assess the—*

5 “(A) *implementation of programs assisted*
6 *under this Act and the impact of those programs*
7 *on addressing the developmental, educational,*
8 *and transitional needs of, and improving the*
9 *academic achievement and functional outcomes*
10 *of, children with disabilities to enable the chil-*
11 *dren to reach challenging developmental goals*
12 *and challenging State academic content stand-*
13 *ards based on State academic assessments, in-*
14 *cluding alternate assessments;*

15 “(B) *types of programs and services that*
16 *have demonstrated the greatest likelihood of help-*
17 *ing students reach the challenging State aca-*
18 *ademic content standards and developmental*
19 *goals;*

20 “(C) *implementation of the personnel prep-*
21 *aration and professional development activities*
22 *assisted under this Act and the impact on in-*
23 *struction, student academic achievement, and*
24 *teacher qualifications to enhance the ability of*
25 *special education teachers and regular education*

1 *teachers to improve results for children with dis-*
2 *abilities; and*

3 “(D) *effectiveness of schools, local edu-*
4 *cational agencies, States, and other recipients of*
5 *assistance under this Act, in achieving the pur-*
6 *poses of this Act in—*

7 “(i) *improving the academic achieve-*
8 *ment of children with disabilities and their*
9 *performance on regular statewide assess-*
10 *ments, and the performance of children with*
11 *disabilities on alternate assessments;*

12 “(ii) *improving the participation rate*
13 *of children with disabilities in the general*
14 *education curriculum;*

15 “(iii) *improving the transitions of chil-*
16 *dren with disabilities at natural transition*
17 *points;*

18 “(iv) *placing and serving children with*
19 *disabilities, including minority children, in*
20 *the least restrictive environment appro-*
21 *priate;*

22 “(v) *preventing children with disabil-*
23 *ities, especially children with emotional dis-*
24 *turbances and specific learning disabilities,*
25 *from dropping out of school;*

1 “(vi) addressing the reading and lit-
2 eracy needs of children with disabilities;

3 “(vii) coordinating services provided
4 under this Act with each other, with other
5 educational and pupil services (including
6 preschool services), and with health and so-
7 cial services funded from other sources;

8 “(viii) improving the participation of
9 parents of children with disabilities in the
10 education of their children;

11 “(ix) resolving disagreements between
12 education personnel and parents through al-
13 ternative dispute resolution activities in-
14 cluding mediation; and

15 “(x) reducing the misidentification of
16 children, especially minority and limited
17 English proficient children.

18 “(4) *INTERIM AND FINAL REPORTS.*—The Sec-
19 retary shall submit to the President and Congress—

20 “(A) an interim report that summarizes the
21 preliminary findings of the national assessment
22 not later than 3 years after the date of enact-
23 ment of the *Individuals with Disabilities Edu-
24 cation Improvement Act of 2004*; and

1 “(B) a final report of the findings of the as-
2 essment not later than 5 years after the date of
3 enactment of the Individuals with Disabilities
4 Education Improvement Act of 2004.

5 “(c) *STUDY ON ENSURING ACCOUNTABILITY FOR STU-*
6 *DENTS WHO ARE HELD TO ALTERNATIVE ACHIVEMENT*
7 *STANDARDS.—The Secretary shall carry out a national*
8 *study or studies to examine—*

9 “(1) the criteria that States use to determine—

10 “(A) eligibility for alternate assessments;
11 and

12 “(B) the number and type of children who
13 take those assessments and are held accountable
14 to alternate achievement standards;

15 “(2) the validity and reliability of alternate as-
16 sessment instruments and procedures;

17 “(3) the alignment of alternate assessments and
18 alternative achievement standards to State academic
19 content standards in reading, mathematics, and
20 science; and

21 “(4) the use and effectiveness of alternate assess-
22 ments in appropriately measuring student progress
23 and outcomes specific to individualized instructional
24 need.

1 “(d) *ANNUAL REPORT.*—*The Secretary shall provide*
2 *an annual report to Congress that—*

3 “(1) *summarizes the research conducted under*
4 *section 662;*

5 “(2) *analyzes and summarizes the data reported*
6 *by the States and the Secretary of the Interior under*
7 *section 618;*

8 “(3) *summarizes the studies and evaluations con-*
9 *ducted under this section and the timeline for their*
10 *completion;*

11 “(4) *describes the extent and progress of the na-*
12 *tional assessment; and*

13 “(5) *describes the findings and determinations*
14 *resulting from reviews of State implementation of this*
15 *Act.*

16 “(e) *AUTHORIZED ACTIVITIES.*—*In carrying out this*
17 *section, the Secretary may support objective studies, evalua-*
18 *tions, and assessments, including studies that—*

19 “(1) *analyze measurable impact, outcomes, and*
20 *results achieved by State educational agencies and*
21 *local educational agencies through their activities to*
22 *reform policies, procedures, and practices designed to*
23 *improve educational and transitional services and re-*
24 *sults for children with disabilities;*

1 “(2) analyze State and local needs for profes-
2 sional development, parent training, and other appro-
3 priate activities that can reduce the need for discipli-
4 nary actions involving children with disabilities;

5 “(3) assess educational and transitional services
6 and results for children with disabilities from minor-
7 ity backgrounds, including—

8 “(A) data on—

9 “(i) the number of minority children
10 who are referred for special education eval-
11 uation;

12 “(ii) the number of minority children
13 who are receiving special education and re-
14 lated services and their educational or other
15 service placement;

16 “(iii) the number of minority children
17 who graduated from secondary programs
18 with a regular diploma in the standard
19 number of years; and

20 “(iv) the number of minority children
21 who drop out of the educational system; and

22 “(B) the performance of children with dis-
23 abilities from minority backgrounds on State as-
24 sessments and other performance indicators es-
25 tablished for all students;

1 “(4) *measure educational and transitional serv-*
2 *ices and results of children with disabilities served*
3 *under this Act, including longitudinal studies that—*

4 “(A) *examine educational and transitional*
5 *services and results for children with disabilities*
6 *who are 3 through 17 years of age and are re-*
7 *ceiving special education and related services*
8 *under this Act, using a national, representative*
9 *sample of distinct age cohorts and disability cat-*
10 *egories; and*

11 “(B) *examine educational results, transition*
12 *services, postsecondary placement, and employ-*
13 *ment status of individuals with disabilities, 18*
14 *through 21 years of age, who are receiving or*
15 *have received special education and related serv-*
16 *ices under this Act; and*

17 “(5) *identify and report on the placement of*
18 *children with disabilities by disability category.*

19 “(f) *STUDY.—The Secretary shall study, and report to*
20 *Congress regarding, the extent to which States adopt poli-*
21 *cies described in section 635(b)(1) and on the effects of those*
22 *policies.*

23 “(g) *RESERVATION FOR STUDIES AND EVALUA-*
24 *TIONS.—*

1 “(1) *IN GENERAL.*—*Except as provided in para-*
2 *graph (2) and notwithstanding any other provision of*
3 *this Act, the Secretary may reserve not more than 1/2*
4 *of 1 percent of the amount appropriated under parts*
5 *B and C for each fiscal year to carry out this section,*
6 *of which not more than \$3,000,000 shall be available*
7 *to carry out subsection (c).*

8 “(2) *MAXIMUM AMOUNT.*—*The maximum*
9 *amount the Secretary may reserve under paragraph*
10 *(1) for any fiscal year is \$40,000,000, increased by*
11 *the cumulative rate of inflation since fiscal year 2003.*

12 **“Subpart 3—Supports To Improve Results for**
13 **Children With Disabilities**

14 **“SEC. 670. PURPOSES.**

15 *“The purposes of this subpart are to ensure that—*

16 “(1) *children with disabilities and their parents*
17 *receive training and information on their rights, re-*
18 *sponsibilities, and protections under this Act, in order*
19 *to develop the skills necessary to cooperatively and ef-*
20 *fectively participate in planning and decision making*
21 *relating to early intervention, educational, and tran-*
22 *sitional services;*

23 “(2) *parents, teachers, administrators, early*
24 *intervention personnel, related services personnel, and*
25 *transition personnel receive coordinated and acces-*

1 *sible technical assistance and information to assist*
2 *them in improving early intervention, educational,*
3 *and transitional services and results for children with*
4 *disabilities and their families; and*

5 *“(3) appropriate technology and media are re-*
6 *searched, developed, and demonstrated, to improve*
7 *and implement early intervention, educational, and*
8 *transitional services and results for children with dis-*
9 *abilities and their families.*

10 **“SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.**

11 *“(a) PROGRAM AUTHORIZED.—The Secretary may*
12 *award grants to, and enter into contracts and cooperative*
13 *agreements with, parent organizations to support parent*
14 *training and information centers to carry out activities*
15 *under this section.*

16 *“(b) REQUIRED ACTIVITIES.—Each parent training*
17 *and information center that receives assistance under this*
18 *section shall—*

19 *“(1) provide training and information that*
20 *meets the needs of parents of children with disabilities*
21 *living in the area served by the center, particularly*
22 *underserved parents and parents of children who may*
23 *be inappropriately identified, to enable their children*
24 *with disabilities to—*

1 “(A) meet developmental and functional
2 goals, and challenging academic achievement
3 goals that have been established for all children;
4 and

5 “(B) be prepared to lead productive inde-
6 pendent adult lives, to the maximum extent pos-
7 sible;

8 “(2) serve the parents of infants, toddlers, and
9 children with the full range of disabilities described in
10 section 602(3);

11 “(3) assist parents to—

12 “(A) better understand the nature of their
13 children’s disabilities and their educational, de-
14 velopmental, and transitional needs;

15 “(B) communicate effectively and work col-
16 laboratively with personnel responsible for pro-
17 viding special education, early intervention serv-
18 ices, transition services, and related services;

19 “(C) participate in decisionmaking proc-
20 esses and the development of individualized edu-
21 cation programs under part B and individual-
22 ized family service plans under part C;

23 “(D) obtain appropriate information about
24 the range, type, and quality of options, pro-
25 grams, services, technologies, and research based

1 *practices and interventions, and resources avail-*
2 *able to assist children with disabilities and their*
3 *families in school and at home;*

4 “(E) understand the provisions of this Act
5 for the education of, and the provision of early
6 intervention services to, children with disabili-
7 ties; and

8 “(F) participate in school reform activities;

9 “(4) in States where the State elects to contract
10 with the parent training and information center, con-
11 tract with State educational agencies to provide, con-
12 sistent with subparagraphs (B) and (D) of section
13 615(e)(2), individuals who meet with parents to ex-
14 plain the mediation process to the parents;

15 “(5) assist parents in resolving disputes in the
16 most expeditious and effective way possible, including
17 encouraging the use, and explaining the benefits, of
18 alternative methods of dispute resolution, such as the
19 mediation process described in section 615(e);

20 “(6) assist parents and students with disabilities
21 to understand their rights and responsibilities under
22 this Act, including those under section 615(m) on the
23 student’s reaching the age of majority;

1 “(7) assist parents to understand the availability
2 of, and how to effectively use, procedural safeguards
3 under this Act;

4 “(8) assist parents in understanding, preparing
5 for, and participating in, the process described in sec-
6 tion 615(f)(1)(B);

7 “(9) establish cooperative partnerships with com-
8 munity parent resource centers funded under section
9 672;

10 “(10) network with appropriate clearinghouses,
11 including organizations conducting national dissemi-
12 nation activities under section 663, and with other
13 national, State, and local organizations and agencies,
14 such as protection and advocacy agencies, that serve
15 parents and families of children with the full range
16 of disabilities described in section 602(3); and

17 “(11) annually report to the Secretary on—

18 “(A) the number and demographics of par-
19 ents to whom the center provided information
20 and training in the most recently concluded fis-
21 cal year;

22 “(B) the effectiveness of strategies used to
23 reach and serve parents, including underserved
24 parents of children with disabilities; and

1 “(C) *the number of parents served who have*
2 *resolved disputes through alternative methods of*
3 *dispute resolution.*

4 “(c) *OPTIONAL ACTIVITIES.—A parent training and*
5 *information center that receives assistance under this sec-*
6 *tion may provide information to teachers and other profes-*
7 *sionals to assist the teachers and professionals in improving*
8 *results for children with disabilities.*

9 “(d) *APPLICATION REQUIREMENTS.—Each applica-*
10 *tion for assistance under this section shall identify with*
11 *specificity the special efforts that the parent organization*
12 *will undertake—*

13 “(1) *to ensure that the needs for training and in-*
14 *formation of underserved parents of children with dis-*
15 *abilities in the area to be served are effectively met;*
16 *and*

17 “(2) *to work with community based organiza-*
18 *tions.*

19 “(e) *DISTRIBUTION OF FUNDS.—*

20 “(1) *IN GENERAL.—The Secretary shall—*

21 “(A) *make at least 1 award to a parent or-*
22 *ganization in each State for a parent training*
23 *and information center which is designated as*
24 *the statewide parent training and information*
25 *center; or*

1 “(B) *in the case of a large State, make*
2 *awards to multiple parent training and infor-*
3 *mation centers, but only if the centers dem-*
4 *onstrate that coordinated services and supports*
5 *will occur among the multiple centers.*

6 “(2) *SELECTION REQUIREMENT.—The Secretary*
7 *shall select among applications submitted by parent*
8 *organizations in a State in a manner that ensures the*
9 *most effective assistance to parents, including parents*
10 *in urban and rural areas, in the State.*

11 “(f) *QUARTERLY REVIEW.—*

12 “(1) *MEETINGS.—The board of directors of each*
13 *parent organization that receives an award under*
14 *this section shall meet at least once in each calendar*
15 *quarter to review the activities for which the award*
16 *was made.*

17 “(2) *CONTINUATION AWARD.—When an organi-*
18 *zation requests a continuation award under this sec-*
19 *tion, the board of directors shall submit to the Sec-*
20 *retary a written review of the parent training and*
21 *information program conducted by the organization*
22 *during the preceding fiscal year.*

23 “(g) *DEFINITION OF PARENT ORGANIZATION.—As*
24 *used in this section, the term ‘parent organization’ means*

1 *a private nonprofit organization (other than an institution*
2 *of higher education) that—*

3 *“(1) has a board of directors—*

4 *“(A) the majority of whom are parents of*
5 *children with disabilities ages birth through 26;*

6 *“(B) that includes—*

7 *“(i) individuals working in the fields*
8 *of special education, related services, and*
9 *early intervention; and*

10 *“(ii) individuals with disabilities;*

11 *“(C) the parent and professional members of*
12 *which are broadly representative of the popu-*
13 *lation to be served; and*

14 *“(2) has as its mission serving families of chil-*
15 *dren and youth with disabilities who—*

16 *“(A) are ages birth through 26; and*

17 *“(B) have the full range of disabilities de-*
18 *scribed in section 602(3).*

19 **“SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.**

20 *“(a) IN GENERAL.—The Secretary may award grants*
21 *to, and enter into contracts and cooperative agreements*
22 *with, local parent organizations to support parent training*
23 *and information centers that will help ensure that under-*
24 *served parents of children with disabilities, including low*
25 *income parents, parents of children with limited English*

1 *proficiency, and parents with disabilities, have the training*
2 *and information the parents need to enable the parents to*
3 *participate effectively in helping their children with dis-*
4 *abilities—*

5 *“(1) to meet developmental and functional goals,*
6 *and challenging academic achievement goals that have*
7 *been established for all children; and*

8 *“(2) to be prepared to lead productive inde-*
9 *pendent adult lives, to the maximum extent possible.*

10 *“(b) REQUIRED ACTIVITIES.—Each community par-*
11 *ent resource center assisted under this section shall—*

12 *“(1) provide training and information that*
13 *meets the training and information needs of parents*
14 *of children with disabilities proposed to be served by*
15 *the grant, contract, or cooperative agreement;*

16 *“(2) carry out the activities required of parent*
17 *training and information centers under paragraphs*
18 *(2) through (9) of section 671(b);*

19 *“(3) establish cooperative partnerships with the*
20 *parent training and information centers funded*
21 *under section 671; and*

22 *“(4) be designed to meet the specific needs of*
23 *families who experience significant isolation from*
24 *available sources of information and support.*

1 “(c) *DEFINITION.*—As used in this section, the term
2 ‘local parent organization’ means a parent organization,
3 as defined in section 671(g), that—

4 “(1) has a board of directors the majority of
5 whom are parents of children with disabilities ages
6 birth through 26 from the community to be served;
7 and

8 “(2) has as its mission serving parents of chil-
9 dren with disabilities who—

10 “(A) are ages birth through 26; and

11 “(B) have the full range of disabilities de-
12 scribed in section 602(3).

13 **“SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING**
14 **AND INFORMATION CENTERS.**

15 “(a) *IN GENERAL.*—The Secretary may make an
16 award to 1 parent organization (as defined in section
17 671(g)) that receives assistance under section 671 to enable
18 the parent organization to provide technical assistance for
19 developing, assisting, and coordinating parent training and
20 information programs carried out by parent training and
21 information centers receiving assistance under sections 671
22 and 672.

23 “(b) *AUTHORIZED ACTIVITIES.*—The Secretary may
24 provide technical assistance to a parent training and infor-
25 mation center under this section in areas such as—

1 “(1) *effective national coordination of parent*
2 *training efforts, which includes encouraging collabo-*
3 *rative efforts among award recipients under sections*
4 *671 and 672;*

5 “(2) *dissemination of information, scientifically*
6 *based research, and research based practices and*
7 *interventions;*

8 “(3) *promotion of the use of technology, includ-*
9 *ing universally designed technologies, assistive tech-*
10 *nology devices, and assistive technology services;*

11 “(4) *reaching underserved populations;*

12 “(5) *including children with disabilities in gen-*
13 *eral education programs;*

14 “(6) *facilitation of transitions from—*

15 “(A) *early intervention services to preschool;*

16 “(B) *preschool to elementary school;*

17 “(C) *elementary school to secondary school;*

18 *and*

19 “(D) *secondary school to postsecondary en-*
20 *vironments; and*

21 “(7) *promotion of alternative methods of dispute*
22 *resolution, including mediation.*

23 “(c) *REGIONAL PARENT CENTERS.—The recipient of*
24 *the award described in section 673(a) shall establish no*
25 *fewer than 4 regional centers from the parent training and*

1 *information centers and community parent resource centers*
2 *receiving assistance under sections 671 and 672 for the pur-*
3 *pose of carrying out the authorized activities described in*
4 *subsection (b). These regional centers shall be selected on*
5 *the basis of the center's—*

6 “(1) *willingness to be a regional parent center;*

7 “(2) *demonstrated expertise in the delivery of re-*
8 *quired parent training and information center activi-*
9 *ties described in section 671(b);*

10 “(3) *demonstrated capacity to deliver the author-*
11 *ized activities described in subsection (b);*

12 “(4) *history of collaboration with other parent*
13 *training and information centers, community parent*
14 *resource centers, regional resource centers, clearing-*
15 *houses, and other projects; and*

16 “(5) *geographic location.*

17 “(d) *COLLABORATION WITH THE RESOURCE CEN-*
18 *TERS.—The recipient of the award described in subsection*
19 *(a), in conjunction with the regional parent centers de-*
20 *scribed in subsection (c), shall develop collaborative agree-*
21 *ments with the geographically appropriate Regional Re-*
22 *source Center to further parent and professional collabora-*
23 *tion.*

1 **“SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION,**
2 **AND UTILIZATION; AND MEDIA SERVICES.**

3 *“(a) IN GENERAL.—The Secretary, on a competitive*
4 *basis, shall award grants to, and enter into contracts and*
5 *cooperative agreements with, eligible entities to support ac-*
6 *tivities described in subsections (b) and (c).*

7 *“(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION,*
8 *AND USE.—*

9 *“(1) IN GENERAL.—In carrying out this section,*
10 *the Secretary shall support activities to promote the*
11 *development, demonstration, and use of technology.*

12 *“(2) AUTHORIZED ACTIVITIES.—The following*
13 *activities may be carried out under this subsection:*

14 *“(A) Conducting research on and promoting*
15 *the demonstration and use of innovative, emerg-*
16 *ing, and universally designed technologies for*
17 *children with disabilities, by improving the*
18 *transfer of technology from research and develop-*
19 *ment to practice.*

20 *“(B) Supporting research, development, and*
21 *dissemination of technology with universal de-*
22 *sign features, so that the technology is accessible*
23 *to the broadest range of individuals with disabil-*
24 *ities without further modification or adaptation.*

25 *“(C) Demonstrating the use of systems to*
26 *provide parents and teachers with information*

1 *and training concerning early diagnosis of,*
2 *intervention for, and effective teaching strategies*
3 *for, young children with reading disabilities.*

4 “(D) *Supporting the use of Internet-based*
5 *communications for students with cognitive dis-*
6 *abilities in order to maximize their academic*
7 *and functional skills.*

8 “(c) *EDUCATIONAL MEDIA SERVICES; OPTIONAL AC-*
9 *TIVITIES.—*

10 “(1) *IN GENERAL.—In carrying out this section,*
11 *the Secretary shall support—*

12 “(A) *educational media activities that are*
13 *designed to be of educational value in the class-*
14 *room setting to children with disabilities;*

15 “(B) *providing video description, open cap-*
16 *tioning, or closed captioning, that is appropriate*
17 *for use in the classroom setting, of—*

18 “(i) *television programs;*

19 “(ii) *videos;*

20 “(iii) *other materials, including pro-*
21 *grams and materials associated with new*
22 *and emerging technologies, such as CDs,*
23 *DVDs, video streaming, and other forms of*
24 *multimedia; or*

1 “(iv) news (but only until September
2 30, 2006);

3 “(C) distributing materials described in
4 subparagraphs (A) and (B) through such mecha-
5 nisms as a loan service; and

6 “(D) providing free educational materials,
7 including textbooks, in accessible media for vis-
8 ually impaired and print disabled students in
9 elementary schools and secondary schools.

10 “(2) *LIMITATION.*—The video description, open
11 captioning, or closed captioning described in para-
12 graph (1)(B) shall only be provided when the descrip-
13 tion or captioning has not been previously provided
14 by the producer or distributor, or has not been fully
15 funded by other sources.

16 “(d) *APPLICATIONS.*—Any eligible entity that wishes
17 to receive a grant, or enter into a contract or cooperative
18 agreement, under this section shall submit an application
19 to the Secretary at such time, in such manner, and con-
20 taining such information as the Secretary may require.

21 “(e) *AUTHORIZATION OF APPROPRIATIONS.*—There are
22 authorized to be appropriated to carry out this section such
23 sums as may be necessary for each of the fiscal years 2004
24 through 2009.

1 **“SEC. 675. ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.**

2 “(a) *INSTRUCTIONAL MATERIALS ACCESSIBILITY*
3 *STANDARD.*—

4 “(1) *ACCESSIBILITY STANDARD.*—*Not later than*
5 *180 days after the date of enactment of the Individ-*
6 *uals with Disabilities Education Improvement Act of*
7 *2004, the Secretary shall, by rulemaking, promulgate*
8 *an Instructional Materials Accessibility Standard*
9 *which shall constitute the technical standards to be*
10 *used by publishers for the preparation of electronic*
11 *files for States under section 612(a)(22).*

12 “(2) *RELATIONSHIP TO OTHER LAWS.*—*For pur-*
13 *poses of this section:*

14 “(A) *AUTHORIZED ENTITY.*—*Notwith-*
15 *standing the provisions of section 106 of title 17,*
16 *United States Code, it is not an infringement of*
17 *copyright for an authorized entity to reproduce*
18 *or to distribute copies of the electronic files de-*
19 *scribed in section 612(a)(22)(B), containing the*
20 *contents of the print instructional materials*
21 *using the Instructional Materials Accessibility*
22 *Standard, if such copies are used solely for re-*
23 *production or distribution of the contents of such*
24 *print instructional materials in specialized for-*
25 *mats designed exclusively for use by the blind or*
26 *other persons with print disabilities.*

1 “(B) *PUBLISHER.*—Notwithstanding the
2 provisions of section of 106 of title 17, United
3 States Code, it is not an infringement of copy-
4 right for a publisher to create and distribute cop-
5 ies of the electronic files described in section
6 612(a)(22)(B), containing the contents of the
7 print instructional materials using the Instruc-
8 tional Material Accessibility Standard, if such
9 copies are used solely for reproduction or dis-
10 tribution of the contents of such print instruc-
11 tional materials in specialized formats designed
12 exclusively for use by the blind or other persons
13 with print disabilities.

14 “(C) *COPIES.*—Copies of the electronic files
15 containing the contents of the print instructional
16 materials using the Instructional Materials Ac-
17 cessibility Standard shall be made in compliance
18 with the provisions of section 121(b) of title 17,
19 United States Code, regarding the reproduction
20 and distribution of copyrighted print instruc-
21 tional materials in specialized formats.

22 “(3) *DEFINITIONS.*—In this section:

23 “(A) *INSTRUCTIONAL MATERIALS ACCESSI-*
24 *BILITY STANDARD.*—The term ‘Instructional Ma-
25 terials Accessibility Standard’ means the tech-

1 *nical standards described in paragraph (2), to be*
2 *used in the preparation of electronic files suit-*
3 *able and used solely for efficient conversion into*
4 *specialized formats.*

5 “(B) *BLIND OR OTHER PERSONS WITH*
6 *PRINT DISABILITIES.—The term ‘blind or other*
7 *persons with print disabilities’ means children*
8 *served under this Act and who may qualify in*
9 *accordance with the Act entitled “An Act to pro-*
10 *vide books for the adult blind”, approved March*
11 *3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive*
12 *books and other publications produced in special-*
13 *ized formats.*

14 “(C) *SPECIALIZED FORMATS.—The term*
15 *‘specialized formats’ has the meaning given the*
16 *term in section 121(c)(3) of title 17, United*
17 *States Code, and for the purposes of this section,*
18 *includes synthesized speech, digital audio, and*
19 *large print.*

20 “(D) *PRINT INSTRUCTIONAL MATERIALS.—*
21 *The term ‘print instructional materials’ means*
22 *printed textbooks and related printed core mate-*
23 *rials that are written and published primarily*
24 *for use in elementary school and secondary*
25 *school instruction and are required by a State*

1 *educational agency or local educational agency*
2 *for use by pupils in the classroom.*

3 “(E) *AUTHORIZED ENTITY.*—*The term ‘au-*
4 *thorized entity’ has the meaning given the term*
5 *in section 121(c)(1) of title 17, United States*
6 *Code.*

7 “(4) *APPLICABILITY.*—*This section shall apply to*
8 *print instructional materials published and copy-*
9 *righted after the date on which the final rule estab-*
10 *lishing the Instructional Materials Accessibility*
11 *Standard is published in the Federal Register.*

12 “(b) *NATIONAL INSTRUCTIONAL MATERIALS ACCESS*
13 *CENTER.*—

14 “(1) *ESTABLISHMENT.*—*Not later than 2 years*
15 *after the date of enactment of the Individuals with*
16 *Disabilities Education Improvement Act of 2004, the*
17 *Secretary shall establish a center, to be known as the*
18 *National Instructional Materials Access Center, which*
19 *shall coordinate the acquisition and distribution of*
20 *print instructional materials prepared in the Instruc-*
21 *tional Materials Accessibility Standard described in*
22 *subsection (a)(2).*

23 “(2) *RESPONSIBILITIES.*—*The duties of the Na-*
24 *tional Instructional Materials Access Center are the*
25 *following:*

1 “(A) To receive and maintain a catalog of
2 *print instructional materials made available*
3 *under section 612(a)(22) and section 613(a)(6).*

4 “(B) To provide authorized entities with ac-
5 *cess to such print instructional materials, free of*
6 *charge, in accordance with such terms and proce-*
7 *dures as the National Instructional Materials*
8 *Access Center may prescribe.*

9 “(C) To develop, adopt, and publish proce-
10 *dures to protect against copyright infringement*
11 *and otherwise to administratively assure compli-*
12 *ance with title 17, United States Code, with re-*
13 *spect to the print instructional materials pro-*
14 *vided under section 612(a)(22) and section*
15 *613(a)(6).*

16 “(3) *CONTRACT AUTHORIZED.—To assist in car-*
17 *rying out paragraph (1), the Secretary shall award,*
18 *on a competitive basis, a contract renewable on a bi-*
19 *ennial basis with a nonprofit organization, or with a*
20 *consortium of such organizations, determined by the*
21 *Secretary to be best qualified to carry out the respon-*
22 *sibilities described in paragraph (2). The contractor*
23 *shall report directly to the Assistant Secretary for*
24 *Special Education and Rehabilitative Services.*

1 “(4) *AUTHORIZATION OF APPROPRIATIONS.*—
2 *There are authorized to be appropriated to carry out*
3 *this subsection such sums as may be necessary.*

4 **“SEC. 676. AUTHORIZATION OF APPROPRIATIONS.**

5 *“There are authorized to be appropriated to carry out*
6 *sections 671, 672, 673, and 663 such sums as may be nec-*
7 *essary for each of the fiscal years 2004 through 2009.*

8 **“Subpart 4—Interim Alternative Educational Set-**
9 ***tings, Behavioral Supports, and Whole School***
10 ***Interventions***

11 **“SEC. 681. PURPOSE.**

12 *“The purpose of this subpart is to authorize resources*
13 *to foster a safe learning environment that supports aca-*
14 *demic achievement for all students by improving the quality*
15 *of interim alternative educational settings, providing more*
16 *behavioral supports in schools, and supporting whole school*
17 *interventions.*

18 **“SEC. 682. DEFINITION OF ELIGIBLE ENTITY.**

19 *“In this subpart, the term ‘eligible entity’ means—*

20 *“(1) a local educational agency; or*

21 *“(2) a consortium consisting of a local edu-*
22 *cational agency and 1 or more of the following enti-*
23 *ties:*

24 *“(A) another local educational agency;*

1 “(B) a community-based organization with
2 a demonstrated record of effectiveness in helping
3 children with disabilities who have behavioral
4 challenges succeed;

5 “(C) an institution of higher education;

6 “(D) a mental health provider; or

7 “(E) an educational service agency.

8 **“SEC. 683. PROGRAM AUTHORIZED.**

9 “The Secretary is authorized to award grants, on a
10 competitive basis, to eligible entities to enable the eligible
11 entities—

12 “(1) to establish or expand behavioral supports
13 and whole school behavioral interventions by pro-
14 viding for effective, research-based practices, includ-
15 ing—

16 “(A) comprehensive, early screening efforts
17 for students at risk for emotional and behavioral
18 difficulties;

19 “(B) training for school staff on early iden-
20 tification, prereferral, and referral procedures;

21 “(C) training for administrators, teachers,
22 related services personnel, behavioral specialists,
23 and other school staff in whole school positive be-
24 havioral interventions and supports, behavioral

1 *intervention planning, and classroom and stu-*
2 *dent management techniques;*

3 “(D) *joint training for administrators, par-*
4 *ents, teachers, related services personnel, behav-*
5 *ioral specialists, and other school staff on effec-*
6 *tive strategies for positive behavioral interven-*
7 *tions and behavior management strategies that*
8 *focus on the prevention of behavior problems;*

9 “(E) *developing or implementing specific*
10 *curricula, programs, or interventions aimed at*
11 *addressing behavioral problems;*

12 “(F) *stronger linkages between school-based*
13 *services and community-based resources, such as*
14 *community mental health and primary care pro-*
15 *viders; or*

16 “(G) *using behavioral specialists, related*
17 *services personnel, and other staff necessary to*
18 *implement behavioral supports; or*

19 “(2) *to improve interim alternative educational*
20 *settings by—*

21 “(A) *improving the training of administra-*
22 *tors, teachers, related services personnel, behav-*
23 *ioral specialists, and other school staff (including*
24 *ongoing mentoring of new teachers);*

1 “(B) attracting and retaining a high qual-
2 ity, diverse staff;

3 “(C) providing for on-site counseling serv-
4 ices;

5 “(D) using research-based interventions,
6 curriculum, and practices;

7 “(E) allowing students to use instructional
8 technology that provides individualized instruc-
9 tion;

10 “(F) ensuring that the services are fully
11 consistent with the goals of the individual stu-
12 dent’s IEP;

13 “(G) promoting effective case management
14 and collaboration among parents, teachers, phy-
15 sicians, related services personnel, behavioral
16 specialists, principals, administrators, and other
17 school staff;

18 “(H) promoting interagency coordination
19 and coordinated service delivery among schools,
20 juvenile courts, child welfare agencies, commu-
21 nity mental health providers, primary care pro-
22 viders, public recreation agencies, and commu-
23 nity-based organizations; or

24 “(I) providing for behavioral specialists to
25 help students transitioning from interim alter-

1 *native educational settings reintegrate into their*
2 *regular classrooms.*

3 **“SEC. 684. PROGRAM EVALUATIONS.**

4 “(a) *REPORT AND EVALUATION.*—*Each eligible entity*
5 *receiving a grant under this subpart shall prepare and sub-*
6 *mit annually to the Secretary a report on the outcomes of*
7 *the activities assisted under the grant.*

8 “(b) *BEST PRACTICES ON WEBSITE.*—*The Secretary*
9 *shall make available on the Department’s website informa-*
10 *tion for parents, teachers, and school administrators on best*
11 *practices for interim alternative educational settings, be-*
12 *havior supports, and whole school intervention.*

13 **“SEC. 685. AUTHORIZATION OF APPROPRIATIONS.**

14 *“There are authorized to be appropriated to carry out*
15 *this subpart \$50,000,000 for fiscal year 2004 and such sums*
16 *as may be necessary for each of the 5 succeeding fiscal*
17 *years.”.*

18 ***TITLE II—AMENDMENTS TO THE***
19 ***REHABILITATION ACT OF 1973***

20 ***SEC. 201. FINDINGS.***

21 *Section 2(a) of the Rehabilitation Act of 1973 (29*
22 *U.S.C. 701(a)) is amended—*

23 (1) *in paragraph (5), by striking “and” at the*
24 *end;*

1 (2) in paragraph (6), by striking the period and
2 inserting “; and”; and

3 (3) by adding at the end the following:

4 “(7) there is a substantial need to improve and
5 expand services for students with disabilities under
6 this Act.”.

7 **SEC. 202. DEFINITIONS.**

8 Section 7 of the Rehabilitation Act of 1973 (29 U.S.C.
9 705) is amended—

10 (1) by redesignating paragraphs (35) through
11 (39) as paragraphs (36), (37), (38), (40), and (41),
12 respectively;

13 (2) in subparagraph (A)(ii) of paragraph (36)
14 (as redesignated in paragraph (1)), by striking
15 “paragraph (36)(C)” and inserting “paragraph
16 (37)(C)”;

17 (3) by inserting after paragraph (34) the fol-
18 lowing:

19 “(35)(A) The term ‘student with a disability’
20 means an individual with a disability who—

21 “(i) is not younger than 14 and not older
22 than 21;

23 “(ii) has been determined to be eligible
24 under section 102(a) for assistance under this
25 title; and

1 “(iii)(I) is eligible for, and is receiving, spe-
 2 cial education under part B of the Individuals
 3 with Disabilities Education Act (20 U.S.C. 1411
 4 et seq.); or

5 “(II) is an individual with a disability, for
 6 purposes of section 504.

7 “(B) The term ‘students with disabilities’ means
 8 more than 1 student with a disability.”; and

9 (4) by inserting after paragraph (38) the fol-
 10 lowing:

11 “(39) The term ‘transition services expansion
 12 year’ means—

13 “(A) the first fiscal year for which the
 14 amount appropriated under section 100(b) ex-
 15 ceeds the amount appropriated under section
 16 100(b) for fiscal year 2004 by not less than
 17 \$100,000,000; and

18 “(B) each fiscal year subsequent to that first
 19 fiscal year.”.

20 **SEC. 203. STATE PLAN.**

21 (a) **ASSESSMENT AND STRATEGIES.**—Section
 22 101(a)(15) of the Rehabilitation Act of 1973 (29 U.S.C.
 23 721(a)(15)) is amended—

24 (1) in subparagraph (A)(i)—

1 (A) in subclause (II), by striking “and” at
2 the end;

3 (B) in subclause (III), by adding “and” at
4 the end; and

5 (C) by adding at the end the following:

6 “(IV) in a transition services ex-
7 pansion year, students with disabil-
8 ities, including their need for transi-
9 tion services;” and

10 (2) in subparagraph (D)—

11 (A) by redesignating clauses (iii), (iv), and
12 (v) as clauses (iv), (v), and (vi), respectively;
13 and

14 (B) by inserting after clause (ii) the fol-
15 lowing:

16 “(iii) in a transition services expan-
17 sion year, the methods to be used to improve
18 and expand vocational rehabilitation serv-
19 ices for students with disabilities, including
20 the coordination of services designed to fa-
21 cilitate the transition of such students from
22 the receipt of educational services in school
23 to the receipt of vocational rehabilitation
24 services under this title or to postsecondary
25 education or employment;”.

1 **(b) SERVICES FOR STUDENTS WITH DISABILITIES.**—
2 *Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C.*
3 *721(a)) is amended by adding at the end the following:*

4 “(25) **SERVICES FOR STUDENTS WITH DISABIL-**
5 *ITIES.*—*The State plan for a transition services ex-*
6 *pansion year shall provide an assurance satisfactory*
7 *to the Secretary that the State—*

8 “(A) *has developed and implemented strate-*
9 *gies to address the needs identified in the assess-*
10 *ment described in paragraph (15), and achieve*
11 *the goals and priorities identified by the State,*
12 *to improve and expand vocational rehabilitation*
13 *services for students with disabilities on a state-*
14 *wide basis in accordance with paragraph (15);*
15 *and*

16 “(B) *from funds reserved under section*
17 *110A, shall carry out programs or activities de-*
18 *signed to improve and expand vocational reha-*
19 *bilitation services for students with disabilities*
20 *that—*

21 “(i) *facilitate the transition of the stu-*
22 *dents with disabilities from the receipt of*
23 *educational services in school, to the receipt*
24 *of vocational rehabilitation services under*
25 *this title, including, at a minimum, those*

1 *services specified in the interagency agree-*
2 *ment required in paragraph (11)(D);*

3 “(ii) *improve the achievement of post-*
4 *school goals of students with disabilities, in-*
5 *cluding improving the achievement through*
6 *participation (as appropriate when voca-*
7 *tional goals are discussed) in meetings re-*
8 *garding individualized education programs*
9 *developed under section 614 of the Individ-*
10 *uals with Disabilities Education Act (20*
11 *U.S.C. 1414);*

12 “(iii) *provide vocational guidance, ca-*
13 *reer exploration services, and job search*
14 *skills and strategies and technical assistance*
15 *to students with disabilities;*

16 “(iv) *support the provision of training*
17 *and technical assistance to State and local*
18 *educational agency and designated State*
19 *agency personnel responsible for the plan-*
20 *ning and provision of services to students*
21 *with disabilities; and*

22 “(v) *support outreach activities to stu-*
23 *dents with disabilities who are eligible for,*
24 *and need, services under this title.”.*

1 **SEC. 204. SCOPE OF SERVICES.**

2 *Section 103 of the Rehabilitation Act of 1973 (29*
3 *U.S.C. 723) is amended—*

4 *(1) in subsection (a), by striking paragraph (15)*
5 *and inserting the following:*

6 *“(15) transition services for students with dis-*
7 *abilities, that facilitate the achievement of the em-*
8 *ployment outcome identified in the individualized*
9 *plan for employment, including, in a transition serv-*
10 *ices expansion year, services described in clauses (i)*
11 *through (iii) of section 101(a)(25)(B);”*; and

12 *(2) in subsection (b), by striking paragraph (6)*
13 *and inserting the following:*

14 *“(6)(A)(i) Consultation and technical assistance*
15 *services to assist State and local educational agencies*
16 *in planning for the transition of students with dis-*
17 *abilities from school to post-school activities, includ-*
18 *ing employment.*

19 *“(ii) In a transition services expansion year,*
20 *training and technical assistance described in section*
21 *101(a)(25)(B)(iv).*

22 *“(B) In a transition services expansion year,*
23 *services for groups of individuals with disabilities*
24 *who meet the requirements of clauses (i) and (iii) of*
25 *section 7(35)(A), including services described in*
26 *clauses (i), (ii), (iii), and (v) of section*

1 101(a)(25)(B), to assist in the transition from school
2 to post-school activities.”.

3 **SEC. 205. STANDARDS AND INDICATORS.**

4 Section 106(a) of the Rehabilitation Act of 1973 (29
5 U.S.C. 726(a)) is amended by striking paragraph (1)(C)
6 and all that follows through paragraph (2) and inserting
7 the following:

8 “(2) *MEASURES.*—The standards and indicators
9 shall include outcome and related measures of pro-
10 gram performance that—

11 “(A) facilitate the accomplishment of the
12 purpose and policy of this title;

13 “(B) to the maximum extent practicable,
14 are consistent with the core indicators of per-
15 formance, and corresponding State adjusted lev-
16 els of performance, established under section
17 136(b) of the Workforce Investment Act of 1998
18 (29 U.S.C. 2871(b)); and

19 “(C) include measures of the program’s per-
20 formance with respect to the transition to post-
21 school vocational activities, and achievement of
22 the post-school vocational goals, of students with
23 disabilities served under the program.”.

1 **SEC. 206. RESERVATION FOR EXPANDED TRANSITION SERV-**
2 **ICES.**

3 *The Rehabilitation Act of 1973 is amended by insert-*
4 *ing after section 110 (29 U.S.C. 730) the following:*

5 **“SEC. 110A. RESERVATION FOR EXPANDED TRANSITION**
6 **SERVICES.**

7 *“(a) RESERVATION.—From the State allotment under*
8 *section 110 in a transition services expansion year, each*
9 *State shall reserve an amount calculated by the Commis-*
10 *sioner under subsection (b) to carry out programs and ac-*
11 *tivities under sections 101(a)(25)(B) and 103(b)(6).*

12 *“(b) CALCULATION.—The Commissioner shall calculate*
13 *the amount to be reserved for such programs and activities*
14 *for a fiscal year by each State by multiplying \$50,000,000*
15 *by the percentage determined by dividing—*

16 *“(1) the amount allotted to that State under sec-*
17 *tion 110 for the prior fiscal year; by*

18 *“(2) the total amount allotted to all States under*
19 *section 110 for that prior fiscal year.”.*

20 **SEC. 207. CONFORMING AMENDMENT.**

21 *Section 1(b) of the Rehabilitation Act of 1973 is*
22 *amended by inserting after the item relating to section 110*
23 *the following:*

“Sec. 110A. Reservation for expanded transition services.”.

1 **TITLE III—NATIONAL CENTER**
 2 **FOR SPECIAL EDUCATION RE-**
 3 **SEARCH**

4 **SEC. 301. NATIONAL CENTER FOR SPECIAL EDUCATION RE-**
 5 **SEARCH.**

6 (a) *AMENDMENT.*—*The Education Sciences Reform*
 7 *Act of 2002 (20 U.S.C. 9501 et seq.) is amended—*

8 (1) *by redesignating part E as part F; and*

9 (2) *by inserting after part D the following:*

10 **“PART E—NATIONAL CENTER FOR SPECIAL**
 11 **EDUCATION RESEARCH**

12 **“SEC. 175. ESTABLISHMENT.**

13 *“(a) ESTABLISHMENT.*—*There is established in the In-*
 14 *stitute a National Center for Special Education Research.*

15 *“(b) MISSION.*—*The mission of the National Center for*
 16 *Special Education Research (in this part referred to as the*
 17 *‘Special Education Research Center’) is—*

18 *“(1) to sponsor research to expand knowledge*
 19 *and understanding of the needs of infants, toddlers,*
 20 *and children with disabilities in order to improve the*
 21 *developmental, educational, and transitional results*
 22 *of such individuals;*

23 *“(2) to sponsor research to improve services pro-*
 24 *vided under, and support the implementation of, the*
 25 *Individuals with Disabilities Education Act; and*

1 “(3) to evaluate the implementation and effec-
2 tiveness of the Individuals with Disabilities Edu-
3 cation Act in coordination with the National Center
4 for Education Evaluation and Regional Assistance.

5 “(c) *APPLICABILITY OF EDUCATION SCIENCES RE-*
6 *FORM ACT OF 2002.—Parts A and F, and the standards*
7 *for peer review of applications and for the conduct and eval-*
8 *uation of research under sections 133(a) and 134, respec-*
9 *tively, shall apply to the Secretary, the Director, and the*
10 *Commissioner in carrying out this part.*

11 **“SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RE-**
12 **SEARCH.**

13 *“The Special Education Research Center shall be head-*
14 *ed by a Commissioner for Special Education Research (in*
15 *this part referred to as ‘the Special Education Research*
16 *Commissioner’) who shall have substantial knowledge of the*
17 *Special Education Research Center’s activities, including*
18 *a high level of expertise in the fields of research, research*
19 *management, and the education of children with disabil-*
20 *ities.*

21 **“SEC. 177. DUTIES.**

22 “(a) *GENERAL DUTIES.—The Special Education Re-*
23 *search Center shall carry out research activities under this*
24 *part consistent with the mission described in section 175(b),*
25 *such as activities that—*

1 “(1) improve services provided under the Indi-
2 viduals with Disabilities Education Act in order to
3 improve—

4 “(A) academic achievement, functional out-
5 comes, and educational results for children with
6 disabilities; and

7 “(B) developmental outcomes for infants
8 and toddlers;

9 “(2) identify scientifically based educational
10 practices that support learning and improve aca-
11 demic achievement, functional outcomes, and edu-
12 cational results for all students with disabilities;

13 “(3) examine the special needs of preschool aged
14 children, infants, and toddlers with disabilities, in-
15 cluding factors that may result in developmental
16 delays;

17 “(4) identify scientifically based related services
18 and interventions that promote participation and
19 progress in the general education curriculum and
20 general education settings;

21 “(5) improve the alignment, compatibility, and
22 development of valid and reliable assessments, includ-
23 ing alternate assessments, as required by section
24 1111(b) of the Elementary and Secondary Education
25 Act of 1965;

1 “(6) examine State content standards and alter-
2 nate assessments for students with significant cog-
3 nitive impairment in terms of academic achievement,
4 individualized instructional need, appropriate edu-
5 cation settings, and improved post-school results;

6 “(7) examine the educational, developmental,
7 and transitional needs of children with high incidence
8 and low incidence disabilities;

9 “(8) examine the extent to which overidentifica-
10 tion and underidentification of children with disabili-
11 ties occurs, and the causes thereof;

12 “(9) improve reading and literacy skills of chil-
13 dren with disabilities;

14 “(10) examine and improve secondary and post-
15 secondary education and transitional outcomes and
16 results for children with disabilities;

17 “(11) examine methods of early intervention for
18 children with disabilities, including children with
19 multiple or complex developmental delays;

20 “(12) examine and incorporate universal design
21 concepts in the development of standards, assessments,
22 curricula, and instructional methods as a method to
23 improve educational and transitional results for chil-
24 dren with disabilities;

1 “(13) improve the preparation of personnel, in-
2 cluding early intervention personnel, who provide
3 educational and related services to children with dis-
4 abilities to increase the academic achievement and
5 functional performance of students with disabilities;

6 “(14) examine the excess costs of educating a
7 child with a disability and expenses associated with
8 high cost special education and related services;

9 “(15) help parents improve educational results
10 for their children, particularly related to transition
11 issues; and

12 “(16) address the unique needs of children with
13 significant cognitive disabilities.

14 “(b) *STANDARDS.*—*The Commissioner of Special Edu-*
15 *cation Research shall ensure that activities assisted under*
16 *this section—*

17 “(1) conform to high standards of quality, integ-
18 rity, accuracy, validity, and reliability;

19 “(2) are carried out in conjunction with the
20 standards for the conduct and evaluation of all re-
21 search and development established by the National
22 Center for Education Research; and

23 “(3) are objective, secular, neutral, and nonideo-
24 logical, and are free of partisan political influence,

1 *and racial, cultural, gender, regional, or disability*
2 *bias.*

3 “(c) *PLAN.—The Commissioner of Special Education*
4 *Research shall propose to the Director a research plan, de-*
5 *veloped in collaboration with the Assistant Secretary for*
6 *Special Education and Rehabilitative Services, that—*

7 “(1) *is consistent with the priorities and mission*
8 *of the Institute and the mission of the Special Edu-*
9 *cation Research Center;*

10 “(2) *is carried out, updated, and modified, as*
11 *appropriate;*

12 “(3) *is consistent with the purpose of the Indi-*
13 *viduals with Disabilities Education Act;*

14 “(4) *contains an appropriate balance across all*
15 *age ranges and types of children with disabilities;*

16 “(5) *provides for research that is objective and*
17 *uses measurable indicators to assess its progress and*
18 *results;*

19 “(6) *is coordinated with the comprehensive plan*
20 *developed under section 661 of the Individuals with*
21 *Disabilities Education Act; and*

22 “(7) *provides that the research conducted under*
23 *part D of the Individuals with Disabilities Education*
24 *Act is relevant to special education practice and pol-*
25 *icy.*

1 “(d) *GRANTS, CONTRACTS, AND COOPERATIVE AGREE-*
2 *MENTS.*—*In carrying out the duties under this section, the*
3 *Director may award grants to, or enter into contracts or*
4 *cooperative agreements with, eligible entities.*

5 “(e) *APPLICATIONS.*—*An eligible entity that wishes to*
6 *receive a grant, or enter into a contract or cooperative*
7 *agreement, under this part shall submit an application to*
8 *the Director at such time, in such manner, and containing*
9 *such information as the Director may require.*

10 “(f) *DISSEMINATION.*—*The Special Education Re-*
11 *search Center shall—*

12 “(1) *synthesize and disseminate, through the Na-*
13 *tional Center for Education Evaluation and Regional*
14 *Assistance, the findings and results of special edu-*
15 *cation research conducted or supported by the Special*
16 *Education Research Center; and*

17 “(2) *assist the Director in the preparation of a*
18 *biennial report, as described in section 119.*

19 “(g) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
20 *are authorized to be appropriated to carry out this part*
21 *such sums as may be necessary for each of fiscal years 2004*
22 *through 2009.”.*

23 “(b) *CONFORMING AMENDMENTS.*—

1 (1) *EDUCATION SCIENCES REFORM ACT OF*
2 *2002.—The Education Sciences Reform Act of 2002*
3 *(20 U.S.C. 9501 et seq.) is amended—*

4 (A) *in section 111(b)(1)(A) (20 U.S.C.*
5 *9511(b)(1)(A)), by inserting “and special edu-*
6 *cation” after “early childhood education”.*

7 (B) *in section 111(c)(3) (20 U.S.C.*
8 *9511(c)(3))—*

9 (i) *in subparagraph (B), by striking*
10 *“and” after the semicolon;*

11 (ii) *in subparagraph (C), by striking*
12 *the period and inserting “; and”; and*

13 (iii) *by adding at the end the fol-*
14 *lowing:*

15 *“(D) the National Center for Special Edu-*
16 *cation Research (as described in part E).”;*

17 (C) *in section 115(a) (20 U.S.C. 9515(a)),*
18 *by striking “including those” and all that follows*
19 *through “such as” and inserting “including those*
20 *associated with the goals and requirements of the*
21 *Elementary and Secondary Education Act of*
22 *1965 (20 U.S.C. 6301 et seq.), the Individuals*
23 *with Disabilities Education Act (20 U.S.C. 1400*
24 *et seq.), and the Higher Education Act of 1965*
25 *(20 U.S.C. 1001 et seq.), such as”; and*

1 (D) in section 116(c)(4)(A)(ii) (20 U.S.C.
2 9516(c)(4)(A)(ii) is amended by inserting “spe-
3 cial education experts,” after “early childhood
4 experts,”.

5 (2) *ELEMENTARY AND SECONDARY EDUCATION*
6 *ACT OF 1965*.—Section 1117(a)(3) of the *Elementary*
7 *and Secondary Education Act of 1965* (20 U.S.C.
8 6317(a)(3)) is amended by striking “part E” and in-
9 serting “part D”.

10 (c) *TRANSITION PROVISIONS*.—

11 (1) *ORDERLY TRANSITION*.—Notwithstanding
12 any other provision of law, the Secretary of Edu-
13 cation shall take such steps as are necessary to pro-
14 vide for the orderly transition to, and implementation
15 of, part E of the *Education Science Reform Act of*
16 2002, as enacted by subsection (a), from research ac-
17 tivities carried out under section 672 of the *Individ-*
18 *uals with Disabilities Education Act* (as such section
19 was in effect on the day before the date of enactment
20 of this Act).

21 (2) *CONTINUATION OF AWARDS*.—The Secretary
22 of Education shall continue research awards made
23 under section 672 of the *Individuals with Disabilities*
24 *Education Act* (as such section was in effect on the
25 day before the date of enactment of this Act) that are

1 *in effect on the day before the date of enactment of*
2 *this Act in accordance with the terms of those awards.*

3 *(d) EFFECTIVE DATES.—Notwithstanding any other*
4 *provision of law—*

5 *(1) the amendments made by subsections (a) and*
6 *(b) of this section shall take effect on October 1, 2004;*
7 *and*

8 *(2) section 672 of the Individuals with Disabil-*
9 *ities Education Act (as such section was in effect on*
10 *the day before the date of enactment of this Act) shall*
11 *remain in effect through September 30, 2004.*

12 **SEC. 302. NATIONAL BOARD FOR EDUCATION SCIENCES.**

13 *Section 116(c)(9) of the Education Sciences Reform*
14 *Act of 2002 (20 U.S.C. 9516(c)(9)) is amended by striking*
15 *the third sentence and inserting the following: “Meetings*
16 *of the Board are subject to section 552b of title 5, United*
17 *States Code (commonly referred to as the Government in*
18 *the Sunshine Act).”.*

19 **SEC. 303. REGIONAL ADVISORY COMMITTEES.**

20 *Section 206(d)(3) of the Education Sciences Reform*
21 *Act of 2002 (20 U.S.C. 9605(d)(3)) is amended by striking*
22 *“Academy” and inserting “Institute”.*

1 **TITLE IV—COMMISSION ON UNI-**
2 **VERSAL DESIGN AND THE AC-**
3 **CESSIBILITY OF CURRICULUM**
4 **AND INSTRUCTIONAL MATE-**
5 **RIALS**

6 **SEC. 401. COMMISSION ON UNIVERSAL DESIGN AND THE**
7 **ACCESSIBILITY OF CURRICULUM AND IN-**
8 **STRUCTIONAL MATERIALS.**

9 *(a) ESTABLISHMENT AND PURPOSE.—*

10 *(1) ESTABLISHMENT.—There is established a*
11 *Commission (hereafter in this section referred to as*
12 *the “Commission”) to study, evaluate, and make ap-*
13 *propriate recommendations to the Congress and to the*
14 *Secretary on universal design and accessibility of cur-*
15 *riculum and instructional materials for use by all*
16 *children, with a particular focus on children with dis-*
17 *abilities, in elementary schools and secondary schools.*

18 *(2) PURPOSE.—The purpose of the Commission*
19 *is—*

20 *(A) to survey the issues related to improv-*
21 *ing access to curriculum and instructional mate-*
22 *rials for children with disabilities, with and*
23 *without assistive technologies;*

24 *(B) to study the benefits, current or poten-*
25 *tial costs, and challenges of developing and im-*

1 *plementing a standard definition of the term*
2 *universal design as a means to achieve accessi-*
3 *bility of curriculum and instructional materials,*
4 *and as the Commission determines necessary, to*
5 *recommend a definition for the term universal*
6 *design, or other terms, taking into consideration*
7 *educational objectives, investment of resources,*
8 *state of technology, and effect on development of*
9 *curriculum and instructional materials;*

10 *(C) to examine issues related to the need for*
11 *and current availability and accessibility of cur-*
12 *riculum and instructional materials for use in*
13 *elementary schools and secondary schools by chil-*
14 *dren with disabilities, gaps in or conflicts among*
15 *relevant technical standards, educational qual-*
16 *ity, availability of instructional materials, tech-*
17 *nical standards, intellectual property rights, and*
18 *the economic and technical feasibility of imple-*
19 *menting any recommended definitions; and*

20 *(D) to provide the Congress and the Sec-*
21 *retary, not later than 24 months after the date*
22 *of enactment of this Act, the report described in*
23 *subsection (d).*

24 *(b) MEMBERSHIP.—*

1 (1) *COMPOSITION.*—*The Commission shall be*
2 *composed of 21 members, of which—*

3 (A) *3 members shall be appointed by the*
4 *Majority Leader of the Senate;*

5 (B) *2 members shall be appointed by the*
6 *Minority Leader of the Senate;*

7 (C) *3 members shall be appointed by the*
8 *Speaker of the House of Representatives;*

9 (D) *2 members shall be appointed by the*
10 *Minority Leader of the House;*

11 (E) *8 members shall be appointed by the*
12 *Secretary including representatives of States,*
13 *local educational agencies, publishers of instruc-*
14 *tional material, individuals with disabilities,*
15 *technical standard setting bodies, and authorized*
16 *entities as defined in section 121(c)(1) of title*
17 *17, United States Code; and*

18 (F) *3 members shall be appointed by the*
19 *Registrar of Copyrights.*

20 (2) *EXPERTISE OF COMMISSIONERS.*—*All mem-*
21 *bers of the Commission shall be individuals who have*
22 *been appointed on the basis of technical qualifica-*
23 *tions, professional expertise, and demonstrated knowl-*
24 *edge and shall include at least 4 representatives of*
25 *each of the following:*

1 (A) publishers of instructional materials,
2 including of textbooks, software, and other print,
3 electronic, or digital curricular materials;

4 (B) elementary and secondary education,
5 including teachers, special educators, and State
6 and local education officials or administrators;

7 (C) researchers in the fields of disabilities,
8 technology, and accessible media;

9 (D) experts in intellectual property rights;
10 and

11 (E) advocates of children with disabilities,
12 including parents of blind, visually impaired,
13 deaf, hearing impaired, physically challenged,
14 cognitively impaired, or learning disabled, or
15 representatives of organizations that advocate for
16 such children.

17 (3) *DATE.*—The appointment of the members of
18 the Commission shall be made not later than 60 days
19 after the date of enactment of this Act.

20 (4) *PERIOD OF APPOINTMENT AND VACANCIES.*—
21 Members shall be appointed for the life of the Com-
22 mission. Any vacancy in the Commission shall not af-
23 fect its powers, but shall be filled in the same manner
24 as the original appointment.

1 (5) *INITIAL MEETING.*—Not later than 45 days
2 after the date on which all members of the Commis-
3 sion have been appointed, the Commission shall hold
4 the Commission's first meeting.

5 (6) *MEETINGS.*—The Commission shall meet at
6 the call of the Chairperson.

7 (7) *QUORUM.*—A majority of the members of the
8 Commission shall constitute a quorum, but a lesser
9 number of members may hold hearings.

10 (8) *CHAIRPERSON AND VICE CHAIRPERSON.*—The
11 Commission shall select a chairperson and vice chair-
12 person from among the members of the Commission.

13 (c) *DUTIES OF THE COMMISSION.*—The Commission
14 shall study and make recommendations to Congress and the
15 Secretary regarding—

16 (1) the purposes of the Commission described in
17 subsection (a)(2);

18 (2) priority topics for additional research;

19 (3) the availability and accessibility of curricula
20 and instructional materials, including print, soft-
21 ware, CD-ROM, video, and Internet, for use in ele-
22 mentary schools and secondary schools by children
23 with disabilities, including—

24 (A) the numbers of affected children with
25 disabilities, by grade, age, and type of disability;

1 (B) the technical and other means by which
2 such materials are made accessible, such as as-
3 sistive technologies, electronic versions, large
4 print, closed captioning, video description, and
5 Braille, and any conflicts between relevant tech-
6 nical standards by which instructional materials
7 are made accessible;

8 (C) the steps taken by State and local edu-
9 cational agencies to support accessibility, includ-
10 ing through State adoption and procurement
11 policies, the acquisition and integration of as-
12 sistive technology, and any State and local re-
13 quirements or standards;

14 (D) timeliness of receipt of such materials
15 by children with disabilities; and

16 (E) continued barriers to access to such ma-
17 terials; and

18 (4) the potential and likely effects of providing
19 accessible or universally designed materials for all
20 students in elementary schools and secondary schools,
21 with a particular focus on children with disabilities,
22 including—

23 (A) an analysis of the current and potential
24 costs to develop and provide accessible instruc-
25 tional materials, with and without specialized

1 *formats, to publishers, States, local educational*
2 *agencies, schools, and others, broken down by—*

3 *(i) type of disability, including phys-*
4 *ical, sensory, and cognitive disability;*

5 *(ii) type of instructional materials, in-*
6 *cluding by grade and by basal and supple-*
7 *mental materials; and*

8 *(iii) type of media, including print,*
9 *electronic, software, web-based, audio, and*
10 *video; and*

11 *(B) an analysis of the effects of any rec-*
12 *ommended definitions regarding—*

13 *(i) the availability and quality of in-*
14 *structional materials for nondisabled stu-*
15 *dents, and innovation in the development*
16 *and delivery of these materials;*

17 *(ii) State learning content standards*
18 *that are media-, skill-, or pedagogically-*
19 *based and may therefore be compromised;*

20 *(iii) prices of instructional materials*
21 *and the impact of the definitions on State*
22 *and local budgets; and*

23 *(iv) intellectual property rights in con-*
24 *nection with the development, distribution,*

1 *and use of curriculum and instructional*
2 *materials.*

3 (d) *PUBLIC HEARINGS.*—*As part of the study con-*
4 *ducted under this subsection, the Commission shall hold*
5 *public hearings, including through the use of the Internet*
6 *or other technologies, for the purposes referred to in sub-*
7 *section (a).*

8 (e) *REPORT.*—

9 (1) *INTERIM REPORT.*—*Not later than 12 months*
10 *after the establishment of the Commission, the Com-*
11 *mission shall provide to the Secretary and Congress*
12 *an interim report on the Commission's activities dur-*
13 *ing the Commission's first year and any preliminary*
14 *findings.*

15 (2) *FINAL REPORT.*—*Not later than 24 months*
16 *after the establishment of the Commission, the Com-*
17 *mission shall submit a report to the Secretary and*
18 *Congress that shall contain—*

19 (A) *recommendations determined necessary*
20 *regarding definitions of the terms described in*
21 *subsection (a)(2)(B);*

22 (B) *recommendations for additional re-*
23 *search; and*

24 (C) *a detailed statement of the findings and*
25 *conclusions of the Commission resulting from the*

1 *study of the issues identified in subsection*
2 *(a)(2)(C).*

3 *(f) POWERS OF THE COMMISSION.—*

4 *(1) AUTHORITY OF COMMISSION.—The Commis-*
5 *sion may hold such hearings, convene and act at such*
6 *times and places, take such testimony, and receive*
7 *such evidence, as the Commission considers necessary*
8 *to carry out the responsibilities of the Commission.*

9 *(2) USE OF MAIL.—The Commission may use the*
10 *United States mails in the same manner and under*
11 *the same conditions as other departments and agen-*
12 *cies of the Federal Government.*

13 *(3) GIFTS.—The Commission may accept, use,*
14 *and dispose of gifts or donations of services or prop-*
15 *erty.*

16 *(4) COMPENSATION.—Except as provided in*
17 *paragraph (5), each member of the Commission who*
18 *is not an officer or employee of the Federal Govern-*
19 *ment shall serve without compensation. All members*
20 *of the Commission who are officers or employees of the*
21 *United States shall serve without compensation in ad-*
22 *dition to that received for their services as officers or*
23 *employees of the United States.*

24 *(5) PER DIEM.—The members of the Commission*
25 *shall be allowed travel expenses, including per diem*

1 *in lieu of subsistence, at rates authorized for employ-*
2 *ees of agencies under subchapter I of chapter 57 of*
3 *title 5, United States Code, while away from their*
4 *homes or regular places of business in the perform-*
5 *ance of services for the Commission.*

6 (6) *EMPLOYMENT AND COMPENSATION OF EM-*
7 *PLOYEES.—Except as otherwise provided in this sec-*
8 *tion and consistent with section 3161 of title 5,*
9 *United States Code, the Chairperson may appoint, fix*
10 *the compensation of, and terminate an executive di-*
11 *rector and such additional employees as may be nec-*
12 *essary to enable the Commission to perform the Com-*
13 *mission’s duties.*

14 (7) *DETAILING OF FEDERAL EMPLOYEES.—Any*
15 *Federal Government employee may be detailed to the*
16 *Commission without reimbursement, and such detail*
17 *shall be without interruption or loss of civil service*
18 *status or privilege.*

19 (8) *TEMPORARY AND INTERMITTENT SERV-*
20 *ICES.—The Chairperson of the Commission may pro-*
21 *cure temporary and intermittent services under sec-*
22 *tion 3109(b) of title 5, United States Code, at rates*
23 *for individuals that do not exceed the daily equivalent*
24 *of the annual rate of basic pay prescribed for level V*

1 of the Executive Schedule under section 5316 of such
2 title.

3 (g) *TERMINATION OF THE COMMISSION.*—The Com-
4 mission shall terminate on the date that is 90 days after
5 the date on which the Commission submits its final report
6 under subsection (e)(2).

7 (h) *AUTHORIZATION OF APPROPRIATIONS.*—

8 (1) *AUTHORIZATION.*—There are authorized to be
9 appropriated \$750,000 for fiscal year 2004, and such
10 sums as necessary for fiscal year 2005 to carry out
11 the provisions of this section.

12 (2) *AVAILABILITY.*—Any sums appropriated
13 under the authorization contained in this subsection
14 shall remain available, without fiscal year limitation,
15 until expended.

16 **TITLE V—MISCELLANEOUS**

17 **SEC. 501. AMENDMENT TO CHILDREN'S HEALTH ACT OF** 18 **2000.**

19 Section 1004 of the Children's Health Act of 2000 (42
20 U.S.C. 285g note) is amended—

21 (1) in subsection (b), by striking “Agency” and
22 inserting “Agency, and the Department of Edu-
23 cation”; and

24 (2) in subsection (c)—

1 (A) in paragraph (2), by striking “and”
2 after the semicolon;

3 (B) in paragraph (3), by striking the period
4 at the end and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(4) be conducted in compliance with section 444
7 of the General Education Provisions Act (20 U.S.C.
8 1232g), including the requirement of prior parental
9 consent for the disclosure of any education records, ex-
10 cept without the use of authority or exceptions grant-
11 ed to authorized representatives of the Secretary of
12 Education for the evaluation of Federally-supported
13 education programs or in connection with the enforce-
14 ment of the Federal legal requirements that relate to
15 such programs.”.

16 **SEC. 502. GAO REVIEW OF CHILD MEDICATION USAGE.**

17 (a) *REVIEW.*—The Comptroller General shall conduct
18 a review of—

19 (1) the extent to which personnel in schools ac-
20 tively influence parents in pursuing a diagnosis of at-
21 tention deficit disorder and attention deficit hyper-
22 activity disorder;

23 (2) the policies and procedures among public
24 schools in allowing school personnel to distribute con-
25 trolled substances; and

1 (3) *the extent to which school personnel have re-*
2 *quired a child to obtain a prescription for substances*
3 *covered by section 202(c) of the Controlled Substances*
4 *Act (21 U.S.C. 812(c)) to treat attention deficit dis-*
5 *order, attention deficit hyperactivity disorder, or*
6 *other attention deficit-related illnesses or disorders, in*
7 *order to attend school or be evaluated for services*
8 *under the Individuals with Disabilities Education*
9 *Act.*

10 (b) *REPORT.—Not later than 1 year after the date of*
11 *enactment of this Act, the Comptroller General shall pre-*
12 *pare and submit to Congress a report that contains the re-*
13 *sults of the review under subsection (a).*

108TH CONGRESS
2^D SESSION

H. R. 1350

AMENDMENT

May 21, 2004

Ordered to be printed as passed